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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 554/2012

Judgment reserved on 20.03.2015

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Judgment pronounced on 20.04.2015

MOHAN DEI

..... Appellant

Through: Mr.Samrat Nigam, Advocate

versus

STATE

..... Respondent

Through: Mr.Sunil Sharma, APP for State along
with Insp. Sudhir Kumar, P.S. Jagat Puri

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CRL.A. 847/2012

JAGDISH @ BOBBY

..... Appellant

Through: Mr.Samrat Nigam, Advocate

versus

STATE

..... Respondent

Through: Mr.Sunil Sharma, APP for State along
with Insp. Sudhir Kumar, P.S. Jagat Puri

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. Crl.A.No.554/2012 has been filed by Mohan Dei (mother-in-law of the deceased) and Crl.A.No.847/2012 has been filed by Jagdish @ Bobby (husband of the deceased). Both the appellants have assailed the common judgment dated 21.4.2012 and order on sentence dated 25.4.2012 passed by learned Additional Sessions Judge, by which both the appellants were held guilty and sentenced to undergo life imprisonment with fine of Rs.10,000/- each for the offence punishable under Sections 302/34 IPC and in default of payment of fine, further rigorous imprisonment for a period of one year. In addition, the appellant, Jagdish @ Bobby (appellant in Crl.A.No.847/2012) has also

been convicted under Section 498-A IPC and sentenced to undergo rigorous imprisonment for three years with fine of Rs.5,000/- and in default thereof, simple imprisonment of six months.

2. In this case the deceased died in her matrimonial home within four and a half years of her marriage with the appellant (Jagdish). On 16.10.2010 at about 11:31 hours information was received at Police Station Jagat Puri, Khureji Khas Gali No.2, Makaan No.213 near Meat Shop and the message flashed was '*meri gharwali ne phasi laga li hai*'. On this information DD no.13B was recorded. SI Subhash Chand along with Constable Murari and Constable Pappu Rathi reached at the spot at the address given in the information where they found the body of a lady lying on the bed in the room. The name of the lady was revealed as Sangita, wife of Jagdish. One piece of *chunni* was found tied with the fan and the other piece of *chunni* was lying on the floor. Crime team was called at the spot and the photographs of the spot were taken. Sangita had died within four years of her marriage and therefore SDM Preet Vihar was informed. SDM inspected the body and found injury marks on her face and bleeding from nose, mouth and back of head of the body. There was dark redness on the neck. There were blood spots on the bed sheet, cushion and pillow covers. No suicide note was found. The bed sheet, pillow covers and cushion covers were seized. Both the pieces of *chunni* were also seized. The body was sent to LBS Hospital where the doctor declared her "brought dead". The body was then sent to LBS Hospital Mortuary for post-mortem. The relatives of the deceased were informed. On 17.10.2010, the relatives of the deceased came and identified the body of Sangita. Statement of Sh. Yad Ram, father of Sangita was recorded by the SDM wherein he stated that he had married his daughter Sangita on 06.12.2006 and had spent Rs.4 lakhs in her

marriage. At the time of marriage, there was no demand of cash but the husband, mother-in-law and sister in law of his deceased daughter started making demand of cash since after six months of the marriage. On their demand, he paid Rs.70,000/- and that two days before the incident, he had sent Rs.10,000/- at the house of his daughter through his nephew (*Bhanja*) Ravi. He stated that on 16.10.2010 at about 12.00 pm, he came to know from the police that his daughter has died. He suspected that his daughter had not died a natural death but was killed and that Ved Prakash (Jeth), Sunder (Jeth), Daulat (Jeth), Jagdish @ Bobby (husband), mother-in-law of Sangita and her Nanad Nakki were responsible for her murder. He further stated that elder sister in law of his daughter also used to tease his daughter and that his daughter was four months pregnant and that her unborn child has also expired. He further stated before the SDM that accused Jagdish was a drunkard and used to beat his daughter. On 18.10.2010, post-mortem of the body of the deceased was conducted. The doctor gave opinion with regard to the cause of death as Asphyxia as a result of combined effect of ligature strangulation and manual smothering. FIR was registered under Section 302/201/34 IPC.

3. In order to prove its case, the prosecution has examined 19 witnesses. The defence has examined two witnesses. We may notice that in this case the parents of the deceased as also the neighbours have all turned hostile and they did not support the case of the prosecution.
4. Mr.Nigam, counsel for the appellants submits that as far as appellant, Mohan Dei (mother-in-law) is concerned, there is no evidence on record, which can be the basis of her conviction. It is also contended that the witnesses PW-2 (Yad Ram) and PW-3 (Smt.Raj Wati) being the father and mother of the deceased respectively did not support the case of the

prosecution and in fact they testified that the deceased was not harassed by her in-laws and neither any demand of dowry was made. It is contended that the court has placed undue reliance on the testimonies of PW-9 (Nand Ram) and PW-16 (Mukesh Kumar). Counsel for the appellants contends that both these witnesses were simply neighbours and were not the persons who would be aware of the internal affairs of the family and moreover, it is unnatural that the deceased would have told her neighbours about her family affairs, more particularly when none of the witnesses have testified that they had intimate relations with the parents of the deceased or the deceased herself. It is also contended that the trial court has erred in placing reliance on a photocopy of the undertaking alleged to have been given by the appellant, Jagdish @ Bobby. It is also contended that in the absence of any evidence, the appellant, Jagdish @ Bobby could not be convicted for the offence under Section 498-A IPC.

