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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 611/2014

% ***Judgment dated 06.05.2015***

VICKY

..... Appellant

Through : Mr.V. Madhukar and Mr.Sachin Dev
Sharma, Advs.

versus

STATE OF DELHI

..... Respondent

Through : Mr.Sunil Sharma, APP for the State
with Inspr.Ajay Kumar, P.S. Jahangir
Puri.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present appeal has been filed by the appellant under Section 374(2) of the Code of Criminal Procedure against the judgment dated 13.1.2014 and order on sentence dated 24.1.2014 passed by learned Additional Sessions Judge, Rohini Courts, Delhi, whereby the appellant (husband of the deceased, Janki), for the offence punishable under Section 302 of the Indian Penal Code, has been sentenced to undergo Rigorous Imprisonment for life with fine of Rs.10,000/- and in default of payment of fine Simple Imprisonment for a period of one year. For the offence punishable under Section 498-A of the Indian Penal Code, the appellant has been directed to undergo Rigorous Imprisonment for a period of two years with fine of Rs.5,000/- and in default of payment of fine Simple Imprisonment for a period of one month. It was also directed that both the sentences would run concurrently.
2. Brief facts of the case, as noticed by the learned trial Court, are as under:

- “(2) *The case of the prosecution is that on 17.06.2011 at about 9:05 PM information was received at Police Station Jahangirpuri which was lodged vide DD No. 20A regarding the giving of beating to a lady by her husband and subsequent hanging at 900 wali gali, pursuant to which SI Anil Kumar along with Ct. Shri Bhagwan reached the jhuggie cluster where they came to know that the incident had taken place at jhuggie No. 164, Lakhi Park, K Block, Jahangirpuri. The PCR staff had already reached there and large number of public persons were present and a lady was found dead on a bed whose name they came to know later on as Janki @ Lali. In the meanwhile the Ambulance from CATS had also reached the spot and the Incharge after checking the lady confirmed that she was dead. The spot was got inspected and photographed through Crime Team after which the dead body was sent to BJRM mortuary through Ct. Shri Bhagwan with a request to CMO Mortuary to preserve the same for 24 hours. On local inquiries the police came to know that the death of Janki had occurred within seven years of marriage on which information was sent to the SDM and family members of the deceased whereas the husband and parents in laws had been absconding.*
- (3) *At about 1:30 AM (intervening night of 17-18.6.2011) the Executive Magistrate Sh. M.P. Kushwaha reached the Police Station Model Town where he recorded the statement of Sharda Devi the mother of the deceased, brother Jitu Singh and father Jagat Singh wherein they made allegations on the husband of the deceased Janki namely Vicky, her mother in law Guddi and her father in law Brij Pal Singh of having harassed and tortured Janki on account of demand of dowry. On the statement of Smt. Sharda, the Executive Magistrate made his endorsement pursuant to which the present case registered.*
- (4) *On the same intervening night the accused Vicky was apprehended from jhuggie Lakhi Park, K block side pursuant to a secret information after which he has been arrested and during interrogation the accused Vicky disclosed having committed the murder of his wife Janki. Pursuant to his disclosure the accused Vicky got recovered a PVC Pipe from his Jhuggi as the weapon of offence, which was then taken into possession. On 18.6.2011 the postmortem examination on the dead body of Janki was conducted by Dr. Bhim Singh who opined the cause of death as Head Injury which was sufficient to cause death in ordinary*

course of nature. On 05.08.2011 accused Brij Pal and Guddi surrendered in the court of Ld. Illaka Magistrate after which they were arrested in the present case. After completion of investigations charge sheet was filed against the accused persons in the Court.”

