

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: September 26.09.2014

+ **CRL.A. 386/2011**
BALJEET SINGH & ANR. Appellants
Through Mr.Vikas Pahwa, Sr. Advocate
with Mr. B. Badrinath, Advocate

versus

STATE Respondent
Through Mr. M.N. Dudeja, APP for the
State with Insp./SHO Raj Kumar
& SI/IO Pradeep Kumar, PS
Nangloi

+ **CRL.A. 486/2011**
NIRMALA Appellant
Through: Mr.N. Hariharan, Senior Advocate
with Mr.Varun Deswal,
Mr.Vaibhav Sharma, Advocates

versus

STATE OF DELHI Respondent
Through Mr. M.N. Dudeja, APP for the
State with Insp./SHO Raj Kumar
& SI/IO Pradeep Kumar, PS
Nangloi
Mr. Ashok Drall, Advocate for
Complainant

+ **CRL.A. 487/2011**
RAJESH & ANR.

..... Appellants
Through Mr. Anupam S. Sharma, Advocate
versus

STATE OF DELHI

..... Respondent
Through Mr. M.N. Dudeja, APP for the
State with Insp./SHO Raj Kumar
& SI/IO Pradeep Kumar, PS
Nangloi
Mr. Ashok Drall, Advocate for
Complainant

+ **CRL.A. 1080/2011**
PUSHPA DEVI

..... Appellant
Through Mr. Ashok Drall, Advocate

versus

RAJESH KUMAR ETC

..... Respondent
Through Mr. Anupam S. Sharma, Adv. for
R-1 and R-2
Mr. M.N. Dudeja, APP for the
State with Insp./SHO Raj Kumar
& SI/IO Pradeep Kumar, PS
Nangloi.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

KAILASH GAMBHIR, J

1. *Tum meri beti nahi beta ho*(You are not my daughter but my son),

a statement often heard by way of giving a compliment to a daughter who

has made her parents proud, but look closely and you will find that this ironic statement is nothing but a reinforcement of every stereotype that women have fought against till date. The so called compliment shrouds the deep rooted prejudice that daughter is a liability and a son an asset and only a male child can do his parents proud, it does nothing but perpetuate the gender discrimination which we had started to believe does not exist anymore.

2. It is an open secret that the want of a male child is a one the biggest manifestations of gender discrimination that pervades all sections of the society, whether urban, rural literate, illiterate, rich or poor. It is understandable that in the past, societal conditioning for wanting to have a male child in a time where women were treated as a second class citizen having a deplorable quality of life was the norm of the day, but it is a disheartening fact that what was treated as an obsession in the bygone era still exists and does not only thrive but drives people to go to unimaginable lengths, the case at hand being a prime example.

3. What monstrosity of a desire would have imbued through the mind of the woman that she was compelled to murder her own daughter –in-

law for being unable to give a male heir to the family is unfathomable to

this court. Domestic violence, frequent abortions, physical and mental abuse, psychological pressure, all is to be endured like a penance for the sin for failing to birth a male child. What is the reason for this insatiable urge to have a male child? The reasons commonly postulated which come to mind are that the son is the bread winner of the family, the one to perpetuate the lineage of the family, caste or clan or he is the one to give light to the funeral pyre of the parents, but are not all mere hollow beliefs having no real consequences today. The women of this country have fought a long dogged battle to fadeout the gender divide, to break social mores and to overcome social barriers that were regarded as their so called limitations to make a mark in this world, but when viewed from the prism of the reality of the cases like the present one, it all seems to be a mirage. The aim with which progressive legislations such as the PNDT are passed every now to curb such social evils becomes toothless in the face of such ghastly acts. It is a scientific fact that the male chromosome is responsible for determining the sex of the child, why is then such savagery reserved for the women who have been granted the privilege to procreate and to continue the human race.

4. By this common judgment we propose to decide the four appeals.

The challenge in all these appeals filed under section 374 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*), is to the judgment dated 31/01/2011 and order on sentence dated 10/02/2011 passed by the learned Trial Court.

5. Criminal Appeal No.486/2011 has been preferred by the Appellant – Nirmala, mother in law of the deceased and Criminal Appeal No. 386/2011 has been preferred by the Appellants – Baljeet and Sanjeet, the father-in-law and the husband of the deceased respectively. All these appellants have challenged their conviction for commission of offence punishable under Section 302/120-B/34 of Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) for which vide order dated 10/02/2011, they were sentenced to imprisonment for life with a fine of Rs.10, 000 each and in default of payment of fine, to undergo simple imprisonment for a period of three months for offence punishable under Section 302/120-B/34 of IPC. Whilst for the offence punishable under Section 498A/34 of IPC, they were ordered to undergo rigorous imprisonment for a period of six months with fine of Rs.10, 000/- each and in default of

payment of fine, to further undergo simple imprisonment for a period of three months.

6. Criminal Appeal No. 487/2011 has been separately preferred by Rajesh and Meena, brother in law (jija) and sister in law (Nanad) respectively, challenging the order of conviction for the offence punishable under Section 498A/34 of IPC and order on sentence whereby they have been sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo simple imprisonment for a further period of three months.

7. Another Criminal Appeal No. 1080/2011 has been preferred by Smt. Pushpa Devi, mother of the deceased to seek conviction of Rajesh and Meena for the offence punishable under Section 302/120-B of IPC at par with the other co-accused persons, and set aside the impugned judgment and order on sentence dated 31/01/2011 and 10/02/2011 respectively which in regard to these two accused persons is inadequate.

8. The facts germane to the case of the prosecution are that –

“PW-16, SI Pardeep Kumar on receipt of DD no. 34A dt. 29.10.2008, reached the house of Baljeet Singh at village Bakkarwala, with PW-11, Ct. Ved Prakash. There they found a dead body lying in a pool of blood in a room. The head of the deceased was towards South-East and legs were towards North-West. The throat of the deceased was slit and there were numerous stab wounds on the body of the deceased. One knife, with a twisted blade covered with a cloth was lying on the dining table. Another knife lay near the left hand of the deceased which was covered with a chunni. The parents of the deceased were called after the inspection of the dead body, statement of Satyawar (PW-6), father of the deceased was recorded. The same was handed over to Ct. Ved Prakash for registration of FIR. The dog squad, crime team and senior officers were informed. Meanwhile, Additional SHO Insp. Prakash Chand reached and inspected the spot. Blood samples were obtained from the spot in his presence and taken into possession vide seizure memo Ex.PW6/K. Charges were framed against the accused persons under sections 302/ 498A/ 120B IPC, to which the accused persons pleaded not guilty and contested

the charges.

In order to bring home the culpability of the accused persons, the prosecution examined as many as 20 witnesses. After the conclusion of prosecution evidence, statements of the accused persons were recorded under Section 313 of Cr.P.C. They were confronted with the entire incriminating evidence produced against them and in response thereto, all the accused persons denied their involvement in the criminal case and pleaded not guilty.

9. In response to the questions put to them for stating anything voluntarily, the appellants- Nirmala, Baljeet and Sanjeet took a defence that on 29th October 2008, Sikander, brother of Nirmala had come to her house to take her to his house in order to celebrate bhai dooj on the 30th October 2008 and Nirmala alongwith Poorvi, went to his house at Sarangpur, Najafgarh, Delhi. They further stated that Anju (deceased) was left alone in the house as Baljeet and Sanjeet had also gone to their respective work places. Nirmala was supposed to return back on 30th October 2008 in the morning so that Anju could also go to her parental house for celebrating Bhai dooj. It was further stated that in

the evening, Nirmala's brother had received information regarding some incident having taken place at Nirmala's house and consequently Nirmala and her brother rushed to her house and as soon as they reached, she found that the police was present there. Baljeet and Sanjeet also came straight away and they saw the dead body of Anju lying in a pool of blood inside the house. Immediately thereafter, Satyawar PW-6 and his wife PW-1 also reached Anju's house and started abusing and assaulting Baljeet. The police took control of the situation and took Nirmala and Poorvi alongwith Baljeet, Sanjeet and Satyawar to the Police Station where they were made to wait. Poorvi was crying because of hunger, so the police took Poorvi from Nirmala and later on, all were erroneously implicated in the present case at the whims and caprices of the police. They also stated that all through the night they were made to sit in the police station. Baljeet and Sanjeet also spoke about the presence of a lot of people who were found standing there. The defence had also examined five witnesses in order to prove their innocence.

10. On behalf of the appellant – Nirmala, arguments were addressed by Mr. Hariharan, Senior Advocate, duly assisted by Mr. Varun Deswal and

Mr. Vaibhav Sharma, on behalf of Baljeet Singh and Sanjeet; the arguments were addressed by Mr. Vikas Pahwa, Senior Advocate, duly assisted by Mr. B. Badrinath. Appellants – Rajesh and Meena were represented through Mr. Anupam S. Sharma and the appellant - Ms. Pushpa Devi was represented by Mr. Ashok Drall, Advocate. The State was represented by Mr. M.N. Dudeja, learned Additional Public Prosecutor. Besides oral arguments, written submissions were also filed by the respective counsels along with the supporting judgements.

11. Mr. Hariharan, Senior Advocate, representing the appellant – Nirmala, mother in law of the deceased, at the outset submitted that the entire genesis of the incident flows from a telephonic call made by one person with the name of Rajbir to PCR at 6.30 p.m. and the police had reached at the spot pursuant to the said report lodged by Rajbir. Learned Senior Counsel further submitted that as per the PCR Form, local police had reached at the spot at 23:3:20 on 29th October 2008 and the PCR Van was relieved from the spot at 23:4:18. Learned counsel further submitted that as per the endorsement made by SI Pradeep Kumar, the rukka was sent to the local police station at 8.30 p.m. and information was received

by the police at 9 p.m., which is totally at odds with the time indicated in the PCR Form regarding the arrival of the police at the spot. Learned senior counsel also submitted that the police had registered the FIR on 30th October 2008 instead of registering it on the same day after receiving the rukka statement at 9.00 p.m.

12. The main contention of the learned senior counsel for the appellant – Nirmala, was that for incomprehensible reasons, the prosecution had neither proved the said PCR Form, nor did they examine any of the witnesses whose names formed a part of the PCR Form, i.e., Rajbir, the person who made the PCR Call, woman constable Sangeeta, who recorded the PCR Call, Suresh, whose name was mentioned against the column – local police informed, HC Ajay Sharma, who transmitted the message, or Mushahid Anwar whose mobile number as well as residence address was recorded in the form. Learned senior counsel further submitted that Rajbir was the most vital and decisive witness to unfurl the circumstances leading to the murder of the deceased Anju and his non-examination should be taken as lethal to the case of the prosecution. Learned senior counsel further contended that the PCR Form though not

proved by the prosecution was relied upon by them in the charge sheet and therefore, the same can be read in favour of the accused but not against her. In support of the foregoing contentions, learned senior counsel had placed reliance on the judgement of the Hon'ble Supreme Court in the case of *Vrijlal Ghosi & anr. Vs. State of M.P., reported in ILR [2012] MP 1351* and the judgment of this Court, passed in the case of *Johnson vs. State, 2012 III AD (Delhi) 154*.

13. The next submission on which much stress was laid by the learned senior counsel was with regard to the alleged presence of Baby Poorvi (PW-10), at the time of the incident. The age of the child was two and a half years at the time of the incident and she was of the age of three years and nine months at the time of her examination in Court and as per the prosecution she was an eye witness of the crime. Her statement was recorded by the police on 30th October 2008 at the residence of Narayan Singh, brother of the accused Baljeet, who was residing near his house. How and why the presence of Poorvi (PW-10) at the scene of the crime is doubtful and her testimony should be discarded being a tutored witness

can be outlined in terms of the following contentions raised by the learned senior counsel:-

- a) Satyawar (PW-6), Ms. Pushpa (PW-1), SI Pradeep (PW-16), Constable Ved Prakash and IO Prakash Chand (PW-19) , had all reached at the spot but none of these persons made any attempt to inquire about the said child or where she had gone;
- b) The conduct of the parents of the deceased is highly inconceivable and implausible for not tracing their granddaughter after having found their daughter murdered in her matrimonial home;
- c) Satyawar (PW-6) does not even make a whisper in his first statement based on which the FIR was recorded about the presence of Poorvi at the spot, nor even in his subsequent complaint dated 3.11.2008 addressed to SHO or even in his statement recorded by the learned SDM;
- d) The IO did not record the statement of Narayan Singh, brother of accused – Baljeet at whose house Poorvi was found, when the IO went in search of the accused persons.

- e) The prosecution failed to examine Constable Balbir Singh, ASI Suresh and Constable Satpal, who had accompanied the IO to the residence of Narayan Singh.
- f) SI Savita (PW-14) did not even make a mention about the recording of statement of Poorvi in her presence when examined in Court.
- g) Introduction of Poorvi as an eye witness – after a suggestion was put by the Senior Prosecutor to introduce some eye witness to prove the case of the prosecution, as admitted by the IO in his cross-examination.
- h) The presence of Poorvi as an eye witness was not disclosed even in the reply filed by the State in the anticipatory bail application of the accused – Rajesh.
- i) In the charge sheet filed by the police, Poorvi's name was absent.
- j) Poorvi's name does not find mention in the Court deposition of PW-1 and PW-6 and even in the statement of police witnesses.

14. Learned senior counsel for the appellant – Nirmala also contended that Poorvi (PW-10) was two and half years old at the time of commission of the crime and was three years and nine months old when she was examined in Court and therefore, one cannot discard the possibility of her maternal grandparents with whom she was staying during this period for having tutored or prompted the child to depose against the accused persons. Learned senior counsel further contended that her tutoring could be manifested from the fact that she blurted the words '*meena ne pakra, dadi ne mara*' in reply to even formal questions that were put to her regarding her dress or bag. Learned Senior Counsel invited the attention to question No.11 and question No.14 in this regard. In reply to question No.14, asking her to let know as to who else was residing at her house, she only disclosed the name of Rajesh (brother in law – phupha), Meena (Bua), Dadi (Nirmala) and herself, but failed to disclose the names of her father and grandfather. In reply to question No.40, she admitted the fact that her maternal grandmother had narrated the story about a 'buria' (old lady) and 'dusri aurat' (another woman) and in that story, she was also told that when 'Buri aurat' had beaten the other

woman, then blood oozed out. Attention of this Court was also invited to the question No.41, 42 and 46 put to PW-10 in cross-examination.

15. Learned senior counsel further submitted that cross-examination of PW-10 was deferred on 9th March 2010 due to electricity failure and on the adjourned date, she flatly refused with reference to any story being told to her by her maternal grandmother. Learned senior counsel also submitted that PW-10 had admitted in her cross-examination that she had met the police person at the house of her mother Anju on Tuesday in response to question no.11, while in response to question No.15, she admitted that her maternal grandmother was present when she met the police. Learned senior counsel for the appellant also contended that PW-10 had also admitted the fact that she had gone to the house of her maternal grandmother after her mother Anju was shifted to the hospital. Learned senior counsel for the appellant further submitted that this admission on the part of PW-10 clearly shows that she was not present at the house of Narayan Singh on 30th October 2008, as per the case set up by the prosecution since she was taken by her maternal grandmother to her house. Learned Senior Counsel also invited attention of this Court to

question No.28, asking her to inform as to whether she was told by her maternal grandmother to tell something before the Court and her response was in the affirmative and confirmatory. Learned senior counsel also submitted that PW-10 nowhere in her examination-in-chief stated that her statement was recorded by the police at the residence of Narayan Singh. Learned senior counsel for the appellant also submitted that the custody of Poorvi (PW-10) was with her maternal grand-parents since the date of the incident i.e. 29th October 2008, and the same could be gathered from the scrutiny of order dated 4th March 2010 passed by Ms. Nivedita Anil Sharma, Additional Sessions Judge, wherein the contention raised by Advocate Mr. Drall that the child Poorvi was living with her maternal grand-mother since the date of the incident i.e. 29th October 2008 was recorded.

16. Learned senior counsel for the appellant thus submitted that it would be totally perilous to rely on the testimony of such a tutored child witness who was just two and half years on the date of the incident. Further to buttress his arguments, learned senior counsel placed reliance on the judgments of the Hon'ble Apex Court in the case of *State of*

Assam vs. Mafizuddin Ahmed reported in (1983) 2 SCC 14 and a decision of this Court in Crl. Appeal No.600/2009, titled as *Babu Lal vs. State (Govt. Of NCT of Delhi)*, decided on 9th March 2010.

17. The next contention raised by learned senior counsel was with regards to the discrepancy in the case of the prosecution with regard to the arrest of the accused persons. Referring to the deposition of Pushpa (PW-1), learned counsel submitted that she pointed out the presence of all the accused persons at the spot of crime, yet she did not insist the police to arrest the accused persons. Similarly, SI Pradeep (PW-16) also saw the accused persons after he had reached the spot still he did not arrest them at that moment, although Satyawar (PW-6) clearly indicted and arraigned Nirmala, Baljeet and Sanjeet for having murdered his daughter in his very first statement. Further the contention raised by learned senior counsel for the appellant was that the non- arrest of the accused persons, who were accessible to the police right from the morning of 29th October 2008, is an imperative fact to show their virtuousness and that they were unlawfully arrested on the following day i.e. 30th October 2008. In support of his submission, learned senior

counsel for the appellant placed reliance on the judgment of this Court in *State of NCT vs. Taj Mohd., 2013(4)JCC2457*.

18. Learned senior counsel further argued that IO- Prakash Chand (PW-19) does not refer to the presence of the accused persons on 29th October 2008, while SI Savita (PW-14) gave a different version with regard to the arrest of the accused persons. Referring to the deposition of PW-14, learned senior counsel pointed out that as per her deposition, she had received a secret information that these accused persons were present at the residence of Narayan Singh at Bakarwala, where she arrived at alongwith the raiding party and arrested these accused persons. Learned senior counsel thus submitted that these diverse stories with regard to the accused persons create enough suspicion about the case of the prosecution.

19. Next contention raised by learned senior counsel was with regard to the supposed disclosure statement made by the accused persons and the recovery done during such disclosure and an assortment of articles seized by the police from the spot of crime. Referring to the deposition of SI Pradeep(PW-16), who in his cross-examination admitted

that he had conducted the house search, but it was an admitted fact that the SI did not follow the mandate of Section 100(4) of the Cr. P.C. before making a search of the house, where the crime had taken place. Learned senior counsel further submitted that zilch efforts were made by the Investigating Officer to ensure the presence of two independent and respectable members of the locality and instead got search witnessed by SI Pradeep and PW-6 – Satyawar. Learned senior counsel thus submitted that the articles on the spot of the crime were seized without following the mandate of Section 100(4) of Cr. P.C. hence the seizure stands vitiated. In support of his argument, learned senior counsel for the appellant placed reliance on the judgment of this Court in the case of *Jaivir Singh vs. State, reported in 1995 (57) DLT 479 (DB)*.

20. Learned senior counsel further pointed out that at the time of recording the disclosure statement of the appellant – Nirmala and recovery of certain incriminating articles during her disclosure is equally doubtful as the prosecution failed to join any independent witness. Learned senior counsel for the appellant thus submitted that in the absence of joining of any independent witness to the alleged recoveries

during the disclosure of appellant – Nirmala, the recovery of one gold chain, of Rs.50,000/-, one blood stained suit becomes doubtful and cannot be stated to have effected at the instance of Nirmala. Learned senior counsel also submitted that the prosecution had taken the help of three police witnesses i.e. SI Savita, Constable Balbir, ASI Suresh Kumar for the alleged recoveries during the disclosure statement of the appellant and the prosecution failed to examine Constable Balbir Singh and ASI Suresh Kumar, while SI Savita contradicted the testimony of the Investigating Officer by denying her visit at the spot on 29th October 2008 or even on 30th October 2008. Learned Senior Counsel further submitted that SI Savita was erroneously examined by the prosecution in relation to the recovery of the said articles and the stand taken by her in Court deposition renders such recoveries totally dubious and uncertain. Learned senior counsel for the appellant also submitted that the said recoveries were further improbable because of the fact that SI Pradeep (PW-16) conducted a thorough and meticulous search of the house in question on 29th October 2008, when he had recovered a blood stained towel and some passbooks from the cupboard cum worship room which was adjacent to the room where the murder had taken place but could not find

blood stained suit, gold chain and Rs.50,000/-, although the same were also found in the same room, as per the disclosure statement of the appellant – Nirmala. To support his arguments, learned Senior counsel placed reliance on the judgment of Apex Court in *State of Tamil Nadu vs. Sundar*, reported in (2003) 12 SCC 695. Learned senior counsel for the appellant also cited judgment of this Court in *Satish Kumar vs. State*, reported in 1996 Cri.L.J 265 to support his argument that the police did not make any efforts to join any independent witnesses before recording of the disclosure statement as an important circumstance to disbelieve such recoveries.

21. Learned Senior Counsel also submitted that the recovery of Rs.50,000/- and the gold chain at the instance of the appellant – Nirmala cannot be said to be an incriminating circumstance as the same does not connect the appellant with the commission of the crime in any manner. On the alleged seizure of bangles, during the arrest of the appellant, which was found to be tallied with the broken bangles seized from the spot, learned Senior Counsel submitted that they were ordinary bangles and could be easily procured from any shop. Learned senior counsel

throwing a doubt on the recovery of bangles, submitted that, two lines with regard to such recoveries of bangles were interspersed later in the disclosure statement of appellant – Nirmala by the police. Inviting attention of this Court to the disclosure statement of Nirmala, learned senior counsel pointed out that the insertion of these two lines can be visibly seen as the spacing between the preceding lines of disclosure statement and these two lines were different. To support his argument, learned senior counsel placed reliance on the judgment of this Court in the case of *Jaivir Singh* (*supra*).

22. Learned senior counsel further pointed out total inconsistency in the alleged recovery of Rs.50,000/-, gold chain and blood stained suit during the alleged disclosure of appellant – Nirmala and the recovery of these articles as recorded in the recovery memo (Ex.PW-14/D). The contention raised by learned senior counsel was that in the disclosure statement, the appellant stated that from the place where the murder took place, she went to another room where she wiped off her blood stained hands with a towel and also took off her blood stained suit and kept it in the corner of the said room, whereafter, she displaced the books lying in

the said room; opened the cupboard and displaced its contents , to give the incident a colour of dacoity, hid Rs.50,000/- and one chain of the deceased in a box. This submission in her disclosure shows that she had hidden Rs.50, 000/-, chain and blood stained suit in the room where there was a cupboard but in the recovery memo, in relation to these articles, it was stated that Rs.50, 000/-, gold chain and blood stained suit were recovered from the same room which was different from that of the one having a cupboard. As per learned senior counsel, it was quite evident that as per the disclosure statement, she had hidden Rs.50, 000/-, gold chain, suit in the cupboard room while as per the recovery memo, they were recovered from the same room and not from the room where a cupboard was kept. Learned senior counsel thus submitted that such an contortion clearly exposes the prosecution of planting such recoveries so as to falsely implicate the appellant.