5. It is also the case of the appellants that the prosecution has to stand on its own legs and cannot draw benefit from the weaknesses of the defence. The *primary* burden to prove that the appellants had killed the deceased was on the prosecution; and the said burden has not been discharged.
6. Mr.Nigam, counsel for the appellants submits that in the absence of any evidence with regard to the demand of dowry and no motive having been proved for the offence to have been committed by the appellants, the appellants would be entitled to benefit of doubt. It is also contended that the parents of the deceased as also the public witnesses have not supported the case of the prosecution and thus the trial court has erred in disbelieving the statement of Yad Ram (father of the deceased) recorded in court, where he also deposed that he did not make any statement before the SDM.

7. Additionally, it is submitted that there is no evidence on record to show that the appellants were present at the spot of the incident and in the absence of such evidence the appellants cannot be held guilty. Mr.Nigam has also contended that there are material contradictions in the testimonies of PW-13 (SDM) and PW-17 (Sub-Inspector, Subhash Chand). It is also contended that while PW-17 has testified that the statement of Yad Ram was written by the SDM in his hand writing, however, the SDM has testified that on account of injury on his right hand he had requested one of his officers to write down the statement whose name he did not recollect. Contradictions are also pointed out by counsel for the appellants with respect to the seizure memo and the signatures and date appearing thereon. It is thus contended that no reliance whatsoever can be placed on the testimonies of PW-17 (S.I. Subhash Chand) and PW-13 (SDM Hukam Singh), as their testimonies are unreliable and not trustworthy.
8. Counsel has also placed reliance on the testimony of PW-12 (Inspector Ajab Singh), wherein during his cross-examination, this witness has deposed that there was nothing to suggest that the accused were present in the house at the time of the incident. It is also contended that Section 106 of the Evidence Act would not apply to the facts of the present case, as the prosecution has not been able to discharge its initial burden with respect to the presence of the appellants at the spot of the incident, and only once the prosecution discharges this burden, section 106 of the Evidence would come into play and the onus would shift on the appellants. Counsel also submits that the case of the prosecution is unreliable and there are various loopholes. Counsel also contends that the site plan was prepared after 65 days and thus no reliance can be placed on the site plan.

9. Counsel for the appellants also submits that even otherwise, no case is made out against the mother-in-law (appellant in Crl.A.No.554/2012), who is more than 80 years of age and is looking after minor child of the deceased and her son (Jagdish), who is serving the sentence. It is contended that there are no evidence on record that appellant (Mohan Dei) had ever demanded dowry and in fact she has been acquitted for the offence punishable under Section 498A IPC.
10. Mr.Nigam submits that since the prosecution has not been able to establish a case against the appellant (Mohan Dei) under Section 498-A IPC, there would be no motive whatsoever for her to have participated in the alleged murder of her daughter-in-law; moreover, the prosecution has not been able to make out a case that this old lady was either present at the spot or in any way participated or was a part of any conspiracy of murder of her daughter-in-law.
11. Learned APP for the State submits that it is an unfortunate case in which even the parents of the deceased, her blood relations have, for the reasons best known to them, not supported the case of the prosecution. Counsel also submits that the statement of the father of the deceased (Yad Ram) was recorded by the SDM, which was duly signed by him. It is contended that the SDM has proved the statement on record.
12. Learned APP for the State contends that any contradictions which have been pointed out in the statements of PW-13 and PW-17 are not material, and they do not touch the real issue in controversy; and the minor contradictions which do not go to the root of the matter cannot, at this stage, affect the case of the prosecution. Counsel further contends that in the present case Section 106 of the Evidence Act would be fully applicable inasmuch as that the wife / daughter-in-law of the appellants died in the dwelling unit and a place where both the appellants and the

deceased were residing. It is further contended that the evidence of PW-17 clearly establishes the presence of both Jagdish @ Bobby and his mother (Mohan Dei) at the spot, and moreover the PCR form Ex.PW-12/I also reveals the presence of both the appellants at the spot of the incident.