3. In support of its case, the prosecution has examined 19 witnesses. The appellant has examined only one witness in his defence.
4. Mr.Madhukar, learned counsel for the appellant, submits that the trial Court has erred in convicting the appellant. It is further submitted that the judgment passed by learned trial Court is based on conjectures and surmises, and the trial Court ought to have rejected the version of the prosecution, which is improbable and false. Counsel further submits that the trial Court has failed to appreciate that the prosecution has failed to prove the story of the crime, as alleged in the charge sheet; the story of the prosecution is a cooked up story; and the appellant has been falsely implicated in this case. Counsel further contends that the testimonies of the family members of the deceased, being PW-1, Smt.Sharda Devi (mother of the deceased); PW-2, Jeetu Singh (brother of the deceased); and PW-6, Jagat Singh (father of the deceased), are unreliable and even otherwise the testimonies of interested witnesses cannot be relied upon to convict the appellant. Counsel also contends that the testimonies of the public witnesses also do not establish the presence of the appellant at the spot of the incident at the time of the alleged offence. It is also contended by the counsel for the appellant that the material witnesses have been suppressed as the said witnesses would not have supported the case of the prosecution. It is next contended that it has repeatedly been testified that the children around the jhuggi of the deceased had heard the appellant saying that he had killed his wife but none of the neighbours and children, who have stated to have heard the appellant

uttering these words, have been examined.

5. Additionally, it is stated by counsel for the appellant that Section 106 of the Evidence Act would not be applicable to the facts of the present case as the prosecution has failed to discharge the initial burden to show that the appellant was present in his jhuggi at the time of the incident. Counsel also contends that testimony of PW-16, Sh.Balram Singh, would show that he has testified that someone was beating someone but no names have been mentioned by him. Counsel contends that it is not the case of the prosecution that either of the witnesses had seen the appellant beating his wife or demanding any dowry from her and, thus, no offence under Section 498A of the Indian Penal Code would be made out against the appellant. It is further submitted that the parents and brother of the deceased had failed to give specific instances with regard to demand of dowry and, thus, the appellant could not have been convicted on the basis of vague statements.
6. It is further contended by counsel for the appellant that for the same set evidence of not having been found at the spot of the incident the parents of the appellant have been acquitted. Counsel further submits that as far as the statement made under Section 313 of the Code of Criminal Procedure is concerned that by itself cannot be an incriminating factor on the basis of which the appellant may be found to be guilty.
7. Mr.Sharma, learned counsel for the State, submits that the prosecution has been able to prove its case beyond any shadow of doubt. It is further submitted that the incident took place at a time when the appellant was present at the spot; all the public witnesses have testified that the appellant used to beat his wife under the influence of liquor; and PW-16 in his cross-examination has stated that he had last seen the appellant locking the jhuggi.

8. Learned counsel for the State has also drawn the attention of the Court to the post-mortem report (Exhibit PW-15/A) wherein external injuries on the body of the deceased have been proved. Attention of the Court is also drawn to the testimony of PW-15, Dr.Bhim Singh, Autopsy Surgeon, who has opined that a plastic *danda* recovered at the instance of the appellant, could have been the weapon of offence, and on which no cross-examination has been conducted by the learned counsel for the accused (appellant herein) before the trial Court. Counsel also contends that the testimony of PW-16, Sh.Balram Singh, who is a public witness, stands corroborated by the medical evidence and the post-mortem report, which relates to the time of death of the deceased Janki. PW-16 has also testified that he had heard voices around 4.00 p.m. and as per the post-mortem report the time of death is approximately 4.00 p.m. It is also contended that another incriminating factor against the appellant is the statement made by him under Section 313 of the Code of Criminal Procedure wherein he has testified that he had left the jhuggi soon before the incident as his wife had wanted to change her clothes and since she did not open the jhuggi, he climbed on the roof of the jhuggi and jumped inside only to fall on her, which resulted into injuries on her body.
9. Counsel for the State also contends that it is the stand of the appellant that the deceased had hung herself. This version of the appellant is false and the same is not supported by the medical evidence, which does not show that the deceased died due to hanging but in fact she died on account of a blow on her head.
10. Mr.Sharma also contends that the case under Section 498A of the Indian Penal Code stands proved, as the parents and brother of the deceased have testified that the appellant used to demand money and in fact even one day prior to the incident Rs.500/- was demanded by the appellant,

which was paid by the brother of the deceased.

