

GAHC010002832019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/12/2019

BIKRAM BANIA
S/O. LT. BHAGABAN BANIA, VILL. TIHU TOWN, WARD NO. 1, P.O. TIHU, P.S.
TIHU, DIST. NALBARI, ASSAM-781371.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. B BHAGAWATI, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MRS. JUSTICE MALASRI NANDI

For the appellant	: Mr. Atal Tiwari, Amicus Curiae
For State respondent	: Ms. B. Bhuyan, Senior Counsel and APP
Date of hearing	: 30.08.2023.
Date of judgment	: 30.11.2023.

JUDGMENT AND ORDER

(CAV)

Heard Mr. Atal Tiwari, learned amicus curiae for the appellant.

Also heard Ms. B. Bhuyan, learned senior counsel and Addl. PP for the State.

2) Aggrieved by the judgment and order of conviction dated 29.09.2018, passed by the learned Sessions Judge, Nalbari in Sessions Case No. 133/2011, the present appeal has been filed by the appellant- convict from District Jail, Nalbari. By the said judgment, the appellant was convicted (i) for committing offence under section 302 IPC and sentenced to life imprisonment for life and to pay a fine of Rs.15,000/- with default stipulation, and (ii) also convicted for committing offence under section 304B IPC and sentenced to undergo rigorous imprisonment for 7 (seven) years. It was ordered that both the sentence would run concurrently.

Prosecution case, in brief:

3) In brief, the prosecution case is that on 07.01.2008, one Himani Baishya had lodged an *ejahar* that her daughter had eloped with the appellant about 3 (three) years ago and thereafter, their social marriage was performed. It was alleged that since marriage, the appellant and his mother Jalo Baishya @ Bania had started physical torture on Tulika demanding dowry and on 28.12.2007, the accused persons set Tulika ablaze after pouring kerosene on her body. When she raised hue and cry, the appellant had brought her to Tihu Govt. Hospital and the doctors had referred her to GMCH, where she had succumbed to her injuries on 05.01.2008. On receipt of the *ejahar*, Tihu P.S. Case No. 1/2008 was registered, corresponding to G.R. Case No. 50/2008.

4) The learned Judicial Magistrate, First Class, Tihu, having found the case exclusively triable for the Court of Sessions, had committed the case to the Court of Sessions Judge, Nalbari for trial. Charges were framed against the appellant under Section 302/304B/34 IPC. In support of the charges, the prosecution had examined 11 (eleven) witnesses, viz., Himani Baishya (PW-1),

Manika Talukdar (PW-2), Nayan Sarma (PW-3), Usha Swargiary (PW-4), Sadhu Das (PW-5), Banikanta (PW-6), Dr. Richa Pandey (PW-7), Angad Rajbonghsi (PW-8), Rohini Talukdar (I/O) (PW-9), S. Haque (I/O) (PW-10), and Tapan Kalita (I/O) PW-11. The following documents were exhibited, viz., *Ejahar* (Ext.1), 164 Cr.P.C. statement of the informant (Ext.2), Postmortem Report (Ext.3), Inquest Report (Ext.4), Dead Body Challan (Ext.5), Final Report (Ext.6), and Sketch Map of PO (Ext.7). On closure of prosecution evidence, the appellant was examined under section 313 Cr.P.C. The appellant had taken the plea of denial and the appellant had declined to examine any defence witnesses.

Decision of the Sessions Court:

5) The complainant, namely, Smt. Himani Baishya was examined as PW-1. In her examination-in-chief, she had stated that the incident took place in the year 2007. Her daughter (i.e. victim) was married to the appellant about 6 years ago and out of their wedlock, the victim had given birth to a male child. She had stated that after their marriage, they demanded furniture, etc. as dowry and she had partly fulfilled their demand and that she had visiting terms to their residence for three years after marriage but as she failed to fulfill their demand they did not allow her to visit their residence. She had stated that on the day of incident at about 4.00 AM, appellant had poured kerosene on the victim and his mother had put fire on the victim and then they sent the brother of the appellant to bring her to their residence. She came and heard that the victim was taken to Nalbari for treatment and she came to Nalbari Civil Hospital and came to know that she was already taken to GMCH and then she came to GMCH and saw that except for the face, her entire body was covered by bandage. She was unable to talk for 3 (three) days and after three days the victim told her to look after her son. The victim had told her that as they could

not fulfill the demand for dowry, the appellant and his mother had burnt her. She had stated that she was with her daughter for 7 (seven) days and after that she came back to her residence and on that date she died and after post-mortem, the dead body was taken to the residence of the appellant and she had also went there. She had exhibited the FIR (Ext.1) and her statement before the Magistrate (Ext.2) and her signatures thereon. In her cross-examination, she had stated that their (i.e. victim and appellant's) marriage had taken place at Kamakhya Temple as they were in love. She had also stated that prior to the death of the victim she and the appellant had separate kitchen. She had stated that when she came to the residence of the appellant, she was informed by the villagers that the victim was burnt by the accused persons but she could not recollect the name of person who had informed her. She had denied that it was not a fact that she had not stated before the police that victim had told her that the accused persons had put fire on her. The rest of her statement, being not relevant for the purpose of this appeal has not been referred herein.

6) The prosecution had examined Smt. Manika Talukdar as PW-2. She had stated in her examination-in-chief that the victim was her niece and that PW-1 was her elder sister. She had also stated that she had visited the residence of the accused persons at the time of birth of son of the victim. She had stated that the PW-1 had told her that the accused persons had demanded dowry from her and that when they visited the residence of the accused persons, they had tortured the victim and told her not to allow her mother to come to her residence otherwise they would assault her. She had also stated that her sister had given almirah, bangle, etc. as dowry. She had stated that the victim was in GMCH for 9 (nine) days and she died there. She had also stated that she had gone to GMCH to meet the victim but the appellant did not allow

her to see the victim. In her cross-examination, she had denied the suggestions that she had not stated before the police that she had heard from her sister about the demand for dowry and that the appellant did not allow her to see the victim at GMCH. She had also stated that the victim was in love with the appellant but her sister had told her that the appellant had quarreled with the victim before marriage. She had further stated that her sister told her that the victim had told her that the accused persons had burnt her by fire.