23. Learned senior counsel for the appellant also submitted that as per Section 27 of the Indian Evidence Act, 1872 only that part of the information disclosed by the accused is admissible which distinctly, indubitably and unambiguously relates to the facts discovered. In the

disclosure made by the appellant, the highlights are: that the appellant was present in the house on 29.10.08; the appellant's hands got blood stained during the incident; she wiped them with a towel; she was wearing a suit which belonged to her; the suit also got blood stained; she had put off the suit; she opened the cupboard and displaced certain items to give the incident a colour of dacoity are inadmissible as no new fact was discovered in consequence thereof. Only a few admissible statements are that she had put the suit in the corner of the room and that she hid Rs.50,000/- and Anju's chain in a box, only these two statements clearly and distinctly relate to the fact discovered i.e. the said articles were hidden in the room as per the knowledge of the appellant. The circumstances that at the time of the incident the appellant was present in the house; she was wearing a suit which got blood stained; the blood belonged to the deceased and not the appellant had to be separately proved by the prosecution, which it has miserably failed to. In support of his argument, learned senior counsel for the appellant placed reliance on the judgment of the Hon'ble Apex Court in the case of *Shankarlal Gyarsilal Dixit vs. State of Maharashtra* reported in (1981) 2 SCC 35 and in the case of *Prabhu vs. State of UP* reported in AIR 1963 SC 1113.

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Learned senior counsel also argued that it is highly improbable that the appellant while making good her escape from the house after committing the murder, would place her blood stained suit in a corner of the room, where it would be visible to everybody who enters the room. Learned senior counsel also submitted that if the recovery of bloodstained suit is itself doubtful, then the report of CFSL in relation to the blood being found on the suit is of no consequence. Learned senior counsel also submitted that it was for the prosecution to have subsequently proved that the blood stained suit recovered in consequence of the disclosure of the appellant belonged to her and that the blood found on the suit was of the deceased and not of the appellant. To support this argument, learned senior counsel for the appellant placed reliance on the decision of the Apex Court in the case of *Shankarlal Gyarsilal Dixit vs. state of Maharashtra* reported in (1981) 2 SCC 35, *Deepak vs. State*, reported in 2011 VII AD (Delhi) 188, *Subhash Chand vs. State of Rajasthan* reported in (2002) 1 SCC 702, *CBI vs. Gurpal Singh*, reported in 124 (2005) DLT 282.

24. Learned senior counsel for the appellant also raised a contention that the rough site plan prepared by the Investigating Officer, on 30th October 2008, nowhere records the presence of bloodstained towel, chappals allegedly belonging to Poorvi, broken bangles, scattered passbooks, water filter, bloodstained table cloth, although these articles were alleged to have been recovered on the same date. Learned senior counsel for the appellant also submitted that even the scaled site plan which was prepared on 13th November, 2008 does not record the presence of Rs.50,000/-, a gold chain, bloodstained suit and even the box wherein these articles were allegedly kept. Learned senior counsel for the appellant further submitted that a bare perusal of the site plan would show that the only room which was open was the room where the murder had taken place whereas the cupboard cum worship room and all other rooms were shown as locked. Learned senior counsel for the appellant thus submitted that these facts further toss a doubt on the alleged recoveries made by the police during the course of investigation.

25. Learned senior counsel for the appellant further submitted that there are different versions in relation to the Investigating Officer handing

over the seal after the alleged recoveries were affected on the spot. As per the deposition of Investigating Officer (PW-19) the seal was handed over by him to SI Pradeep on 29th October 2008 but SI Pradeep nowhere refers to the same in his deposition. Similarly, there is no evidence on record as to when the Investigating Officer took back the seal from SI Pradeep after he had effected the recoveries on 30th October 2008. Learned senior counsel further submitted that these circumstances render the recoveries made on 30th October 2008 as inconspicuous and ambivalent.

26. Ld. Senior Counsel further argued that the alleged visit of PW12 Amit, brother of the deceased and PW-5 Harender nephew of PW-6, Satyavan on 26.10.08 to the house of the deceased is also unpersuasive and doubtful. Counsel further submitted that PW-6 Satyavan did not even make a whisper about such an important circumstance either in his first statement, which was recorded on 29.10.08 or his two subsequent statements given to the police and the SDM respectively and correspondingly PW1 Pushpa also did not disclose about such visits of PW12 and PW5 in her statement dated 3.11.08 recorded by the SDM. Counsel further argued that both these witnesses were very much

available all along but yet their statements were recorded as late as on 15.1.2009 with a view to strengthen the case of the prosecution against the accused persons. Counsel also referred to the cross-examination of PW19 wherein he admitted the fact that the statements of witnesses were recorded after the objection to that effect was raised by the prosecution on 15.1.2009. Counsel also referred to the cross examination of PW-5 wherein he admitted that he met the police for the first time in the mortuary on 30th October, 2008 nevertheless he by no means came forward to insist for the recording of his statement. Counsel also submitted that he did not tell anybody at the mortuary or even to the SDM about the alleged torture meted out to his sister. Counsel also submitted that PW-5 further deposed that after having returned from the house of the deceased on 26.10.2008, he told everything that happened there at the house of the deceased to his uncle PW-6; even then PW-6 neither make any call to the deceased's in-laws nor did he take any action. Counsel further argued that the conduct of PW-12 is no way different than the conduct of PW-5 as he also never came forward to give the statement till it was recorded on 15th January, 2009. Counsel also submitted that PW-5, PW-6 and PW-19 in their depositions affirmed the presence of PW-12 in

the mortuary on 13.12.2008 and yet they did not avail the opportunity to disclose about the visit to the house of the deceased on 26.10.2008. Counsel also drew attention of this Court to the deposition of PW-12 where he referred to the cordial relationship between husband and wife during their stay at London and also when she had visited their house at Dwarka. Contention raised by the counsel for the appellant was that had there been any harassment caused to the deceased on account of the alleged demand of Rs. 10 lakhs or for her inability to beget a child even then the relationship between the husband and wife would not have been genial. Counsel thus submitted that the two witnesses PW-5 and PW-12 were not ingenuous witnesses rather they were planted by the prosecution with a view to foster the case of the prosecution against the accused persons.

27. The last contention raised by the counsel for the appellant was that the finger prints were lifted by the police from the water filter found installed at the spot but as per the Finger Prints report, the same were not found to be linked to any of the accused persons. Counsel thus submitted that the presence of such finger prints which were not that of the accused persons clearly indicates towards the presence of unfamiliar persons in

the house than the accused persons to have murdered Anju, the deceased herein. Counsel also argued that the prosecution had failed to take finger prints from the two knives, scattered pass books, cupboard or the box wherein Rs. 50,000/- and gold chain were kept so as to rule out the possibility of robbery and affirm the presence of the accused persons at the spot. Counsel also argued that even no call records of the accused persons' mobile phones were collected, which could have shown the location of the accused persons at the relevant time. At the end the counsel for the appellant submitted that the deposition of PW-10 Poorvi cannot be believed on account of various reasons already canvassed by him and minus her statement, the case of the prosecution becomes that of a circumstantial evidence and as far as circumstantial evidence is concerned, the prosecution failed to complete the chain of incriminating circumstances, which could unerringly prove the guilt on the part of the appellant.

28. In the light of these submissions counsel for the appellant also relied upon judgment of High Court of Madhya Pradesh in ***Buddhu Pal and Anr. vs. State of M.P., 2013 CriLJ 1693*** and strongly urged for the acquittal of the appellant- Nirmala.

29. Mr. Vikas Pahwa, learned Senior Advocate, representing the appellants Baljeet (father-in-law of the deceased) and - Sanjeet (husband of the deceased) reiterating the aforesaid contentions, also elucidated that the prosecution has miserably failed to prove the charges framed under Section 498A/302/120-B/34 of IPC beyond reasonable doubt but still the learned trial Court has convicted them under these offences. Learned senior counsel submitted that the prosecution has failed to prove the presence of these accused persons at the spot at the time of the alleged incident and the only direct evidence is that of the baby girl – Poorvi (PW-10) which is totally unreliable, conniving and untrustworthy as she was just two and half years of age at the time of the incident and was not competent enough to give the true and correct narration of the alleged incident. Learned senior counsel further submitted that PW-2 *prima facie* pointed out that there were two accused persons present at the spot and only one weapon but the prosecution has recovered two blood stained weapons of offence. Learned senior counsel also pointed out that the learned trial Court has failed to appreciate that PW-6 and PW-1 were interested witnesses while PW-5, PW-12 were planted witnesses, who were introduced belatedly after a gap of two and half months so as to

falsely implicate all the family members of the appellants. Learned senior counsel for the appellant further submitted that no matter how diabolical the crime is, the burden always remains on the prosecution to prove the guilt of the accused and Courts have to be extra cautious not to get influenced by emotions ignoring the evidence adduced on record. In support of his contentions, counsel placed reliance on the following judgments:-

- a) State vs. Mahender Singh Dhaiya, (2011) 3 SCC 109*
- b) Mousam Singha Roy vs. State of West Bengal, (2003) 12 SCC 377*
- c) Sarwan Singh Rattan Singh vs. State of Punjab, 1957 Cri.LJ 1014*

30. The next contention raised by learned counsel for the appellants was that PW-6 has made glaring improvements in the statements recorded on various dates and these statements do not inspire any confidence and should be discarded on its face itself. Learned senior counsel also submitted that the statement of PW-6 Satyawar Singh was recorded at the first instance on 29th October 2008 which is restricted to very general type of allegations levelled by him against the in-laws of his daughter but after

a gap of five days, he gave a supplementary statement wherein he made a considerable improvement in his allegations and also falsely implicated Meena (nanad) and Rajesh (brother-in-law of deceased). Similarly, the statement was also made to the SDM after some gap i.e. on 3.11.2008. Learned senior counsel further pointed out that PW-19 admitted in his deposition that he met PW-6 Satyawar on 30.10.2008, 31.10.2008, 01.11.2008 and 2.11.2008, but he never told him about the involvement of Rajesh and Meena in causing the unnatural death of the deceased. Learned senior counsel for the appellant also pointed out that PW-6, in his Court deposition attempted to improve his case by stating that, the deceased was threatened to be killed by her in-laws because she was unable to bear a child and they wanted their son Baljeet to get re-married. PW-6 also deposed that this factum about the said threat was told to him by his wife PW-1 Pushpa Rani, however PW-1 in her entire deposition never made any such allegation. Learned senior counsel also pointed out another material improvement in the deposition of PW-6, wherein PW-6 stated that Rs.10 lacs were demanded by the in-laws of the deceased for the purpose of buying a big car although such demand does not find mention in any of the statements made by either PW-6 or PW-1. Learned

senior counsel further argued that the Hon'ble Supreme Court in various judgments has cautioned the Courts not to rely upon the evidence of the interested witnesses who make apparent improvements in their testimony with a motive to falsely implicate all the members of the family. In support of his arguments, Learned senior counsel placed reliance on the following judgments:-

- a) State of Rajasthan vs. Rajendra Singh, (2009) 11 SCC 106*
- b) Mahender Singh vs. State, 1989 (Suppl.) 1 SCC 338*
- c) Jandel Singh vs. State of MP, (2003) 9 SCC 110*
- d) State vs. Sait Alias Krishnakumar, (2008) 15 SCC 440;*
- e) Mahender Pratap Singh vs. State of U.P., (2009) 11 SCC 334*
- f) Jalpat Rai vs. State of Haryana, (2011) 14 SCC 208.*

31. Contention raised by learned senior counsel was that PW-1 Pushpa Devi was belatedly introduced by the prosecution after five days of the incident when her statement for the first time was recorded by the SDM on 3.11.2008 even though she had reached at the spot of crime on the

same evening and thus her testimony should be discarded solely. Learned senior counsel also argued that no evidence was adduced by PW-1 to demonstrate that she frequently visited her daughter so as to re-concile the matter with the in-laws of her daughter and similarly no records of telephonic calls were produced by the prosecution to prove frequent communication between her and her daughter. In support of this argument, learned senior counsel placed reliance on the judgment of Hon'ble Supreme Court in the case of *Gayadin vs. State of M.P., (2005) 12 SCC 267*.

32. Learned senior counsel further with regard to the introduction of PW-10 Poorvi as an eye witness contended that PW-10, Poorvi was never present at the time of commission of the crime and she was deliberately introduced by the Investigating Officer after the prosecution had given a recommendation to introduce the eye witness to strengthen the case of the prosecution. Learned senior counsel also submitted that the prosecution went to the extent of manipulating the records by recording her statement under Section 161 of Cr.P.C. from back date i.e. on 30.10.2008. Learned senior counsel for the appellants also argued that it is because of this

manipulation, the statement of PW-10 which was never recorded by the Investigating Officer before the Magistrate under Section 164 Cr.PC, was later shown to have been recorded. Learned senior counsel for the appellant also pointed out that PW-1 and PW-6 in their statements made to the police and the SDM never disclosed about the presence of PW-10 Poorvi at the time of commission of the alleged offence. Learned senior counsel also reiterated some of the contentions already canvassed by Mr. Hariharan, learned senior counsel for the appellant – Nirmala as regards to the deposition of child witness PW-10 and as to how she was amenable to tutoring. In support of his arguments, learned senior counsel for the appellants placed reliance on the following judgments:-

1. ***K. Venkateshwarlu vs. State of A.P., (2012) 8 SCC 73***
2. ***State of Assam vs. Mafizuddin, (1983) 2SCC 14***
3. ***Bhagwan Singh vs. State of M.P., (2003) 3 SCC 21***
4. ***Chhagan Dame vs. State of Gujarat, 1995 SCC (Crl) 182***
5. ***Golla Yelugu Gobindu vs. State, (2008) 16 SCC 769***

33. The next contention raised by learned senior counsel was with regard to the conduct of the prosecution in introducing PW-5-Mr. Harender Singh, PW-12 - Amit after a gap of two and half months so as to falsely give rise to the incident on 26.10.2008 and provide strength to the prosecution story of alleged dowry harassment and alleged threats extended to the deceased – Anju by the in-laws for having not been able to bear a child any more. Contention raised by learned senior counsel was that these two witnesses have not paid any visits to the house of Anju on 26.10.2008 on the evening of Diwali, as is evident from the fact that all the statements of the witnesses which were recorded prior to 15.1.2009 failed to mention of any such visit made by PW-5 and PW-12. Learned senior counsel further submitted that it is highly unbelievable that the blood relations of the deceased who were present at the spot and took part in the investigation would not disclose about the incident of 26.10.2008 to the parents of the deceased and to the concerned police officers prior to 15.1.2009. Learned senior counsel thus submitted that no reliance can be placed on the testimony of such planted witnesses. In support of his arguments, learned senior counsel for the appellants placed reliance on the following judgments:-

- a) Paramjit Singh vs. State of Punjab, (1997) 4 SCC 156*
- b) Jagjit Singh vs. State of Punjab, (2005) 3 SCC 689;*
- c) Maruti Rama Naik vs. State, (2003) 10 SCC 670*
- d) Harjinder Singh vs. State of Punjab, (2004) 11 SCC 253*
- e) Prem Narayan & Anr. Vs. State of M.P., (2007) 15 SCC 485.*

34. Learned senior counsel also argued that no recoveries have been made from the appellants to connect them with the commission of the crime and their disclosure statements are inadmissible in law. Learned senior counsel further argued that finger prints of appellants were taken during the investigation but these prints lifted from the spot did not match with that of the appellants or any other accused persons. Learned senior counsel for the appellants also argued that there is no direct or indirect evidence available on record to establish that the appellants conspired with each other to commit the offence of murder of deceased Smt. Anju, yet the learned trial Court has assumed such conduct of the accused persons and convicted them for hatching a criminal conspiracy for committing the murder of the deceased Anju. Learned senior counsel for

the appellant also argued that the prosecution has failed to prove any motive on the part of the appellants in order to commit the murder of the deceased. Learned senior counsel for the appellants further submitted that it was brought on record by the appellants that the deceased Smt. Anju monitored the primary school of the accused and was financially sound. She was also filing her income tax returns which were duly proved on record through the evidence of DW-5-Naresh Kumar Mahajan. And the defence has also proved the bank statement of Sanjeet and deceased showing numerous transactions running into lacs of rupees. Defence has also brought on record the FDRs in the name of deceased and also the immovable properties worth crores of rupees.

35. Learned senior counsel contended that keeping in view such sound financial standing of the appellants there could arise no occasion for raising the alleged demand of Rs.10 lacs from the deceased or her parents. Learned senior counsel also pointed out that PW-12 Amit in his Court deposition categorically stated that the deceased was leading a happy married life with her husband. Learned senior counsel also submitted that no evidence was produced to show that the appellants had

ever tortured the deceased for money or for not being able to bear a child any more. Learned senior counsel for the appellants also argued that even if it is presumed that the prosecution has been able to prove the motive to kill the deceased, still mere motive in the absence of any circumstantial evidence would not be sufficient to convict the accused persons. In support of his arguments, learned senior counsel placed reliance on the judgments of Apex Court in the case of *Sunil Rai vs. Union Territory, Chandigarh*, (2011) 12 SCC 258.

36. The last contention raised by learned senior counsel for the appellant was that there was no evidence adduced by the prosecution to prove common intention of the appellants to carry out the murder of the deceased as required under Section 34 of the IPC. Learned senior counsel also argued that it is a settled legal position that it is for the prosecution to prove its case beyond any shadow of doubt and it is only after the prosecution succeeds in proving its case, that the principles as envisaged under Section 106 of Indian Evidence Act, 1872 can be considered in order to judge the conduct of the accused persons. Learned senior counsel further submitted that this will be against the well settled principles of

criminal jurisprudence to prove the guilt of the accused persons based on the weakness of the defence or the failure of the defence to prove their innocence. Based on the above submissions, Mr. Vikas Pahwa, learned senior counsel for the appellant strongly urged for the acquittal of these appellants as they have been falsely implicated by the prosecution at the instance of the parents of the deceased and also relied on the following judgments:-

- a) ***Jayantibhai Bhenkarbhai vs. State of Gujarat, (2002) 8 SCC 165;***
- b) ***Nagaraja vs. State of Karnataka, (2008) 17 SCC 277;***
- c) ***Mohan Singh vs. State of Punjab, (1963) 1 Cri.LJ 100;***
- d) ***Aftab Ahmad Ansari vs. State of Uttaranchal, (2010) 2 SCC 583***
- e) ***Ram Lakhan Singh and Others vs. State of Uttar Pradesh, (1977) 3 SCC 268***

37. Addressing arguments on behalf of appellants – Rajesh and Meena, challenging their conviction for the offences punishable under Section 498-A/34 of IPC, Mr. Anupam Sharma, Advocate, representing them argued that there was an inordinate delay in registration of the FIR and no explanation has been given by the police witnesses to explain the

delay. Learned counsel further reiterated that as per the endorsement on the rukka (Ex.PW-16/A), FIR was registered at 9.00 pm on 29th October 2008 vide corresponding DD No.38A but neither was such DD placed on record nor exhibited. Learned counsel for the appellants further submitted that as per the FIR (Ex.PW-3/A), the case was registered on 30th October 2008 and not on 29th October 2008. Learned counsel for the appellants also argued that as per the Crime Team Report, exhibited as Ex.PW-13/A, inspection of the spot was conducted on 29th October 2008 between 8.15 pm to 9.00 pm and rukka was dispatched at 8.30 pm after recording the statement of Complainant – Satyawan but in column No. (iv) of the said report, the name of the Complainant has been mentioned as PCR. Learned counsel thus submitted that at least, till 9 pm on 29th October 2008, the investigating agencies did not file the complaint of Satyawan so; the version of the prosecution regarding sending of rukka at 8.30 pm for registration of FIR and its registration at 9 pm on 29th October 2008 is false. The next contention raised by learned counsel for the appellants was that admittedly both these appellants got married much prior to the marriage of the deceased and were residing separately in Nangloi which is 7 kilometres away from the matrimonial home of the deceased and

therefore, their presence at the matrimonial house of the deceased is highly impractical. Learned counsel also submitted that both these appellants were named in the FIR and there were no allegations levelled by the Complainant against them. It was only on 3rd November 2008, after inordinate delay of five days, that for the first time, names of these appellants were roped in. Learned counsel for the appellants also pointed out that on 29th October 2008, PW-6 - father of the deceased was present during the course of the investigation of the case at the spot and even his supplementary statement was recorded on the same day but he never named these appellants as the perpetrators of the crime. Learned counsel for the appellants also submitted that even in the inquest proceedings, which were conducted on 30th October 2008, no allegations were levelled against these appellants at that time. Learned counsel for the appellants also submitted that Inspector Prakash Chand (PW-19) investigating officer of the case admitted that till 3rd November 2008, no allegations were levelled by the Complainant or any person against these appellants. Learned counsel for the appellants also submitted that PW-5 Harinder in his deposition had admitted that he met the SDM in the mortuary but gave no explanation for not giving any statement to the police and it is

only after about two and a half months of the incident, statements of PW-5 and PW-12 were recorded by the police under Section 161 Cr. P.C. on 15th January 2009. Learned counsel also pointed out that it was admitted by PW-19 that supplementary statements of witnesses were recorded after certain objections were raised by prosecution branch pointing out various discrepancies in the investigation. Learned counsel thus submitted that delay in recording the statement of PW-1, PW-5, PW-6, PW-10 and PW-12 coupled with no previous complaint by these witnesses against these very appellants amply proves that the case of the prosecution against them lacks reliability.

38. The next contention raised by learned counsel for the appellants was with regard to the various contradictions and omissions in the versions of all the related and other witnesses produced by the prosecution which apparently show that they were giving incorrect and coloured versions. The other counsels have already raised similar contentions impeaching the credibility of these witnesses who were family members of the deceased and therefore, the same need not be repeated here again. However, with regard to the alleged visit of PW-5

Harinder and PW-12 Amit Kumar at the matrimonial house on 26th October 2008 i.e. eve of Diwali, the counsel pointed out that both the witnesses took a stand that they had informed the father of the deceased about the said incident dated 26th October 2008 and PW-12 also deposed that his father had a telephonic conversation with the accused on this aspect but neither PW-6, nor PW-1 in their respective depositions made any reference to any such telephonic conversation to have taken place in their depositions and therefore, it is quite apparent that these two witnesses PW-5 and PW-12 are planted witnesses in order to abridge the lacunae in the prosecution case.

