

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1151 OF 2009

1. Mayur Mulji Parmar. 38 yrs
 2. Bharat Mulji Parmar, 35 yrs
- of Bombay, adults,
Indian Inhabitants, res. at
Dharavi, Kumbharwada Tisriwadi,
by the side of Ram Mandir,
Dharavi, Mumbai 400 017 ..Appellants

versus.

The State of Maharashtra .
Through Mahim Police Stn.,
Mumbai, C.R.No.474 of 1999 ..Respondents

Mr. Shirish M. Gupte, Sr. Counsel, Mr. P.S.Pasbola i/b. Mr. Rahul Arote for the Appellants.

Mr.H.J.Dedia, APP for the Respondent/State.

**CORAM : SMT. V.K.TAHILRAMANI &
SMT. ANUJA PRABHUDESSAI, JJ.**

RESERVED ON : APRIL 20, 2016.

PRONOUNCED ON : MAY 6, 2016.

JUDGMENT (PER ANUJA PRABHUDESSAI, J.)

1. The appellants are the original accused nos.1 and 3 in Sessions Case No.275 of 2000, and shall be hereinafter referred to as accused no1 and accused no 3. These accused have challenged the impugned judgment and order dated 12.11.2009, whereby the learned Session Judge, Mumbai convicted them for offences under Section 302 r/w. 201 r/w 34 of IPC. They have been sentenced to imprisonment for life and fine of Rs.1000/ each, in default R.I. for one year for the offence under Section 302 r/w 34 IPC; and to suffer R.I. for three years and fine of Rs.500/- each in default further R.I. for six months for the offence under section 201 r/w 34 IPC.

2. The facts of the case in brief are as under:

On 23.10.1999, PW7 Dilip Herekar informed Mahim police, that a suspicious looking gunny bag was lying on the footpath outside the gate of BPT Quarters, Mahim. PW17 PI Suresh Angadi, PW8 Police Constable Vishnu Ladkar and other police personnel visited the spot.

They opened the gunny bag in presence of a pancha witness PW3 Ismail Mohd. Shaikh. The said bag contained a dead body of a woman, about 22-25 years of age with hand and legs tied with a nylon rope. The body was wrapped in a blue colour saree and a pink colour bed sheet. There was a tattoo mark "Shree Ram" on the right hand. There were several injury marks on the neck and stomach and the body was partly burnt and smelt of kerosene. The inquest and spot panchanama at Exh.13 was drawn by PW1 in presence of PW3 Ismail Mohd. Shaikh and all the incriminating material was seized under the said panchanama.

3. PW1 Raghvendra Thakur, being satisfied that the death was homicidal, lodged the FIR at Exh.14 against unknown persons for committing murder of the said unknown woman and further for trying to destroy the evidence. He sent the body to Sion Hospital for post-mortem. Dr.V.R.Dhapane, the then lecturer in forensic medicines, of Sion Hospital conducted the postmortem over the body on 24.10.1999 and submitted the PM report at Exh.62 colly. He opined that the death was due to Hemorrhagic shock following multiple

wounds.

4. The investigation was taken over by PW19 Sr. PI Madhukar Sankhe. Since the identity of the deceased was not revealed, photographs of the body were published in news papers circulated in Mumbai. PW19 also cross checked the missing complaints filed at different police stations. One of such missing reports dated 24.12.1999 was lodged by the accused no.1, stating that his wife Manjula was missing since 24.12.1999 at 5.30 a.m. The description of said missing woman tallied with the description of the dead body, hence the accused no.1 and his mother (the deceased accused no.2) were called to identify the body. The accused no.1 and his mother did not identify the body as that of Manjula. However, the brother and the family members of the deceased Manjula identified the body as that of Manjula.

5. Apprehending some foul play, the accused were placed under arrest. There were injury marks on their person. The accused were referred to Nagpada Police Hospital for medical examination. PW13

Dr. Ashok Nandapure examined the accused; and recorded the details of the injuries sustained by them and the other accused in the certificates at Exh.47 to 56. He took blood samples of the accused for blood grouping. The blood samples collected by this witness was sent for CA Analysis. The CA reports at Exh. 52 and Exh.54 reveal that blood of the accused no.1 was of 'A' group, and that of the accused no.3 was of 'B' group.