7) The prosecution had examined Narayan Ch. Sarmah, a teacher, as PW-3. He had stated in his examination-in-chief that he had seen PW-1 only on that day. He knows both the accused persons. He had stated that the incident had occurred 4 years back. He had also stated that the victim was married to the appellant following a love affair and a male child was born to them. He had stated that on the following day of occurrence he came to know that the victim got burnt and that she was taken to hospital and she died after a few days. As per the LCR, the examination-in-chief had ended here thereafter, cross-examination is recorded. However, the reference to cross-examination is missing in the paper-book. In his cross-examination, the PW-3 had stated that the appellant was his neighbour, staying on rent and that he was not in visiting terms with the accused and do not know about their private life or about quarrel between them. He did not know who had taken the victim for treatment. He had stated that the appellant had performed the last rites of the deceased. He does not know where PW-1 lives.

8) Smt. Usha Swargiary was examined by the prosecution as PW-4. In her examination-in-chief, she had stated that she does not know anything about the incident. In her cross-examination, she had stated that she had heard the name of PW-1 only on that date and that she stays in her mother's house

and not in the house of her husband.

9) The prosecution had examined Sri Sadhu Das as PW-5. He had stated in his examination-in-chief that he does not know PW-1, or the victim and did not know about the incident. His cross-examination was declined.

10) The prosecution had examined Bani Kt. Talukdar as PW-6. He had stated in his examination-in-chief that he had written the FIR (Ext.1) as per the version of PW-1, which was read over to her and she had put her signature on it and he had exhibited his signature on the FIR. His cross-examination was declined by the defence.

11) The doctor who had conducted the post-mortem examination of the dead body of the victim was examined as PW-7. In her examination- in-chief, she had stated that she had seen burn injuries over the front of the chest, upper part of the abdomen, both arms, neck, face, part of hair, left leg medially, hips, back of chest. Burn areas were blackened and the injuries were dermoepidermal and deep in nature. Patchy areas of pus and granulations tissues were seen at places over the burn injuries. Wounds were unhealthy and foul smelling. Other body parts examined were not affected by burn injuries and therefore, not narrated herein. She had opined that death was due to exhaustion as a result of burn injuries as described. All the injuries were *ante mortem* and dermoepidermal and deep in nature covering approximately 60% of total body surface area and the time of death was approximately 12 to 24 hours. She had exhibited the post-mortem report (Ext.3) and her signature thereon. Her cross-examination was declined by the defence.

12) Sri Angad Rajbongshi, retired ASI of Police was examined as PW-8. He had stated in his examination-in-chief that on 06.01.2008, he was the In-

Charge of Bhangagarh O.P. attached to GMCH and he had sent the dead body of Tulika Bania aged about 17 years, wife of the appellant by a dead body challan for post-mortem examination by the doctor of Department of Forensic Medicine, GMC vide GMCH OP GDE No. 63 dated 05.01.2008 (*sic.*). He had sent the dead body challan with the inquest report and had exhibited the dead body challan as Ext.5 and his signature thereon. His cross-examination was declined by the defence.

13) The prosecution had examined Sri Rohini Kr. Talukdar, S.I. of Police as PW-9, who was the I.O. of the case. In his examination-in-chief, he had stated that on 01.08.2008, while working as S.I. of Tihu P.S., the O.C. had handed over the case diary to him to complete the investigation. The previous I.O. was S.I. Tapan Kalita. He had stated that during investigation, he had arrested the appellant and had forwarded him to learned CJM and that the other accused could not be arrested during his investigation period. He had recorded the statement of witnesses, namely, Nagen Sarma, Mahendra Nath Baishya and scribe of the *ejahar*, Bani Kanta Takukdar, and had the statement of Himani Baishya and Usha Swargiary recorded under section 164 CrPC by Magistrate and as he was transferred, he had handed over the case diary. He knows the signature of O.C. Nanda Ram Kalita, since expired. He had stated that he had submitted the charge-sheet against Bikram Baishya (appellant) and Jalo Baishya under sections 304B/34 IPC and exhibited the charge-sheet (Ext.6) and the signature of O.C. Nanda Ram Kalita, which is known to him. His cross-examination was declined by the defence.

14) The prosecution had examined Sri Sirajul Haque, retired Inspector, as PW-10. He had stated in his examination-in-chief that on 05.08.2009, while he was working at Tihu P.S. as S.I., the O.C., Tihu P.S. had handed over the case

diary of Tihu P.S. Case No. 1/2008 for completing the investigation. On perusal of the case diary, he found that the investigation was almost completed and only accused was to be arrested. He had searched for the accused but could not trace him. Thereafter, he was transferred and he had handed over the case diary to the O.C., Tihu P.S. His cross-examination was also declined by the defence.

15) Tapan Kalita, the then Inspector at CID was examined as PW-11. He had stated in his examination-in-chief that on 07.01.2008, while he was working as O.C., Tihu P.S., he had received an *ejahar* from PW-1 and registered Tihu P.S. Case No. 1/2008 under section 304B/34 IPC and took up the investigation. He had recorded the statement of the informant at the police station and visited the place of occurrence, which is the house of the deceased and prepared a sketch-map of the place of occurrence. The same was exhibited as Ext.7 along with his signature thereon. He had recorded the statement of the witnesses and came to know that the occurrence of setting fire happened on 28.12.2007 at night and the victim was shifted to GMCH and she had expired at GMCH on 05.01.2008. Thereafter, he was transferred and so the case diary was handed over to the O.C. He had stated in his cross-examination that the occurrence was on 28.12.2007 and *ejahar* was lodged on 07.01.2008 and as he was transferred on 07.01.2008, he did not visit GMCH. He did not seize any article. He had also stated that the PW-1 in her statement under section 161 CrPC had told that the accused and the victim used to cook separately from the mother of the accused. He had also stated that Monika Talukdar (PW-2), in her statement under section 161 CrPC had not stated that she had heard from her sister that the accused had demanded dowry.