13. Learned APP for the State further submits that during the course of proceedings the PCR form was duly exhibited and there is no cross-examination that the said Form or the information in the form is incorrect. Counsel further contends that the presence of the husband (Jagdish) is also established from the testimony of DW-1 (Ahmad Ali), who has testified that Jagdish used to work with him and on 15th October, 2010 he was working till 12:00 at night. Mr.Sharma, learned APP for the State contends that in case Jagdish reached home post 12:00 and in case he found his wife brutally murdered, he would have called the police. Counsel further submits that even as per the post mortem report, the deceased could have died either on 15th or 16th October, 2010. The effect of this would be that the victim died between 12:00 at night of 15th October, 2010 and before 11:31 a.m. of 16th October, 2010, when information was given to the PCR with regard to the death of the victim. Living in the same house it was for the appellant (Jagdish) to explain how his wife died in unnatural circumstances, however, there is no explanation by the appellant in this regard.
14. Learned APP for the State further submits that it is the case of the defence that the wife / daughter-in-law of the appellants had fallen from the stairs and had sustained multiple injuries, whereas, as per the evidence of PW-6 (Dr.Vinay Kumar Singh), the cause of death was asphyxia as a result of combined effect of ligature strangulation and manual smothering. Counsel further submits that the external injuries on

the deceased would show that she was brutally murdered by the appellants. Counsel submits that even in the statement recorded under Section 313 of the Code of Criminal Procedure, it has been stated that the deceased had sustained injuries in the absence of the appellants. Counsel contends that this statement as also the defence sought to be raised that she had fallen from the stair are found to be factually incorrect and contradictory to each other and thus it would form as an incriminating factors against the appellants.

15. Learned APP for the State has placed strong reliance in the case of *Trimukh Maroti Kirkan Vs. State of Maharashtra* reported at (2006) 10 SCC 681 and also in the case of *State of Rajasthan Vs. Thakur Singh* reported at JT 2014 (8) SC page 50.
16. In response to the argument raised by Mr.Nigam, with regard to the delay in preparation of the site plan, counsel for the State has clarified that in fact the site plan was made on the date FIR was registered, however, the site plan by the draftsman was made after a period of about 2 months, which is not unusual.
17. Before we consider the rival submissions of the parties, we deem it appropriate to examine the testimonies of some of the material witnesses in detail. PW-2 (Yad Ram) father of the deceased, has not supported the case of the prosecution. The statement of this witness was recorded by the SDM. During cross-examination he was confronted with the statement marked PW-2/A. Statement of PW-2 reads as under:

“PW-2, Sh. Yad Ram S/o Sh. Prabhati Lal aged about-53 years, R/o. Mohalla Jatwan, Town Kakod, Distt. Bulandshahar, UP.

On S.A.

I am working as labourer. Deceased Sangita was my daughter. She got married with Jagdish @ Bobby present in Court

today through V/C (correctly identified) on 6.12.06. I spent Rs.3-4 Lacs at the marriage of my daughter Sangita. Accused Jagdish and Sangita used to reside at Khureji at house No.213, Gali No.2, Khureji Khas, Delhi. After the marriage Sangita started living with accused Jagdish at Khureji. Jagdish has 5-6 brothers and mother namely Mohan Devi, his mother present in Court today (correctly identified).

Sangita was leading a normal life with her husband in her matrimonial house. She never complained against her husband and mother-in-law or anyone else to me and my wife. Sangita never told me if either of the accused had made any demand for money from her or had asked her to demand money from her parents.

On 15.10.10 I made a call to Sangita. She told me that she had fallen on the floor and had sustained injuries on her neck and head. She also told me not to worry about her. On 16.10.10 I was doing my work in Sadar Bazar, I received a call from police station telling me that Sangita has died. I reached PS Jagat Puri. I made a call at my village. My wife, all three sons, other family members and neighbourers all reached at LBS Hospital. I identified dead body of Sangita there vide memo Ex.PW2/A which bears my signature at point A. SDM met me there and inquired my name and address. Me and my wife were under shock and my family members had made us sit on the side. I do not know if SDM recorded my statement or not.

At this stage complaint mark PW2/A is shown to witness, he admits his signatures on it at point A. After postmortem dead body of Sangita was handed over to me. We took her dead body to our Village and cremated her there.

At this stage Ld. APP request to cross-examine the witness as the witness is resiling from his previous statement. Heard. Allowed."

18. PW-3 (Smt. Raj Wati) is the mother of the deceased, although in her statement under Section 161 Cr.P.C. she had stated that the demand of dowry was made and Rs.70,000/- was paid but in court she did not support the case of the prosecution. The neighbours PW-4 (Ashok Kumar); PW-5 (Bahadur); PW-7 (Vinod); and PW-8 (Radhey Singh) did

not support the case of the prosecution and they were confronted with the statements made by them under Section 161 Cr.P.C.

19. The deceased had as many as 7 injuries on her body. Relevant portion of the deposition and cross-examination of PW-6 (Dr.Vinay Kumar Singh) Specialized Forensic Medicine, LBS Hospital is as under:

“....

Time since death was two – three days.

Opinion

In my opinion cause of death was due to asphyxia as a result of combined effect of ligature strangulation and manual smothering. All injuries are ante mortem and recent duration.

Injury No.2 to 5 are possible by human nail. Injury No.6 is caused by manual pressure.”

“xxxx

It is wrong to suggest that the injuries No.1 to 5 mentioned in P/M report could be caused by falling from the stairs. It is wrong to suggest that there were no strangulation mark or manual smothering mark on the dead body of deceased. It is wrong to suggest that I have prepared the P/M report at the instance of I.O.”

20. PW-9 (Nand Ram) is the nephew of Yad Ram and has supported the case of the prosecution. The evidence of PW-9, reads as under:

“PW-9 Sh. Nand Ram S/o Sh. Jamna Dass, aged about 54-55 years, R/o Kakod, Mohalla Jatwan, Distt. Bulandshahar, UP.