6. The investigating Officer, PW19 visited the house of the accused in presence of panch witness PW4 Mulji Solanki. He noticed that there were bloodstains on the walls, curtains, door etc. Some hair and a piece of flesh was also found in the bathroom. All the incriminating material, including a piece of cloth fiber and a nylon rope found in the house were seized under the panchanama at Exhibit 21.

7. In the course of interrogation, the accused no.1 made a disclosure statement, pursuant to which one cane basket and knives were recovered under panchanama at Exh.36 drawn in presence of

PW6 Nishid Suvana. The clothes of the appellants and a broken mangalsutra of the deceased was recovered pursuant to the disclosure statement made by the accused no.3 under panchanama at Exh.44. The said clothes and the mangalsutra were forwarded to CSFL, Mumbai for forensic examination.

8. Upon completion of the investigation, charge sheet was filed against these accused, their mother Amrutaben (A2) and sisters Pushpa (A4) and Hemlata Parmar (A5). The offence being Sessions triable, the case was committed to the court of sessions. Charge was framed and explained to the accused. The accused pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 19 witnesses. Statements of the accused came to be recorded under section 313 Cr.P.C. The defence of the accused was that of total denial. The accused no.2 Amrutaben died during the pendency of the trial and the proceedings were closed as abated. The accused no 5 was held to be a juvenile and was referred to JJB. The accused no.4 has been acquitted whereas these accused have been held guilty and are convicted and

sentenced as stated above. Being aggrieved by the said conviction and sentence, the accused have preferred this appeal.

9. At the outset it may be mentioned that in the course of arguments Mr. Gupte, the learned Sr. counsel for the accused had brought to our notice that the findings recorded in the CA report, which is the basis for conviction, were not put to the accused in the statement under section 313 Cr.P.C. It was submitted that non-questioning of the accused on this vital piece of evidence had caused prejudice to the accused. Since the accused had raised the plea of non compliance of Section 313 Cr.P.C. and had alleged material prejudice, by order dated 7th April, 2016 this court directed further examination of the accused under section 313 Cr.P.C. Accordingly, the accused were examined under section 313 Cr.P.C on findings of CA report.

10. We have perused the records and considered the submissions advanced by Shri Gupte, the learned Sr. Counsel for the accused and Shri Dedia the learned APP for the State. Undisputedly, there is

no direct evidence connecting any of the accused with the commission of the crime. The case of the prosecution is based upon circumstantial evidence. In ***Krishnan v/s State represented by Inspector of police (2008) 15 SCC 430***, the Apex Court after considering large number of its earlier judgments observed as follows:

"This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
- (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;*
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that with all human probability the crime was committed by the accused and none else; and*
- (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence".*

11. It is thus well settled that to convict a person on the basis of

circumstantial evidence, all the circumstances relied upon by the prosecution should be of conclusive nature and must be clearly established. The chain of circumstances must be such as would reasonably exclude the possibility of innocence of the accused and should be consistent only with the hypothesis of the guilt of the accused.

12. In the light of the above, we shall now consider whether in the present case the prosecution succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the appellant had committed the crime.

13. The testimony of PW7 Dilip Herekar reveals that on 23.10.1999 he had seen a suspicious looking gunny bag lying outside BPT Quarters Gate, Mahim. PW7 informed PWI Raghvendra Thakur, PI, attached to Mahim police station about the said gunny bag. Thereupon PW1 went to the spot along with PW8 Police Naik Vishnu Ladkar, PW17 Suresh Angadi and other police personnel. He opened the gunny bag in presence of panch witness PW3 Ismail

Mohd. Shaikh. The testimony of PW1, PW3, PW7, PW8 and PW17 vis-a-vis the panchanama at Exh. 13 reveals that the said gunny bag contained a body of a woman aged about 20-22 years, wrapped in a bed sheet and a saree. Her hands and legs were tied with a nylon rope. There were no clothes over the body, her hair was cut, the abdomen was cut and the internal organs were protruding out. There were several injuries over the body. A tattoo mark "Shree Ram" was seen on the right forearm. The body was partly burnt and smelt of kerosene.