16) The learned Sessions Judge, after considering the evidence of

PWs, was of the view that in this case, the prosecution could prove that just before the death of the victim, she was subjected to cruelty or harassment. The deceased, who was the wife of the appellant, got burn injuries on 28.12.2007 in the secrecy of the bedroom of her matrimonial home. It took into consideration the evidence of PW-1 who had stated that on the date of the incident, the mother of the appellant had poured kerosene over the body of the victim, i.e. her daughter and the appellant had set fire on the victim. According to the medical evidence, the victim had suffered 60% burn injuries and that she had died on 05.01.2008. Accordingly, based on the evidence and lack of explanation of the manner in which the victim had suffered burn injuries which led to her death, it was held by the learned Sessions Judge that the chain of circumstances appearing against the appellant was complete and that the said chain led to no other hypothesis other than that the victim was burnt and murdered by the appellant in conspiracy with his mother, who was also named as the co-accused in the charge-sheet. Accordingly, the appellant was convicted and sentenced as indicated herein before.

Death of co-accused during trial:

17) It may be mentioned that from the LCR, it is seen that the learned Sessions Judge had recorded in the order-sheet dated 03.12.2016 that as per the report from the police, the co-accused, namely, Jalo Baishya @ Golapi Baishya had died on 30.08.2016.

Submissions on behalf of the appellant, in brief:

18) The learned amicus curiae had submitted that the conviction of the appellant was not sustainable due to many lapses on part of the investigation, which do not make a complete chain of circumstances appearing against the appellant and in the said context, it was submitted that as there

were no eye witnesses, the non-existence of a complete chain would be fatal to the prosecution.

19) It was submitted that the learned Sessions Judge had convicted the appellant on the basis of surmises and conjectures alone. The learned amicus curiae had extensively referred to the evidence of PWs and their respective cross-examination to highlight, what according to him were the infirmities in their respective evidence, which made them unreliable to sustain the conviction of the appellant.

20) It was submitted that the provision of section 304B IPC can be said to be in two parts, but there was no evidence of existence of subjecting the victim to cruelty or harassment for dowry. It was submitted that the learned Sessions Court had failed to consider the statement made by PW-1 that the co-accused, i.e. the mother of the appellant was having a separate kitchen for last two years. It had also failed to consider the evidence of PW-1 that the appellant and the victim had eloped and then got married socially.

21) It was submitted that the evidence of the informant (PW-1), who was the mother of the victim was totally unreliable because she was allegedly in proximity of the victim for 9 (nine) days from 28.12.2007 to 05.01.2008, and all this time she did not lodge any *ejahar* before the police. However, the story of demand of dowry and alleged dowry death had surfaced for the very first time with the lodging of the *ejahar* on 06.01.2008. Hence, it was submitted that the complainant got ample of time to get tutored so as to make out a false and fabricated story of the appellant demanding dowry, alleged mental and physical torture and the incident of death of the victim due to burns was converted to a case of murder.

22) It was submitted that the learned Sessions Court had failed to consider that it was the appellant who had brought the victim first to Tihu Govt. Hospital, then she was taken to Nalbari Civil Hospital and then to GMCH for her medical treatment after the doctors had referred the victim to GMCH. It was submitted that the appellant had admitted the victim to the GMCH and that the appellant and the complainant were both attending the victim for 9 (nine) days from 28.12.2007 to 05.01.2008. It was submitted that if the appellant was the culprit, he would have fled away and not remained with the victim and the complainant for 9 (nine) days, risking his arrest because the victim would have given her statement to the doctors giving treatment to her. It was submitted that it would be unusual for the doctor not to ask the victim and/or write in the medical record how she had got 60% burn injuries.

23) In support of his submissions, the learned amicus curiae had cited the following cases, viz., *Mohd. Firoz v. State of Madhya Pradesh*, (2022) 7 SCC 443, and *Umakant & Anr. v. State of Chhattisgarh*, (2014) 7 SCC 405.

Submissions on behalf of the State:

24) Per contra, the learned Addl.PP had made her submissions in support of the impugned judgment by submitting that the chain of circumstances was complete and pointed out to the accused as the only person who could have burnt the victim with an intention to kill her within seven years of their marriage. It was submitted that the physical and mental torture of the victim was proved. In support of her submissions, reliance was placed on the following cases, viz., *State of Madhya Pradesh v. Jogendra*, (2022) 5 SCC 401, *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681 and *Bijoy Singh v. State of Bihar*, (2002) 9 SCC 147.

Reasons and decision:

25) We have carefully perused the LCR. Also considered the submissions made by the learned amicus curiae and the learned Addl. PP and also considered the cases cited by them.

26) As per order-sheet, on 02.02.2012, charges were explained to the appellant for committing offence punishable under section 304B/302/34 IPC.

27) The evidence of the PWs have been perused and the same has been discussed herein before.

28) The learned Sessions Court had formulated two following points for determination:-

i. *Whether accused Bikram on 28/12/2007 at Ward No. 1 of Tihu Town under Tihu PS, in furtherance of common intention with his mother, committed dowry death of Tulika Baishya and thereby committed an offence punishable u/s 304B/34 IPC.*

ii. *Whether the accused Bikram on the same day and place, in furtherance of common intention with his mother, committed her death and there by committed an offence punishable u/s 302/34 IPC.*

29) In its judgment, the learned Sessions Court had referred to the evidence-in-chief of PW nos. 1, 2, and 7 to 11. However, the cross-examination of the PW nos. 1 to 4 and 11 has not been referred to.

30) The learned trial Court, by relying on the evidence of PW-1, PW-2 and statement of the appellant on his examination under section 313 CrPC, held that the marriage of the victim with the appellant was solemnized in the year 2005 and she had died on 05.01.2008, which was within 3 (three) years of their marriage. From the statement of the appellant under section 313 CrPC, it was held that the occurrence of burning happened inside the bedroom of the appellant, which also appears from sketch-map (Ext.7). The purported

statement of the victim to the PW-1 that she was burnt by the accused was held to be not reliable because if the victim could speak about the incident on 4th day, she would have certainly spoken about the involvement of the appellant and his mother to the doctor attending her or any other staff of the hospital who had attended her.