11. We have heard learned counsel for the parties, who have taken us through the evidence in the matter. We have also given our thoughtful consideration to the submissions, which have been made before us.
12. In this case, on 17.06.2011 at about 9:05 PM an information was received at Police Station Jahangirpuri with regard to death of a lady by hanging herself subsequent to the beatings given to her at K Block, Jahangirpuri. The deceased is stated to have died within seven years of her marriage. In the statement recorded before the Executive Magistrate the mother, brother and father of the deceased made allegations against the appellant, his mother and father for harassing the deceased and torturing her for want of dowry. Thereafter the appellant was arrested. Pursuant to the disclosure statement of the appellant, a PVC Pipe was recovered from the Jhuggi of the appellant, being the weapon of offence. On 18.6.2011 postmortem was conducted by Dr.Bhim Singh who opined the cause of death as Head Injury.
13. Before we deal with the rival submissions of counsel for the parties, we deem it appropriate to discuss the evidence of some of the material witnesses. We may notice that the trial court in its judgment has culled out the testimonies of various witnesses, which read as under:

“Smt. Sharda Devi (PW-1)

She is the mother of the deceased Janki and has deposed on the following aspects:

- 1. That her daughter Janki @ Lali got married with accused Vicky on 10th December.*
- 2. That on 14.06.2011 she along with her husband went to the matrimonial home of her daughter Janki to take her to their home when her daughter complained that accused Vicky used to give beatings to her and also demanded money and asked her to bring the money from them.*

3. That Janki also complained that all the family members did not allow the deceased to meet or talk to anybody and accused Vicky used to consume liquor and beat her.
4. That on 17.06.2011, at the about 10:00 PM police came to their house and then she came to know that her daughter had expired on which they went to the Police Station.
5. That police had already apprehended accused Vicky whereas his parents were absconding.
6. That she had her suspicion that her daughter had been killed by accused Vicky, his father namely Brijpal and mother of Vicky namely Guddi whom she has correctly identified in court.
7. That her statement was recorded by Executive Magistrate which is **Ex.PW1/A** and police also recorded her statement.”

“Jeetu Singh @ Ravinder (PW-2)

He is the brother of the deceased who has deposed on the following lines:

1. That they were three brothers and one sister namely Janki who was the third child of his parents and was married on 10th December with accused Vicky.
2. That on 17.6.2011 at about 9:30 p.m. police from Police Station Jahangir Puri came to their house and informed that his sister Janki had expired at her matrimonial home and police had found the dead body of Janki at her matrimonial home.
3. That they reached the Police Station and found that accused Vicky had already been apprehended by the police and his parents were absconding.
4. That on 14.06.2011 on Tuesday his parents went to the house of accused Vicky and when his mother returned to their house, she told that “Janki Bahoot Dari Huyi Lag Rahi Thi.”
5. That he asked his mother as to why she had not brought Janki to their house, on which his mother replied that her in-laws did not allow her to bring Janki to their house.
6. That he had suspicion that his sister Janki was killed by accused Brij Pal, Guddi and accused Vicky whom the witness has correctly identified in the court.
7. That his statement was recorded by Executive Magistrate

which is **Ex.PW2/A**.

8. That he identified the dead body of his sister Janki vide his statement **Ex.PW2/B** and after the postmortem, dead body was handed over to them vide memo.**PW2/C**.”

“Paley (PW-3)

He is the neighbour of the accused and has deposed on the following aspects:

1. That on 17.06.2011, in the evening hours, he alongwith his friends Dharmbir and Bona, was sitting in the park of K Block, Jahangir Puri.
2. That some children came and informed him that Vicky was saying that he had killed his wife on which they all went to the house of Vicky but the Jhuggie of the Vicky was found locked.
3. That they then tried to see inside teh Jhuggie in the light of a matchstick, which was in the hand of Bona and saw that the wife of Vicky was found lying dead on the bed.
4. That they went to the PCO and telephoned the police pursuant to which Police reached the spot and opened the lock of the Jhuggie of the house of accused.
5. That they had heard that accused Vicky used to beat his wife and also not to allow her to go outside.”