14. Being satisfied that it was a homicidal death, PW1 lodged the FIR (Exh.14), pursuant to which crime no.474 of 1999 was registered against unknown persons for the offences under Section 302, 201 of IPC. PW17 Suresh Angadi and PW19 Madhukar Sankhe conducted further investigation. He seized all articles viz. gunny bag, nylon rope, bed sheet, saree etc under panchanama at Exh. 21, drawn in presence of PW4 Mulji Solanki. PW19 forwarded the said incriminating material for CA analysis. The CA report at Exh.81 reveals that the said saree, bed sheet, and the nylon rope

were stained with human blood of 'B' group.

15. The inquest panchanama at Exh 17 was drawn in presence of PW2 Mohd. Farooq and the corpse was sent to Sion Hospital for postmortem. The prosecution has examined PW16 Dr. Mukesh Shamrao Ghuge, who was attached as Lecturer at Forensic Medicine, Sion Hospital, Mumbai. He has deposed that Dr. Dhakne, who was also a lecturer in forensic department at Sion Hospital, conducted the postmortem over the body of the said unidentified woman. He had deposed that Dr. Dhakne had expired in a motor accident in the year 2009. PW16 has further deposed that he had worked with Dr.Dhakne for about 8-9 years and that he is conversant with his handwriting as well as his signature. He has identified the handwriting and the signature on the postmortem report at Exh. 62 colly, which was prepared by Dr.Dhakne.

16. PW16 has deposed that as per the postmortem report the body was received in Sion Hospital mortuary on 23.10.1999 and that the postmortem was performed on 24.10.1999 between 2.35 p.m. to

4.30 p.m. As per the said postmortem report there were following external injuries over the body:

- i) Chop wound over left lateral aspect of neck.
- ii) Chop wound over abdomen
- iii) Chop wound on the right elbow flexer aspect.
- iv) Chop wound on left elbow.
- v) multiple incise wounds over forehead, face and scalp.
- vi) Chop wound on right forearm.
- vii) incise wound on left palm
- viii) incise wound on rt. leg above knee, below knee
- viii) chop wounds on post aspect of knee, over calf muscle, below knee, right ankle joint, left leg above ankle jt. and
- ix) abrasions over left shoulder and chest.

17. PW16 has deposed that the said injuries were ante-mortem and fatal. He has deposed that Dr. Dhakne had opined that the cause of death was because of shock due to multiple chop wounds.

He has deposed that the said injuries could have been caused by a sharp edged weapon. In his cross-examination, he has stated that such injuries are not possible due to fall on a hard surface or a glass. He has further stated that there were postmortem burns over the body.

18. PW17 has deposed that he had made inquiries at the spot to ascertain the identity of the said deceased lady, however, nobody came forward to identify her. Since the identity of the lady was not established, PW19 PI Madhukar Sankhe, got the news item as well as photographs of the corpse published in various news papers and news journals. He also crosschecked the missing reports at different police stations. He has stated that he came across a missing report no.105 of 1999 (Exh.75) lodged by Mayur Mulji Parmar (A1), registered at Dharavi Police Station alleging that his wife Manjula was missing from the house since 24.10.1999, 5.30 a.m. The description of Manjula tallied with the description of the corpse. He therefore called the accused no.1 and his mother (deceased A2) to the police station to identify the body. He has deposed that the

accused no.1 and his mother claimed that the body was not of Manjula. PW19 thereafter called the brother and parents of Manjula Parmar and showed them the belongings, which were recovered from the gunny bag. One of the relatives of Manjula identified the saree and sandals as of the deceased Manjula. PW19 thereafter showed the body to the brother, father and other relatives of Manjula. They identified the body as that of Manjula.

19. PW14 Suresh Chawla is the brother of the deceased Manjula. He has deposed that Manjula was his sister. She was engaged to the accused no.1 in the year 1996 and that their marriage was performed in the year 1997. PW14 has stated that on 24.10.1999 at about 8 a.m. the father of the accused came to their house and told them that Manjula had left their house at about 5 a.m to answer nature's call and that she had not returned. He has stated that the father of the accused had told them that they were going to the police station to lodge a missing report. He has stated that he and his relatives searched for Manjula but they were unable to trace her.