31) The failure of the appellant to challenge the statement of the PW-1 and PW-2 regarding partial fulfillment of demand of dowry and not allowing PW-1 to come to their house was accepted as an incriminating material appearing against the appellant and it was held that statement of PW-1 under section 164 Cr.P.C., brought credence to the allegation of the informant (PW-1) of demand of dowry and torture of the victim for dowry. The learned trial Court had also held that the defence could not bring out contradiction of the statement of PW-1 with her statement under section 161 CrPC. It was held that the PW-2 had corroborated demand of dowry and torture of the victim as stated to her by the PW-1.

32) The learned trial Court opined that in the statement of the appellant under section 313 CrPC it was nowhere suggested that the PW-1 had no relationship with the deceased or no visiting terms with the appellant after marriage of the appellant and the deceased. Accordingly, the learned trial Court did not find any ground to disbelieve the evidence of PW-1 relating to demand of dowry, partial fulfillment of demand and torture upon the deceased.

33) It was also held that the delay of 7/8 days in lodging of *ejahar* on 07.01.2008 cannot be a ground to doubt the veracity of the prosecution case and the delay was held to be justified because the PW-1 had suffered trauma for the death of her daughter.

34) Therefore, the evidence of PW-1 regarding demand of dowry, partial fulfillment of demand, stopping of her visitation terms to the house of the appellant 3 (three) years after marriage were accepted to be incriminating circumstances appearing against the appellant. It was held that on marshalling of evidence, the prosecution had proved (i) the deceased, wife of the appellant died on 05.01.2008 due to burn injuries sustained by her on 28.12.2007 at the house of the appellant and that the death was caused other than normal circumstances; (ii) she had died within 7 (seven) years of her marriage; (iii) soon before her death, she was subjected to cruelty or harassment by the appellant, her husband; (iv) the cruelty or harassment was in connection with dowry. Accordingly, presumption under section 113B of Evidence Act was drawn against the appellant on the ground that the prosecution could prove that soon before her death, the victim was subjected to cruelty or harassment for dowry. It was opined that the appellant had not stated that any lamp or *chaki* was lit in the room so as to presume that fire caught on her body accidentally. Hence, it was held that the prosecution had established all the essential ingredients of case under section 304B IPC beyond all reasonable doubt and the appellant was convicted under section 304B IPC.

35) Referring to the case of (i) *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, and (ii) *Padala Veera Reddy v. State of Andhra Pradesh*, (1989) Supp (2) SCC 706, relating to circumstantial evidence, it was held that non-denial of accusation that the appellant and his mother had burnt the victim by fire amounted to admission of facts. Referring to the case of *Mohan Singh v. Pran Singh*, AIR 2002 SC 3582, it was held that the statement of the appellant under section 313 CrPC led credence to the prosecution case that the victim got burnt inside the bedroom of the appellant.

36) Referring to non-implication of the appellant by the neighbours, it was opined that neighbours were generally reluctant to depose against a neighbouring family and therefore, reliance was placed on the case of (i) *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681 (para 11 and 12), (ii) *State of West Bengal v. Mir Mohammad Omar & Ors.*, (200) 8 SCC 382 (para-31 to 33), (iii) *Ram Gulam Chaudhary & Ors. v. State of Bihar*, (2001) 8 SCC 311, and (iv) *Ganeshlal v. State of Maharashtra*, (1992) 3 SCC 106, it was held that the said decisions shows that where death of wife occurred in the custody of the accused or the offence takes place in the dwelling house where the husband also normally resides, the accused have to give a plausible explanation in his statement under section 313 CrPC for the cause of death. It was held that the appellant had nowhere disclosed that he was not in his bedroom and that it was clear from his statement that he was in the bedroom since the previous night upto 5:30/6:00 AM with the deceased and their two month old child. However, in view of the appellant's explanation that the room was bolted from inside and he saw his wife burning, a normal man would have immediately raised a hue and cry seeking help from the neighbours and other inmates of the house, but nowhere from his statement under section 313 CrPC, it appeared that he had raised a hue and cry so as to draw attention of inmates of the house or neighbours, but he remained silent and opened the door forcibly. The learned trial Court had formed an opinion that had the appellant raised a hue and cry, his neighbours Narayan Ch. Sharma (PW-3) and Usha Swargiary (PW- 4), would definitely have heard him. It was held that evidence was lacking from the defence that the door was bolted from inside. It was further opined that the I.O. who visited the place of occurrence did not disclose anything about the damage to the door or the lock. It was observed that the

appellant had nowhere stated that he tried to extinguish fire on the body of the deceased and that if he had tried to extinguish fire, he would certainly have received burn injuries, but such evidence was lacking from the defence.

37) According to the learned trial Court, there was a two month old child in the room and no mother would endanger the life of the baby by burning herself inside the bedroom where the baby also stayed. It was also observed that if a lamp, *chaki* or any match box was in the room, it would have been noticed by the police when they had visited the place of occurrence and they would have been seized. The appellant or his family members would have handed over those articles with which the deceased would have burnt herself to the police.

38) Thus, it was held that there was a strong chain of circumstances appearing against the appellant and he was convicted of committing murder of his wife. Accordingly, the appellant was convicted for committing offence under sections 304B/302/34 IPC and sentenced as already mentioned herein before.

39) From the discussions above, the point of determination that arises in this case is whether the impugned judgment and sentence by the learned trial Court is sustainable in the eye of law.

Delay in lodging of ejahar/ FIR:

40) In her cross-examination, the PW-1 had stated in unequivocal terms that when she came to the residence of the appellant, she was informed by the villagers that the victim was burnt by the appellant and his mother but she could not recollect the name of person who had informed her. Thus, even before PW-1 had come to GMCH on 28.12.2007, she had received information from the villagers of the appellant that her daughter was burnt by the appellant

and his mother. The PW-1 did not give any explanation of the delay in lodging of the FIR in her examination-in-chief between 28.12.2007 till her daughter died on 05.01.2008.