“Bhagwan Das @ Bona (PW-5)

He is the brother of the deceased who has deposed on the following lines:

1. That on 17.06.11 at about 8:00 PM he along with his friends Dharmabir and Palley were sitting in the park where some small children came to them and told that Vicky was saying that he had killed his wife, after which they all three went to the Jhuggi of Vicky which was found locked outside.
2. That they lit a matchstick and in that light they saw inside the jhuggi and saw that the wife of Vicky was found dead.
3. That he went near the STD Booth and phoned to the police on which police reached the spot and broke the lock and carried out the investigation.
4. That he knew Vicky prior to the incident and he used to give beatings to his wife.

5. That his statement was recorded by the police and he narrated the whole facts to the police.”

“Jagat Singh (PW-6)

He is the father of the deceased who has deposed as under:

- 1. That he had married his daughter Janki @ Lali with accused Vicky S/o Brij Pal in December, 2010 with full pomp and show and had given all the dowry articles as per his capacity including Rs.17,000/- were given in cash in the marriage.*
- 2. That on 17th in summer season of 2011 at about 10:30-11:00 pm, police officials from Jahangir Puri police station came to his house and informed them that a quarrel had taken place with his daughter with her in laws.*
- 3. That on this he along with his family members reached the Police Station at about 12:00 midnight and came back to his house at about 4:00 AM.*
- 4. That police officials asked them to come on next day and in the Police Station they came to know that his daughter is no more and her body was in the mortuary of BJRM Hospital and therefore, on the next date they went to the mortuary of BJRM Hospital from where he identified the dead body of his daughter and received the same.*
- 5. That prior to the death of his daughter Janki, he and his wife had gone to the house of in laws of Janki as his wife told him that Janki had informed her that accused persons demanded money from her.*
- 6. That one day prior to her death, his son in law i.e. accused Vicky came to her house and took Rs.500/- from him as he was in need of some rupees and at that time he was accompanied with two-three boys.*
- 7. That his statement was recorded by the Executive Magistrate vide Ex.PW4/A.*
- 8. That many a times on the demand of Vicky and Brij Pal, he had given money to them after taking on loan.*
- 9. That his wife also told to him that many a time his daughter informed her that accused Vicky used to beat her, for non*

fulfilling their demand and this fact was told to him by his wife.

10. That the death of his daughter was not natural but when they reached at mortuary they noticed that there was a head injury and sharp injury mark on the back and having blood.

11. That he had strong suspicious over the accused persons that accused persons have killed his daughter.”

“Dharambir Singh (PW-9)

He is also a neighbour of the accused persons who has deposed on the following aspects:

1. That on 17.06.2011 he came back from his job and was standing at park, at K Block, Jahangir Puri, alongwith Bona and Paley.

2. That some children came to him and told that accused Vicky had committed the murder of his wife on which he along with Bona and Paley went to the side of jhuggi of Vicky and Bona raised noise, that if somebody was there inside the Jhuggi, but no response came from inside the jhuggi, while they were peeping through the window of jhuggi.

3. That they entered inside the jhuggi through the windowpane, after removing the curtain and flashed a matchstick and in the light of matchstick, they saw that the wife of Vicky was lying dead, on the bed.

4. That thereafter they came out and Bona made a call from a nearby STD, at 100 number pursuant to which the Police came there and broke the lock of jhuggi.

5. That the Police inspected the spot and took the dead body of the wife of Vicky.

6. That he himself did not see the accused giving beatings to Janki but he had heard from the neighbours about the same “Humne Aas Padosion Se Suna Tha Ki Jhagda Hota Tha, Par Humne Kabhi Dekha Nahin”.