20. On 25.10.1999 at about 3.30 p.m. the accused no.1 told him that he had received a phone call from the police station stating that one dead body was found at Mahim. He has stated that the accused no.1 had gone to the police station to identify the body. PW14 has deposed that the accused no.1 had told the police that the body was not of Manjula.

21. PW14 Suresh Chawda, has further stated that on 26.10.1999 he had seen a news report and a photograph of a dead body published in the news paper "Mumbai Chowpher" and on seeing the news report and the photograph he went to the police station along with his aunt and told the police that the body was of Manjula. He has stated that the police took them to Sion Hospital and showed them the body. They identified the body as that of Manjula.

22. The evidence of PW11 Pramila Chawda, the sister-in-law of the deceased indicates that on 24.10.99 at about 10 a.m. the father-in-law of Manjula, had come to their house and informed them that Manjula had left the house at about 5 a.m to answer nature's call

and that she had not returned. She has deposed that she, her husband and other family members searched for Manjula in nearby locality from Churchgate to Borivali, but they could not trace her.

23. PW11 has stated that one of her neighbors had shown her the newspaper "Mumbai Chowpher" in which a photograph of a dead body was published. She has deposed that the photograph appeared to be of Manjula. Hence, they went to Mahim Police Station. The police showed them some photographs of a woman. They confirmed that the body seen in the said photographs (exh.19 colly) was that of Manjula. She has stated that she was also shown a saree and a pair of chappals which were found along with the body. She has deposed that it was the same pair of chappals which she had given to Manjula when she had come home for delivery. She also identified the Saree, as the one given to Manjula at the time of her engagement. Subsequently, they were shown the body and that they identified the body as that of Manjula.

24. The above stated facts, which are not under serious challenge,

amply prove that on 23.10.1999 the body of Manjula, the wife of the accused no.1, was found in a gunny bag outside BPT gate, Mahim. The death of Manjula was homicidal caused by multiple chop wounds. The fact that there were postmortem burns also indicates that an attempt was made to destroy the body and thus conceal her identity.

25. The testimony of PW14 Suresh Chawda, reveals that since her marriage Manjula was residing in her matrimonial house with the accused no.1 and his family members including the accused no.2 herein, who is the brother of the accused no.1. He has deposed that Manjula was treated well for about 4-6 months and thereafter her mother-in-law (the deceased A2) started harassing and torturing Manjula. He has stated that whenever Manjula visited her parental home, she complained to them that the accused used to abuse, assault and threaten to kill her. He has deposed that they had reported the matter to the panch of their community. The members of his community had intervened and advised the accused not to harass Manjula. He has stated that thereafter Manjula seemed to

be happy and it appeared that the problem was sorted out. However, her happiness was short-lived as the accused no.1 and his family members continued torturing and harassing Manjula. He has stated in his cross-examination that he or his family members had not lodged any complaint against the accused for harassing his sister. He has stated that he had not personally seen the accused harassing his sister Manjula and that he had learnt about the same through Manjula. He has stated that he wanted to lodge a complaint but his parents did not agree and hence he refrained from lodging a complaint against the accused.

26. PW11 has also deposed that the marriage of Manjula and the accused no.1 was solemnized in the year 1997 and since then Manjula was residing in her matrimonial home along with the accused no.1 and his family members. She has deposed that the deceased Manjula was treated well for about six months since her marriage. Thereafter the accused started harassing her. They would taunt her for being poor, abuse and threaten to kill her. PW11 has deposed that once when Manjula was about three months pregnant,

she had told her that the accused had assaulted her and had also threatened to burn her. She had further stated that Manjula had also lodged a complaint at Dharavi P. Stn. The police registered the said complaint as NC. However, they had called the mother-in-law of the deceased Manjula and had instructed her not to harass Manjula.