41) The PW-1 and the appellant were both attending the victim for 9 (nine) days in GMCH from 28.12.2007 to 05.01.2008. In her examination-in-chief, the PW-1 had stated that her deceased daughter was unable to talk for 3 (three) days and after 3 (three) days the PW-1 was informed by her daughter to look after her son and that due to failure to fulfill the demand for dowry she was burnt by fire by the appellant and his mother. It appears to be quite unnatural for the PW-1 not to inform the attending doctors and nursing staff of GMCH of what was told to her by the victim so that the doctors could call the police personnel in the precincts of GMCH or to otherwise record the statement of the victim. The prosecution did not even venture to prove as to what or who had prevented the PW-1 from lodging an FIR with Bhangagarh Police Outpost during those 9 (nine) days between 28.12.2007 to 05.01.2008. Be it mentioned herein that the said Bhangagarh P.O. is located in the precincts of the GMCH.

42) The occurrence took place on 29.12.2007. If 3 (three) days time when the victim could not allegedly speak is excluded, the fourth day would be on 31.12.2007, when the victim had allegedly told PW-1 that she was burnt by the appellant and her mother-in-law.

43) The PW-1, with purported pre-existing knowledge that her deceased daughter was burnt by the appellant and his mother, had attended the last rites of her deceased daughter, which was performed by the appellant. However, at that time also, the PW-1 did not disclose before persons present during cremation that his daughter was burnt by the appellant and his mother and she did not lodge any FIR before the nearest police station. Such conduct of

the informant cannot be said to be normal.

44) This case was investigated by three I.O.'s, i.e. PW nos. 9, 10 and 11. In his cross-examination, the PW-11 had stated that the occurrence happened on 28.12.2007 and the *ejahar* was lodged on 07.01.2008 and as he was transferred on 07.01.2008, he did not visit GMCH or seized any article. Thus, nothing incriminating was seized by the I.O.'s from the scene of crime.

45) Under such circumstances, the delay in informing the police about commission of crime by the appellant and his mother appears to be of immense importance because as per the statement of the I.O., he could not visit the place of occurrence to collect evidence of commission of crime.

Unnatural conduct of the PW-1:

46) The PW-1 is the mother of the victim. The PW-1, in her cross-examination had stated that she was informed by a villager on 28.12.2007 that her daughter was burnt by the appellant and his mother. However, she could not name the villager. In her examination-in-chief, PW-1 had stated that after 3 (three) days, the victim had told her that she was burnt by the appellant and his mother. Therefore, in a short span of 3-4 days, she had received information from a villager and by victim herself that the appellant had burnt her. Under the circumstances, it appears to be an unnatural conduct on part of the PW-1 to go back to her home on 05.01.2008, by leaving her daughter under care of the appellant, despite pre-existing knowledge that the appellant and his mother had burnt her daughter in the morning of 28.12.2007. The PW-1, in her examination-in-chief had further stated that her daughter had expired on the day she went back to her home.

47) It appears to be an unnatural conduct on part of PW-1 not to

inform the doctor and medical staff of GMCH that her daughter had informed her that she was burnt by the appellant and his mother.

48) It appears to be an unnatural conduct on part of PW-1 to not raise any objection when the last rites of her daughter was being performed by the appellant, who had burnt her in the first place, leading to her death.

49) The said unnatural conduct on part of the PW-1, i.e. the mother of the victim leads to a possibility that the victim had never stated to the PW-1 in GMCH that she was burnt by the appellant and his mother.

Whether there was a demand of dowry by the appellant:

50) The PW-2, who is the sister of PW-1, does not have any personal knowledge of demand of dowry by the appellant and his mother. The PW-2 did not depose that the victim had told her that she was being tortured for dowry, and as her examination-in-chief, her knowledge of demand of dowry was hearsay, having been told by the PW-1.

51) The PW-1 and PW-2, did not mention the date of marriage in their evidence and did not state even the month and year when the appellant had demanded dowry. The PW-1 and PW-2 had also not given the month and year when the PW-1 had partially fulfilled the demand for dowry. Thus, the allegation of demand of dowry is totally vague and bereft of material particulars to ascertain the date when demand for dowry was made and its proximity to the fire incident on 28.12.2007, when the victim got burnt.

52) Except for the PW-1, none of the prosecution witnesses had stated that the appellant or his mother had been demanding dowry and when they did not get dowry, the victim was tortured and burnt by fire.

53) Therefore, a mere fact that the PW-1 may have given some

furniture, almirah, bangles to her daughter, but it is not sufficient to establish that there was a proximity to the demand for dowry and burning of the victim.

54) In this regard, the learned trial Court had failed to appreciate that as per the statement made by the PW-1 in her examination-in-chief, her daughter had eloped and got married to the appellant in Kamakhya Temple and then social marriage had taken place.

55) The PW-1 had stated that she was in visiting terms in the appellant's residence for 3 years since marriage of her daughter, but when she could not fulfill the demand of dowry, she was not allowed to visit the victim. This piece of evidence, on which the learned trial Court had relied does not inspire confidence of the Court because the learned trial Court, by relying on the evidence of PW-1, PW-2 and statement of the appellant on his examination under section 313 CrPC, had held that the marriage of the victim with the appellant was solemnized in the year 2005 and she had allegedly been burnt on 28.12.2007, which was within 3 (three) years of their marriage. Therefore, it appears that the victim had died much before 3 (three) years of her marriage. Hence, as the PW-1's visitation to appellant's house was for 3 (three) years, it cannot be accepted that she was prevented from meeting the victim till she had suffered burn injuries on 28.12.2007.