On S.A.

Yadram is my cousin son of my Chacha. Deceased Sangita was daughter of Yadram Singh. Sangita was married with accused Jagdish present in Court today through V/C (correctly identified). Jagdish to harass Sangita and used to give beatings to her under influence of liquor and this fact she used to tell me and other villagers as and when she used to visit our village. Once Jagdish had gone to our village to take Sangita with him and the family members of Sangita had refused to send her with the accused, then

accused gave an undertaking that he will not harass Sangita in future and that undertaking was reduced into writing on Rs.10/- stamp paper, photocopy of which is mark PX1 which bears my signatures at point A as well signatures of accused Jagdish at Point B and it is in the handwriting of accused Jagdish.

XXXX by Sh. S.K. Ahluwalia, Ld. Defence counsel for the accused persons.

Jagdish had come to the Village on 8.7.10 on the occasion of Raksha Bandhan. The stamp paper mark PX1 was brought by accused himself but I do not know when he had purchased the said stamp paper. I cannot say from where accused had purchased this stamp paper. Vol. I had seen him writing it. Accused used to visit our village. The original of mark PX1 is in the custody of father of Sangita. Police met me in Delhi when we came there on receiving of information regarding death of Sangita. I do not remember the date when my statement was recorded but it was might have been recorded after about 10-15 days. It is wrong to suggest that stamp paper mark PX1 was not purchased by accused Jagdish nor did he write it in his handwriting.

Mark PX1 was written at about 10 a.m. on 8.7.10. 15-20 people of village were present there at that time including Mukesh, Kanhiya. Sangita was also there but I do not know if she had signed it or not. I never visited the matrimonial home of Sangita after her marriage. Accused Jagdish or his family member never demanded dowry in my presence from deceased or his family. It is correct that accused Jagdish never gave beatings to Sangita in my presence. Sangita had come on 8.7.10 with the accused to Delhi. It is wrong to suggest that Sangita never told me that accused used to harass her or used to give beatings to her. It is wrong to suggest that I am deposing false in this regard. It is wrong to suggest that accused never harassed Sangita nor gave any undertaking. It is wrong to suggest that I am deposing false.”

21. PW-12 (Inspector Ajab Singh) has testified that he was the investigating officer in the case and he along with SI Subhash and a lady constable Monika reached the spot of the incident on 20.10.2010, wherein the appellants (Mohan Dei and Jagdish @ Bobby) were present; they were interrogated and arrested at the instance of S.I. Subhash vide arrest

memo Ex.PW-12/A; personal search was conducted and disclosure statements were recorded as Ex.PW-12/B, Ex.PW-12/C, Ex.PW-12/D and Ex.PW-12/E. PW-12 has also testified that he had prepared the site plan at the instance of S.I. Subhash. This witness has testified that he collected a copy of the undertaking of Jagdish @ Bobby written on a stamp paper in his own hand writing. During cross-examination this witness admitted that till the investigation was handed over to him there was no evidence on record that the accused persons were present at the house. He has further stated during cross-examination that subsequently he recorded the statement of witnesses (Ashok Kumar, Bahadur, Vinod and Radhey), who had heard the noise of quarrelling between accused persons and the deceased.

22. PW-16 (Mukesh Kumar) has also supported the case of the prosecution. The deposition of PW-16 is reproduced below:

“PW 16 Sh. Mukesh Kumar S/o Sh. Ratan Singh, aged about 40 years R/o Mohalla Jatvan Kasba Kakod District Bulandshahar UP.

On SA

I know Yaad Ram being my neighbour. Deceased Sangita daughter of Yaad Ram was married to accused Jagdish @ Bobby present in court today (correctly identified) through V/C. As and when Sangita used to visit her parental house, she used to tell her family members even to me that her husband used to give beatings to her under the influence of liquor. Due to this reason, Yaad Ram declined to send Sangita with accused Jagdish to his house. On 08.7.10, a Panchayat was held in Kasba Kakod at the house of Yaad Ram. Several people collected in Panchayat. On the request of Panchayat Yaad Ram agreed to send Sangita with accused Jagdish. Jagdish had given an undertaking on a stamp paper that in future he will not harass and give beating to Sangita and if he will do so, he will face consequences. The photocopy of stamp paper thereon accused Jagdish had given undertaking is mark PX1 which bears my signatures at point C.

xxxx by Sh. S.K. Ahluwalia, Ld. Defence counsel for accused.