39. Learned counsel for the appellants also pointed out that with regard to the alleged fact that the deceased had told these witnesses regarding the demand of Rs.10 lacs raised by her in-laws, there is no consistency in their depositions. Learned counsel for the appellants pointed out that PW-12 in his Court deposition, admitted the fact that during the stay in London, his sister and her husband were very happy and whenever her sister visited Dwarka, he could notice that they were leading a happy married life. Learned counsel for the appellants thus submitted that in

view of the gross contradictions and omissions, no credence can be attached to the testimonies of the said witnesses, who were introduced just with a view to falsely implicate these appellants. In support of his arguments, learned counsel for the appellants placed reliance on the following judgements:

- a) Kans Raj vs. State of Punjab and others, 2000 SCC (Cri) 935*
- b) Arulvelu and Anr vs. State and Anr., 2010 Cri.LJ 433*
- c) State vs. Suraj Mehto & Ors., (Crl. L.P. No.60/2011, decided by Delhi High Court on 8th August 2011).*
- d) Crl. A. No. 280/2011 titled as Preet Singh vs. State of NCT of Delhi & Ors., decided by Delhi High Court on 29.8.2011.*

40. Countering the said arguments, Mr. M.N. Dudeja, learned APP for the State and Mr. Ashok Drall, counsel representing the appellant – Pushpa Devi strongly pleaded for upholding the impugned judgment of conviction and order on sentence, besides pleading for setting aside the impugned judgment so far as the acquittal of appellants – Rajesh and Meena are concerned and to convict them alongwith other co-accused under Section 302/120-B/34 of IPC. Counsel Crl.A. No.386/2011, 486/2011, 487/2011 & 1080/2011

submitted that the prosecution has proved its case beyond all reasonable doubts against all the accused persons, based on the circumstantial evidence as well as the ocular evidence of an eye witness – Poorvi (PW-10). Mr. M.N. Dudeja, learned APP for the State vociferously contended that the murder of the deceased was committed at the matrimonial house and the prosecution has led a very cogent and convincing evidence to prove each and every piece of circumstantial evidence to prove the guilt of these accused persons besides proving the ocular evidence of child witness – Poorvi (PW-10). He further contended that the main motive behind these accused persons to murder Anju was to get the appellant-Sanjeet married again as the deceased Anju, after removal of her uterus, was incapable of giving birth to a male child. Counsel also argued that the in-laws of the deceased, her sister-in-law Meena and her husband Rajesh also subjected her to harassment for not paying a sum of Rs.10 lacs, despite being told to bring the same several times. Counsel also argued that the removal of the uterus of the deceased had become an issue in the family, because if Sanjeet was not re-married, then there will be none left to carry forward the family lineage. Counsel also argued that the contemporaneous conduct of the accused persons if seen in the right

perspective and in the background of well established principles of law on *res gestae* as embodied in Section 6 of Indian Evidence Act, 1872 would clearly prove the involvement of all the accused persons in committing the murder of the deceased – Anju. Counsel also argued that there is no contemporaneous evidence to show that the murder of the deceased had taken place while committing any robbery or dacoity at the premises and this is also evident from the fact that no such suggestion was given by the accused persons to the prosecution witnesses. Counsel also argued that the entire environment of the place, on correct appreciation of facts would lead to only one conclusion that is the guilt on the part of these accused persons.

41. Mr. Ashok Drall, counsel for the appellant – Pushpa Devi laid much stress on his argument that the sole testimony of PW-10 Baby Poorvi coupled with false defence raised by accused persons and their failure to offer any explanation as to how the crime was committed at the matrimonial house, sufficiently prove these accused persons to be the perpetrators of the crime. Counsel also argued that it is a settled legal position that if an offence like murder is committed in secrecy inside the

house then the kind of evidence led by the prosecution to establish the charge against the accused persons cannot be of the same degree as is required in other cases and there will be corresponding burden on the inmates of the house to give explanation as to how the crime was committed, as per Section 106 of the Indian Evidence Act 1872.

42. Counsel further submitted that the defence failed to create any doubt on the testimony of PW-10 Poorvi or to disbelieve her presence as an eye witness of the crime. Counsel also pointed out that the defence has failed to give any of the following suggestions to Poorvi (PW-10), PW-1 and PW-6 in their cross-examinations:-

- a) To PW10 that she has been tutored at the instance of PW-1 and PW-6 being the maternal grandparents.
- b) That on 30.10.2011 police had not met PW-10 at Village Bakkarwala and her statement was not recorded.
- c) That PW-10 Poorvi was in the custody of PW-1 and PW-6 just after the reaching at the spot on 29.10.2011

- d) That Meena and Rajesh were not present at the spot on the day of incident.
- e) That on 29.10.2011, PW-10 Poorvi had gone with her grandmother to her Uncle's house at village Sarangpur.
- f) That PW-10 Poorvi had not seen anybody inflicting the knife injuries to deceased Anju.
- g) That PW-10 Poorvi has deposed at the instance of PW-1 and PW-6 or this witness has deposed falsely against the accused persons.
- h) To PW-1 and PW-6 in their cross-examination at the early stage of evidence that PW-10 has been tutored by them and she was not at the spot on the day of the incident as she had gone with accused Nirmala at the house of DW-3.
- i) To PW-1 and PW-6 in their cross-examination at the early stage of evidence that initially it was the incident of robbery/dacoity cum murder and nobody was talking about committing of murder alone at Village Bakkarwala and PW1 and PW6 later on after discussing with relatives falsely implicated the accused persons.”

43. In the absence of the above suggestions, counsel submitted that the un rebutted testimony of PW-10 and that of PW-1 and PW-6 can be taken as an admission on the part of the accused persons to the uncontroverted facts, deposed in examination-in-chief by these witnesses. Counsel further argued that the recovery of two pairs of blood stained hawai chappals from the spot belonging to PW-10 Poorvi, the blood stains were 'A+', which was also the blood group of the deceased. Counsel also argued that in the photographs taken out by the crime team of the police, the existence of chappals carrying the blood has been clearly shown and therefore, the recovery of the two pairs of chappals further strengthens the case of PW-1 in respect of the presence of PW-10 on the spot at the time of commission of the crime. Counsel also argued that the defence failed to give any contrary suggestions to witnesses PW-1, PW-10, PW-16 and PW-19 to disprove that the presence of chappals or the blood present on them was not of PW-10, so as to falsely show the presence of PW-10 at the time of commission of crime or that Ex.PW-6/E was a fabricated seizure memo and in fact the chappals were not taken into possession from the spot on 29th October 2008 or even to dispute that the said chappals recovered from the spot did not belong to PW-10. Counsel thus

submitted that the recovery of chappals from the spot remained uncontroverted and the same further corroborates and strengthens the presence of PW-10 on the spot at the time of murder of her mother. Counsel further argued that PW-19 had deposed in his examination-in-chief that on 30th October 2008 Poorvi (PW-10) was found at the house of Narayan Singh and he had recorded her statement there and this version of PW-19 gets corroborated from the evidence of DW-3 who in his examination-in-chief has also deposed that the police took Satyawar, Baljeet, Sanjeet and Nirmala to the Police Station from the spot of the crime but he did not mention about the presence of PW-10 Poorvi which would clearly mean that by that time, PW-10 Poorvi was shifted to the residence of Narayan Singh. Counsel also argued that PW-16 in his cross-examination also deposed about the presence of all the family members of the accused persons at the spot and therefore, this manifests that PW-15, did not exclude the presence of PW-10 Poorvi, who was a part of the family of the accused persons. Counsel further submitted that no suggestion was given by the defence to PW-1, PW-6 and PW-10 in their cross-examination to suggest that PW-10 has been with them since 29th

October 2008. Counsel further submitted that no question was put to PW-
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1 and PW-6 by the defence as to when and from which place they took the custody of the child Poorvi. Such question was intentionally avoided by the defence so as to avoid a correct answer from these witnesses.

44. Counsel also argued that a false defence was taken by the accused persons that PW-10 Poorvi was taken by accused Nirmala and her brother DW-3 to Village Sarangpur, Najafgarh on 29th October 2008 and such falseness on the part of the defence got exposed as during the cross-examination of PW-10, suggestion was given that she was playing at the house of her friend at the time of the murder but when nothing on those lines came out from the witness, then the defence changed the story and tried to prove that PW-10 Poorvi was not present at the house at the time of murder and was with DW-3 and her grandmother – Nirmala. Counsel also submitted that DW-3 in evidence could not disclose the identity of the person who had informed him about the incident. Counsel also argued that it was strange that any person of the locality could have the telephone number of DW-3. Counsel also argued that the deceitfulness on the part of DW-3 also appears from the fact that he never lodged any complaint with the police if he was convinced about the illegal detention of the

accused persons. Counsel thus submitted that a false defence taken by the accused persons becomes an additional link in proving the presence of PW-10 at the spot of the crime.

45. Counsel further argued that the plea of alibi taken by the accused Nirmala is also palpably false and her plea also does not get any support from the deposition of her brother – DW-3. Counsel further submitted that it cannot be believed that a girl child of two and a half years of age would accompany her grandmother and would remain out for overnight stay separated from her mother. Counsel also argued that the accused persons also cooked up a false story of robbery and murder at the hands of the assailants when none of the accused persons were present at the house but the defence ultimately could not succeed to hoodwink the investigation to believe the false plea and the concocted story. Counsel further argued that the presence of DW-3 at the spot on 30.10.2008 is further doubtful because as per his deposition he received information at about 6 pm on 30.10.2008 and he had reached the house of his sister within one hour and fifteen minutes which would mean; at least by 7.15 pm and when he reached at the house he saw a huge crowd and the

persons of police, while PW-16 – Sub-Inspector Pradeep deposed that he had received DD No.34A at 7 pm and reached within 25 minutes which would mean by 7.25 pm and he deposed that all the family members of the accused persons were present there inside the house. Counsel thus contended that when all the family members of the accused persons were present then how DW-3 could have deposed that when he had reached alongwith his sister – Nirmala, the police was also there at the spot. Counsel further argued that DW-3 in his examination-in-chief also showed his ignorance about the exact date of death of his sister's daughter-in-law, this fact further proves that he was a planted witness by the defence. Counsel further submitted that DW-3 in his cross-examination stated that after seeing the body of her daughter-in-law, Nirmala had not even touched the body and if this version of DW-3 is taken as correct, then how could there be any bloodstain on the clothes of the accused – Nirmala. Counsel further submitted that the FSL report clearly shows that the blood of the deceased was on the cloths of the accused and this again negates the deposition of DW-3.

46. The next argument advanced by counsel for the complainant was that it was the festival of '*goverdhan puja*' on 29.10.2008 and on that day

family members together perform puja and therefore without performing puja, no lady would leave the house to celebrate the festival of 'bhaiya dooj' on the morning of the next day. Counsel also submitted that two other brothers of the accused – Nirmala were also living at Village Bakarwala and therefore, it was highly improbable for a sister to accompany one brother who was living at a farther place in Village Sarangpur, Najafgarh. Counsel also submitted that the entire conduct of accused persons is an unnatural human conduct and can be taken against them under Section 8 of the Evidence Act, 1872.

47. Counsel also argued that all the accused persons were having their mobile phones but Nirmala and DW-3 did not confirm the news from the other co-accused Sanjeet and Baljeet with regard to the happening of the incident and such an important circumstance should be taken in their opposition in view of Section 8 of the Indian Evidence Act, 1872. Counsel further argued that PW-1 had specifically deposed that accused – Sanjit was without any work yet the defence failed to explain about the nature of work of Sanjeet or the place where he was working which even kept him busy on the day of a festival when all other schools and institutions remained closed.

48. Counsel also submitted that it is also surprising that DW-3 in his cross-examination stated that he did not know Rajesh or his telephone number although he happens to be the maternal uncle of Meena- wife of Rajesh, and yet he was not aware as to who Rajesh was . Counsel further submitted that there is no evidence regarding the possibility of commission of the offences of robbery and dacoity by some assailants although the defence made a vain attempt to misdirect the investigation. Counsel also argued that the recovery of sum of Rs.50,000/- and a gold chain at the instance of the accused – Nirmala adequately proves the fact that she made all attempts to make a false case of robbery but did not succeed in such an attempt. Counsel also argued that PW-16 – Sub-Inspector Pradeep in his cross-examination stated that when he had reached the spot, the situation at the site was highly stimulating and even he quoted '*jhagre jaise halaat ho gaye thhey*'. Counsel for the appellant further contended that had it been a case of robbery or dacoity, the family members of the complainant would have been sympathetic to the son-in-law and parents-in-law of the deceased instead of blaming them for the murder of their daughter. Counsel also submitted that otherwise also there is no evidence which could even remotely suggest the possibility of

commission of the offence of robbery or dacoity. Making his submission good, counsel pointed out that the FIR is with regard to the murder and not robbery or dacoity, the information given to PW-1 by the informant was about the murder of her daughter and not about robbery or dacoity and similarly, when DW-3 asked the people who had gathered at the spot about the incident, they informed him about the murder of Anju and not about robbery or dacoity to have taken place. Counsel also argued that the incident happened at about 5 – 5.30 pm in the month of October, 2008 and the house in question is situated at thickly populated area where on both the sides, there were residential accommodations and had there been any robbery/dacoity, someone would have surely noticed the assailants running from the house after committing the offence. Counsel further submitted that the motive of robbery or dacoity is always to burgle gold, cash and other valuables but no cash or jewellery was reported to be stolen from the house. Counsel invited attention of this Court to the photographs (Ex.PW-4/1 to PW-4/21) which clearly demonstrate that the deceased was wearing her earrings and gold chain and had the robbers/dacoits attacked the house, they would have first removed all the jewellery items, currency and other valuables lying in the house. Counsel

also argued that the number of stab wounds found on the body of the deceased further shows that the real motive of the assailants was to commit murder and not to commit any other offence and counsel also argued that there was no evidence of forced entry inside the house and this again is a crucial situation to disprove any suggestions of a robbery or dacoity having been committed on the evening of 30th October, 2008.

49. Counsel further argued that PW-1, PW-5, PW-6 and PW-12 were consistent in their respective depositions and that all these accused persons hatched a conspiracy to commit murder of Anju as she was not able to deliver a male child for the family and to none of the witnesses, a suggestion was put by the defence about the commission of robbery/dacoity which resultantly caused the murder of Anju. Counsel thus submitted that the defence taken by the accused persons about the possibility of alleged occurrence of robbery/dacoity is an afterthought. Counsel also argued that the theory of robbery for the first time was introduced by the defence at the time of the cross-examination of PW-16, PW-19, when the defence did not find any other escape route to save them. Counsel also submitted that it is also not the case of the defence that these accused persons had any kind of enmity with any person either

in the village or elsewhere and this fact has been admitted by DW-3 in his cross-examination and therefore, the apprehension that any other person committed such a heinous crime is clearly ruled out.

50. Counsel further submitted that the accused persons have taken a false stand that they were already in custody of the police since the night of 29th October 2008 and their arrest was falsely shown on 30th October 2008. Counsel further submitted that the speciousness on the part of the accused persons is manifested from the fact that no such defence was raised by them in answer to a particular question with regard to their arrest, put to them. Counsel also submitted that murder of Anju was committed inside the matrimonial house and therefore, the burden on the prosecution to prove its case would be of light character based on the principles envisaged under Section 106 of Indian Evidence Act, 1872. Counsel thus submitted that it was for the defence to have come out with the true and correct facts leading to the murder of Anju which had taken place within the four walls of the matrimonial house and having failed to do so, they instead put up a false defence clearly establishing their involvement in the said crime.

51. Counsel also argued that the prosecution has also successfully established the motive on the part of these assailants to carry out the murder of Anju and motive on the part of the accused persons can be clearly reflected from the very first statement made by PW-6 (Ex.PW-6/M) based on which the FIR was registered. Counsel also argued that the contention of defence that names of PW-5 and PW-12 were introduced later so as to falsely rope them in the commission of said crime has no legs to stand as the names of these accused persons were taken by PW-1 in her very first statement recorded on 3rd November 2008 which was proved on record as Ex.PW-1/A. Counsel also submitted that PW-1 has duly explained the reasons for recording of her statement by the Sub-Divisional Magistrate on 3rd November 2008 i.e. after four days of the incident, in her Court deposition, where she deposed that she did not give any statement to the police on the next date because she remained very perturbed on 31st January 2008, 1st November 2008 and 2nd November 2008.

52. Similarly, counsel pointed out that PW-6 also gave sufficient explanation for having named Rajesh and Meena in his supplementary statement made on 3rd November 2008, stating that it was not possible for

him to give minute details of the allegations against the accused persons when his daughter was lying in the pool of blood in the matrimonial home. Counsel also submitted that the version of PW-1 was fully corroborated by the evidence of her husband PW-6 and the defence did not give any suggestion to these witnesses to disprove their presence at the spot of the crime. Counsel thus submitted that the delay in recording the statement of PW-1 and supplementary statement of PW-6 again discredit their statements made to the Sub-Divisional Magistrate as well as their Court depositions. Counsel also argued that the FIR is not an encyclopaedia of all the facts and circumstances of the case, as at the time of lodging the FIR, the requirement is to place sufficient basic facts which disclose commission of a cognizable offence, which would indeed be enough for the investigation to commence and that each and every fact needn't be placed at the time of registration of the FIR.

53. On the testimonies of PW-5 and PW-12, counsel for the complainant/appellant submitted that the same cannot be doubted merely because the statements so recorded were after a gap of two and a half months period as these witnesses gave sufficient explanation for the delay in recording of the statements by the police. Counsel further

submitted that even PW-12 and PW-19 explained the reasons for not being able to record the statements of PW-5 and PW-12. Counsel also submitted that PW-5 and PW-12 fully support the case of the prosecution and the statements made by them under Section 161 of Cr.P.C. and their testimonies cannot be discredited merely because of delay in recording of their statements by the police. Counsel also submitted that for delayed recording of the statements, the blame can be fastened on the police as it is the duty of the police to have taken prompt steps in recording the statements of the material witnesses and the laxity if any, on the part of the police cannot put a question mark on the correctness of the statements made by the said two witnesses even though recorded after some gap. Counsel for the complainant also gave explanation as to why PW-1 and PW-6 did not refer the visit of PW-5 and PW-12 at the matrimonial house of Anju on 26th October 2008, the same being a human error, due to lapse of memory as both these witnesses had lost their daughter, thus some kind of nervousness was quite natural and possible to have arisen at that point in time while deposing in court.

54. Counsel also submitted that it is a settled legal position that conspiracies are hatched in secrecy and rarely is there a direct evidence to

prove conspiracy, which can only be inferred from the proven facts and circumstances of the case. Counsel further submitted that the conspiracy to commit murder of Anju by the accused persons was primarily to re-marry Sanjeet so that he could bring a male child in the family to carry on his lineage and to achieve this objective they conspired with each other to eliminate Anju who could no more conceive and give birth to a child. Counsel also submitted that the use of two weapons of offence in the commission of crime and its recoveries from the house clearly establishes involvement of two or more persons in the crime. Counsel further submitted that the accused – Rajesh and Meena had absconded and were arrested only on 3rd November 2008 and this circumstance of abscondance also clearly establishes their involvement in the said crime as this being an additional link in the chain of incriminating evidence in establishing their involvement in the crime. Counsel also submitted that PW-10 Poorvi also deposed the presence of Rajesh and Meena at the time of murder at the spot and the presence of Rajesh and Meena was also proved by the deposition of PW-6, who in his deposition referred to their presence at the spot and also their leaving the spot after sometime.

Counsel also argued that PW-1 and PW-6 have deposed about the

harassment caused to the deceased by accused Rajesh and Meena in their respective statements made to the police as well as in their Court depositions and therefore, the role of Rajesh and Meena cannot be separated from the role of other accused persons.

55. Mr. M.N. Dudeja learned APP for the State was quite vociferous in submitting that the circumstances of the case, conduct of the accused persons and the environment of the place are very important factors to be looked into for reaching any final conclusion in a crime of this nature which took place within the four walls of the matrimonial house. Counsel also argued that the entire medical and ocular evidence collected by the prosecution unequivocally establishes one thing, i.e., the guilt of these accused persons in committing the murder of a young lady Anju. Counsel also submitted that there was no animosity of any kind amongst any relatives or neighbours and there is no trace of robbery committed at the house, then who else except these accused persons, who also had a clear motive, could be the perpetrators of the said barbaric crime at the matrimonial house of Anju. Counsel thus submitted that all these accused persons deserve their conviction under Section 302 of IPC without any exception and urged for maintaining the sentence of life imprisonment as

awarded by the Ld. Trial Court. Counsel also pleaded that accused Meena and Rajesh should also be awarded the same sentence.

56. Based on the aforesaid submissions, counsel for the complainant/appellant and learned APP for the State pleaded for upholding the order of learned trial Court so far as appeals of 386/2011, 486/2011 and 487/2011 are concerned, and for accepting the plea of the complainant to convict and sentence the respondents – Rajesh and Meena for the offence punishable under Section 302 IPC.

57. In support of his submissions, the following judgments were relied upon by the learned counsel for the appellant –Pushpa and the State:-

- a) State of U.P. vs. Ashok Kumar Srivastava, AIR 1992 SC 840;*
- b) Ramesh Kumar @ Rameshwar vs. State, 2010 CriLJ 85;*
- c) Trimukh Maroti Kirkan vs. State of Maharashtra, (2006) 10 SCC 681;*
- d) Superintendant of Police, CBI and others vs. Tapan Kumar Singh, AIR 2003 SC 4140;*
- e) Abu Thakir & Ors vs. State, JCC 2010 (2) 1503 SC*
- f) Dhanaj Singh vs. State of Punjab, AIR 2004 SC 1920;*

- g) *Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra, AIR 2008 SC 2991;***
- h) *State of U.P. vs. Krishna Master & Ors., 2010 Cri.LJ 3889 SC***
- i) *Gunnana Pentayya @ Pendadu & Ors vs. State of UP, (2009) 16 SCC 59;***
- j) *Sheo Shanker Singh vs. State of Jharkhand and Ors. II (2011) SLT 217, SC.***

58. We have heard the learned counsel for the parties at considerable length and have also bestowed our thoughtful consideration to the pleas raised by them. We have also gone through the judgment passed by the learned ASJ and examined the lower court record.