27. PW 11 has further deposed that when she had gone to the house of the accused to tell them that they could not trace Manjula, the accused told her that they could continue the search but would not find her. An omission has been elucidated as regards the accused No.1 telling PW11 to continue search Manjula and that she would not be found. PW11 has admitted that she had not stated in her statement under section 161 of Cr.P.C. that the accused had threatened to kill and burn Manjula. She has denied the suggestion that the quarrel between the deceased Manjula and her in-laws was only because of work or food. She has admitted that Manjula used to come to her matrimonial home and used to complain about the ill treatment. She has also stated her that her mother-in-law (deceased A 2) used to harass her for not doing work and that her

husband (A1) would not say anything to her. She has stated that there used to be quarrel between Manjula and her mother-in-law over trivial issues. She has admitted that they used to persuade Manjula to return to her matrimonial home.

28. The prosecution has also examined PW15 Dattaprasad Nade. He has deposed that on 26.9.1998 he was posted as SHO at Dharavi Police Station. He has deposed that one lady by name Manjula had come to the police station and lodged a complaint alleging that her mother-in-law had abused and assaulted her. He has deposed that he had registered the said NC complaint at Exh.59. In his cross examination he has stated though he had not investigated the crime, he had called said Amrutaben to the police station and had advised her to maintain peace.

29. Learned Sr. counsel Shri Gupte has submitted that the deceased had not lodged any complaint against these accused and that her grievance was only against her mother-in-law. It is true that the NC complaint at Exh.59 reveals that Manjula had complained

only against the deceased accused no.2 and not against these accused. However one cannot overlook the mindset of Indian parents, specially from a poor strata of the society, who very often disown their married daughters as 'paraya dhan' and thus compel them to suffer marital violence silently and endlessly. Under such circumstances, absence of a complaint does not presuppose a happy married life.

30. In the instant case, the evidence of PW11 and PW14 reveals that the deceased was not happy in her marital home. She had complained that she was being harassed and ill-treated by the accused but every time she was persuaded to return to her marital home. The evidence of PW14 also reveals that his parents had dissuaded him from filing a complaint against the accused and his other family members for harassing Manjula. It is thus obvious that Manjula had no support from her family and she and her minor child were entirely dependent on the accused no.1. Under these circumstances, reluctance of the deceased to lodge a complaint against the accused is not a ground either to disbelieve the evidence

of PW11 and PW14 or to believe that all was well with her marital life.

31. It is true that there are some omissions in the evidence of PW11 specially as regards threats given to the deceased. As rightly argued by learned APP Dedia, every omission or discrepancy does not affect the credibility of the witness. As it has been held by the Apex Court in ***State of Karnataka vs. Suvarnamma (2015) 1 SCC 299*** much weight cannot be given to minor discrepancies which are bound to occur on account of different perception, loss of memory and other invariable factors. It is therefore, the duty of the Court to ascertain the truth from the facts of the case. On going through the entire evidence of PW11 whereof the opinion that the evidence of PW11 inspires confidence and her evidence cannot be discarded in its entirety on the basis of some stray omissions.

32. The evidence of PW11 and PW14 proves that the deceased was harassed and subjected to cruelty. The evidence of PW11 in particular proves that on the eve of her body being found Manjula

had told her that her 10 month old son had broken the glass of the refrigerator because of which her mother-in-law and sister-in-law were angry with her. She has deposed that Manjula had further told that her mother-in-law had also threatened her of more trouble once her husband (A1) returns from work. She has admitted in the cross examination that Manjula apprehended that the accused No.1 and her father-in-law would shout at her because of breaking of the glass of the refrigerator. She has stated that thereafter Manjula went to her matrimonial home and that she never returned thereafter.

33. The evidence of this witness, clearly indicates that on 22.10.1999 the son of Manjula had broken the glass of the refrigerator for which reason her mother-in-law (the deceased A-2) and her sister-in-law had shouted at her and threatened her that she would be in trouble once her husband (A-1) returns home. This evidence has not been controverted and there is no reason to disbelieve the same. The fact that Manjula had narrated the said incident to PW11 gives a clear indication that she was apprehensive and sensed trouble. This fact gains relevance as on the next

morning the body of Manjula was found in a gunny bag on 23.10.1999.