“Kishan Lal (PW-13)

He is also a neighbour of the accused persons and has deposed as under:

1. That he is residing on K-571, Jahangir Puri, Delhi where

he is also running a grocery shop and a PCO is installed on his shop.

2. That on 17.6.2011 at about 9:00 PM one person namely Bhagwan Dass came from the nearby jhuggies of 900 wali gali and made a call at 100 number from his PCO by saying that one lady was killed by her husband and thereafter he went away from there.

3. That other persons following Bhagwan Dass and that is why he came to know his name.

4. That his PCO number is 27637856 of MTNL and his statement was recorded by the police.”

“Balram Singh (PW-16)

He is again a neighbour of the accused persons and has deposed on the following lines:

1. That he is residing at Jhuggie No. A-163, K Block, Lucky Park, Jahangirpuri, Delhi along with his family.

2. That he had a paralytic attack which affected his leg as a result of which he is unable to do any work and remains at home.

3. That the family of Brij Pal is his immediate neighbors and the son of Brij Pal namely Vicky was married about six months prior to the incident with one Janki @ Lali.

4. That most of the time Vicky remained unemployed but some time he was doing the work of painting (safedi).

5. That on a couple of occasions he had seen Vicky indulged into mar pitai with Janki and the behaviour of family members of Vicky with Janki was normal and he is not aware how the incident took place.

6. That whenever Vicky used to fight with his wife, they often used to take side of Janki.

7. That on 17.06.2011 at about 4PM he heard the voices as if somebody was beating someone inside the house of Brij Pal and he also heard nasal voices as if somebody's mouth has been pressed to suppress the voice (Nak ke sur ki awaz jaise kisi ne kisi ka muh daba diya ho).

8. That even previously on many occasions Vicky who was a habitual alcoholic had been indulging this kind of mar pitai/ quarrel not only with his wife but also with them and therefore he did not intervene.

9. That it was only after some time when the police came that

he came to know what had happened and he told them about what he had heard and seen.

10. That Vicky often used to beat his wife in the state of intoxication.

11. That after some time the voices stopped coming and he saw Vicky coming outside the house after which he and his parents i.e. Brij Pal and Guddi went away somewhere and it was Vicky who had put the lock on the door before going away.

12. That on arrival of the police at 9 PM the dead body of Janki was recovered.”

“Dr.Bhim Singh (PW-15)

He is the Autopsy Surgeon who has proved having conducted the postmortem on the dead body of Janki @ Lali vide his postmortem report Ex.PW15/A according to which there were following external injuries on the body of the deceased:

- 1. Reddish abrasion 1.5 cm x 1 cm (left side of neck just below ramus of mandible).*
- 2. Contused reddish abrasion 5 cm x 3 cm (left side middle of back horizontally placed, 11 cm lateral to midline.*
- 3. Contused reddish abrasion 3 cm x 2 cm right side of back, para spinal area horizontally placed.*
- 4. Contused 5 cm x 2 cm outer surface of left arm.*
- 5. Reddish blue contusion front of right hand thinner eminence 5 cm x 2 cm.*
- 6. Contused abrasion 1 cm x 1 cm left elbow.*
- 7. Contusion 2 cm x 1 cm (left ear lobule).*
- 8. Swelling (hematoma) over head in frontal, parietal and occipital region.*

He has proved that the death was due to Coma consequent upon head injury, sufficient to cause death in ordinary course of nature and all the injuries were antemortem, fresh in duration and could be caused by hard blunt object and time since death was about 20 hours.

Dr. Bhim Singh has further proved his subsequent opinion with regard to the weapon of offence which opinion is Ex.PW15/B according to which the Injury No.2 to 8

mentioned in the Postmortem Report Ex.PW15/A could be possible by the said plastic danda and injury No.1 could be due to pressure from thumb by the accused.”