59. Every criminal trial is a voyage of discovery in which truth is the quest and it is the solemn duty of the court to disengage truth from falsehood instead of taking an easy course of rejecting the evidence in its entirety solely on the ground that the same is not acceptable in case of some of the accused. The Court has to minutely dissect the entire evidence placed before it in order to give a virtuous and upright decision. This journey of the Court to search for truth primarily depends on the material placed before it by the police and to check if it satisfies the ordeal of credibility. The fair, independent and impartial investigation at the hands of the competent investigating team is a *sine qua non* for any

fair trial of a criminal case. The task of the investigation is no different from that of the Courts as investigation is also a systematic search for the truth. The objective of investigation is to first determine whether a crime indeed has been committed and then to search for the perpetrators of the crime by using their expert investigating techniques with the help of scientific and modern methods so as to present the best possible case before the court. Foremost duty of the investigating team is to see that no innocent man is falsely implicated and no guilty man is able to escape their attention. The conviction and acquittal of any accused in a crime to a very large extent depends on the fervour and competence of the investigating team. The onerous task of the Court to search for the truth can become easy if the investigating team has performed its job with all fairness, sincerity, honesty, impartiality and without being influenced by any extraneous factors, and conversely, the task of the Court would become difficult if the investigation is shoddy, full of loop holes, gaps and not conducted in a fair, honest and impartial manner. The duty of the investigating team is not merely to bolster the prosecution case with such evidence as may enable the Court to record the conviction but essentially to bring out the real unvarnished truth. After all, a criminal trial is meant

for doing justice to all, i.e., the accused and the victim of the crime and more importantly the society itself. In the matter of ***H.N. Rishbud and Inder Singh vs. State of Delhi***, reported in ***AIR 1955 SC 196***, the Hon'ble Supreme Court of India exhaustively laid down the procedure of investigation as follows:-

“5. ...When information of the commission of a cognizable offence is received or such commission is suspected, the appropriate police officer has the authority to enter on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non-cognizable offence, he shall not investigate it without the order of a competent Magistrate. Thus it may be seen that according to the scheme of the Code, investigation is a normal preliminary to an accused being put up for trial for a cognizable offence (except when the Magistrate takes cognizance other-wise than on a police report in which case he has the power under section 202 of the Code to order investigation if he thinks fit). Therefore, it is clear that when the Legislature made the offences in the Act cognizable, prior investigation by the appropriate police officer was contemplated as the normal preliminary to the trial in respect of such offences under the Act. In order to ascertain the scope of and the reason for requiring such investigation to be conducted by an officer of high rank (except when otherwise permitted by a Magistrate), it is useful to consider what "investigation" under the Code comprises. Investigation usually starts on information relating to the commission of an offence given to an officer in

charge of a police station and recorded under section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally either by himself or by a duly authorised deputy. The officer examining any person in the course of investigation may reduce his statement into writing and such writing is available, in the trial that may follow, for use in the manner provided in this behalf in section 162. Under section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be -necessary for the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under section 54 of the Code. A police officer making an investigation is enjoined to enter his proceedings in a diary from day-to-day. Where such investigation cannot be completed

within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned. It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefore under section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under section 173 of the Code in the prescribed form furnishing various details. Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-

sheet under section 173. The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation, viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551.”

60. Laying emphasis on the concept of fair investigation and fair trial, the Supreme Court in the matter of ***Siddharth Vashshith v. State of NCT of Delhi***, reported in ***AIR 2010 SC 2352*** observed as under:-

“199. In the Indian Criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to

*ensure compliance to the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India. A person is entitled to be tried according to the law in force at the time of commission of offence. A person could not be punished for the same offence twice and most significantly cannot be compelled to be a witness against himself and he cannot be deprived of his personal liberty except according to the procedure established by law. The law in relation to investigation of offences and rights of an accused, in our country, has developed with the passage of time. On the one hand, power is vested in the investigating officer to conduct the investigation freely and transparently. **Even the Courts do not normally have the right to interfere in the investigation. It exclusively falls in the domain of the investigating agency. In exceptional cases the High Courts have monitored the investigation but again within a very limited scope.** There, on the other a duty is cast upon the prosecutor to ensure that rights of an accused are not infringed and he gets a fair chance to put forward his defence so as to ensure that a guilty does not go scot free while an innocent is not punished. Even in the might of the State the rights of an accused cannot be undermined, he must be tried in consonance with the provisions of the constitutional mandate. The cumulative effect of this constitutional philosophy is that both the Courts and the investigating agency should operate in their own independent fields while ensuring adherence to basic rule of law. **It is not only the responsibility of the investigating agency but as well that of the Courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally***

enforceable canon of criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of bias mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society.

200. In the case of **Kashmeri Dev v. Delhi Administration and Anrs.** [JT 1988 (2) SC 293] it has been held:

“That the record of investigation should not show that efforts are being made to protect and shield the guilty even where they are police officers and are alleged to have committed a barbaric offence/crime. The Courts have even declined to accept the report submitted by the investigating officer where it is glaringly unfair and offends basic canons of criminal investigation and jurisprudence. Contra veritatem lex nunquam a liquid permittit: implies a duty on the Court to accept and accord its approval only to a report which is result of faithful and fruitful investigation. The Court is not to accept the report which is contra legem but to conduct judicious and fair investigation and submit a report in accordance with Section 173 of the Code which places a burden and obligation on the State Administration. The aim of criminal justice is two-fold. Severely punishing and really or sufficiently preventing the crime. Both these objects can be achieved only by fair investigation into the commission of crime, sincerely proving the case of the prosecution

before the Court and the guilty is punished in accordance with law.”

61. On the role of the investigating officer in the dispensation of criminal justice, the Apex Court in *State of Bihar v. P.P. Sharma*, reported in *1991 Crl. L. J. 1438*, observed as under:

“47. The Code demarcates the field of investigation exclusively to the executive to be vigilant over law and order. Police officer has statutory power and right as a part to investigate the cognizable offence suspected to have been committed by an accused and bring the offender to book. In respect thereof he needs no authority from a Magistrate or a Court except to the extent indicated in Sub-section 3 of Section 156, the superintendence sparingly over the investigation and the matters incidental thereto, like enlarging the accused on bail or to secure his presence for further investigation; to record judicial confession under Section 164 of the Code or to conduct identification parade of the accused or the Articles of crime or recording dying declaration under Section 32 of Evidence Act.”

62. In *Sanjeev Nanda v. State*, reported in *160 (2009) DLT 775*, learned single judge of this Court also laid emphasis on the need for scientific investigation than the one involving obsolete methods and relevant paras of the same are reproduced as under:-

“Role of investigating authorities

274. *Since our country follows the adversarial system of criminal justice, it is essential for bringing the culprits to the books that the prosecution is strong and well fed by the investigating agencies.*

275. *Police and other investigating agencies are at the heart of the criminal justice system of India. The foundation for the Criminal Justice System is the investigation by the police. When an offence committed is brought to the notice of the police, it is their responsibility to investigate into the matter to find out who has committed the offence, ascertain the facts and circumstances relevant to the crime and to collect the evidence, oral or circumstantial, which is necessary to prove the case in the Court. The success or failure of the case depends entirely on the work of the investigating officer.*

276. *In India, the rate of acquittal of criminals as compared to conviction rate is very high. In the report submitted by Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs headed by Dr. Justice V.S. Malimath, formerly, Chief Justice of Karnataka and Kerala High Courts, popularly known as the Malimath Committee Report, the reasons behind such low rate of conviction in India were reported as under:*

2.19.3 Technical or non-fulfilment of any procedural requirement or inadequacies of evidence or non-examination of material witnesses, mistakes in investigation and similar other factors have quite often contributed to acquittals. This amounts to failure of the Courts' to search for truth to do justice.

277. *Investigation is basically an art of unearthing the truth for the purpose of successful detection and prosecution. The Apex Court in **State of Bihar v. P.P.***

Sharma, 1992 Supp (1) SCC 222 explained various steps involved in investigation, in the following terms:

39. Investigation consists of diverse steps — (1) to proceed to the spot, (2) to ascertain the facts and circumstances of the case; (3) discovery and arrest of the suspected offender, (4) collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons including the accused and the reduction of their statements into writing if the officer thinks fit (Section 161 CrPC), (b) the search of places and seizure of things necessary for the investigation to be proceeded with for the trial (Section 165 CrPC etc.) and (c) recovery of the material objects or such of the information from the accused to discover, in consequence thereof, so much of information relating to discovery of facts to be proved. (Section 27 of the Indian Evidence Act).

278. In *Jamuna Chaudhary v. State of Bihar-* (1974) 3 SCC 774 the Hon'ble Supreme Court held:

“The duty of the Investigating Officer is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth.”

279. In *P.P. Sharma's case (supra)* the Hon'ble Apex Court observed as under the duty of the investigating officer:

47. The investigating officer is the arm of the law and plays pivotal role in the dispensation of

criminal justice and maintenance of law and order. The police investigation is, therefore, the foundation stone on which the whole edifice of criminal trial rests — an error in its chain of investigation may result in miscarriage of justice and the prosecution entails (sic) with acquittal. The duty of the investigating officer, therefore, is to ascertain facts, to extract truth from half-truth or garbled version, connecting the chain of events. Investigation is a tardy and tedious process. Enough power, therefore, has been given to the police officer in the area of investigatory process, granting him or her great latitude to exercise his discretionary power to make a successful investigation. It is by his action that law becomes an actual positive force. Often crimes are committed in secrecy with dexterity and at high places. The investigating officer may have to obtain information from sources disclosed or undisclosed and there is no set procedure to conduct investigation to connect every step in the chain of prosecution case by collecting the evidence except to the extent expressly prohibited by the Code or the Evidence Act or the Constitution. In view of the arduous task involved in the investigation he has been given free liberty to collect the necessary evidence in any manner he feels expedient, on the facts and in given circumstances. His/her primary focus is on the solution of the crime by intensive investigation. It is his duty to ferret out the truth. Laborious hard work and attention to the details, ability to sort through mountainous information, recognised behavioural patterns and above all, to co-ordinate the efforts of different people associated with various

elements of the crime and the case, are essential. Diverse methods are, therefore, involved in making a successful completion of the investigation

Need for scientific investigation

280. Scientific inputs help the investigators in solving a number of cases of crime. The latest state-of-the-art equipments are the need of the hour considering the escalating rates of acquittal in India due to faulty and defective investigation. In plethora of cases, the Hon'ble Apex Court has pointed out the need for scientific investigation by the investigating agency and deprecated the practice of failure on the part of the investigating agencies in collecting relevant evidence resulting in the acquittal of the accused due to inefficient and untrained Investigating Officers, who take the investigation in a very casual, careless and traditional manner. With the advancement in science and technology, it is high time that the novel & scientific methods of investigation by a team of well-trained experts and not merely through an ill equipped, overburdened and constrained team of Investigating Officers. ”

63. Reiterating the aforesaid principles of investigation, this court also elucidated in ***Crl. A. 1297 and 1322/2010***, titled as ***Pawan @ Diggi Vs . State***, decided on 24.01.2014 as under:

16. In the matter of Jamuna Chaudhary and others vs. State of Bihar, AIR 1974 SC 1822, the Apex Court ascribed the role of the investigating officer to bring out the real unvarnished truth for the courts to reach a right

conclusion. Relevant para of the said judgment is referred to as under:-

The duty of the Investigating Officers is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth. It is apparent that the prosecution witnesses had tried to omit altogether any reference to at least the injuries of the appellant Ramanandan because there was a cross case in which such an admission could have been made use of to support the prosecution in that case. Dukhharan, however, made a very feeble and obviously untruthful attempt to account for the injuries of Ramanandan by saying that he had snatched a pharsa from one of the members of the crowd and had started swinging it around. He could not, however, state whether any one was injured by it. He even stated that he did not recognise the man from whom he had snatched the pharsa. Although he said that he knew Ramanandan from his childhood, he could not say whether all his fingers were present on the day of occurrence. It was apparent that he was trying to conceal some occurrence over the Shikmi land that morning in which the fingers of Ramanandan were chopped off. He admitted that there was a dispute between Raghubir, Jamuna, and Rajdhari which had lasted 2 1/2 to 3 years over the Shikmi land. In fact, this dispute was given as the only cause of the incident set up by the prosecution.

17. After a challan is filed, if the Court is of the opinion that the evidence on record is sufficient to proceed against the accused, then the Court shall take the cognizance and vice-versa. After the Court has taken cognizance and the charges are framed against the accused, the journey of trial commences. The sole object of every trial is to conduct a fair trial in search of a

ultimate truth viz. whether the accused is an actual perpetrator of the crime or is an innocent person. To find out the ultimate truth in a criminal case, the court is not dependent merely on the evidence placed on record by the police. The effect of any criminal proceedings cannot always be left entirely in the hands of the parties as ultimately, it is the duty of the court to leave no stone unturned to bring out the truth for doing complete justice between the parties and to protect the interest of the society as well. Dealing with the concept of fair trial in relation to any criminal proceedings, the Apex Court in the case of Zahira Habibullah Sheikh (5) and Anr. v. State of Gujarat and Ors. reported in 2006(3) SCC 374 held as under:-

The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: 'The Judge was biased.' (Per Lord Denning, M.R. in Metropolitan Properties Co. Ltd v. Lannon, All ER p. 310 A.) The perception may be wrong about the Judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Caesar's wife should be above suspicion (Per Bowen, L.J. in Leeson v. General Council of Medical Education.). It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep the promise to justice and it cannot stay petrified and sit nonchalantly. The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope (see Jennison v. Baker).

Increasingly, people are believing as observed by Salmon quoted by Diogenes Laertius in Lives of the Philosophers, Laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away Jonathan Swift, in his Essay on the Faculties of the Mind said in similar lines: Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial: the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

18. Describing that a criminal trial is not like a fairy tale, the Hon'ble Apex Court in State of Punjab vs. Jagbir Singh & Others, reported in AIR 1973 SC 2407 has held as under:-

A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. 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.

19. Laying emphasis for the courts to adopt rational, realistic and genuine approach for administering justice in a criminal trial, the Apex Court in the case of State of Himachal Pradesh vs. Lekh Raj & Anr., reported in (2000) 1 SCC 247, in the following para held as under:-

The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt of innocence of the accused arraigned. In arriving at a conclusion about the truth, the Courts are required to adopt rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper technicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstances keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hyper technical approach has to be

replaced by rational, realistic and genuine approach for administering justice in a criminal trial. Criminal Jurisprudence cannot be considered to be a Utopian though but have to be considered as part and parcel of the human civilisation and the realities of life. The courts cannot ignore the erosion in values of life which is a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and the mankind.

20. In State of Karnataka vs. Yarappa Reddy, 2000 SCC (Cri.) 61, the view taken by the Apex Court was that the court must have predominance and pre-eminence in a criminal trial over the action taken by the investigating officer and criminal justice should not be made causality for the wrongs committed by the investigating officers in the case. The relevant para of said judgment is reproduced as under:-

19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of

the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigation officers. Criminal Justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.

64. After the investigating team completes its task and places the charge sheet before the concerned trial Court, the real journey of the Court begins in search for truth. It is after all the most fundamental and pious duty of the Court to ascertain the truth and then impart justice on the basis of truth. The truth has been held to be an ace in the entire judicial system and the Courts are the repositories of faith of the people. The Courts have to play a pro-active role to discover the truth to do complete justice between the parties and in the process carry out in-depth examination and evaluation of material placed on record by the investigating team and equally by the defence. The shaky, shoddy and defective investigation cannot come in the way of the Court while

evaluating the evidence placed on record and it is the prime duty of the court to objectively analyse whether a person who is accused of an offence, deserves acquittal or conviction which is indeed an uphill task.

65. In a plethora of judgments, the Apex Court has taken a view that acquitting an accused person solely on the basis of faulty and defective investigation would amount to playing in the hands of the investigating officer and criminal justice system will become a casualty for the wrongs committed by such kind of investigating officer.

66. In the case of ***Ram Bihari Yadav v. State of Bihar and Ors. (1998 (4) SCC 517*** it was held that if primacy is given to such designed or negligent investigation due to the omissions or lapses by perfunctory investigation, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice. The view was again re- iterated in the case of ***Amar Singh v. Balwinder Singh and Ors. 2003 (2) SCC 518.***

67. Success or failure of any criminal trial depends upon lots of factors; the first and foremost role is of the police as the criminal machinery sets in motion when any offence is brought to their notice.

Then comes the role of the investigating team as to how the investigation is conducted, if the same is done in a perfect precession or in a lopsided manner just not bothering to adopt any scientific measures. The investigating team should frequently monitor and keep a tab that the investigation is carried out in a most fair, honest and impartial manner making all sincere efforts to bring the real culprit of the crime to book, else the same would result in an unfair, dishonest and biased investigation, which would save the actual culprit and falsely implicate some innocent person. An investigation would be successful only if all sincere efforts are made to promptly complete it and not to proceed in a leisurely and lackadaisical fashion. It may even require the help of the family of the victims in apprehending the actual culprit of the crime. The investigating team has to be vigilant and cautious that it may not take the help of the culprit of the crime in the manner that it misdirects the investigation, deliberately leaving many lacunae to the advantage of the defence rather should make all efforts to leave no gaps, loopholes or lacunae in conducting the same. This entire guiding process which ultimately may or may not lead to a just conclusion is the responsibility of the investigating team at the first place. The police and the other

investigating agencies are thus at the heart of the criminal justice delivery system in the country. After the role of the investigation is complete then comes the role of the prosecuting agency and of the counsel representing the defence. Here again the fate of the prosecution would depend upon the competence/incompetence of the prosecutors and equally that of the counsel representing the defence. In large majority of the cases, the cases of the indigent facing criminal prosecution are represented through counsels on the panel of the legal aid committees and it is commonly seen the effort and hard work as is required to be put on behalf of the defence is missing. Same is true in case of rich and mighty people, who are represented through lawyers of high calibre and standing and in many of such cases the calibre of the prosecutors do not match and stand up to face the experience, knowledge and standing of such astute lawyers. And lastly and more importantly the role comes of the Trial Courts to very objectively and dispassionately evaluate the entire material brought on record by the prosecution and defence to give a just and impartial finding in a most free, fair and honest manner uninfluenced by the standing of the prosecutor or of the defence counsel.

any crime. These witnesses can be eye witnesses, injured eye witnesses, chance witnesses, natural witnesses and also the defence witnesses. There cannot be a better evidence to prove any crime then the evidence of an eye witness and if there is no eye witness to the crime or even where the eye witness is not prepared to come to the aid of the investigation, to stand as a witness for what he has seen then the only other option left with the investigation is to base the case of the prosecution on circumstantial evidence. The evidence in each case has to be considered from the point of view of trustworthiness, reliability and from the angle as to whether it inspires confidence in the mind of the Court. There cannot be a prosecution case with a cast-iron perfection in all respects and it is obligatory for the Courts to analyse and assess the evidence on record, with particular reference to its trustworthiness and truthfulness, by a process of dispassionate, judicial scrutiny with an objective and reasonable appreciation of the same, without being obsessed by an air of total suspicion of the case of the prosecution. (*Ref: Sardul Singh v. State of Haryana 1970 SLR SC 101*).

69. In the background of the aforesaid legal principles, let us now examine as to whether the prosecution has succeeded to bring home the

guilt of the accused persons and also whether the findings given by the learned trial Court are based upon proper appreciation of facts of the case and sound judicial principles of law.

70. Before we deal with the respective contentions raised by the counsel for the parties, let us again have a look on the basic facts of the case. It is a shocking case of murder of a young married woman just of about 22 years of age, who was brutally killed by the assailants with such vengeance that the front portion of her body was inflicted with almost 20 wounds. Two knives were used by the assailants to brutally kill her. The fact that murder of the victim Anju took place at her matrimonial house on the dreadful evening of 29th October, 2008, when she took her last breath, a day of '*Goverdhan Pooja*', a festival i.e. widely celebrated in our society is not in dispute. Anju got married with Sanjeet on 28.11.2004 and out of this wedlock a female child namely Poorvi was born who was about two and half years of age on the date of the incident. It is also not in dispute that at the time of delivery of the child – Poorvi, Anju's uterus was removed by the doctors because of which she could no more conceive. Co-accused Meena is her sister in law who got married with

Rajesh and was residing at her matrimonial home at Nangloi. Co-accused
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Baljeet and Nirmala are the parents-in-law of the deceased. The offence had taken place at the matrimonial house of the deceased and the matrimonial house is located in a thickly populated residential area.

71. The most vital aspect which needs a deeper scrutiny in all cases of such grave nature is actually to ascertain as to who are the actual assailants and perpetrators of the crime. As per the prosecution, Sanjeet-husband, Baljeet- father-in-law, Nirmala- mother-in-law, Meena- sister-in-law and real brother-in-law had conspired together to commit the murder of Anju. The learned trial Court convicted the accused persons, namely, Nirmala, Baljeet and Sanjeet for committing the offences under Sections 302/498A/304B/34 IPC and acquitted accused Rajesh and accused Meena so far as the offence of murder is concerned after giving them the benefit of doubt. As regards the offences under Sections 498A/34 IPC are concerned, all these accused persons were held guilty.

72. The said Trial Court judgment and the order on sentence is under challenge in the present appeals. The three accused persons, who have been convicted for committing an offence under Section 302/120B/34 IPC and the accused Rajesh and Meena, who have been convicted for the

offence under Section 498A/34 IPC are seeking to set aside the impugned judgment and order on sentence passed against them while the complainant Pushpawati in her appeal seeks conviction of Rajesh and Meena under Section 302/120B/IPC and urges that they be sentenced at par with other accused persons. State is here to oppose the three appeals preferred by the accused persons and lends its support so far as the appeal filed by the complainant is concerned.

73. Elaborate and extensive arguments were addressed from both the sides. Written submissions alongwith supporting judgments were also filed by both the parties. Before we delve into the submissions made by learned counsel for the parties, we may at the outset point out that the cause of death of Late Ms. Anju being homicidal is not under dispute and in our view rightly so. The evidence on record amply proves that the deceased Anju had died after having received 20 stab injuries on her neck and on the front portion of her body. PW-8 – Dr. Manoj Dhingra had conducted the post mortem and as per his post mortem report, the deceased Anju had suffered following external and internal injuries:-

External Injuries:-

“1. Stab wound over right side:-

- (i) Incised penetrating wound over auxiliary fold right side 5cm below the top of shoulder of size 5.2cm X 2.3cm. It has cut the skin, muscle of posterior part right arm through and through and further cut the skin inter-costal right side posterior auxiliary line between 2nd and 3rd rib further cut the plane and extend the chest cavity by cutting apex of right lung parenchyma, above and downward direction is obliquely vertical.
- (ii) Incised penetrating wound present in front of chest of size 2cm X 1 ½ cm. It has cut the skin, muscle and penetrated the right lung in between the 6th and 7th intercostals space.
- (iii) Stab incised wound present in chest of size ½ cm, 1 cm below the above wound in between the 7th and 8th incostal space, it penetrating the muscle skin.
- (iv) Stab incised the wound present over abdomen 3cm, above of size 2cm X ½ cm, it penetrating the muscle, skin and then to liver right lobe.
- (v) Stab incised penetrating wound of size 2 X ½ cm at post axillary line, it penetrating the skin, muscles.
- (vi) Stab incised wound of size 1 ½ cm X ½ cm, it penetrating the skin muscle and then to right kidney hepatic area of right kidney.

- (vii) Stab incised wound of size 2X ½ cm, it penetrating the skin and muscles.
- (viii) Stab incised wound of size 2 X ½ cm of side at post axillary line.
- (ix) Stab incised wound of size 2 X ½ cm of size 3 ½ cm X 1 cm of back of scapular region at the level of T3.
- (x) Stab incised wound of size 3cm X 1 cm at the level of T4 at back of scapular region.
- (xi) Stab incised wound of size 3 cm X 1cm at the level of T6 at interior angle of scapula.
- (xii) Stab incised wound of size 4 X 1 cm at the level of right thigh.

2. Stab wound over left side:-

- (i) Stab incised wound over left hand 2 cm below left elbow joint of size 3cm X 1cm, it penetrate the skin and muscle.
- (ii) Stab incised wound on left hand 3 ½ cm below elbow joint of size 2cm X ½ cm it penetrating the skin and muscle.
- (iii) At back stab incised wound of size 4 cm X ½ cm to its pearse the left kidney.
- (iv) Stab in are wound of size 3 cm X ½ cm, it penetrating skin and muscle then penetrating to the spleen.
- (v) Stab wound of size 1 cm over left thigh.