I am running a barber shop in Kasba Kakod at distance of 500-600 yards from the house of Yaad Ram. Jagdish had come in Kasaba Kakod on 10.07.10. Again said, I do not know when accused had come at and left Kasba Kakod. Stamp papers are available in Kakod. When I reached to attend the Panchayat Stamp paper was already there and when I reached there, Panchayat was going on. I remained in Panchayat till its end for about 30 minutes. I do not know who had brought stamp paper. Before 08.07.10, it was not ever decided to take any undertaking on any stamp paper from Jagdish in my presence. My statement was recorded by the police on 03.01.11 along with Nand Ram. We were brought by the police. I do not remember the time when Panchayat started but it was about 10-11 AM. Sangita had also attended the Panchayat. I do not remember if she had signed on undertaking given by accused. It is wrong to suggest that in my presence, accused never gave beatings to Sangita nor did he made any demand of dowry from Sangita or her parents. Sangita had come in Kasba Kakod 4-6 days before the Panchayat. I do not know after panchayat when Sangita had come from Kakod with accused. It is wrong to suggest that Jagdish never had taken any undertaking on the stamp paper. It is wrong to suggest that I signed all the documents at the instance of Yaad Ram and the police. It is wrong to suggest that I am deposing falsely.”

23. PW-13 (Hukam Singh) has testified that he was posted as SDM, Preet Vihar on 16.10.2010; he received information that a lady had committed suicide. He reached the spot of the incident and thereafter described the scene of occurrence, the condition of the victim and conducted the proceedings at the spot. PW-17 (SI Subhash Chand) has also testified that on the fateful day he reached the spot i.e. house No.213 Gali No.2 Near Meat Shop, Khureji Khas, Delhi, wherein appellant Jagdish whom he identified and his mother Mohan Dei and other relatives were present. This witness has also stated that the steps were taken by him including informing the SDM and arresting the accused persons.
24. In this backdrop, the submissions of counsel for the appellants can be summarized as under:

- (i) The parents of the deceased have not supported the case of the prosecution and thus the trial court has erred in convicting the appellants.
- (ii) There are material contradictions in the testimonies of PW-17 (Subhash Chand) and PW-13 (Hukam Chand).
- (iii) There is no evidence to show that the appellants were present at the time of the incident.
- (iv) The deceased had injuries on her body on account of a fall in the stairs.
- (v) Section 106 of the Evidence Act would not be applicable, as the prosecution has not discharged its initial burden.

25. In this case, wife of Jagdish and daughter-in-law of Mohan Dei died within a period of four years of her marriage. The opinion of the doctor PW-6 (Dr. Vinay Kumar Singh) is that the death was due to asphyxia as a result of combined effect of ligature strangulation and manual smothering. The evidence of PW-6 leaves no room for doubt that the death of Sangita was homicidal. Undoubtedly, there was no eye witness in this case. Only two witnesses i.e. PW-9 and PW16 have supported the case of the prosecution, besides the police witnesses and the formal witness. PW-9 is the cousin brother of the deceased. He has testified that Jagdish used to harass Sangita and used to beat her under the influence of liquor. This fact was disclosed to him by none other but Sangita herself; she also disclosed this fact to other villagers. This witness has also deposed that once Jagdish had come to the village to take Sangita with him and the family members of Sangita had refused to send her with Jagdish; thereafter Jagdish gave an undertaking that he would not harass Sangita in future. The undertaking was reduced into

writing on a Rs.10/- stamp paper. Photocopy of the undertaking is marked as Ex.PX1. This document was signed by him at point 'A' and signed by Jagdish at point 'B'. During cross-examination PW-9 has testified that dowry was never demanded in his presence, neither Sangita was beaten in his presence.

26. PW-16 a neighbour of Yad Ram has also deposed that when Sangita used to visit her parental house, she used to tell her family and also tell him that Jagdish beats her under the influence of liquor. PW-9 has also testified that Yad Ram had declined to send his daughter with Jagdish and on 8.7.2010 a Panchayat was held in Kasba Kodod at the house of Yad Ram and at the request of Panchayat Yad Ram agreed to send Sangita with Jagdish and Jagdish gave an undertaking on a stamp paper that in future he will not harass and beat Sangita. We find the testimony of both the witnesses [PW-9 and PW-16] to be trustworthy and reliable; both the witnesses have testified on identical lines. Testimony of both these witnesses would show that Jagdish under the influence of liquor used to beat his wife.
27. The first submission of Mr.Nigam, counsel for the appellants, is that the material witnesses including the parents of the deceased have not supported the case of the prosecution. It has further been contended that the trial court has erred in relying on the testimonies of PW-9 and PW-16, who were not family members and thus would not be aware of the family matters. No doubt the parents of the deceased have not supported the case of the prosecution, we have for this reason extracted the entire evidence of PW-2 (Yad Ram, father of the deceased) in the paragraph foregoing and are reproducing his cross-examination below. The statement of PW-2 was recorded by SDM. During his examination-in-chief, the complaint Ex.PW-2/A was shown to him and he admitted his

signatures therein at point 'A'. During cross-examination he also admitted that SDM had met him on 17.10.2010. Cross-examination of this witness (PW-2) reads as under:

xxxxx by Sh.Mohd. Iqrar, Ld. APP for State

It is correct that SDM met on 17.10.10. It is wrong to suggest that six months after marriage accused used to make demands of dowry from my daughter and I had given Rs.70,000/- to accused or I had stated so the SDM. Confronted with statement mark PW2/A where it is so recorded at point A to A.

It is correct that Ravi is my nephew. It is wrong to suggest that two days before death of Sangita through Ravi I had sent Rs.10,000/- to her or I had stated so the SDM. Confronted with statement mark PW2/A where it is so recorded at point B to B.