34. The evidence of PW19 reveals that on 24.10.1999 accused No.1, had lodged a missing report at Exh.75 at Dharavi Police Stn. stating that Manjula was missing from the house since 24.10.1999 at 5.30 a.m. The accused no.1 has not denied the said fact in his statement under Section 313 of Cr.P.C. The fact that the body of Manjula was found on 23.10.1999 and was referred to Sion hospital on the same day for postmortem clearly indicates that the accused No.1 had lodged a false report that Manjula was missing since 24.10.1999. In ***Rameshbhai Mohanbhai Koli & Ors vs State Of Gujarat on 20 October, 2010*** the Apex Court has reiterated that " *A false plea taken by an accused in a case of circumstantial evidence is an additional link in the chain of circumstances. [Vide Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116 and Mehbub Samsuddin Malek & Ors. vs. State of Gujrat (1996) 10 SCC 480].*"

35. It is also pertinent to note that the evidence of PW19 proves that the physical features of the said corpse tallied with the description of the missing person given in the missing report dt. 24.10.1999 at Exh.75. Hence he had called the accused no.1 and his family members to the police station to identify the body. His evidence indicates that the accused had claimed that the body was not of Manjula. Whereas the evidence of PW11 and PW14 reveals that they had identified the deceased on the basis of her physical features, tatoo mark as well as her belongings. The evidence of PW1 who had informed the police about suspicious looking gunny bag and who was present when the gunny bag was opened reveals that the face of Manjula was recognizable. The evidence on record therefore indicates that the body was not beyond recognition and the same could be identified on the basis of physical features as well as the tatoo mark on the forearm, and the belongings found along with the body, despite which the accused had claimed that the body was not of Manjula. The conduct of the accused in lodging a false missing report and furthermore refusal to identify the body as that of Manjula are the incriminating circumstances which are incompatible

with the innocence of the accused.

36. PW19 had arrested accused on 27.9.1999. He had seen some injuries on the person of the accused and hence he had referred them for medical examination. PW13 Dr. Ashok Nandapure examined the accused. The testimony of PW13 reveals that Mayur Parmar (A1) had following injuries:

- (i) linear abrasion over neck front left side oblique blackish colour scab of size 5cmx4cm over sternal notch.
- (ii) linear abrasion over right shoulder top vertically oblique 4 cm in length blackish brown colour scan found.

37. PW13 Dr. Ashok Nandapure has further deposed that Bharat Parmar (A3), had following injuries :

- (i) incise wound over index finger right hand palm aspect horizontal, at the distal end of middle phalnx 2 x 0.2cm skin deep brownish edges.
- (ii) teeth bite mark on right middle finger dorsal aspect three in number varying size of 0.2 to 0.1 cm blackish brownish scab.
- (iii) two teeth bite marks on index finger right hand dorsal at the base of terminal phalnx varying in size 0.2

to 0.1 cm brownish blackish colour.

38. PW 13 has produced the medical certificate at Exh.47 and 49 respectively. The said medical evidence was brought to the notice of the accused. Both these accused have not denied having sustained injuries as stated by PW13 and have also not offered any explanation about the injuries suffered by them. The nature of the injuries suffered by the accused and non-explanation of the same is an additional link in the chain of circumstances.

39. The testimony of PW19 reveals that he had visited the house of the accused on 27.10.1999 along with PW4 Mulji Solanki and another panch witness. He had seen blood stains on the walls, steel utensils, curtains etc. He also noticed hair and a piece of flesh on the door of the bathroom. He called a team of chemical analyser and with the help of experts; he took the scrapings from the walls, curtains, utensils etc. He has further deposed that he also found a nylon rope of about 20 feet length in the house of the accused. All the incriminating articles were packed, sealed and seized in presence of panchas under panchanama at Exh.21. He has denied

that the panchanama at Exh.21 was not drawn in the house of Mulji in presence of the panch witnesses. He has also denied that the said incriminating material was not seized from the house of Mulji.

40. PW4 who is one of the witnesses to the said panchanama has deposed that on 27.10.1999 he was called by Mahim police and requested to serve as a witness to the panchanama to be drawn at the house of one Mulji. He accompanied the police to the house of Mulji. He has stated that there were blood stains on the cupboard and curtains in the sitting room, and steel tank and wall of the kitchen. They also notice some hair and flesh (tissue) in the bathroom. He has stated that the police seized all the said articles including a piece of nylon rope and the saree fabric found in the house. He has identified his signature on the panchanama at Exh. 21 as well as on the packets (Art. 19A colly. to Art.19F) in which flesh/tissue, saree fibre, hair, scrapings, nylon rope etc. were packed and sealed.