- (vi) Stab wound of size 1 cm X ½ cm on left lower thigh.

3. Neck:-

- (i) Stab incised wound over neck of size 8cm X 1 cm. 2 ½cm above manubrium sterni.
- (ii) Stab incised wound over neck of size 6cm X 1 1/2 cm. 1 ½ cm above manubrium sterni with cut at ant jugular vein with cut of sternocleidomastoid muscle.”

74. The cause of Anju’s death was due to a haemorrhage shock as a result of multiple stab injuries. The post mortem was conducted at Sanjay Gandhi Memorial Hospital, Govt. Of NCT of Delhi, and the time since death was stated to be approximately 19:00 hours. PW-8 , Dr. Manoj Dhingra also gave an opinion on the request of PW-19 – Inspector Prakash Chand regarding recovered weapon of offence (Ex.PW-8/D) and in his opinion, after going through the post mortem report and examination of the weapon, the injuries mentioned in the post mortem report were possible with the weapon or similar such weapon. The said post mortem report was proved by PW-8 – Dr. Manoj Dhingra as Ex. PW-8/A. He was not cross examined by any of the accused persons. In

the light of these admitted facts, there can arise no difficulty in

concluding that the deceased Anju died a homicidal death caused by the stab injuries on various parts of her body with one knife and one dagger which were found lying at the spot of the crime.

75. Now to deal with the most crucial and critical part of the case as to who committed the said ghastly murder of this young lady Anju. Whether these four accused persons, who were charge sheeted by the police, are the actual perpetrators of the crime or not all but some amongst them were involved or if some unknown or strange assailants were involved who while committing the crime of robbery/dacoity had murdered the deceased Anju. Another crucial question that needs to be examined is whether there was any motive on the part of these assailants to commit the said murder and that too in such a barbaric and horrific manner.

76. The case of the prosecution rests on the ocular testimony of child witness – Poorvi (PW-10) and also the circumstantial evidence proved on record with the help of private and public witnesses supported by the medical and forensic evidence. The testimony of the said child finds a very crucial bearing on the circumstances relating to the occurrence of crime in the present case.

77. PW-10 – Poorvi was a child of about two and half years of age on the date of commission of the crime and she was of three years and nine months of age when she came to depose before the learned trial Court. Her testimony has come under rigorous attack by the counsels representing the accused persons. The main contentions raised by counsels for the accused persons to impeach the credibility of the said child witness broadly are that she was not present at the time of incident; she had accompanied her grandmother on the morning of 29th October 2008 after DW-3 – Sikander came to take his sister – Nirmala for the purpose of celebrating bhaiya dooj; failure of the prosecution to examine Narayan Singh at whose residence the statement of the child was recorded; failure of the prosecution to examine Constable Balbir Singh, ASI Suresh and Constable Satpal who had accompanied the Investigating Officer to the residence of Narayan Singh, the conduct of the parents of the deceased for not tracing their granddaughter Poorvi after not being able to find her at the spot; PW-1 and PW-6 not even making a whisper in their statements about the presence of Poorvi at the spot nor even in the subsequent statement of PW-6 dated 3.11.2008 made to the SHO and the supplementary statement made by him before the learned Sub-Cr.L.A. No.386/2011, 486/2011, 487/2011 & 1080/2011

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Divisional Magistrate; introduction of Poorvi as an eye witness after the advise to introduce some eye witness was given by the Senior Prosecutor; the presence of Poorvi as an eye witness not disclosed in the reply filed by the State to the anticipatory bail application filed by accused – Rajesh; statement of Poorvi under Section 161 recorded by the police was manipulated by the Investigating Officer from the back date; and lastly, Poorvi, who remained with her maternal grandmother (Nani) from the date of commission of the crime till her Court deposition, was a tutored witness and her tutoring was manifested as she blurted the words '*meena ne pakra dadi ne mara*' even in reply to formal questions.

78. As per the prosecution, the said baby girl Poorvi met the Investigating team when they landed at the house of Narayan Singh, brother of accused Baljeet, while they were searching for the accused persons. Statement of Poorvi was recorded by the Investigating Officer in question – answer form under Section 161 of Cr.P.C. For better appreciation, the statement of the Poorvi as recorded by the Investigating Officer under Section 161 Cr.P.C. is reproduced in vernacular as under:-

“Bayan ajane Poorvi D/o Sanjeet @ Sonu, S/o Vanjeet

Singh, R/o Gaon Wakarwala, Nangloi, Delhi ka umer
2 ½ saal U/s 161 Cr.P.C.:

Prashan: Bete aapka kya naam hai?

Uttar: Poolvi

Prashan: Aapki mummy ka kya naam hai?

Uttar: Anju

Prashan: Aapki mummy kahan hai?

Uttar: Mummy Achhpatal Patti kadane gai hai.
Main mummy paachh jaoongi.

Prashan: Hospital Kyon Gai?

Uttar: Dadi ne meli mummy to chaku mala tha.
Mummy ke pait main khoon nikla tha.

Prashan: Aapki dadi nai jab chaku mara tha, aur
kaun tha?

Uttar: Bua Meena.

Prashan: Aapki Bua nai kya kiya?

Uttar: Main lo lahi thi Bua ne godi main tha liya
tha.”

79. To examine the accusation as to whether the Investigating Officer had manipulated the statement of baby Poorvi from the back date, we have perused the inner case diary of the police and the case diary No.2 dated 30.10.2008 clearly reveals that the Investigating Team had first visited the house of Baljit Singh and it was found locked. The neighbours told them that none of the accused persons had come back after the incident and as and when they come, the police will be notified. It is

further revealed that the police team then landed at the residence of Narayan Singh, brother of accused – Baljeet Singh where they met the wife of Narayan Singh who told the police team that these accused persons have already left after putting a lock in their house and their daughter Meena had also left for her in-laws house yesterday and it was only baby Poorvi – the grandchild of Baljeet Singh, who was staying at their house since yesterday. The said case diary also reveals that the statement of Poorvi was recorded by the police under Section 161 Cr.P.C. in question answer form. It further reveals that the wife of Narayan Singh refused to give any statement concerning the incident because the matter pertained to Baljeet and his family. After having perused the case diary of the police, we are not persuaded to accept the contention raised by Mr.Vikas Pahwa, Senior Advocate that the Investigating Officer had manipulated the recording of statement of PW-10 from the back date. We also find no substance in the contention raised by Mr. Hariharan, Senior Advocate to disbelieve the presence of Poorvi (PW-10) at the time of incident merely because the police had not examined certain witnesses or Narayan Singh was not produced by the police or the presence of Poorvi as an eye witness was not disclosed or mentioned by the prosecution

witnesses. The recording of statement of Poorvi as an eye witness on 30th October 2008 is a matter of fact borne out from the record and we find no reason to disbelieve the same.

80. Now to deal with another vital facet as to whether Poorvi (PW-10) was a tutored witness and was prompted to give answers on the dotted lines on the dictates of her maternal grandparents and that if, it would derelict the entire controversy and it may not be safe to place reliance on the testimony of such a tutored child of extremely tender age.

81. It is a settled legal position that the conviction of accused persons can be based on the testimony of a single eye witness but such testimony must be credible, reliable and trustworthy and free from any suspicion so far as the core of the prosecution case is concerned. However, a case may have blotchy effect if such an eye witness happens to be a child of a tender age, nevertheless we can also not overlook the fact that the question whether reliance be placed on child testimony, differs from case to case and it is not something which can be etched in stone.

82. We may refer the observations of this Court as to who can be considered as a competent witness which have been enunciated in ***Crl. A.***

No. 207/2000, Jodhpur vs. State, decided on 4.3.2014, which are as under:-

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“13. Before scrutinizing the testimony of solitary eye witness to the incident, who was a child aged about ten years, let us have a glance at the legal position concerning the testimony of a child witness.

14. Indian Evidence Act, 1872 (in short the 'Evidence Act') does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease- whether of mind, or any other cause of the same Kind. A child of tender age Crl. A. No.207/2000 Page 8 of 38 can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer J in Wheeler v. United States 159 U.S.

523. The evidence of a child witness is not required to be rejected per se; but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. (Vide Surya Narayana v. State of Karnataka 2001 (1) Supreme 1).

15. In Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341, it was held as follows:

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child

witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored".

16. While appreciating the evidence of a child witness of extreme tender age, it would be desirable for the Court to keep in mind the principle that although there is no bar in accepting the uncorroborated testimony of a child witness yet prudence requires that court should Crl. A. No.207/2000 Page 9 of 38 not act on the uncorroborated evidence of a child whether sworn or unsworn. While dealing with this aspect of the case, their Lordships of the Privy Council in Mohamed Sugul Esa v. The King, AIR 1946 PC 3, observed as follows (at pages 5 & 6) :--

"In the Indian Act there is no such provision and the evidence is made admissible whether corroborated or not. Once there is admissible evidence a Court can act upon it, corroboration, unless required by statute, goes only to the weight and value of the evidence. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law."

17. Again in Panchhi Vs. State of UP (1998) 7 SCC 177 it was held that evidence of the child witness must be evaluated more carefully and with greater

circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical wisdom than of law. [vide Prakash vs. State of MP,(1992) 4 SCC 225].”

83. Under the Indian Evidence Act, 1872, does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease- whether of mind, or any other cause of the same Kind. The only precaution which the Courts should bear in mind while assessing the evidence of a child witness is that the evidence must find corroboration and his/her demeanour must be like any other competent witness and he/she should not be a tutored witness. Another precaution which the Court has suggested in the case of child witness is that as a rule of prudence, it would be desirable to have the authentication to such evidence from other dependable evidence on record. The legal position concerning the testimony of child witness has

been a subject matter of discussion in catena of judgments of the Hon'ble Supreme Court as well as the various High Courts of India and abroad. It would be apt to refer to some of the important decisions on the subject.

84. The observation of the Courts in the case of *State of U.P. vs Krishna Master and Ors (2010) 12 SCC 324* are :

*“a witness Madan Lal was six years old at the time of occurrence and he was examined in chief, during trial, when he was about 16 years old. The High Court rejected his testimony on the ground that a child of six years would not have been in a position to recapitulate the facts in his memory when he is examined after such a gap. Overturning the reasoning given by the High Court, it was **observed by the Supreme Court that when a child of tender age witnesses gruesome murder of his mother, father, brothers etc., he is not likely to forget the incident for his whole life and would certainly recapitulate the facts in his memory, when asked about the same at any point of time, notwithstanding the gap of about 10 years between the incident and recording of his evidence.***

85. In *Nivrutti Pandurang Kokate and Ors. v. State of Maharashtra AIR 2008 SC 1460*, this Court dealing with the child witness has observed as under:

"10. The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the

said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial Court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

86. In ***Suryanarayana vs State Of Karnataka, (2001) 9 SCC 129***, the Hon'ble Apex Court dealing with the authenticity of a child witness testimony held as under:

"5....The time and place of the occurrence and the attending circumstances of the case suggest no possibility of there being any other person as an eye-witness. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The witness of PW2 cannot be discarded only on the ground of her being of Teen age. The fact of being PW2 a child witness would require the court to scrutinize her evidence with care and caution. If she is shown to have stood the test of cross-examination and

there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.

6. This Court in Panchhi & Ors. v. State of U.P. [1998 (7) SCC 177] held that the evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon as the rule of corroboration is of practical wisdom than of law (vide Prakash v. State of M.P. 1992 (4) SCC 225, Baby Kandayanathi v. State of Kerala 1993 Supp (3) SCC 667; Raja Ram Yadav v. State of Bihar, 1996 (9) SCC 287; Dattu Ramrao Sakhare v. State of Maharashtra 1997 (5) SCC 341). To the same effect is the judgment in State of U.P. v. Ashok Dixit & Anr. [2000 (3) SCC 70].”

87. The position was concisely stated by BREWER, J. in ***WHEELER V. United States, 159 US 523 (1895)*** wherein the objection was raised to the action of the court in permitting the son of the deceased to testify. The homicide took place on June 12, 1894, and this boy was five years old on the 5th of July following. The case was tried on December 21, at which time he was nearly five and a half years of age. The boy, in reply to questions put to him on his voir dire, said, among other things, that he knew the difference between the truth and a lie; that if he told a lie, the bad man would get him, and that he was going to tell the truth. When further asked what they would do with him in court if he told a lie, he replied that they would put him in jail. He also said that his mother had told him that morning to 'tell no lie,' and, in response to a question as to what the clerk said to him when he held up his hand, he answered, 'Don't you tell no story.' Other questions were asked as to his residence, his relationship to the deceased, and as to whether he had ever been to school, to which latter inquiry he responded in the negative. The Hon'ble Court convicting the accused held as under:

*“As the testimony is not all preserved in the record,
we have before us no inquiry as to the sufficiency of*

the testimony to uphold the verdict, and are limited to the question of the competency of this witness.

*5. That the boy was not by reason of his youth, as a matter of law, absolutely disqualified as a witness is clear. While no one should think of calling as a witness an infant only two or three years old, there is no precise age which determines the question of competency. This depends on the capacity and intelligence of the child, his appreciation of the difference between truth and falsehood, as well as of his duty to tell the former. The decision of this question rests primarily with the trial judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence, as well as his understanding of the obligations of an oath. As many of these matters cannot be photographed into the record, the decision of the trial judge will not be disturbed on review, unless from that which is preserved it is clear that it was erroneous. These rules have been settled by many decisions, and there seems to be no dissent among the recent authorities. In *Brasier's Case*, 1 Leach, Crown Cas. 199, it is stated that the question was submitted to the 12 judges, and that they were unanimously of the opinion 'that an infant, though under the age of seven years, may be sworn in a criminal prosecution, provided such infant appears, on strict examination by the court, to possess a sufficient knowledge of the nature and consequences of an oath; for there is no precise or fixed rule as to the time within which infants are excluded from giving evidence, but their admissibility depends upon the sense and reason they entertain of the danger and impiety of falsehood, which is to be collected from their answers to questions propounded to them by the*

court.' See, also, 1 Greenl. Ev. § 367; 1 Whart. Ev. §§ 398-400; 1 Best, Ev. §§ 155, 156; State v. Juneau, 88 Wis. 180, 59 N. W. 580; Ridenhour v. Railway Co., 102 Mo. 270, 13 S. W. 889, and 14 S. W. 760; McGuff v. State, 88 Ala. 147, 7 South. 35; State v. Levy, 23 Minn. 104; Davidson v. State, 39 Tax. 129; Com. v. Mullins, 2 Allen, 295; Peterson v. State, 47 Ga. 524; State v. Edwards, 79 N. C. 648; State v. Jackson, 9 Or. 457; Blackwell v. State, 11 Ind. 196.

6. These principles and authorities are decisive in this case. So far as can be judged from the not very extended examination which is found in the record, the boy was intelligent, understood the difference between truth and falsehood, and the consequences of telling the latter, and also what was required by the oath which he had taken. At any rate, the contrary does not appear. Of course, care must be taken by the trial judge, especially where, as in this case, the question is one of life or death. On the other hand, to exclude from the witness stand one who shows himself capable of understanding the difference between truth and falsehood, and who does not appear to have been simply taught to tell a story, would sometimes result in staying the hand of justice.

88. We think that, under the circumstances of this case, the disclosures on the voir dire were sufficient to authorize the decision that the witness was competent, and therefore, there was no error in admitting his testimony. Thus the general principles of appreciating the child witness having regard to Section 118 of the Evidence Act aptly transpire that the evidence of a child witness has to be subjected to the closest

scrutiny and can be accepted only if the court comes to the conclusion that the child understands the questions put to him and he is capable of giving rational answers.

89. Children are the most vulnerable faction of the society and by reason of their tender age definitely are considered to be a pliable witnesses. There is no denying the fact that each child is different and possesses varied level of interests and intellect. In today's fast paced world, where children are exposed to media, one cannot doubt their cognition levels. Not every child possesses sufficient understanding of nature and the consequences of his acts, but the same cannot negate the intellect capabilities of those who can, very well grasp the state of affairs and maintain a vision of the same in their minds.

90. One of the issues marring the growth of our country is the evil of child sexual abuse which we hear very often. The POCSO Act, 2013 was therefore formulated in order to effectively address the heinous crimes of sexual abuse and sexual exploitation of children. There lies no iota of doubt that it takes great amount of grit and courage to distinctly explain the horrendous incident that a child is made to go through because of

certain ruthless section of the society. A child however even at a tender age does possess the ability to answer the questions put to her/ him spontaneously if she/he was present at the site of crime or if he/ she has been a victim herself. It is even the courts duty to be sensitive towards the child as the courtroom proceedings are alien to him and it may have a more stressful and terrifying effect which may create a fear in his mind rendering him unable to speak about the incident. It is for the court to adjudge the grasping abilities of children, their tendency to fantasise and their susceptibility to coaching, which are certain factors that need careful examination on case to case basis. Therefore, the court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under a threat or coercion. Careful evaluation of the evidence of a child witness in the background of facts of each case in context of other evidence on record is inescapable before the court decides to rely upon it.

91. As can be seen from the broad principles laid down in the aforesaid legal pronouncements, the competency of a child witness to give evidence is not regulated by the age but by the degree of understanding he/she appears to possess. Undoubtedly, the Court should examine a child

of tender years only after it has fully satisfied itself that the child is mentally capable of understanding the questions and also understands the duty of speaking the truth, then only such a child should ordinarily be examined. It is thus imperative for every Court to first test the testimonial intelligence of the child before a child is put in the witness box to testify and where the Court finds that the child does not possess sufficient understanding to distinguish between the truth and falsehood and also lacks the requisite testimonial intelligence, the Court may not examine such a child at all.

92. In one of the similar cases where the Apex Court had dealt with the issue of testimony of child witness in ***Rameshwar vs. State of Rajasthan, reported in AIR 1952 SC 54*** where the Court had also examined the provisions of the Indian Evidence Act, 1872 and Indian Oaths Act, 1873 held as under:-

“7. The proviso to section 5 of the Indian Oaths Act, 1873, prescribes that-“Provided that where the witness is a child under twelve years of age, and the Court or person having authority to examine such witness of opinion that, though in understand, the duty of speaking the truth, he does not understand the nature of an oath or affirmation the foregoing

provisions of this section and the provisions of section 6 shall not apply to such witness, but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness not affect the obligation of the witness to state the truth."

8. The question is whether the opinion referred to must be formally recorded or whether it can be inferred from the circumstances in which the deposition was taken.

9. The proviso quoted above must be read along with section 118 of the Evidence Act and section 13 of the Oaths Act. In my opinion, an omission to administer an oath, even to an adult, goes only to the credibility of the witness and not his competency. The question of competency is dealt with in section 118. Every witness is competent unless the Court considers he is prevented from understanding the questions put to him, or from giving rational answers by reasons of tender years, extreme old age, disease whether of body or mind, or any other cause of the same kind. It will be observed that there is always competency in fact unless the Court considers otherwise. No other ground of incompetency is given, therefore unless the Oath as Act adds additional grounds of incompetency it is evident that section 118 must prevail.

11. Section 5 is the main provision regarding the administration of oaths. The proviso only sets out the cases in which the oath is not to be administered. If, therefore, an omission to take the oath does not affect the admissibility of the evidence, it follows that an irregularity of the kind we are considering which arises out of the proviso cannot affect the admissibility either Section 118 remains and unless the judge considers otherwise the witness is competent."

93. In *Gagan Kanojia and Anr vs. State of Punjab, (2006) 13 SCC 516*, the Apex Court took a view that even a part of the statement of the child witness which can be separated from the tutored portion can be relied upon for the purpose of corroboration provided such un-tutored part inspires confidence of the Court.

94. In a recent case, *State of M.P. vs. Ramesh and Anr.* reported in *(2011) 4 SCC 786*, the Apex Court after referring to many previous judgments summarised the legal position in the following words:-

“13. In view of the above, the law on the issue can be summarized to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the Court and there is no embellishment or improvement therein, the Court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.”

95. Dr. Hans Gross in his authoritative work on criminal investigation has extensively dealt with the subject of child psychology and the testimonial abilities of children of tender years and children being

innocent are held to be more susceptible to all kinds of influence, threats, false representations and such external factors influencing the children to speak in a particular manner and on the tutored lines but at the same time it was opined that the children being innocent would speak especially that part of the truth which they themselves have visibly seen.

96. In the background of the aforesaid legal principles, let us now examine as to whether the testimony of Poorvi (PW-10) can be relied upon as a credible and reliable piece of evidence. On the date of the commission of offence, Baby Poorvi was merely two and half years old and even at the time of her Court deposition, she was below five years of age being of the age of three years and nine months. There can be no two views that Poorvi was indeed a small baby and therefore extra caution is required to evaluate and scrutinise her testimony.

97. Baby Poorvi in this case was examined under Section 161 Cr.P.C. on the evening of 30th October 2008 i.e. within 24 hours from the time of commission of crime. If, we accept the presence of Poorvi at the time of incident, then the way the murder of Anju had taken place, i.e. 20 stabbed wounds on her body, then certainly, even a child of such a tender age

would not easily forget such an unusual and horrifying happening. We cannot be oblivious of the fact that here the crime that took place involved the mother of the child and the perpetrators of the crime were well familiar to the child, being the grandmother (dadi) and Aunt (bua) of the child. In her statement under Section 161 Cr.P.C., which was recorded in question – answer form, she specifically named her grandmother who had inflicted a knife blow in the stomach of her mother due to which blood was oozing out from the stomach and due to that her mother had gone to the hospital for dressing. She further named her Aunt (bua) – Meena present at the time of commission of the said crime. Investigating Officer for the reasons best known to him did not ask more pertinent questions with regard to the presence of the other accused persons. Yet, we see no reason to doubt the recording of the statement made by Baby Poorvi naming her grandmother as the lady who killed her mother and also disclosed about the presence of Meena (bua) at the same time. PW-10 remained resolute, unflinching and unbending from her stand at the time of her Court deposition firmly reiterating that it was her grandmother only who had killed her mother. She further did not disclose about the presence of any other accused persons at the time of the

commission of crime except that of Meena and the role ascribed to Meena was that she caught hold of her mother. To test the understanding and rational of the child, the trial Court had put certain preliminary questions and considering the prompt and sensible answers given by her, the Court found in its opinion that the child was making statement voluntarily and without any threat, pressure and coercion. The Court also observed that the child appeared to be a happy, talkative child and was willingly giving answers to the questions being put to her. One of the preliminary questions put to the child was whether one should speak truth or false, the prompt reply came “*sach bolna chahiye*”. The Court again put another question i.e. Question No.15, that if somebody tells her to speak false then would she tell a lie?, again the artless answer came “*sach bolna chahiye*”. To test the credibility of this witness and for better appreciation of the facts, it would be appropriate to reproduce some of the questions and answers as were recorded in her cross examination, which are as under:-

“Q.2. Apki umar kya hai?