Non-examination of any doctor or nursing staff of GMCH:

56) If the PW-1 is to be believed, the victim started to talk after the 3rd day. Let us assume that on 4th day of admission, the victim had spoken. The victim was admitted in GMCH on 28.12.2007, therefore, the 4th day would be 31.12.2007. It is unlikely that none of the doctors or nursing staff of GMCH on finding that the victim had started to speak, would not have asked the victim as

to how she got burnt. The prosecution did not examine any doctor or nursing staff of GMCH, who had provided treatment or medical assistance to the victim from 28.12.2007 to 05.01.2008 to arrive at a truth as to what actually happened on 28.12.2007. The I.O. had not seized any medical document from GMCH to find out whether anything was recorded therein which could throw some light on the medical condition of the victim and whether she was otherwise fit to give her statement.

Analysis of evidence of PW-2:

57) The PW-2 had stated that she had gone to GMCH, but the appellant did not allow her to meet the victim. However, as per the evidence of PW-1, she was very much in GMCH from 28.12.2007 to 05.01.2008. But there is no explanation forthcoming by the PW-2 as to why she did not contact PW-1 or why she did not contact the GMCH administration to allow her to meet the victim.

58) The PW-2, otherwise is a hearsay witness, who did not state that she had knowledge that the appellant and his mother were demanding dowry and on not getting the entire dowry, the appellant and his mother were torturing the victim.

Analysis of reasons given by the learned trial Court for convicting the appellant:

59) From the paper-book, it is seen that the PW-1, in her examination-in-chief and cross-examination, had not stated about the time of occurrence being 4.00 AM. Therefore, the finding recorded by the learned trial Court in para-36 of the impugned judgment, wherein the time of occurrence was stated to be 4.00 AM is *de hors* the record. As per Ext.2, i.e. the statement of PW-1 recorded under section 164 CrPC, the demand for dowry was made both by the appellant and his mother on 28.12.2007, the victim was assaulted

and then set ablaze. The PW-1 was admittedly not in the place of occurrence. In her said statement, the PW-1 had not stated that she was told by the victim about demand of dowry from her, followed by assault and then followed by setting her ablaze by both the appellant and his mother. Therefore, the statement made by PW-1 in Ext.2 is found to be lacking in reliability. Thus, the learned trial Court, by making a mention of time of occurrence as 4:00 AM, has allowed extraneous material to influence it.

60) The learned trial Court had heavily relied on the provisions of section 106 of the Evidence Act, 1872 to draw adverse inference against the appellant because the victim got burnt in the bedroom of the matrimonial home. However, it failed to take note of the fact that the victim did not die in the confines of her matrimonial home, but she was taken to Tihu CHC, then to Nalbari Civil Hospital and then to GMCH. The victim was hospitalized from 28.12.2007 till 05.01.2008, and she died on 05.01.2008.

61) The PW-1 had stated that after 3rd day, the victim told her that the appellant and his mother had set her ablaze. Nonetheless, the learned trial Court had discarded the so called dying declaration to the PW-1 as the PW-1 had not narrated about the victim's narration when the statement of the PW-1 was recorded by the Magistrate under section 164 CrPC.

62) It is seen that in this case the I.O. did not examine any doctor or hospital staff to arrive at a truth as to whether the victim had spoken anything to them about how the incident happened.

63) It is seen that the learned trial Court had wrongly shifted the burden of proof on the appellant by forming an opinion that in his examination under section 313 CrPC, the appellant had nowhere suggested that the PW-1

had no relationship with the deceased or she had no visiting terms with the appellant after his marriage with the daughter of PW-1. On a perusal of the examination of the appellant under section 313 CrPC, it is seen that no such question was asked to the appellant. Moreover, in a criminal trial, it was not the burden upon the appellant to prove anything.

64) The learned trial Court had formed an opinion that the victim was tortured for dowry within the four walls of the appellant's house. However, the prosecution did not examine any neighbours to bring home the point that the victim was not allowed to go out of the confines of the matrimonial home and to meet any neighbouring people. The learned trial Court had allowed surmises and conjectures to prevail over it because the said learned Court had mentioned in para-41 of the impugned order as follows:-

“41. Defence argued that if there would have dowry demand and torture would have been caused for dowry upon the deceased then the deceased would certainly speak to her neighbours about the same but none of the independent witnesses corroborated the above facts relating to torture which was narrated by the family members of the deceased and this creates doubt regarding the alleged torture and dowry demand. In this regard my view is that the demand of dowry, abuse and torture on the deceased being done within the four walls of the matrimonial house the neighbours could not get any scope to know about the demand of dowry and torture relating to dowry. Usually a married woman would not like to disclose about any dowry demand or torture she had been receiving from the husband to the neighbours due to the fact that such publicity might irritate the husband which ultimately would close the door of amicable settlement of the matter. Apart from this the married woman usually feel ashamed of making matter of such family dispute public as because such publicity might make her to be looked with sympathy and pity. Usually the woman disclosed about such fact to the close relatives. Mother being the close relative of the deceased, it is quite obvious and

natural that she was informed by the deceased about the torture caused by the deceased."

65) The learned trial Court appears to have allowed extraneous materials to prevail over its decision by referring in the impugned judgment that "... *the accused nowhere stated that any lamp or "chaki" was lighting inside the room so as to presume that fire caught her body accidentally.*" Such a suggestion was neither made by the appellant nor had such a question been asked by the Court while examining the appellant under section 313 CrPC. In the considered opinion of the Court, in a criminal trial, it may not be permissible for the Court to create a crime scene which was neither the case of the prosecution nor of the defence. The appellant had not denied that his wife got burnt inside their bedroom.

66) The learned trial Court had observed in the impugned judgment that the neighbouring witnesses also probably do not want to be inimical to the appellant who is their neighbour by deposing against the appellant and that the neighbours are generally reluctant to depose against a neighbouring family. Such an observation cannot be allowed to influence the decision making process because in this case the prosecution did not make any prayer before the learned trial Court to declare those neighbouring witnesses as hostile.

67) The learned trial Court had drawn adverse inference against the appellant because he did not give any evidence to prove that at 5:30/6:00 AM on the date of occurrence he had went out of his room for answering nature's call and on returning back he found the door of his bedroom locked from inside and because the appellant did not raise hue and cry for opening bolted door but opened the door forcibly. The learned trial Court was of the opinion that the evidence was lacking from the defence to show that the door was bolted from

inside. However, the learned trial Court had not put forth the said incriminating circumstances when the appellant was examined under section 313 CrPC.