It is wrong to suggest that I had stated to the SDM that accused and his family is responsible for the death of my daughter or I had stated so the SDM. Confronted with statement mark PW2/A where it is so recorded at point C to C.

It is wrong to suggest that I had told to the SDM that my daughter was first beaten up, then hanged and I am confident that my daughter has not committed suicide but she was murdered and Ved Prakash (brother-in-law), Sunder and Daulat (brother-in-laws), accused Jagdish and Mohan Devi (mother-in-law) and Nakki (sister-in-law) are responsible for all this or I had stated so the SDM. Confronted with statement mark PW2/A where it is so recorded at point D to D.

It is correct that at the time of death Sangita was pregnant for four months. It is correct that Sangita has studied upto 10th standard.

It is wrong to suggest that I had told to SDM that accused Jagdish used to drink liquor and thereafter used to beat my daughter and all the accused persons should be punished for the maximum punishment or I had stated so to the SDM. Confronted

with statement mark PW2/A where it is so recorded at point E to E.

It is correct that when I signed mark PW2/A all the contents were written on it and thereafter I signed it. Vol. No one has read over these contents to me. Since I was under shock even I had not read it.

It is wrong to suggest that SDM had written on mark PW2/A whatever I had stated to him. I do not know why SDM had recorded all this. It is wrong to suggest that I am deposing false.

It is wrong to suggest that I had given photocopy mark PX1 to the IO which was seized by him vide seizure memo mark PX2 dated 21.12.10. At this stage the seizure memo dated 21.12.10 shown to the witness, he admits his signatures at point A and submits that he does not know when he had signed it.

It is correct that I had handed over to IO marriage card of my daughter and photographs of marriage which are collectively Ex.P1. At this stage the seizure memo mark PX3 dated 3.1.11 shown to the witness, he admits his signatures at point A and submits that he does not know when he had signed it.

It is wrong to suggest that I am deposing false regarding awareness about the contents of mark PX2 and PX3.

It is wrong to suggest that on 21.12.10 police has recorded my statement. Vol. I was called in the PS and my signatures were taken on one document.

It is wrong to suggest that I had told the police that on Raksha Bandhan day, 3/ 3 ½ months prior to her death, accused Jagdish had beaten my daughter under the influence of liquor and Jagdish used to put pressure upon Sangita to bring money from us or I had stated so to the police. Confronted with statement mark PW2/B where it is so recorded at point A to A.

It is wrong to suggest that I used to fulfil the demands of accused Jadish or I had stated so to the police. Confronted with statement mark PW2/B where it is so recorded at point B to B.

It is wrong to suggest that on the day of Raksha Bandhan accused Jagdish had come to my house to take Sangita with him but I refused to send Sangita with him stating that he will beat my daughter under the influence of liquor and he may also kill her or I had stated so to the police. Confronted with statement mark PW2/B where it is so recorded at point C to C.

It is wrong to suggest that at that time Jagidsh had given an undertaking on a stamp paper of Rs.10/-, which is mark PX1 or I had stated so to the police. Confronted with statement mark PW2/B where it is so recorded at point D to D.

It is wrong to suggest that I had not made complaint to the police earlier with the fear that her matrimonial life will be ruined or I had stated so to the police. Confronted with statement mark PW2/B where it is so recorded at point E to E.

It is wrong to suggest that on 15.10.10 Sangita had not told me that she had fallen on the floor and sustained injuries on her head and neck. It is wrong to suggest that I am deposing false being won over by the accused persons.

xxxx by Sh. S.K. Ahluwalia, Ld. Defence counsel for accused persons.

Nil. Opportunity given.”

28. This witness was confronted with the statement marked Ex.PW-2/A with respect to all material issues, including demand of dowry of Rs.70,000/-, payment of Rs.10,000/- made two days prior to her death; the fact that appellants were responsible for the death of his daughter; his daughter was beaten up and then hanged; she had not committed suicide; appellant (Jagdish) used to drink liquor and thereafter beat her; the incident of beating on the day of Raksha Bandhan; the undertaking given by the appellant, (Jagdish) on Rs.10/- stamp paper.
29. PW-9 (Nand Ram), the nephew of Yad Ram has supported the case of

the prosecution and testified that appellant (Jagdish) used to harass the deceased (Sangita); used to beat her under the influence of liquor and Sangita would tell this fact to him and other family members when she visited the village. PW-9 has also testified that the family members of Sangita had refused to send her with appellant (Jagdish), upon which he had assured them that he would not harass her and signed an undertaking on a 10 rupees stamp paper. He also identified his signatures on the undertaking at point 'A' and signatures of the appellant (Jagdish) at point 'B'. PW-16 (Mukesh Kumar), who is the neighbour of Yad Ram has also supported the case of the prosecution. He testified on the lines of PW-9 and there is no contradiction between the testimony of PW-9 and PW-16. PW-13 the SDM has testified that on 16.10.2010 he had received information that a lady had committed suicide and he had visited the site of the incident. This witness had also testified that he recorded the statement of Yad Ram Ex. PW-13/C, earlier marked as Ex.PW-2/A.