A. Teen Saal.

Q.3. Aap school jaate ho?

A. Bulbul School.

Q.4. Aap kaun si class mein padte ho?

A. Nursery mein.

Q.5. Aapke papa ka naam kya hai?

A. Sonu.

Q.7. Aapke kitne bhai bahan hai?

A. Nahin hai

Q.8. Aap kahan rahte ho?

A. Faridabad.

Q.10. Aap mandir jate ho?

A. Nahi. Mandir hee nahi hai wahan.

Q.12. Aapko kaun sa rang acha lagta hai?

A. Blue, Red and green.

Q.13 Kya sach bolna chahiye ya jhuth?

A. Sach bolna chahiye.

Q.14 Aap kisi se darte ho?

A. Nahi.

Q.15 Agar koi jhuth bolne ko kahe toky aap jhuth bologe?

A. Sach bolna chahiye.

Q.17. Kya aapke school mein punishment milti hai yam am datati hai?

A. Datati hai.”

98. Baby Poorvi was partly cross-examined on the same date and then was cross-examined on two subsequent dates. Some of the questions put

to her and answers given by the witness, in her cross-examination on 4th

March 2010 are reproduced as under:-

“Q.11 Aap frock pahante ho?

A. Nahi. (at this stage the witness has started reciting a poem in Hindi Hathi Raja kahan chale).

(At this stage the witness has stated “Meena ne pakra dadi ne mara).

Q.12 Abhi jo aapne bola meena ne pakra dadi ne mara ye baat kisne batayee thee?

A. Kisi ne nahi.

Q.14 Aapke ghar mein aur kaun kaun rahta hai?

A. Rajesh, Meena, Dadi aur main.

Q.17. Bag mein kya le jate ho?

A. Tifen, khana, bottle and drawing ki copy, chota elephant (maine kitni baar bata diya aur main kitna bataaun).

(Dadi ne mara Meena ne pakra)

Q.18 Aap dadi ke saath bahar gaye huye the ya phir Nani ke sath?

A. Nani ke sath.”

99. Some of the other questions put to her and answers given by the witness, in her cross-examination recorded on 9th March 2010, are reproduced as under:-

“Q.1 Yeh waale uncle kaun hai (the defence has counsel pointed towards the counsel for complainant)?

A. The witness is shaking her head in negative.

Q.23. Yeh uncle jab kal mile thai inhone aap ko toffee di thi?

A. Haan.

(The witness is started playing with colours).

Q.24. Jab yeh uncle kal mile thai inhone aap ko kaha thai ki kal yahan aakar kya kehna hai?

A. Haan. Kehna nahi bolna hai. Kehna bhi bolna bhi.

Q.25. Aapki ki mummy ne kal aapko kya khilaya tha?

A. The witness is not responding and playing with colours.

Q.38. Kya aapne gedad aur sher ki kahani suni hai?

A. Nahin.

Q.39 Kya aapne budia aur doosi aurat ki kahani suni hai?

A. Nahin.

Q.40. Kya aapki mumma nai aapko budia aur doosri aurat ki kahani sunaiye thi?

A. Budia aur lady ki.

Q.41. Kya aapki mumma nai bataya tha ki ek budia aur ek lady ekathe rehte thai?

A. Haan.

Q.42. Kya aapki mumma nai bataya tha ki jab budi aurat nai doosri aurat ko maara toh khoon aaya?

A. Haan.

Q.46. Kya aapki mumma acchi hai.

A. Haan.”

100. The Cross examination further continued on 25th March 2010, the extracts of the same are reproduced as under:-

“Q.3 Mamma ne koi kahani sunie?

A. Nahi.

Q.12 Police wala kab mila tha?

A. Mangalwar ko.

Q.13. Police wale ne kya kaha tha.

A. Kucch nahi.

Q.14. Apne police wale ko kya kaha tha?

A. Kucch nahi.

Q.15. Jab police wala mila tha? To kya ye wali mami (Maternal grandmother) tere saath thi.

A. Haan.

Q.16. Phir mami ne police wale ko kucha bataya jo likh liya?

A. Haan. Again said Nahi.

Q.17. Kya police wale ne tere ko tofi di thi?

A. Nahi.

Q.21. Anju Mami jab hospital chali gayi to Poorvi kahan gayi?

A. Iss mami ke ghar.

Q.22. Aaj kahan se aaye ho?

A. Kahi nahi se. Iss Mami ke ghar se.

Q.23. Jab police wala aaya that u so rahi thi ya jag rahi thi?

A. Jaag rahi thi.

Q.24. Jab police aayi thi kya Rajesh ka naam batha diya tha.

A. Haan.

Q.25. Phir police ne kya Rajesh ko Pakar liya tha?

A. Nahi.

Q.26. Jo teri ye wali mami kehthi hai woh tu maanti hai?

A. Haan.

Q.27. Kya aap ki iss wali mami ne kaha tha ke ye batana ki anju mami ko maara tha or unke khoon nikla?

A. Haan. Again said Nahi.”

101. As we can see from the cross-examination of this child witness, defence counsel had put across many scarring questions on three different dates and the child gave almost the same version in her Court deposition as was stated by her in her statement recorded under Section 161 Cr.P.C. She did not add any other name of the accused persons in her Court deposition except that of Rajesh, but without assigning any role to him. She also reiterated her stand that at the time when dadi had stabbed her mother she was weeping. She further maintained that after her mother

was stabbed, blood of red colour oozed out from her stomach. It is correct that in her cross-examination dated 04th March, 2010, she gave a different answer to question of different nature like question no.11, where she was asked to answer “aap frock pehante ho?” Although she replied in the negative and also started reciting a poem in Hindi “*Hathi Raja Kaha Chale..*” and soon after that she repeated that “*Meena ne pakra tha, dadi ne mara tha*”.

102. Similarly answer to another question No.17 put in cross-examination, asking her to reply as to what she carried in her school bag, and while replying she repeated the same line –“*dadi ne mara, meena ne pakra*”. So far as the question Nos 23 and 24 of cross-examination of baby – Poorvi recorded on 9th March 2010 are concerned, the child was busy in playing with colours and therefore, did not properly respond. With regard to question No.40, 41 and 42, where the defence counsel sought to know from the child as to whether she was told any story of an old lady and a woman, and in the story, the old lady killing the woman, the answer of the child came in positive. In our considered view, we do not find any fault with the answer of the child as this was actually what she had seen herself. Therefore the said suggestion of her grandmother

telling her a story in the form of an actual incident is not of much significance. We also cannot lose sight of the fact that when such a gruesome incident had taken place at the house where the child since her birth has been residing and murderer happens to be none else but a member of her family, then a child of even such a tender age must have had an impact and the same could not be easily washed away from her memory. Defence counsel made an attempt to paint the child as a tutored witness at the hands of the police and her maternal grandmother but we do not find the same to be true from the entire set of circumstances. We also do not find any force in the contention raised by counsel for the accused persons that the child was tutored to the extent that she kept repeating the same words as were told to her. The incident of murder by itself was so gruesome and horrifying that it must have engraved in the mind of a small child and therefore, it was not unusual on the part of the child to repeat in the Court what she had personally seen in front of her eyes.

103. In our view, Baby Poorvi (PW-10) was very firm, cogent and consistent in her Court deposition despite her lengthy and gruelling cross-

examination in describing the incident as she had seen herself in front of her eyes. Any child who is told to depose in the manner as was actually seen by her, cannot be said to be a tutored witness and one thing that can't be forgotten is that the case here deals with the murder of the child's mother by her own dadi (paternal grandmother) so the child's familiarity with the incident was very natural. Serious attempts were made to attack the credibility of the said child witness –Poorvi but the defence itself failed to put the most relevant questions in her cross-examination, such as – no suggestion was given to Poorvi that she was not present on 29th October 2008 at the time of commission of offence and as a consequence thereof having not seen the crime taking place before her eyes; no suggestion was given to her that she was not present in the house of Narayan Singh on 30th October 2008; no suggestion was given to her that she was taken by her grandmother (dadi) to the house of DW-3 – Sikander on the morning of 29th October 2008; no suggestion was given to her that from the date of the incident she started residing with her maternal grandmother – PW-1 Pushpa Devi and no suggestion was given to her that her grandmother (dadi) never inflicted any stab blow to her mother; and no suggestion was given to dispute the presence of Meena

and Rajesh at the time of commission of the crime; no suggestion was given to her that the two pairs of hawai chappals recovered from the spot did not belong to her; no suggestion was given to her that her statement was not recorded at the house of Narayan Singh. In the absence of all these very pertinent suggestions, defence itself has not disputed the presence of Poorvi at the spot of the crime on the evening of 29th October 2008 and her being a witness to the scene of the crime. We also do not find any merit in the contention raised by Mr.Vikas Pahwa, Senior Advocate that the statement of Poorvi (PW-10) was recorded under Section 161 Cr.P.C. after an objection was raised by the prosecution branch to introduce the evidence of an eye witness to strengthen the case of the prosecution. PW-19, in his cross-examination categorically denied the suggestion and he also voluntarily deposed that Poorvi was made a witness much earlier. He also denied the suggestion that the statement of Poorvi was recorded after 15th January 2009 and it was ante dated. From the deposition of PW-19, it is clearly proved that he was referring to the statements of Amit (PW-12) and Harinder (PW-5) whose statements were recorded after certain objections were raised by the prosecution but in his cross-examination instead of saying witnesses, he mentioned about the

introduction of an eye witness after having discussed the matter with the Senior Prosecutor on 15th January 2009. This is a glaring and apparent mistake on the part of the Investigating Officer and the same cannot put the defence to any advantageous position. We also do not find any merit in the contention raised by Mr. Hariharan, Senior Advocate that the presence of Poorvi as an eye witness was not disclosed in the reply filed by the State to the anticipatory bail application of accused – Rajesh. Non disclosure of any material fact due to any carelessness by the State in their reply to the bail application cannot be of any benefit to the defence.

104. After carefully evaluating the evidence of the child witness Poorvi (PW-10), we find no hesitation in believing that the said child is a truthful and credible witness. She was truthful to the extent that she did not name any other accused person in her Court deposition except her grandmother and bua and with due prudence she narrated in Court what she had stated in her statement recorded under Section 161 Cr.P.C. She was also not found to be a tutored witness by the learned trial Court and we therefore, find no difficulty to accept the evidence of the said child witness, being the witness of the scene of the crime. However even after considering the

statement of Poorvi to be correct and plausible, we would still be hesitant to mention the conviction of the accused persons solely based on her testimony, unless we find that there is sufficient corroborative evidence which can lend support to her testimony and overall to the case of the prosecution in all other respects.

105. We shall now take up for discussion as to how the prosecution has succeeded to establish the other incriminating facts in the nature of circumstantial evidence that can lend support and corroboration to the testimony of the said child witness (PW-10), but before we do so, we may first deal with, whether the prosecution has proved any motive on the part of these accused persons for the commission of such a monstrous crime.

106. As per the case of the prosecution, the main and primary motive which has been alleged against the accused persons is that after the removal of uterus, Anju became incapable of delivering any child which led to her harassment and torture and in fact Nirmala joined by her husband Baljeet and son Sanjeet used to taunt Anju so that they could remarry Sanjit after killing her. The other aspect of motive which has been attributed against the accused persons was that they were subjecting Anju

to harassment for bringing insufficient dowry. PW-6 Satyawar father of the deceased Anju in his deposition stated that he had spent Rs.11 lacs in the marriage of his daughter and just after 2-3 months of her marriage, these accused persons started harassing his daughter for demand of dowry. He further deposed that he had left India and reached London on 12.7.2005 and remained there for about three years, when his daughter used to inform him that the accused persons were harassing her for demand of dowry.

107. He also deposed that accused persons were asking for Rs.10 lacs for buying a big car during his stay in London. He alongwith his wife visited India five times to request the accused persons not to harass their daughter. He further deposed that in June 2006 his daughter gave birth to a girl child and during this time, her uterus was removed due to some medical complication and after removal of the uterus his daughter became incapable of giving birth ever. He also deposed that after having come to know about this fact, the parents-in-law of Anju started cursing and threatening to kill Anju and re-marry Sanjit with someone else. He also deposed that this fact was told to him by his wife. He also deposed that in

September 2006, to pacify the matter he invited Sanjit and his daughter to London and his daughter was sent to London by their in-laws after imposing a condition that she must return back with Rs.10 lacs. He further deposed that Sanjit and his daughter Anju alongwith their baby remained in London for about one and half months and he gave his daughter whatever he could as per his capacity; however the in-laws of Anju kept harassing her for dowry even when she returned back from London.

108. PW-6 further deposed that after being informed by his daughter in February 2007, he came to Delhi especially to settle the matter with her in-laws and after having met them, he had requested them not to talk about the re-marriage of Sanjit and about the dowry demands of Rs.10 lacs. Anju had also told the accused persons that she will not allow the re-marriage of Sanjit. PW-6 went back to London again and finally came to India in July 2008 and in the month of August 2008, he again called accused Rajesh, Sanjit and Baljeet to his house to make them understand that they should not talk about the re-marriage of Sanjit and make unnecessary dowry demands. He also deposed that in the month of

September he went to the house of the accused persons alongwith his wife and they again reiterated about the re-marriage of Sanjit. Finally on 29th October 2008, PW-6 received a telephonic call at 7 PM from someone informing him that his daughter has been murdered.

109. If we look at the first statement of PW-6 – Satyawar Singh, based on which the FIR was registered, it can be clearly discerned that he made a lot of improvements in his Court deposition, so far as the allegation of dowry is concerned. In his initial statement proved on record as Ex.PW-6/M, he had not levelled any allegation against accused Meena and accused Rajesh. In his first statement, the thread of Anju's murder was also linked with Anju not being in a position to deliver the child after removal of her uterus and Sanjit's re-marriage after eliminating Anju. In the supplementary statement made by Satyawar, he for the first time roped in accused Rajesh and Meena for harassing his daughter Anju for bringing more dowry. In his supplementary statement, PW-6 reiterated his allegation of murder of his daughter Anju as was told to Anju by accused Nirmla and Meena that since she failed to bring any money from her parents, even after she was sent to London and also that she

could no more bear a child, therefore they would all kill her. To the same effect is the statement made by PW-1 Pushpawati under Section 161 Cr.P.C. on 3rd November 2008 as well as when she appeared in Court to give evidence.

110. The statements of PW-5 – Harinder Singh and PW-12 Amit were recorded much later in time i.e. on 08.09.2009 and 08.03.2010 respectively. In their Court depositions they mainly referred to the said demand of Rs.10 lacs raised by Anju's in-laws and her life being under threat because of her inability to deliver a child as was told to them by Anju on their visit to her house on 26th October 2008.

111. In so far as the harassment of Anju due to dowry demands, the same appears to us as a vague and evasive allegation and the same does not inspire confidence of the Court. Bringing of Rs.10 lacs as part of dowry demand or such related allegations, have been incorporated to build a case of dowry death either by the complainant party or at the instance of the Investigating Officer. The marriage between the parties took place on 28.11.2004 and there was no such complaint ever lodged by the girl or her family members with regard to any kind of dowry demands

being raised by the in-laws. As per the own case of the prosecution, Anju
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had stayed in London for a period of one and half months alongwith her husband and child and such a long stay is demonstrative of the fact that there was no tension in the family with regard to at least any kind of dowry demand. This also gets manifested from the fact that neither PW-1 nor PW-6 could reveal any figure of the amount which was allegedly paid by them to their daughter Anju after she had returned back from London alongwith her husband. There is no other specific allegation of monetary demand levelled against the in-laws of Anju right from the inception of her marriage except the said demand of Rs.10 lacs which was allegedly made before she was sent to London.

112. PW-12 Amit in his cross-examination deposed that whenever his sister visited his house at Dwarka after coming back from London, his brother-in-law used to accompany Anju and they seemed to be a happy couple. Further, the defence through the evidence of DW-4, Raj Kumar proved on record that Anju was acting as a Manager in the Managing Committee of Vikram Public School in place of her father-in-law Baljeet Singh and used to accompany him to work in the said company till her demise and through the defence of DW-5 – Naresh Kumar, the income

tax return of deceased Anju Rani for the financial years 2004-2005 to
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2007-2008 were proved on record as Ex.DW-5/A to DW-5/A-4. DW-2 – Mr. Om Pal, Assistant Manager of Syndicate Bank has also placed on record the computer generated statement of the account of accused Sanjit with effect from the period 1.9.2006 to 7.7.2010 in respect of his saving bank account No. 90802010044127. The said statement reflects various money transactions running into lacs. Taking an overall view of the kind of vague, evasive and unspecific allegations levelled by the prosecution witnesses and taking into consideration the said evidence adduced by the defence, we do not find ourselves in agreement with the case set up by the prosecution that Anju was being subjected to harassment because of dowry demand. The Hon'ble Supreme Court of India and various High Courts have already condemned such a tendency of the girl's parents to level exaggerated and embellished allegations roping in every relative of the husband to falsely implicate them by abusing the beneficial provision of Section 498-A of IPC.

113. The Apex Court in a recent judgment in the case of *Arnesh Kumar v. State of Bihar*, (2014) 8 SCALE 250 expressed its concern on the growing misuse of the provision of Sec. 498A of the Indian Penal Code

and opined as under;

“.. The institution of marriage is greatly revered in this country. Section 498-A of the Indian Penal Code was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence Under Section 498-A of the Indian Penal Code, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases Under Section 498A, Indian Penal Code is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

6. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its

lesson; the lesson implicit and embodied in the Code of Criminal Procedure. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

In ***Preeti Gupta & Anr. V. State of Jharkand & Anr., (2010)7 SCC667***, the Hon’ble Supreme Court held that the allegations on the relatives and friends relating to harassment should be scrutinised with great care and circumspection, the relevant para is as follows:

“35.The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the

complainant are required to be scrutinised with great care and circumspection.

35. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful.

37. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislature. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law."

113. The question now before us is if money was not the motive, then what was the other motive which could drive these accused persons to kill

their daughter-in-law Anju. The motive on the part of the accused persons was clearly spelt out by PW-6 – Satyawar in his very first statement made by him immediately after the incident wherein he said that the Anju's in-laws wanted to remarry Sanjit after eliminating his wife Anju, who was no more capable of bearing a child. It is an undisputed fact that at the time of her delivery, Anju had developed certain medical complications and she was removed from Sharad Nursing Home to Maharaja Agrasen Hospital. It is also an undisputed fact that the uterus of Anju was removed due to medical complications after she gave birth to a female child due to which she became incapable of giving birth to any other child. PW-6 – Satyawar also stated that the moment it came to the knowledge of the accused – Nirmala that in future, Anju will not be able to bear a child she started taunting Anju by saying that she will re-marry her son Sanjit after killing her. He further stated that he tried to reason with Nirmala but she kept threatening and in fact Sanjit – husband of Anju and Baljeet (father-in-law) also joined Nirmala in harassing Anju on this count. PW-6, in his Court deposition remained consistent on this stand. PW-1 in her statement recorded under Section 161 Cr.P.C. also stated the same and she further added that many a times she especially

flew to Delhi to make them understand on this count on this court. In her Court deposition also, she remained consistent in reiterating the allegations made under Section 161 Cr.P.C. on the said aspect. She also mentioned exact taunts and accusations which were being made by the in-laws to Anju and the same were “*tu maa nahi ban sakti...Tu vansh nahi chala sakti....Tujhe hum maar denge.*”

114. Motive is relevant in all criminal cases and it assumes more significance when the case of the prosecution rests on circumstantial evidence and it certainly lends huge support to corroborate the testimony of an eye witness. The legal position regarding the substantiation of motive as an essential requirement for bringing home the guilt of the accused is fairly well settled by a catena of decisions of the Apex Court and High Courts of this country. In a criminal case, a credible eye witness account can be the sole basis for conviction of an accused person, even in the absence of proof of any motive on the part of the assailants. Motive assumes considerable significance where the prosecution relies upon circumstantial evidence as in such cases, proof of motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely.

Motive of the crime, however adequate cannot by itself sustain a criminal charge and conversely if the evidence against the accused is clear and settled, failure on the part of the prosecution to establish any motive is of no consequence.

115. In order to examine the importance of motive in a criminal offence; the contours within which it must be examined and the nature of the evidence required to establish it, let us refer to a few authorities cited by the Hon'ble Supreme Court.

116. In *State of U.P. v. Babu Ram, (2000) 4 SCC 515*, the Supreme Court has stated that — *“motive is a relevant factor in all criminal cases whether based on the testimony of eyewitnesses or circumstantial evidence. The question in this regard is whether the prosecution must fail because it failed to prove the motive or whether inability to prove the motive would weaken the prosecution to any perceptible limit.”*

117. In *Sheo Shankar Singh v. State of Jharkhand and Anr., (2011) 3 SCC 654*, the Supreme Court has noticed the difference in the significance of proof of motive where prosecution is based upon

circumstantial evidence and where it relies upon the testimony of eye witnesses in following terms:

15. The legal position regarding proof of motive as an essential requirement for bringing home the guilt of the accused is fairly well settled by a long line of decisions of this Court. These decisions have made a clear distinction between cases where the prosecution relies upon circumstantial evidence on the one hand and those where it relies upon the testimony of eyewitnesses on the other. In the former category of cases proof of motive is given the importance it deserves, for proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eyewitness account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eyewitnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely, even if the prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eyewitnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an eyewitness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eyewitnesses. See Shivaji Genu Mohite v. State of Maharashtra [(1973) 3 SCC 219 : 1973 SCC (Cri) 214] , Hari Shanker v. State of U.P. [(1996) 9 SCC 40

: 1996 SCC (Cri) 913] and *State of U.P. v. Kishanpal* [(2008) 16 SCC (2010) 4 SCC (Cri) 182]

118. On the aspect of importance of motive in a case of circumstantial evidence, the judgment of the Supreme Court in (2011) 12 SCC 554, *Amitava Banerjee v. State of West Bengal* also sheds valuable light. The legal position as laid down by Wills in his book ‘Circumstantial Evidence’ and in prior judicial pronouncements was relied upon by the court which may usefully be extracted and reads as follows:

—41. *Motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence results in is that the court shall have to be more careful and circumspect in scrutinizing the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty.*

42. *Absence of motive in a case depending entirely on circumstantial evidence is a factor that shall no doubt weigh in favour of the accused, but what the courts need to remember is that motive is a matter which is primarily known to the accused and which the prosecution may at times find difficult to explain or establish by substantive evidence.*

119. In light of the facts of the present case, all these accused persons are members of the in-law's family of the deceased and without there being any strong motive on their part, they would not have joined hands in carrying out such a dubious plan of murdering their daughter-in-law in such a brutal manner. All these accused were desperate to have another male child in the family who could carry forward the family chain, however their dream was shattered after the uterus of Anju was removed and therefore to accomplish their wish to re-marry Sanjit , they took the life of young Anju for no fault of hers. Motive in the present case also assumes significance as the eye witness in the present case was of a tender age and as already mentioned above, without an adequate corroborative evidence giving strength to the account of child witness, this Court will be hesitant to base the conviction of the accused persons merely on the basis of the sole testimony of the said child witness.