68) Adverse inference against the appellant was drawn from the circumstances that the I.O. who had visited the place of occurrence nowhere disclosed anything about any damage to the door or the lock. However, in this regard, the Court is of the considered opinion that merely because the I.O. had not found any damage to the door or the lock, cannot form a ground to convict the appellant. The prosecution did not lead any positive evidence that the I.O. found the door of the place of occurrence intact without any sign of forcible opening. Moreover, adverse inference was drawn against the appellant because he had not stated that he had tried to extinguish the fire on the body of the deceased and the Court found the said conduct surprising. The learned trial Court also opined that had the appellant tried to extinguish the fire he would also have been burnt. This opinion appears to be based on conjectures and surmises. However, the appellant was not accosted with the aforesaid circumstances when he was examined under section 313 CrPC.

69) The learned trial Court had drawn adverse presumption against the appellant by assuming that no mother will endanger the life of the baby by burning herself inside the bedroom where the baby was staying. In this regard, the Court is of the considered opinion that such a presumption is on the basis of surmises and conjectures.

70) The learned trial Court had reiterated that as the appellant could not give any satisfactory explanation during his examination under section 313 CrPC as to how and why the victim had caught fire inside the bedroom and therefore, arrived at a conclusion that there was a complete chain of circumstances that it was the appellant alone who was the perpetrator of

intentionally causing murder of the victim and that the appellant had committed dowry death. Accordingly, the appellant had committed offence punishable under section 304B/302/34 IPC. In this regard, it may be mentioned that while examining the appellant under section 313 CrPC, he was not informed that he had failed to explain how the victim got burnt inside the confines of the bedroom or that the appellant did not have to force open the door.

Analysis of cases cited by both sides:

71) The learned Addl. PP had cited the case of *Trimukh Maroti Kirkan (supra)* to impress upon the Court that when a murder takes place within the confines of the house, the husband is required to give some explanation, failing which under the "last seen together" theory, it must be presumed that the husband alone was the perpetrator of the murder. The observations of the Supreme Court of India in paragraphs 15, 21 and 22 thereof is quoted below:-

15. *Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.*

* * *

21. *In a case based on circumstantial evidence where no eye-witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See *State of Tamil Nadu v. Rajendran*, (1999) 8 SCC 679 (para 6); *State of U.P. v. Dr. Ravindra Prakash Mittal*, AIR 1992 SC 2045 (para 40); *State of Maharashtra v. Suresh*, (2000) 1 SCC 471 (para 27); *Ganesh Lal v. State of**

Rajasthan, (2002) 1 SCC 731 (para 15) and Gulab Chand v. State of M.P. (1995) 3 SCC 574 (para 4)].

22. *Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram v. State of Himachal Pradesh, (1972) 2 SCC 80, it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khukhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In Ganeshlal v. 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. In State of U.P. v. Dr. Ravindra Prakash Mittal, (1992) 3 SCC 300: AIR 1992 SC 2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In State of Tamil Nadu v. Rajendran, (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.*

72) Para-11 of the case of *Bijoy Singh (supra)*, on which reliance was placed by the learned Addl. PP is reproduced below:-

11. *There is no denial of the fact as it has been proved beyond any shadow of doubt that Jawahar Singh (A-2) and Upender Singh (A-3) had come on spot with fire arms and had actually fired at the deceased and Sanuj Singh as a consequence of which Vijay Singh died and Sanuj Singh was injured. Whereas A-2 is held guilty for the commission of offence under Section 302 and 307 read with Section 34, A-3 is held responsible for the commission of the offence under Section 307 and 302 read with Section 34. The conviction and sentence awarded to Jawahar Singh (A-2) and Upender Singh (A-3) by the trial court and upheld by the High Court is confirmed. So far as the presence of other accused persons are concerned, the same being doubtful, they cannot be convicted on the ground of sharing common object as held by the courts vide the judgments impugned in these appeals. Merely because the aforesaid accused persons are related to A-2 and A-3, and were on inimical terms with the deceased and the injured is no ground to hold them guilty despite the fact that their presence on spot is not free from doubt. There is reasonable doubt in our mind regarding the involvement of rest of the accused persons in the commission of crime in which Vijay Singh died and Sanuj Singh was injured. Giving the benefit of doubt to Ramanandan Singh (A-1), Chulhan Singh @ Ramswarath Singh (A-4), Kamta Singh (A-5), Mahendra Singh (A-6), Ashok Singh (A-7), Navin Singh (A-8), Devendra Singh (A-9), Manoj Singh (A-10) and Vijay Singh (A-12), their conviction and sentence as awarded by the trial Court and confirmed by the High Court is liable to be set aside.*

73) The case of *Jogendra (supra)* was cited to bring home the point that when dealing with the offence committed and punishable under section 304B IPC, the Court must examine that there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law. Para-17 of the said case is extracted below:-

17. In the above context, we may usefully refer to a recent decision of a three Judge Bench of this Court in Gurmeet Singh v. State of Punjab, (2021) 6 SCC 108

that has restated the detailed guidelines that have been laid down in Satbir Singh & Anr. v. State of Haryana, (2021) 6 SCC 1 both authored by Chief Justice N.V. Ramana, relating to trial under Section 304-B IPC where the law on Section 304-B IPC and Section 113-B of the Evidence Act has been pithily summarized in the following words:

“38.1. Section 304-B IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

38.2. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B of the Evidence Act operates against the accused.