30. Reading of the testimonies of the two independent witnesses, leaves no room for doubt that the deceased was beaten by her husband, appellant (Jagdish) under the influence of liquor and he also demanded dowry. We find the testimonies of PW-9 and PW-16 to be truthful and reliable. Thus to say that since the parents of the deceased have not supported the case of the prosecution the trial court has erred in convicting the appellants, is without any force. We may, however, add that neither of the two witnesses i.e. PW-9 and PW-16 have given any evidence against the mother-in-law of the deceased (Mohan Dei) and thus she has rightly been acquitted for the offence punishable under Section 498-A IPC.
31. We may also note that there is also no evidence that the mother-in-law has harassed the deceased or there was any confrontation between the

two on any issue. Another submission made by Mr.Nigam, is that there is no evidence on record to suggest that the appellants were present at the time of the incident and thus the law laid down in the case of *Trimukh Maruti Kirnan (Supra) and State of Rajasthan (Supra)* would not be applicable and it cannot be said that section 106 of the Evidence Act would be applicable or that the burden of proof would shift on him.

32. Counsel for the appellants also submits that in the statements under Section 313 the appellants (Mohan Dei and Jagdish) have stated that the deceased has sustained injuries in their absence and the deceased had not made any complaint against them and their family members regarding dowry and harassment. It is settled law that equal weightage is to be given to the evidence of defence witness.
33. DW-1 (Ahmed Ali) has testified that he is doing his job of lathe machine at Laxmi Nagar. Appellant (Jagdish) had worked in his shop till 15.10.2010 and his normal duty hours were from 9:00 a.m. to 8:00 p.m. and in case of work he had to stay till 12:00 midnight and on 15.10.2010 appellant had worked at his shop till 12:00 midnight.
34. If the testimony of this witness is taken to be as correct as per which the appellant (Jagdish) had worked at his shop till midnight and returned home thereafter, and in case, on his return he found that his wife (Sangita) had been murdered, he would not have waited till the next morning i.e. 16.10.2010 till 11:31 a.m. to inform the police. Thus it is clear that on his return from work Sangita was alive. In reply to a question under Section 313 Cr.P.C. appellant (Jagdish) has admitted that he was residing at House No.213 Gali No.2, Khureji Khas, Delhi along with his wife. In addition thereto S.I. Subhash Chand (PW-17) has testified that on 16.10.2010 he was posted at Police Station Jagat Puri; and on receipt of DD No.13A he reached the house No.213, Gali No.2,

Near Meat Shop, Khureji Khas, Delhi and saw a lady lying dead on a bed, and appellant (Jagdish), his mother and other relatives were present at the spot. PCR form Ex.PW-12/1 also shows the presence of Jagdish at the spot of the incident and PW-12, who proved the PCR form was not cross-examined with regard to the presence of the appellants. It is clearly established that appellant (Jagdish) was residing along with his wife at the given address and he was found present by PW-17 and the PCR form, Ex.PW-12/1 also shows presence of Jagdish at the spot.

35. We deem it appropriate to rely upon *Trimukh Maroti Kirkan & Ors. (Supra)*. The facts of this case are somewhat similar to the facts of the case at hand. Both these cases are on circumstantial evidence; and both the cases relate to the death of a woman in the dwelling house of her husband. In the case of *Trimukh Maroti Kirkan (Supra)* the deceased Ms.Revata died in her matrimonial home; allegations were that her in-laws and husband used to ill-treat her and used to harass her and demanded Rs.25,000/-; police was informed that she was bitten by a snake and had died. The post mortem report, however, revealed that she died due to asphyxia as a result of compression of neck. The Supreme Court has held that when an offence takes place inside the privacy of the house and the assailants have ample opportunity to plan and commit the offence, it would be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused. Relevant paragraphs of the judgment reads as under:

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a

criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

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.

18. The question of burden of proof where some facts are within the personal knowledge of the accused was examined in *State of West Bengal v. Mir Mohammad Omar & Ors.* (2000) 8 SCC 382. In this case the assailants forcibly dragged the deceased Mahesh from the house where he was taking shelter on account of the fear of the accused and took him away at about 2.30 in the night. Next day in the morning his mangled body was found lying in the hospital. The trial Court convicted the accused under Section 364 read with Section 34 IPC and sentenced them to 10 years RI. The

accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for murder charge. The accused had not given any explanation as to what happened to Mahesh after he was abducted by them. The learned Sessions Judge after referring to the law on circumstantial evidence had observed that there was a missing link in the chain of evidence after the deceased was last seen together with the accused persons and the discovery of the dead body in the hospital and had concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond any reasonable doubt. This Court took note of the provisions of Section 106 of the Evidence Act and laid down the following principle in paras 31 to 34 of the reports :

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

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

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

common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the court what else happened to Mahesh at least until he was in their custody."

19. Applying the aforesaid principle, this Court while maintaining the conviction under Section 364 read with Section 34 IPC reversed the order of acquittal under Section 302 read with Section 34 IPC and convicted the accused under the said provision and sentenced them to imprisonment for life.