120. That brings us to the most critical part of the case in which we shall examine whether the prosecution has succeeded in proving the charge of murder against all the accused persons beyond any shadow of doubt. There cannot be any disagreement about the legal position that the burden

remains on the prosecution to prove the guilt of the accused, no matter how diabolic the crime may be. It is also a settled principle of criminal jurisprudence that more serious the offence, the stricter the degree of proof, since a higher degree of assurance is needed to convict the accused. It has also been held by the Supreme Court in numerous judgments that the Courts have to be extra cautious to not get swayed by strong sentiments of repulsions and disgust when faced with crimes of depravity (*Ref: State Through C.B.I vs Mahender Singh Dahiya, AIR2011SC1017*) . It is in such cases that the Court needs to be on its guard to ensure that conclusions are reached not by emotions but are based on evidence produced in the Court. Suspicion no matter how strong cannot and should not be permitted to take the place of proof (*Ref: State vs. Mohinder Singh, (2011) 3 SCC 109 & Mansarover Singh Rai vs. State of West Bengal, (2003) 12 SCC 377*).

121. *In Swarn Singh Rattan Singh vs. State of Punjab, AIR 1957 SC 637*, the Apex Court held that it is a matter of regret that a foul cold-blooded and cruel murder like the present should go unpunished. There may also be an element of truth in the prosecution story against the

accused. Considering as a whole the prosecution story may be true, but between ‘may be’ and ‘must be’ true, there is inevitably long distance to travel and the whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence, before an accused can be convicted. It would be important here to refer to the judgment of the Apex Court in the case of *Trimukh Maroti Kirkan vs. State of Maharashtra* reported in (2006) 10 SCC 681, wherein the Court took a view that burden of the prosecution to establish its case would be comparatively lighter where an offence like murder is committed in secrecy inside a house;. Relevant paras of said judgment are reproduced as under:-

“10. In the case in hand there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

11. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it

becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.”

122. In ***State of Punjab vs. Karnail Singh, (2003) 11 SCC 271***, the Apex Court took a view that the law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible or extremely difficult to be led. The duty of the prosecution is to lead such evidence which it is capable of leading, having regards to the facts and circumstances of the case.

123. In ***State of West Bengal vs. Mir Mohd Omar & Ors., (2000) 8 SCC 382***, the Apex Court took note of the provisions of Section 106 of the Indian Evidence Act and laid down the following principles:

“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 fossilized 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.”

124. In ***Ganesh Lal 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 Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were 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.

125. In ***State of U.P. Vs. Ashok Kumar Srivastava, 1982 SC 840***, the Apex Court while dealing with the well settled principles of proving the case based on circumstantial evidence took a view that the circumstances relied upon must be found to be fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused, however,

farfetched and fanciful might be; nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.

126. Keeping in view the said legal principles in our mind and at the same time not forgetting the fact that the present case is not merely based on circumstantial evidence but on the ocular testimony of a child witness as well, let us examine as to whether there exist strong corroborative and incriminating circumstances which can come in the aid of the testimony of the said child witness and also against the other accused persons who were not named by the child in her testimony.

127. In the case in hand, Husband, parents in-law, sister in-law and brother in-law are in the dock facing the charge of murder. On the morning of 29.10.2008, undeniably, every member of the family was present at the house except Meena who was staying with her husband-Rajesh at her matrimonial house. As per the defence, DW-3 Mr. Sikander, who is the real brother of Nirmala (mother in-law of Anju) came to the house of his sister in the morning of 29.10.2008 so as to take her with him to celebrate '*Bhaiyyadooj*' on the following day, i.e., on

30.10.2008. DW-3 Sikander, in his deposition stated that when he reached in the morning his sister Nirmala, her husband Baljeet, her son Sanjeet, her daughter in-law Anju (deceased) and her granddaughter Poorvi were present in the house. He further deposed that at about 10.00 a.m. after taking tea etc. Baljeet and Sanjeet went for their job while Nirmala got ready to accompany him to his house. He further deposed that at that time baby Poorvi started weeping in order to accompany Nirmala and accordingly he brought Nirmala and Poorvi with him to his house. It is not the case of these accused persons that they were not present at their house on the morning of 29.10.2008 as can be manifested from their statements recorded under Section 313 Cr.P.C. Their presence at the matrimonial house was thus very natural and conspicuous. It is also not in dispute that 29.10.2008 was a festive day, it being "*Goverdhan Pooja*". The murder of Anju took place inside the matrimonial house and not outside. PW-16 SI Pradeep Kumar was the police officer who first reached at the spot of the crime along with Constable Ved Prakash. In the words of PW-16 SI Pradeep Kumar as narrated by him in his Court deposition when he reached the room, he found the dead body of a lady and a lot of blood lying on the floor, also there were many blood

wounds on the body of the deceased. The investigation of this case was entrusted to PW-19 Inspector Prakash Chand. He had also reached at the site after having received information about the entrustment of the investigation to him at about 8.30 p.m. The crime team and the dog squad had also reached the spot of the crime. In the presence of the crime team, the following articles which were lying at the spot, were seized by the police.

- i. One blood stained knife,
- ii. one blood stained dagger,
- iii. blood stained broken and bangles type *Choodi* of red and yellow colour,
- iv. blood stained towel,
- v. Six pass books (2 in the name of Sanjeet, 3 in the name of Baljeet and 1 in the name of Nirmala),
- vi. Two pairs of *Hawai Chappal* of mark Relaxo of pink and light blue colour and one pair of blue colour found blood stained,
- vii. Blood stained earth,
- viii. Earth control,
- ix. Table cover (Mej poss),
- x. Blood sample and water filter.

128. PW-16 SI Pradeep Kumar had recorded the statement of PW-6 Satyawar, father of the deceased, and he had endorsed his statement vide Ex. PW-16/A and rukka was handed over by him to Constable Ved Prakash for registration of FIR and information about the said incident was given to the area SDM by PW-16 SI Pradeep Kumar at about 11.30 p.m. on 29.10.2008. The SDM had visited the site at about 9.00 a.m. on 30.10.2008 alongwith the area SHO/IO. He also went to the mortuary and got the post mortem of the dead body of the deceased/Anju conducted in his presence. As per the deposition of SDM and his brief report proved on record as Ex. PW-2/B, he directed the IO to produce the parents of the deceased before him but they were produced before the SDM only on 03.11.2008. The statements of the parents of the deceased were recorded by the SDM on 03.11.2008. Based on the statement of PW-1 Smt. Pushpa and the supplementary statement of PW-6 Satyawar, the SDM directed the police to include the name of sister in-law Ms. Meena and her husband Rajesh also in the said FIR.

129. On 30.10.2008 at about 6.00 p.m. IO Inspector Prakash Chand started to search for the accused persons and when he reached Mundaka

village along with the members of the raiding party, secret information was received by him that all the accused persons were present at their house. The police party accordingly reached at the house of the accused persons and arrested all the three accused persons from their house. All the three accused persons, i.e., Nirmala, Baljeet and Sanjeet made their separate disclosure statements. Nirmala got recovered a *salwar suit* along with *Chunni* from one of the rooms of the house in question, Rs.50, 000/- and a gold chain from a box which was found lying in the said room. The police had also seized some pieces of *Choodis* which accused Nirmala was found wearing at the time of her arrest. These broken pieces of *Choodis* along with seizure memo were separately sealed with the seal of Inspector Prakash Chand. The IO of the case had also recorded the statement of two more witnesses, i.e., PW-.12, Amit and PW-5 Harinder on 15.11.2008. The other two accused persons namely Meena and Rajesh were apprehended by the police on 12.02.2009 on the basis of secret information received at their end.

130. The blood group of the deceased was A+ve and as per the FSL reports proved on record as Ex. PW-9/A and Ex. PW-9/B, knife, dagger, broken bangles pieces, two pairs of *Hawai Chappal* and a *lady's shirt*,

printed *salwar* of a lady and one *Chunni* all of them were found to contain A+ve blood which tallied with the blood group found on the clothes which the deceased was wearing at the time of her murder which are marked as, Exs. 10a, 10b, 10c and 10d respectively.

131. Out of all the accused persons, Nirmala and Meena were specifically named by the said eye witness not only in her statement under Section 161 Cr.P.C. but in her Court deposition as well. The accused Rajesh was named by PW-10 only in her Court deposition and not at the time of making the statement under Section 161 Cr.P.C. There were two weapons of offence which were found and recovered from the spot of the crime, one being the knife and the other being a dagger. This shows that there were two assailants at least who committed the said crime and this can also be manifested from the fact that at least 20 stab injuries were inflicted on the body of the deceased. The broken pieces of *Choodis* which were recovered from the spot of the crime and found to be carrying blood of the deceased as per the FSL report tallied with the *Choodis* which Nirmala was wearing at the time of her arrest, as per the seizure memo proved on record as Ex. PW-6/K.

132. We are not in agreement with the contention raised by the counsel

for the accused persons that the broken bangles shown in the hands of Nirmala could be easily manoeuvred by the police as such kind of bangles were easily available in the market as the defence cannot reasonably dispute the fact that at least the police could not have tampered with the broken bangles which were blood stained and recovered from the spot of the crime.

133. The SDM in his brief report proved on record as Ex. PW-2/B succinctly stated that he had seen the dead body of Ms. Anju Rani during her post mortem in Sanjay Gandhi Hospital, Delhi on 30.10.2008 and Anju was of a strong built. He further observed that a lady of such a strong built was over powered and brutally killed which could not be a single person's job. This fact regarding the physique and built of the deceased has not been disputed by the defence and in this background the involvement of at least two assailants in committing the said crime cannot be ruled out.

134. All the three accused persons, namely, Baljeet, Sanjeet and Nirmala were members of the same family and were residing under the same roof along with deceased Anju and therefore, their presence at the house was quite natural and expected, more particularly when the same

happened to be a festive day of '*Goverdhan Pooja*'. They did not dispute their presence on the morning of 29.10.2008 and also immediately after the murder. So where were they in the intervening time? To show their absence from the house, these accused persons had introduced the evidence of DW-3 Sikander. Not only did they try to play smart in order to show the presence of baby Poorvi with DW-3 Sikander without realising the fact that it would be highly improbable that the child of two and half years would stay overnight at the house of a stranger that too after parting with the company of her mother and father. It is DW-3 Sikander, who took upon him the burden of showing not only the absence of Nirmala and Poorvi but also of Baljeet and Sanjeet by saying that they left for their job when he was present at the house at about 10.00 a.m. to take his sister Nirmala for celebrating *Bhaiyyadooj* on the following day. These two accused persons Sanjeet and Baljeet in their statements recorded under Section 313 Cr.P.C. also took the same defence. They also stated that Nirmala was supposed to return in the morning of 30.10.2008 so that on the next day Anju could also go to her parental house for celebrating *Bhaiyyadooj*. They further stated that they went for their work and Nirmala along with the child- Poorvi accompanied DW-3

Sikander, to his house. They further stated that in the evening when they returned to their house they found a lot of people standing there and after sometime the parents of Anju reached the spot. They also found that Nirmala too had reached there by that time. They further stated that Anju was lying in a pool of blood inside the house and parents' in-law started abusing them and in fact Anju's father fought with Baljeet. They further stated that Nirmala was holding Poorvi in one hand and Sikander was standing next to her and then they were taken to the police station and all through the night they were made to sit in the police station and later on were falsely implicated in the said case.

135. After a fair reading of evidence adduced by DW-3 – Sikander, and the defence raised by the accused – Sanjeet, Baljeet and Nirmala in their statements recorded under Section 313 Cr.P.C., we have no hesitation in holding that DW-3 Sikander, is a wholly unreliable witness and his testimony is in no way unswerving or has any exactitude and the same is the position of the defence raised by the said accused person in their respective statements recorded under section 313 Cr.P.C. Mr. Sikander (DW-3) claimed himself to be the real brother of the accused – Nirmala.

He was a resident of Village Saharanpur. Nirmala had two more brothers
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who were residing near her place. As per the deposition of DW-3 and also as per the statement made by the three accused persons, DW-3 had visited the residence of his sister to take her with him to celebrate Bhaiyya Dooj on the next day, i.e., 30th October 2008. It is also their case that DW-3 received telephonic information about the mishappening at the house of Nirmala and that they should reach the house immediately. He told this to his sister and then both got worried and thereafter, reached Nirmala's house, where they found the dead body of Anju in the pool of blood inside the house.

136. We feel that DW-3 is a plotted witness and the said accused persons have raised a false defence, the following points amply prove the same:-

- a) It is highly improbable that Poorvi, a child of two and half years would insist to accompany her grandmother to stay at the place of her relative over night by parting the company of her own parents.
- b) DW-3 in his cross-examination could not tell the number of times prior to 29th October 2008, when he had brought his sister to his house to celebrate Bhaiyya Dooj.

- c) DW-3 also failed to state as to whether Anju – mother of Poorvi had readily agreed to allow her daughter Poorvi to accompany them for overnight stay.
- d) DW-3 also failed to disclose the identity of a person from whom he had received the telephonic information about the mishap in the house of Smt. Nirmala.
- e) DW-3 also failed to explain as to how the informant knew his telephone number for informing him about the said incident.
- f) Why DW-3 and Nirmala did not contact Sanjeet and Baljeet who were having their independent mobiles about the occurrence of such a mishap in the house.
- g) No complaint was made by DW-3 against the alleged illegal arrest of Nirmala, Sanjeet and Baljeet by the police on the night of 29th October 2008.
- h) No complaint was lodged by DW-3 to the police that he was threatened by some police officer that they would arrest him if he did not leave the police station, when he visited the police station on the next day. He also did not take the help of his son who was aged about 26 years to lodge the complaint with any government authority about the alleged false implication of Nirmala in the said criminal case.

- i) Failure of DW-3 to disclose the name of the police officer who had allegedly threatened him.
- j) As per his deposition in his cross-examination, DW-3 had received the information about the incident at about 6 PM at 29th October 2008 while as per DD No.34A; the Police Station had received the information about the incident from the PCR at 6.40 PM.
- k) DW-3 denied having any knowledge of Rajesh or his telephone number, although he was the real maternal uncle of Meena, wife of Rajesh.

137. The aforesaid incongruities in DW-3's conduct manifestly shows that he was not an ingenuous witness and was introduced by the defence only to prove the absence of Nirmala, Poorvi , Baljeet and Sanjeet at the time of the commission of crime but he miserably failed in his attempt. It is aptly said "man may lie, but the circumstances don't".

138. As already discussed above, the defence could produce no evidence other than the DW-3 Sikander, to prove their absence at the time of the commission of crime. In fact, the accused Baljeet and Sanjit brought no evidence to show the nature of their job, nor even their place of work. They also did not produce any evidence to prove that they were working

till late hours on the evening of 29th October 2008 which was otherwise a festive day, it being Goverdhan Pooja. PW-1 in her deposition categorically stated that her son in law Sanjit was not doing any work. It is a matter of record that Baljeet and Sanjit had returned to their house just like routine to pretend as if they had no prior knowledge about the murder of Anju having taken place. As per the deposition of DW-3, Baljit and Sanjit had reached just after the arrival of DW-3 with Nirmala and Poorvi. It is also quite surprising that nobody informed them about the incident but rather informed DW-3. DW-3 Sikander must not have been a known face in the locality and his telephone number could not have been known to the people residing in the locality. The aforesaid conduct of accused Nirmala, Baljeet and Sanjit in a case of such a grave nature where the offence has been committed inside the matrimonial house, certainly strengthens the case of the prosecution and the contemporaneous conduct and surrounding circumstances can be accepted as relevant facts on the matter in issue in terms of the principle of *res gestae* as envisaged under Section 6 of Indian Evidence Act, 1872.

139. In a recent judgment in the case of ***Raj Kumar vs. State of M.P.***,

2014 CriLJ 1943, the Apex Court reiterated the view that where the
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accused fails to give any explanation in his statement recorded under Section 313 Cr. P.C. regarding any incriminating material that has been produced against him, the Court will be entitled to draw such adverse inference against the accused as may be permissible in law. Relevant para of the said judgment is reproduced as under:-

“The accused has a duty to furnish an explanation in his statement Under Section 313 Code of Criminal Procedure regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the Court, then the accused may choose to maintain silence or even remain in complete denial when his statement Under Section 313 Code of Criminal Procedure is being recorded. However, in such an event, the Court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law.”

140. In ***Raj Kumar (supra)***, the Court also took a view that once the accused has not denied his presence in the house on the night when the incident had taken place, then he was bound to explain as to under what circumstances the victim had died. After placing reliance on the judgment of the Apex Court in the case of ***Prithpal Singh vs. State of Punjab & Ors., (2012)1 SCC 10*** and ***Mir Mohd. Omar (supra)***, the Apex Court in the following para held as under:

“... if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.”

141. In the facts of the present case also, the prosecution with the help of ocular evidence of a child witness and other incriminating circumstances duly corroborated by the evidence of recovery, medical and forensic evidence, successfully discharged its initial burden to establish the guilt on the part of Nirmala, Sanjit and Baljeet in the commission of the said crime of murder of Anju, on the said date inside the matrimonial house on the evening of 29th October 2008 in a thickly populated locality.

142. These accused persons in fact offered a false explanation through

the evidence of DW-3 and in their statement recorded under Section 313 of Cr.P.C. to show their own absence as well as that of baby Poorvi at the time of commission of crime and such false explanation offered by them forms an added link in the chain of incriminating circumstances to prove their guilt in the commission of crime, if read with the ocular evidence of the child Poorvi.

143. We again remind ourselves of the authoritative pronouncement of the Apex Court in *Trimukh (supra)* case where the Court took a view that where an offence like murder is committed in secrecy, inside a house then in such like cases it becomes very difficult for the prosecution to lead evidence as no member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The Court further held that nature and amount of evidence to be led by the prosecution to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The Apex Court further held that the burden on prosecution is comparatively of lighter character than the corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed in terms of

Section 106 of the Indian Evidence Act, 1872. Court also held that inmates of the house cannot get away by simply keeping quiet and offering no explanation on the 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.

144. The Apex Court in the case of ***Shambu Nath Mehra vs The State Of Ajmer 1956 AIR 404*** while explaining the scope of Section 106 of the Indian Evidence Act in the following para held as under:-

“That s. 106 of the Evidence Act does not abrogate the well- established rule of criminal law that except in very exceptional classes of cases the burden that lies on the prosecution to prove its case never shifts and s, 106 is not intended to relieve the prosecution of that burden.’ On the contrary, it seeks to meet certain exceptional cases where it is impossible, or disproportionately difficult, for the prosecution to establish facts which are especially within the knowledge of the accused and which can be proved by him without difficulty or inconvenience. But when knowledge of such facts is equally available to the prosecution if it chooses to exercise due diligence, they cannot be said to be especially within the knowledge of the accused and the section cannot apply.”

145. In a recent judgement of the Apex Court in the case of ***Jogender Yadav vs. State of Bihar, (2014) 2 SCC (Cri) 255***, wherein the deceased was in the custody of the accused but disappeared from the house, and

later her dead body was found in the river, the Court held that all the circumstances leading to her unnatural death were within the special and personal knowledge of the accused, which they chose not to disclose and instead they gave a totally false explanation that the deceased had gone for a bath where she slipped and died after getting drowned in the water.

146. Taking into consideration the entirety of the facts and circumstances of the case, which were proved on record, we find that the prosecution succeeded in establishing the case against Nirmala, Baljeet, and Sanjeet in committing the murder of the deceased Anju inside the matrimonial house on the evening of 29th October, 2008. The motive of these accused persons was clearly proved on record. The testimony of child witness as already stated above is inspiring and trustworthy. The admitted presence of Nirmala, Baljeet and Sanjeet at their house on the morning of 29.10.08 as were last seen in the presence of the deceased and DW-3, and their immediate presence after the commission of the crime, failure on the part of the accused persons to give any explanation as to how the crime was committed inside the matrimonial house, no evidence to establish the case of robbery/dacoity, as jewellery items worn

by the deceased Anju were found intact and amount of Rs.50,000/- which was recovered alongwith one gold chain, one blood stained suit found intact in cupboard and most of the other circumstances discussed above and in the trial Court judgment, duly supported by medical and forensic evidence on record unerringly establishes the culpability of these accused persons in committing the said crime.

147. The accused Meena is nanad of the deceased, who got married a few years back and was thus not residing in her maternal home on regular basis .Baby Poorvi (PW-10) in her statement recorded under Section 161 Cr. P.C. and court deposition did refer to the presence of Meena alongwith Nirmala at the time of commission of crime. However, we do not find that any credible evidence has surfaced which could corroborate the testimony of child witness Poorvi (PW-10) to hold accused-Meena guilty for committing the said offence of murder. In her testimony the said child witness had assigned her the role of catching hold of the deceased Anju while the other co-accused Nirmala started inflicting knife blows indiscriminately on the front portion of the body of the deceased. Except this evidence of the child witness Poorvi, the investigating agency

had failed to collect any other evidence which could establish the complicity of Meena in the commission of the said crime beyond any shadow of doubt. Meena was a married woman and was residing separately at her matrimonial home along with her husband and therefore, austere speaking she was not a part of the family of her brother to owe an explanation in order to disclose her whereabouts at the time of the commission of the crime. Meena was not even named in the first statement made by Shri Satyawar Singh (PW-6) based on which the FIR was recorded and her name was referred in the statement of Pushpa Rani (PW-1) and in the supplementary statement of PW-6 which were recorded by the police on 3rd November, 2008. Here also one would notice that so far as the statement of Smt. Pushpa Rani (PW-1) is concerned she only named Meena, along with other members of the deceased's in-laws' family for causing harassment to the deceased for want of sufficient dowry. No other specific allegation was levelled by Smt. Pushpa Rani in her statement dated 3rd November, 2008 against Meena, although, in general she referred that atrocities were committed upon her daughter by her in-laws. Satyawar in his said supplementary statement also did mention the name of Meena along with Nirmala for

extending threats to the deceased Anju for not bringing an amount of Rs.10 lacs from her parents and also because of her not being able to give birth to a child again but in the absence of any specific allegations levelled by these witnesses against Meena, we are not convinced that Meena can be held guilty for an offence of such a serious nature based on the bald statements of these witnesses. We have already stated that in the absence of any clinching evidence which corroborates the testimony of the child witness, we would be hesitant to base the conviction of the accused persons merely based on the sole testimony of the said child witness. We thus find ourselves in agreement with the view taken by the learned trial Court in acquitting the accused Meena so far offence under Section 302-IPC is concerned.