38.3. The phrase “soon before” as appearing in Section 304-B IPC cannot be construed to mean “immediately before.” The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

38.4. Section 304-B IPC does not take a pigeonhole approach in categorising death as homicidal or suicidal or accidental. The reason for such non-categorisation is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.” (emphasis added)

74) In the present case, circumstances as depicted in the case of *Trimukh Maroti Kirkan (supra)*, are absent. Moreover, none of the witness examined by the prosecution had stated as to (i) what sort of dowry was demanded by the appellant or his mother, (ii) when the demand for dowry was made, or (iii) when the demand of dowry was partly satisfied. None of the witnesses had said that the victim had told them that she was tortured for dowry or that she did not have cordial relation with the appellant or his mother. Thus, the ingredients of demand for dowry, as held in the case of *Jogendra (supra)*, in the considered opinion of the Court, are totally absent, save and except a solitary statement by the PW-1, which is bereft of any material particulars relating to demand of dowry, its time, quantum, etc. In this case there is no medical evidence that the victim was strangulated or had suffered

ante mortem injuries and thereafter burnt alive. The police did not exhibit any medical documents from the GMCH to show that apart from burn injuries, the victim had been treated for any other injuries between 28.12.2007 to 05.01.2008. The prosecution had not examined any doctors, nursing staff and/or any other hospital staff to prove that the victim had informed them that the appellant had burnt her by fire. Thus, the cases of *Trimukh Maroti Kirkan (supra)* and *Jogendra (supra)* does not help the respondent- State to sustain the conviction of the appellant.

75) The PW-1 has clearly stated that the mother of the appellant and the victim maintained a separate kitchen. None of the witnesses examined by the prosecution had stated that the mother of the appellant resided in the same house with the victim and moreover, the prosecution has not led any evidence to prove that the mother of the appellant was present in the room where the victim had suffered burn injury. Therefore, the case of *Bijoy Singh (supra)*, is not found to help the State in any manner.

Whether or not there exists circumstantial evidence against the appellant:

76) As already mentioned earlier, it is reiterated at the cost of repetition that the learned trial Court had already ruled out the evidence of PW-1 wherein she had stated that her daughter had told her that she was burnt by the appellant and his mother as dying statement of the victim. We do not find any infirmity in the said finding. Even otherwise, the so called dying declaration of the victim does not inspire the confidence of the Court because of the fact that the victim was in hospital from 28.12.2007 to 05.01.2008 and during this period of 9 (nine) days, the victim did not say anything to any of the hospital staff and doctors that she was burnt by the appellant and his mother. It is not the case of the prosecution that during these nine days, the victim was not in a

position to speak.

77) In this case, as submitted by the learned Addl. PP, the "last seen together" theory had been proved not only by the prosecution but also by the appellant in his examination under section 313 CrPC. Therefore, the question is whether the same would be sufficient to establish that the appellant was guilty of committing the offence of murder and dowry death with the help and common intention of his mother. The learned Addl. PP had submitted that although the burden of proving the guilt of the accused is on the prosecution, but when it is admitted that the appellant was with the victim before the victim had received burn injuries, under section 106 of the Evidence Act, 1871, the appellant was required to give some evidence or explanation of what actually transpired inside the confines of his bedroom. We do not doubt the said submission. But in the present case in hand, the victim did not die inside the confines of the bedroom. She had received burn injuries on 28.12.2007, and she was taken by the appellant to the Tihu Govt. Hospital, then to Nalbari Civil Hospital and then she was admitted to GMCH by the appellant, where she had succumbed to her injuries on 05.01.2008. Surely, in these three places, there must have been some doctor or nursing staff who would have asked the victim how she had received burn injuries. Therefore, when the doctors and nursing staff of the GMCH had free access to the victim for 9 (nine) days while administering medical treatment to her and there is no evidence forthcoming that in these 9 (nine) days, the victim was unable to give her statement to the doctors and nursing staff as to how she got burn injuries, in the considered opinion of the Court, the lack of explanation of the circumstances how the victim had suffered burn injury would not be so fatal compared to a case where the death occurred within the confines of four walls of a house. Therefore, on

facts, the case is distinguishable from the facts of the case of *Sharad Birdhichand Sarda (supra)*. Moreover, the appellant's conduct after the incident to bring the victim first to Tihu Govt. Hospital, then to Nalbari Civil Hospital and then to Guwahati Medical College and Hospital (GMCH) shows that he had taken steps to provide immediate treatment to the victim.

78) The conduct of the PW-1 to leave her victim daughter in the care of the appellant on 05.01.2008, much before she died negates the prosecution case that the victim had told the PW-1 that she was burnt by the appellant on dowry demand remains unfulfilled, because it cannot be believed that a mother would leave her burnt daughter under the care of the appellant whom she has accused of causing burn injuries. This is sufficient to indicate that the allegation that the appellant and his mother had burnt the victim was an after-thought. The daughter of the PW-1 had died on 05.01.2008 and she had attended her last rites on 05.01.2008 but she had lodged the FIR on 07.01.2008, and therefore, had sufficient time to plan-out and then file the FIR.

79) The I.O. had prepared the sketch map of the place of occurrence and therefore, had visited the site. However, the I.O. was not able to collect any evidence from the house of the appellant to suggest that there were marks in the place of occurrence which suggested that the appellant and his mother had poured kerosene on the body of the victim and caused burn injuries to her, or that there was total absence of forced entry of the appellant in the room where the occurrence took place.

80) Therefore, the chain of circumstances is missing at various links as discussed above. Hence, the cases cited by the learned Addl. PP does not help to sustain the conviction of the appellant. Therefore, this appeal deserves to be allowed, which we hereby do.

81) The prosecution had failed to prove materials against the mother of the appellant and resultantly, the learned trial Court had not returned any finding against the mother of the appellant, moreso because she had died during the pendency of trial. Therefore, the conviction of the appellant under section 34 IPC fails.

O R D E R

82) In light of the discussions above, the Court does not concur with the finding of guilt and resultant the conviction of the appellant for committing offence under section 304-B/302/34 IPC, as held by the learned trial Court.

83) This appeal, thus, stands allowed. The conviction as well as sentence awarded upon the appellant is set aside by giving him the benefit of doubt.

84) The appellant is liable to be released if not otherwise wanted in any other case.

85) Let the LCR be returned.

86) The Registry shall transmit a copy of this order to the learned trial Court as well as to the jail where the appellant is presently lodged.

87) We put on record our appreciation of the effort put in by the learned amicus curiae. He shall be entitled to his usual fees.

JUDGE

JUDGE