“Sh.M.P. Kushwaha (PW-4)

He is the Executive Magistrate who has proved the following aspects:

- 1. That on 17.06.2011 in the night hours at about 11.00 PM, he received information from SHO, PS Jahangir Puri about the death of one lady namely Janki @ Lali, on which he directed SHO to call the Crime Team and got inspected the scene of crime and dead body to be preserved at BJRM Hospital.*
- 2. That on the intervening night of 17-18.06.2011, at about 1.30 AM, he reached Police Station Model Town and recorded statement of Sharda Devi, mother of deceased vide Ex.PW1/A which was attested by him at point B and he directed SHO to take legal action and he (witness) made endorsement in this regard, from point X to X on Ex.PW1/A.*
- 3. That he recorded the statement of Jagat Singh, father of deceased, vide Ex.PW4/A, recorded the statement of Jeetu Singh vide Ex.PW2/A and prepared the inquest papers i.e. request for autopsy which is Ex.PW4/B, brief facts which is Ex.PW4/C, form 25.35 which is Ex.PW4/D and also recorded statement of body identification vide Ex.PW2/B and Ex.PW4/E.*
- 4. That he also directed the IO to handover the dead body to its claimants.”*

14. The argument of counsel for the appellant can be summarized as under:

- (1) The version of the prosecution is improbable and false.
- (2) The appellant has been falsely implicated in the case.
- (3) The testimonies of PW-1, PW-2 and PW-6 being family members of the deceased are unreliable and interested witnesses, cannot be relied upon.

- (4) Testimony of public witness do not establish the presence of the appellant at the spot of the incident and hence Section 106 of the Evidence Act would not apply, as the prosecution has failed to discharge the initial burden.
 - (5) The children, who had heard appellant say that he has killed his wife, have not been examined.
 - (6) No specific instance of demand of dowry has been given by the family members.
15. The submissions of learned APP for the State can be summarized as under:
- (1) The presence of the appellant stands established.
 - (2) The prosecution has fully discharged the initial burden to show that the appellant was present in the *JHUGI* along with his wife.
 - (3) Section 106 of the Evidence Act would be applicable.
 - (4) The evidence of the family members cannot be discarded and their evidence is trustworthy and reliable.
 - (5) Specific instances of demand of dowry have been given.
16. The law with regard to the interested witnesses that their testimonies can be relied upon is well settled, however, the courts must be cautious and most carefully scrutinize the evidence of such witnesses.
17. The mother PW-1 has testified that on 14.6.2011 she had gone to the matrimonial home of her daughter; wherein she had complained that her husband beats her and also demands money. This fact stands corroborated by the evidence of father of the deceased (PW-6). PW-6 father of the deceased has also testified that he had gone along with his

wife to the house of his daughter and his daughter had informed his wife that accused person had demanded money from her and also that one day prior to the incident his son-of-law had come to the house and taken Rs.500/-. PW-2, the brother of the deceased, has testified that his parents had gone to his sister's house on 14.6.2011 and on their return PW-1 mother had informed him "*JANKI BAHUT DAARI HUI LAG RAHI THI*". Both these witnesses i.e. mother and father of the deceased have testified that after consuming liquor, the appellant used to beat the deceased. Since all the three witnesses have testified on almost similar lines, there are no material inconsistencies, we find the testimonies of these three witnesses i.e. PW-1, PW-2 and PW-6 to be reliable and trustworthy. The factum of beating by the appellant to the deceased is also corroborated by the testimonies of the independent witnesses, who were neighbours. PW-16 (Balram Singh) the immediate neighbour has testified that on couple of occasions he had seen appellant indulging in *MAAR PITAI* with Janki. PW-16 has also testified that on account of paralytic attack he is unable to do any work and remains at home. In our view the testimony of this witness is extremely vital and the same is reproduced below:

"..... I am residing at the aforementioned address along with my family. I am having a paralytic attack which is effected my leg as a result of which I am unable to do any work and I remain at home. The family of Brij Pal is my immediate neighbors. The son of Brij Pal namely Vicky was married about six months prior to the incident with one Janki @ Lali. Most of the time Vicky remained unemployed but some time he was doing the work of painting (safedi). On the couple of occasions I had seen Vicky indulged into mar pitai with Janki. The behaviour of family members of Vicky with Janki was normal and I do not know how the incident took place. Whenever Vicky used to fight with his wife, they often

used to take side of Janki. On 17.06.2011 at about 4PM I heard the voices as if somebody was beating someone inside the house of Brij Pal and I also heard nasal voices as if somebody's mouth has been pressed to suppressed the voice. (Nak ke sur ki awaz jaise kisi ne kisi ka muh daba diya ho). Even previously on many occasions Vicky who was a habitual alcoholic had been indulging this kind of mar pitai/quarrel not only with his wife but also with us and therefore I did not intervene. It was only after some time when the police came that I came to know what had happened and I told them about what I had heard and see.

At this stage, Ld. APP for the state, seeks permission to put leading questions to the witness as he is not giving the complete details.

Heard, Permission granted.

It is correct that police had recorded my statement on 19.06.2011. It is correct that I had told to police that Vicky often used to beat his wife in the state of intoxication but it is wrong to suggest that I told to suggest that I also told the police that his parents and family members sided him and Vicky did not permit her to go to her parental house. I also did not tell the police that Guddi, mother of Vicky and his father Brij Pal used to quarrel with their daughter in law and taunt her. Confronted with portion A to A1 of statement EX PW 16/PX1 where it is so recorded. It is wrong to suggest that I had told the police that when I heard the screams of Janki coming from the house, I asked Brij Pal and Guddi who were sitting outside the jhuggie after closing the door what had happened then they told me that there was a quarrel between Vicky and Janki as it is a routine. Confronted with portion B to B1 of statement EX PW 16/PX1 where it is so recorded. It is correct that I had informed the police that after some time the voices stop coming and I saw Vicky coming outside the house after which he and his parents i.e. Brij Pal and Guddi went away some where. Vol. it was Vicky who had put the lock on the door before going away. It is correct that I had told the IO that on arrival of the police at 9 PM the dead body of Janki was recovered but I did not tell them that I strongly believed that the accused Vicky and his parents Brij Pal

and Guddi were responsible for the death of Janki. Confronted with portion C to C1 of statement EX PW 16/PX1 where it is so recorded. I can identify the accused Vicky, Brij Pal and Guddi who are present in the court today (correctly identified by the witness).”

18. We find the testimony of this witness to be reliable, trustworthy and nothing has been produced on record to show that he has had any animosity with the appellant. This witness has also been cross-examined and his testimony remains unshaken. A careful reading of the deposition of this witness would show that he had seen the appellant indulging in MAAR PITAI with his wife; and on the fateful day at about 4:00 p.m. he had heard voice of somebody beating someone inside the house of Brij Pal. He had also heard nasal voices as if somebody’s mouth has been pressed to suppress the voice. Thereafter this witness goes on to testify that previously on many occasions appellant who is a habitual alcoholic had been indulging in this kind of MAAR PITAI / quarrel not only with his wife but also with us, therefore, he did not intervene.
19. No doubt this witness (PW-16) was not present and had not witnessed the incident but the post mortem report corroborates the time of the incident, which is 4:00 p.m., when PW-16 had heard nasal voices as if somebody’s mouth has been pressed, which further stands established by the injury no.1, i.e. Reddish abrasion 1.5 cm x 1 cm (left side of neck just below ramus of mandible), which lends strong credence to the testimony of PW-16. PW-16 had volunteered during cross-examination that appellant, Vicky had put a lock on the door before going away. During cross-examination, PW-16 has also stated “*it is wrong to suggest that I did not hear any voices of JANKI, as claimed by me or that I not noticed Vikky beating Janki inside the house*”.