148. Before we deal with various contentions raised by the counsel for the accused persons, we are constrained to observe that the investigating agency with a view to bolster the case of the prosecution had introduced two witnesses i.e. PW-5 and PW-12, whose statements were recorded by the police after a gap of two and a half months. Amit (PW-12) is the real brother of the deceased while Harinder Singh (PW-5) is the cousin of the

deceased. These witnesses were available all through from the date of the incident but their statements with regard to their alleged visit at the place of their sister Anju on the evening of 26th October, 2008 were recorded by the police on 15th January, 2009 i.e. after a gap of two and a half months. We hardly find any justification for these witnesses to stay back if they had paid a visit to their sister on the evening of 26th October, 2008 and during the said visit their sister allegedly told them about the said sinister plan of her in-laws to physically eliminate her for not bringing Rs.10 lacs after her visit to London and also because she could not become a mother any more. The introduction of these witnesses by the prosecution is also manifest from the fact that there is no reference of their alleged visit on 26th October, 2008 in the statements made by the parents of Anju to the police, despite the fact that as per the testimony of PW-5 he had apprised his maternal uncle Satyawar as to what had been transpired in the evening of 26th October, 2008. The witness PW-12Amit in any case being the real brother of Anju certainly would have told his parents as to what had happened in the evening of 26th October, 2008. There is nothing new and it is a very common practice of the police that instead of putting their brains in carrying out proper investigation into a crime with the help of

modern and scientific techniques they more often indulge themselves to look for easy solutions without realising the fact that such dubious methods of police are not hidden from anyone. We, thus attach no credence or credibility to the evidence of the two witnesses i.e. PW-5 and PW-12. However, even after ignoring their evidence, we find no difficulty in affirming the view taken by the learned trial Court so far as the role of accused Nirmala, Baljeet and Sanjeet is concerned in the commission of the said crime.

149. Coming to some of the contentions raised by the counsel who represented the main accused persons, namely, Nirmala, Baljeet and Sanjeet. At the very outset, we may say that various contentions raised by the counsel for the accused persons could have some significance, had the case of the prosecution been rested on mere circumstantial evidence but not supported by ocular evidence of an eye witness. Mr. Hariharan, Senior Counsel appearing for accused Nirmala laid much emphasis on the argument that the prosecution deliberately failed to prove on record the PCR Form No.1 although the same was filed along with the chargesheet. Counsel further submits that the said crime of murder was reported by

one Rajbir at 18:43:20 hours and this PCR Form further records the arrival of the Police at the spot at 23:3:20 hours on 29th October, 2008 while rukka for registration of the FIR was sent by IO at 8.30 p.m. and information at the Police Station was received at 2100 hours. Counsel also pointed out that if the rukka was received at Police Station on 29th October, 2008 at 2100 hours then how come the date of the registration mentioned in the FIR was 30th October, 2008. Counsel also submitted that the said PCR Form though was not proved by the prosecution but the same can be read in favour of the accused. We find no merit in this contention raised by Mr. Hariharan, Senior Counsel for accused Nirmala, as the defence never confronted the said PCR Form to any of the Police witness especially the IO of the case. This PCR Form appears to be a highly suspicious document as various timings recorded therein do not tally with the timings as proved on record by the Police and other private witnesses. Surprisingly, this PCR Form also referred to DD No.34A which was registered at 18:40 on 29th October, 2008 at Police Station Nangloi, Delhi and this DD was proved on record as Ex. PW-3/B. This DD No.34A is also based on the information received by PW 16 SI Pradeep Kumar through a PCR call. Another reason for doubting the

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contents of the said PCR Form No.1 is that it records the arrival of the Police at the spot at 23:3:20 hours on 29th October, 2008 and this again is not possible because when as per this PCR Form information from one Rajbir was recorded at 18:43:20 then the Police would not reach at the spot after a gap of more than two hours. The exact picture with regard to the contents of the said PCR Form No.1 could be cleared only with the confrontation of the said document to the IO of the case and other Police witnesses and having not done so the defence cannot take refuge under the said PCR Form to cast a doubt on the prosecution case. So far as the date of registration of the FIR is concerned, we have no doubt in saying that the FIR was registered on 29th October, 2008 and recording of wrong date on the front page of the FIR is hardly of any significance. On every other document, the date of registration of the FIR is mentioned as 29th October, 2008.

150. One of the contentions raised by Mr. Hariharan, Senior Counsel for accused Nirmala was that PW-1 Pushpa was the first person who had reached at the spot and she saw all the accused persons present at the spot yet she did not choose to get them arrested. Counsel also argued that even

PW-16 SI Pradeep Kumar did not arrest the accused persons after having recorded the statement of PW-6 Satyawar who named the said accused persons for having murdered his daughter. This argument of the counsel for the appellant is also misconceived as there is nothing wrong if in a given case the Police takes some time to finally arrest some persons even though named in the FIR particularly where there is a remote possibility of the accused persons fleeing away and also where before arresting accused persons the Police is in the process of collecting some evidence to toughen its hands in arresting the actual culprits of the crime.

151. Another contention raised by the counsel for the appellant was that SI Pradeep Kumar had conducted the house search without following the mandate of Section 100(4) of the Cr. P.C. as he failed to call upon two or more independent and respectable inhabitants of the locality to attend the witnesses to the search. This Section 100(4) of the Cr. P.C. would not be applicable to the facts of the present case as the said search in question had taken place at the spot of the crime which was lying open and easily accessible to one and all. While the applicability of Section 100(4) of the Cr. P.C. is in a case where the place of search and inspection is lying closed.

152. Another contention raised by the counsel for the appellant was that the IO failed to join any independent witness at the time of recording of the disclosure statement of the accused persons and also at the time of recovery of the incriminating material from accused Nirmala. There can hardly be any dispute that it is incumbent upon the IO to make all possible endeavours to join independent witnesses at the time of recording of the disclosure statement of accused persons and also at the time of recovery. It is equally true that independent witness more particularly where the members of the accused are from the same family do not easily come forward to join as a witness. In the facts of the present case, it is not only the family of Baljeet but also his real brother Narayan Singh who was residing in the same locality and therefore, in such like cases no local person would invite hostility of his neighbours to stand as a witness. The Apex Court recognizing such deterrence on the part of independent witnesses of the locality to join as a witness held, in the case of *Ajmer Singh Vs. State of Haryana (2010) 3 SCC 746* that non joining of independent witness is not fatal to the prosecution case particularly when efforts were made by the investigating party to join public witnesses but none were willing.

153. The Hon'ble Supreme Court in the case of *Jarnail Singh v. State of Punjab* reported in (2011) 1 SCC (Cri.) 1191, held, that merely because the prosecution did not examine any independent witness, it would not necessarily lead to the conclusion that the accused had been falsely implicated, because on facts, the prosecution offered a plausible explanation with regard to the non-joining of independent witnesses.

154. Mr. Hariharan, Senior Counsel for accused Nirmala also argued that the two lines were later inserted after the last line was recorded in the disclosure statement of Nirmala and this insertion is quite apparent if we look at the space between the two lines of the disclosure statement and the lines inserted later. This disclosure statement of accused Nirmala was recorded by PW-19 and the same was witnessed by PW14- SI- Savita, Constable-Balbir Singh and ASI-Suresh Kumar but the defence failed to put any question to these witnesses during the course of cross-examination about the alleged insertion of two lines after the last line of accused Nirmala was recorded in the disclosure statement. Having not put any such question to these witnesses, we find no force in the said contention raised by the counsel for the appellant at the Appellate Stage.

155. Another contention raised by the counsel for the appellant was that the recovery of Rs.50,000/- and the gold chain from the spot of the crime during the disclosure statement of accused Nirmala cannot be said to be an incriminating circumstance against her as the same does not connect the accused with the commission of crime in any manner. It is correct that the recovery of currency of Rs.50,000/- and the gold chain is not directly linked to the commission of the crime, however, this fact of recovery of money and gold chain is a relevant fact in the background of the prosecution case, the accused persons planted these things to create an evidence of robbery/dacoity, and therefore, the recovery of the said money and gold chain during the course of the disclosure statement of accused Nirmala for creating an evidence of dacoity/robbery is a relevant fact which can be received in evidence under Section 27 of the Evidence Act, 1872.

156. Counsel for the appellant also raised a contention that in the rough site plan the presence of blood stained towel, chappals, blood stained broken bangles and blood stained table clothes (mej poss) were not shown and similarly the scaled site plan prepared on 13.11.2008 does not

record the presence of Rs.50, 000/-, gold chain, blood stained suit, and the box wherein these articles were kept would further cast a shadow of doubt on the story of the prosecution. It would have been better if the police recorded the presence of these articles in the rough site plan but at the same time non-recording of the presence of articles in the rough site plan and scaled site plan would not demolish the case of the prosecution if it has otherwise proved with the help and support of other clinching evidences.

157. Dealing with the next contention of learned counsel for the appellant – Nirmala that the prosecution miserably failed to prove that the bloodstained suit which was recovered from the spot belongs to Nirmala and the blood found on the suit matched with the blood group of the deceased. Contention raised by the counsel for the appellant was that the statements made to this effect by the appellant in her disclosure statement stating that the appellant was present in the house on 29th October 2008; the appellant's hands got bloodstained during the incident; she wiped them with a towel; she was wearing a suit which belonged to her; suit also got bloodstained; she put off the suit; she opened the cupboard and

displaced the items to give the incident a colour of dacoity are inadmissible as no new fact was discovered in consequence thereof. Undeniably, there is considerable merit in the submission of the counsel for the appellant as it is not every statement of fact made by the accused in the disclosure statement can be admissible under Section 27 of the Indian Evidence Act but it is only so much of the statement which relates distinctly to the facts discovered can be admissible under Section 27 of the Indian Evidence Act. It is also correct that the onus was on the prosecution to have proved that the said bloodstained suit belonged to the appellant – Nirmala and the blood on the said suit was that of the blood group of the deceased. This is indeed one of the many other lapses committed by the Investigating Officer in carrying out the investigation of the case in hand. However, due to such lapses on the part of the investigation, these appellants cannot prove their innocence when there are other strong circumstances existing, including the ocular testimony of the child witness to establish their involvement in the commission of the crime.

158. We may also hasten to add that the recovery of the said

bloodstained suit in the disclosure statement of the appellant – Nirmala, if read with the statement of the child witness, who had seen the appellant committing the murder of the deceased, certainly becomes an important piece of incriminating circumstance against the appellant – Nirmala even in the absence of any evidence proving that the said bloodstained suit belonged to the appellant – Nirmala. We, thus, do not find any merit in the said contention raised by the counsel for the appellant-Nirmala.

159. Dealing with the last contention of counsel for the appellant – Nirmala, that certain finger prints were lifted by the Investigating Team from the water filter installed at the spot but those finger prints were not found to be linked to the finger prints of the accused persons. Counsel for the appellant also raised the argument that the police failed to collect the finger prints from either of the two knives recovered from the spot, the scattered passbooks, cupboard or the box wherein Rs.50,000/-, gold chain were kept and nor did they collect the call details of the mobile phones of the accused persons and because of such lapses on the part of the police, no full proof case to inculcate these appellants in the commission of the said crime has been made out by the prosecution.

160. As we have already discussed above, the present case is not based on circumstantial evidence alone but on the ocular evidence of child witness supported by other incriminating evidences proved on record, which clearly brings home the guilt of these accused persons. We may reiterate here that the onus on the prosecution in the case of this nature, where the offence has been committed within the four walls of a matrimonial house and accused persons being none other but the family members themselves, is comparatively lighter in comparison to the other cases. It is also an admitted position that there can hardly be any case where the investigation is not free from such kind of lapses and shortcomings. In every case, it is for the court to see as to how such lapses and shortcomings on the part of the investigation can create a dent in the prosecution case or the same can be ignored looking into the other evidence proved on record.

161. After taking a cumulative view of the facts and circumstances proved on record, the prosecution succeeded in establishing the guilt of the appellants – Nirmala, Baljeet and Sanjeet in the commission of the said crime. We may not separately deal with the contentions raised by

Mr. Vikas Pahwa, learned senior counsel, who represents the appellants –
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Baljeet and Sanjeet as his arguments also revolve around similar issues which have already been discussed by us hereinabove.

162. On the conspiracy angle and the common intention on the part of these accused persons, we find ourselves in complete agreement with the reasoning given by the learned Trial Court in the impugned judgment which needs no re-appreciation by us.

163. In the facts of the present case, the evidence against the accused persons is strong enough to prove the guilt on their part and the minor discrepancies as pointed out by the counsel for the appellant on the part of the investigating agency will not hold these accused persons as innocent. We also do not find any merit in the contention raised by the counsel for the appellant that the bangles which were recovered from accused Nirmala could be easily obtained from the market and therefore, such a recovery should be disbelieved. The bangles which were recovered from accused Nirmala got exactly tallied with the broken bangles which were recovered from the spot of the crime and therefore, this incriminating evidence lends support to the other incriminating circumstances unerringly pointing out to the involvement of the accused

Nirmala in the commission of the said crime.

164. The accused – Nirmala also got recovered the bloodstained clothes which she was wearing at the time of crime. The defence failed to give any suggestion that if those clothes were not of the accused Nirmala, then whose bloodstained clothes were recovered from the spot. The contemporaneous conduct of the accused persons even post commission of the crime sufficiently proves their accomplicity in committing the said crime. None of the defence witnesses gave any evidence that any of these accused persons were shocked to have witnessed the murder of Anju who was none else but an important member of their family, even there was no evidence on record that the mother in law or husband cried or supplicated after seeing the said horrifying and brutal incident. The defence also introduced the angle of robbery much later during the cross-examination of PW16 and PW19. It is an admitted fact that no evidence had surfaced to prove that any stranger or outsider had forced entry into the house to commit the offence of robbery/dacoity. The lock of the doors of the house were not found broken either from the main gate or from the back side and nor the locks of the almirah were found broken. The learned trial court is right in observing that there was no evidence on record to prove that any stranger or outsider made a forced entry into the house. The

learned Trial Court is also correct in its observation that the conduct of these accused persons was not natural and the same can be considered as relevant under Section 8 of the Indian Evidence Act to prove their accomplicity in the commission of the said crime.

165. If we take into consideration the totality of the facts and circumstances which are proved on record, the only irresistible conclusion we can arrive at is proven guilt of the accused Baljeet, Sanjeet and Nirmala in committing the said diabolical murder of the young lady Anju. They can find no escape route to save themselves by taking refuge either of the poor investigation of the police or of the minor inconsistencies creeping in the evidence of the prosecution witnesses or failure of the prosecution in not discharging its onus in proving its case with cast iron perfection in all respects. Undeniably, the task of the Courts become more arduous and hard to mete out justice when the investigating agency and the prosecutors involved in prosecuting a case before the Court failed to carry out their duties with utmost perfection, devotion, sincerity and above all with honesty and fairness. However, with whatever imperfection the investigation is conducted in the case or

in the presentation of a case by the prosecution before the trial court, still the Courts are duty bound to discharge its pious responsibility to objectively analyse and dispassionately appreciate the material on record after separating the chaff from the grain so as to reach to a just and fair conclusion. It has been rightly said that every acquittal of an offender of a crime and conviction of an innocent person should be understood as a failure of the justice delivery system.

166. Thus Justice to all is not only an integral part of the criminal justice system but it is its prime objective. This finds reiteration by the Supreme Court of India in the judgment reported at **(2012) 8 SCC 263, Dayal Singh and Ors. v. State of Uttarakhand** when the court emphasized thus:

“—34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the

prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a —fair trial, the Court should leave no stone unturned to do justice and protect the interest of the society as well.”

167. While upholding the view taken by the learned trial court in convicting the accused – Sanjeet, Baljeet and Nirmala for committing the offence punishable under Section 302/34/120-B read with Section 498A of IPC, we do not agree with the conviction of the accused Rajesh and Meena for the offence punishable under Section 498-A of IPC as no ocular or circumstantial evidence was proved on record to sufficiently and convincingly uphold their conviction for committing the offence punishable under Section 498-A IPC. The allegations of dowry harassment levelled by PW-6 (Satyawar), against Rajesh and Meena were evasive and unspecific besides being vague and based on such vague allegations, they cannot be held guilty for committing an offence for causing harassment and cruelty to the deceased Anju as contemplated under Section 498-A of IPC.

168. We also find no cogent evidence having surfaced against Meena

for causing harassment to Anju for becoming incapable to bear a child. The conviction and sentence imposed upon these accused persons under Section 498-A is accordingly set aside.

169. Before we part with the judgment, we express our total discontentment and disappointment in the manner of investigation as carried out by the investigating team in the present case.

170. As already discussed above, the dispensation of justice becomes speedy and easy if the other agencies involved in the process undertake their job seriously and with complete perfection. To highlight some of the features in the present case , which *inter alia* are: the failure of the investigation in carrying out proper search of the house immediately after the police team had reached at the spot of the crime so much so that they could lay their hands on the bloodstained suit, Rs.50,000 and gold chain only after they had arrested Nirmala and other two accused persons; No report of the Dog Squad was placed on record; finger prints were not lifted from other articles and objects available on the spot; statement of the child witness was not recorded under section 161 Cr.P.C in detail; no proper efforts were made to join the independent public witnesses; no

explanation given for not recording the statement of PW-1 – Pushpawati
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with all promptness; and also the statement of witnesses PW-5 and PW-12 was recorded after a gap of two and a half months and also for not tracing the call details after seizing the mobile phones of these accused persons.

171. The Apex Court in the case of *State of Gujarat vs. Kishanbhai etc., 2014 (1) SCALE 177* came very heavily on such erring police officials and investigating officers who did not discharge their duty with full diligence and perfection and commit various lapses in the course of investigation. The relevant paras of the said judgment are reproduced hereunder:-

“Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for

crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the

seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.”

172. The Hon’ble Supreme Court in ***Hema v State thr Inspector of Police, Madras*** 2013(1)SCC192 held that:

“10) It is also settled law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. In C. Muniappan and Others vs. State of Tamil Nadu, 2010 (9) SCC 567, the following discussion and conclusion are relevant which are as follows:-

55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation

by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

11) In Dayal Singh and Others vs. State of Uttaranchal, 2012 (8) SCC 263, while reiterating the principles rendered in C. Muniappan (supra), this Court held thus:

Merely because PW 3 and PW 6 have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground.

12) In Gajoo vs. State of Uttarakhand, 2012 (9) SCC 532, while reiterating the same principle again, this Court held that defective investigation, unless affects the very root of the prosecution case and is prejudicial

to the accused should not be an aspect of material consideration by the Court. Since, the Court has adverted to all the earlier decisions with regard to defective investigation and outcome of the same, it is useful to refer the dictum laid down in those cases:

20. In regard to defective investigation, this Court in Dayal Singh v. State of Uttaranchal while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under: (SCC pp. 280-83, paras 27-36)

27. Now, we may advert to the duty of the court in such cases. In Sathi Prasad v. State of U.P this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in Dhanaj Singh v. State of Punjab, held: (SCC p. 657, para 5)

5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so [pic]would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

28. Dealing with the cases of omission and commission, the Court in Paras Yadav v. State of Bihar enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether

the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

29. In Zahira Habibullah Sheikh (5) v. State of Gujarat, the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that: (SCC p. 398, para 42)

42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance, if not more, as the interest of the individual accused. In this courts have a vital role to play. (emphasis in original)

30. With the passage of time, the law also developed and the dictum of the court emphasised that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a

public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

31. Reiterating the above principle, this Court in NHRC v. State of Gujarat held as under: (SCC pp. 777-78, para 6)

The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice often referred to as the duty to vindicate and uphold the majesty of the law. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of

undermining the fair name and standing of the Judges as impartial and independent adjudicators. (Zahira Habibullah case, SCC p. 395, para 35)

32. In State of Karnataka v. K. Yarappa Reddy this Court occasioned to consider the similar question of defective investigation as to whether any manipulation in the station house diary by the investigating officer could be put against the prosecution case. This Court, in para 19, held as follows: (SCC p. 720)

19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the [pic]action taken by the investigating officers. The criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer suspicious role in the case.

33. *In Ram Bali v. State of U.P. the judgment in Karnel Singh v. State of M.P. was reiterated and this Court had observed that: (Ram Bali case15, SCC p. 604, para 12)*

In case of defective investigation the court has to be circumspect [while] evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective.

34. *Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the Judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a fair trial the court should leave no stone unturned to do justice and protect the interest of the society as well.*

35. *This brings us to an ancillary issue as to how the court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But*

it is not that every minor variation or inconsistency would tilt the balance of justice in favour of the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In Kamaljit Singh v. State of Punjab, the Court, while [pic]dealing with discrepancies between ocular and medical evidence, held: (SCC p. 159, para 8)

8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.

36. Where the eyewitness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.

The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by [examining] the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert opinion, because

once the experts opinion is accepted, it is not the opinion of the medical officer but [that] of the court.

13) It is clear that merely because of some defect in the investigation, lapse on the part of the I.O., it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions etc., it is the obligation on the part of the Court to scrutinize the prosecution evidence de hors such lapses to find out whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth. In the light of the above principles, as noticed, we reject the main contention of the learned counsel for the appellant, however, as observed in the above decisions, let us examine the material relied on by the prosecution and find out whether a case has been made out against the appellant.”

173. Considering the aforesaid dicta in the light of the facts of case at hand, we are of the view that the Investigating Officer of the case and other members of investigating team were totally negligent in carrying out proper investigation in the present case and they did not even bother to follow the very basics of the investigation. We therefore, direct the Commissioner of Police to hold a proper departmental inquiry against the conduct of the concerned Investigating Officers, the members of the investigating team and all the other concerned officers, who were supervising and monitoring the investigation of the said case and to take

suitable action against them for carrying out their duties in the most shoddy and negligent manner.

174. In light of the aforesaid discussion, we deem it appropriate to uphold the sentence so far as Accused Nirmala, Baljeet and Sanjeet are concerned. Accordingly, appeals filed by the accused – Nirmala (Crl.A. No. 486/2011), Baljit and Sanjeet (Crl.A. No. 3386/2011) are dismissed and the order on sentence passed by the learned trial court convicting them for the offence punishable under Section 302/120-B/34 of IPC is confirmed. However, so far as the appeal filed by Rajesh and Meena is concerned, (Crl.A. No.487/2011) the same is hereby allowed and the judgment and order on sentence passed by the learned trial court convicting them under section 498-A of IPC is set aside and the appellant – Meena and Rajesh are acquitted. With regard to the appeal filed by appellant – Pushpa Devi (Crl.A. No.1080/2011) the same does not sustain in view of the above discussion and the same is hereby dismissed.

175. At the end we are pained to observe, *the more things change, the more they remain the same*, and this has never ringed true than in today's time and age. We, the world's largest democracy are touted to be the

most progressive nation, proud of our rich cultural heritage, but are we also proud of our deep rooted biases? The present case is a manifestation of the bitter ostensible truth of our society where words like women liberation and gender equality seem to be overrated but have yet to attain their true meaning. There is a huge chasm that needs to be bridged between fact and fiction, to make the women masters of their own circumstance and not vice versa and to falsify the age old adage of ***“Putrathe Kriyathe Varja”*** that “we marry with the sole aim to have a son to keep the clan progressing”.

176. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

177. It is ordered accordingly.

KAILASH GAMBHIR, J.

SUNITA GUPTA, J.

Sept 26, 2014
v/pkb