20. In *Ram Gulam Chaudhary & Ors. v. State of Bihar* (2001) 8 SCC 311, the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they have murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference.

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* AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' 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* 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.”

36. In a recent decision *State of Rajasthan Vs. Thakur Singh* reported at JT 2014 (8) SC page 50 it was held as under:

16. Way back in *Shambhu Nath Mehra v. State of Ajmer* [1956 SCR 199] this Court dealt with the interpretation of Section 106 of the Evidence Act and held that the section is not intended to shift the burden of proof (in respect of a crime) on the accused but to take care of a situation where a fact is known only to the accused and it is well nigh impossible or extremely difficult for the prosecution to prove that fact. It was said:

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

17. In a specific instance in *Trimukh Maroti Kirkan v. State of Maharashtra*.....

18. Reliance was placed by this Court on *Ganeshlal v. State of Maharashtra* [JT 1992 (2) SC 592] in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

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

20. In *Jagdish v. State of Madhya Pradesh* [JT 2009 (12) SC 300] this Court observed as follows:

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

21. More recently, in *Gian Chand v. State of Haryana* [JT 2013 (10) SC 515], a large number of decisions of this Court were referred to and the interpretation given to Section 106 of the Evidence Act in *Shambhu Nath Mehra* was reiterated. One of the decisions cited in *Gian Chand* is that of *State of West Bengal v. Mir Mohammad Omar* [JT 2000 (9) SC 467] which gives a rather telling example explaining the principle behind Section 106 of the Evidence Act in the following words:

“During arguments we put a question to learned Senior Counsel for the respondents based on a hypothetical

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

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

37. Applying the law to the facts of this case, we find that in this case also the offence has taken place inside the privacy of the house. There are injury marks on the body of the deceased and as per the post mortem report she died due to asphyxia as a result of compression of neck. This is yet another case where the offence has been committed with brutality within the house itself, yet the initial burden to establish the case would undoubtedly be upon the prosecution. In our view, the initial burden has been discharged by the prosecution on the basis of the evidence of PW-9 and PW-16, which prove that Sangita was being beaten by her husband under the influence of liquor; and by the evidence of PW-17, to show that the appellants were present at the place of the incident. In view of Section 106 of the Evidence Act, the burden would thus shift on the inmates of the house to give a cogent explanation as to how crime has taken place.

38. In this case, as per the appellant (Jagdish) his wife sustained injuries as

she had fallen from the stairs. This explanation of the appellant has been found to be untrue. As per the opinion of doctor (PW-6) the victim died due to asphyxia as a result of combined effect of ligature strangulation and manual smothering. In our view this becomes as additional link in the chain of circumstances to make it complete. It is a strong circumstance which would indicate that he is responsible for the commission of the crime. In the case of *Stirland v. Director of Public Prosecution* reported at 1944 AC 315 it has been observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished, but also to see that a guilty man does not escape.

39. Another argument raised by Mr.Nigam, counsel for the appellants is that there is contradiction in the evidence of PW-17 (Subhash Chand) and PW-13 (Hukam Singh). It has been argued before us that the SDM (PW-13) has testified that the statement was recorded by his staff as he was having injury on his right hand, whereas PW-17 has testified that SDM recorded statement of the father of the deceased with his own hand. In our view this is not a material contradiction. This contradiction does not go to the root of the matter. It is settled law that testimonies of witnesses are to be read as a whole and in case of minor contradiction which do not touch the core issue, cannot be a ground to discharge the evidence of such witnesses.
40. We may notice that the trial court has convicted appellant (Mohan Dei) on the ground that both she and the appellant (Jagdish) have admitted that they were residing in the matrimonial house along with the deceased. The appellant (Mohan Dei) is the mother-in-law of the deceased; her admission that she was residing in the same house by itself is not sufficient to convict her, unless, there are evidence to the effect that she either demanded dowry or harassed her or gave beatings to the

deceased or in any way participated in the murder of her daughter-in-law. It may also be noticed that other family members of the appellant (Mohan Dei) and the husband of the deceased (Jagdish), were residing in the same house but they have been discharged by the trial court on the ground that there were not sufficient evidence against them.

41. Having observed that there is no evidence against Mohan Dei with regard to demand of dowry and also harassing the deceased or that there was any confrontation between the two, it would be extremely unsafe to convict the appellant only on the ground taken by the trial court that the appellant (Mohan Dei) was residing in the same house.
42. For the reasons stated, we find no merit in the appeal [Crl.A.No.847/2012] filed by the Jagdish @ Bobby and the appeal is accordingly, dismissed. So far as the second appeal [Crl.A.No.554/2012] filed by Mohan Dei is concerned, the same is allowed, as there is no evidence that she had at any stage strained relations with the deceased or that she had participated at any point of time in the murder of Sangita.
43. We are informed that Mohan Dei is on bail. Let the bail bond be cancelled and surety be discharged.
44. Both the appeals [Crl.A.No.847/2012 & Crl.A.No.554/2012] stand disposed of, in above terms.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

APRIL 20th, 2015

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