20. The presence of the appellant is also not disputed at the place of incident. In the statement recorded under Section 313 Cr.P.C. the appellant has stated as under:

“..... On the day of incident we both had our lunch together and thereafter she asked me to go outside of the jhuggi as she had to change her clothes. I came out of the jhuggi and sat under the tree in front of the jhuggi of my chacha. After some time my sister Santosh came to me in perplexed and informed me that janki had hanged herself. I rushed towards my jhuggi and found the jhuggi locked from inside and Janki was hanging inside with the chunni. I went on the roof of the jhuggi and broke the roof and entered inside the jhuggi and thereafter I got her down but in that process we both fell down as she was stout body and due to fall her head stuck on the corner of the bed and she received injury. I conveyed this information to my parents who had gone to Mandir and perhaps my father called the police.”

21. Statement under Section 313 of the appellant would establish that soon before the incident he was present in the *JHUGGI* as his wife wanted to change her clothes he went out and thereafter he was informed by his sister that his wife had hanged herself; but as the door was closed he broke the roof and entered Jhuggi and while trying to bring her down they both fell and she received head injury. Medical evidence proved on record, belies this statement of the appellant, and thus it becomes an incriminating factor to be held against him. The appellant neither died by hanging and on the contrary she had various injuries on her body, as per the post mortem report, which are as under:

“1. Reddish abrasion 1.5 cm x 1 cm (left side of neck just below ramus of mandible).

2. Contused reddish abrasion 5 cm x 3 cm (left side middle of back horizontally placed, 11 cm lateral to midline.

3. Contused reddish abrasion 3 cm x 2 cm right side of back,

para spinal area horizontally placed.

4. Contused 5 cm x 2 cm outer surface of left arm.

5. Reddish blue contusion front of right hand thinner eminence 5 cm x 2 cm.

6. Contused abrasion 1 cm x 1 cm left elbow.

7. Contusion 2 cm x 1 cm (left ear lobule).

8. Swelling (hematoma) over head in frontal, parietal and occipital region.

I found the following injuries on internal examination.

Head - Effusion of blood in scalp tissues over frontal left, parietal region and occipital region measuring 4 cm X 3 cm, 5 cm X 3 cm and 5 cm X 3 cm was present. Brain shows multiple contusions below injuries with patchy subarachnoid was present at places and brain was edematous. All other organs were congested.

Opinion - Death was due to, consequent upon head injury, sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem, fresh in duration and could be caused by hard blunt object."

22. The opinion of the doctor would show that the deceased did not die by strangulation, but consequent upon head injury. Even as per the evidence of PW-9, the *JHUGGI* was locked from outside and police had broken the lock of the *JHUGGI*. During cross-examination this witness has testified "accused Vicky was seen running by me and children were chasing him."
23. Since it stands established that the appellant was present soon before the incident along with his wife in the same *JHUGGI*, we are of the view that the prosecution has been able to establish its initial burden.

24. In the case of *Trimukh Maroti Kirkan Vs. State of Maharashtra* reported at (2006) 10 SCC 681, 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.”

25. 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.”

26. We may also notice that PW-14 has testified that the weapon used to inflict the blows on the deceased was recovered at the instance of the appellant from under the bed of *JHUGGI*, Ex.PW-14/D. Dr.Bhim Singh (PW-15) has deposed that injury nos.2 to 8 mentioned in the post mortem report, Ex.PW-15/A could be possible by the said solid plastic *DANDA* and injury no.1 could be due to pressure of thumb by the accused.
27. The evidence establishes that appellant used to beat his wife under the influence of liquor. He had demanded money as well; on the fateful day PW-16 had heard noises at about 4:00 p.m. which time stands corroborated by the post mortem report; and the presence of the appellant stands duly established. A statement was made under Section 313 Cr.P.C. by the appellant that his wife has hanged herself which was found to be false based on the medical evidence. The recovery of plastic *DANDA* on the pointing out of the appellant which according to the doctor could be the possible weapon used to inflict the blows on the deceased. Based on the evidence on record, we find that the trial court has reached a correct finding. Hence, we are of the view that there is no infirmity in the judgment and order on sentence of learned trial court and the appeal stands dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 06, 2015 msr/ssn