41. The learned Senior Counsel Shri Gupte has submitted that the

recovery of nylon rope and other incriminating material from the house is highly suspicious. He has further argued that there was delay in forwarding the said articles for CA analysis. He therefore submits that no credence can be given to such evidence.

42. It is pertinent to note that PW4 is a resident of the same locality. His evidence indicates that his house is situated at a distance of 200 ft away from the house of the accused. In his cross examination he has stated that Mulji, the father of the accused, is his brother-in-law. There is nothing on record to suggest that the relations between this witness and the accused are strained. There is nothing to suggest that he had any animosity towards the accused or that he had any motive to level false accusations against them. In short, no material has been elicited to discredit his testimony.

43. The testimony of PW4 which finds due corroboration in the testimony of PW19 vis-a-vis the panchanama at Exh.21 proves beyond reasonable doubt that visible bloodstains were seen at different places in the house of the accused. The said scrapings as

well as a nylon rope, hair and a piece of flesh and saree fibre found in the house were seized from the house of the accused and the same were packed and sealed separately. PW4 has identified his signatures on the packets in which the said articles were labeled. The CA report also reveals that the said articles were received in sealed condition with intact seals. Hence we do not find anything suspicious in the seizure of these articles from the house of the accused.

44. The testimony of PW19 indicates that vide letter at Exh.80 he had forwarded all the incriminating material seized by him in the course of investigation for CA analysis. He has produced the CA report at Exh.81. It may be mentioned that the prosecution has not placed on record the C.A. report in respect of the blood group of the deceased. Nonetheless, the CA report at Exh.81 reveals that the bed sheet, saree, gunny bag, and all the articles found along with the body were stained with human blood of 'B' group, which fact sufficiently proves that the blood of the deceased was of 'B' group.

45. A perusal of the CA report at Exh.81 reveals that the scrapings on the wall of the sitting room, main door, steel tank were stained with human blood of 'B' group. Similarly, the hair and tissue seized from the bathroom door was human hair and tissue and both were stained with blood of 'B' group. The CA report further reveals that the blood found on the curtains was human blood. However, the blood group report was inclusive. The CA report further reveals that the nylon rope seized from the house of the accused tallies with the nylon rope found on the body of the deceased in respect of hue, design and physical dimensions. The CA report further reveals that the fiber seized from the house of the accused tallies with the fibre of the saree found on the body of Manjula in respect of hue and fibre characteristics. There is nothing on record to indicate that the delay in forwarding the articles to CFSL, Mumbai, has caused any prejudice to the accused. Consequently, there is no reason to discard the CA report.

46. Finding of human hair, tissue/flesh and blood stains of the same group as that of the deceased, at several places in the house

of the accused, as well as finding of a nylon rope of same hue, design and physical dimensions as that of the rope found on the body of the deceased, is a highly incriminating circumstance which indicates that the offence was committed in the house of the accused.

47. Learned APP Shri Dedhia has submitted that the accused have denied all the incriminating circumstances without making any attempt to clarify or explain such circumstances. Learned APP has submitted that such denial provides a missing link for completing the chain of circumstances. He has relied upon the decision of the Apex Court in ***Joseph V/s.State of Kerala (2005) 5 SCC 1977*** wherein the Apex Court has held that falsity of the defence plea, false answers given to Court, denial of circumstances instead of making an attempt to explain or clarify the incriminating circumstances, provides a missing link for completing the chain of incriminating circumstances.

48. In ***State of Maharashtra v. Suresh, (2000) 1 SCC 471***, it has

been held that when the attention of the accused is drawn to such circumstances that inculcate him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for completing the chain of circumstances. Similar was the view taken in ***Jagroop Singh vs. State of Punjab, (2012) 11 SCC 768, Alagupandi @ Alagupandian vs. State of Tamil Nadu, Munish Mubar vs. State of Haryana (2013) 1 SCC (Cri.) 52.***

49. In the instant case all the incriminating circumstances were brought to the notice of the accused when they were questioned under section 313 of the Criminal Procedure Code. The accused have not given any explanation but have either feigned ignorance or denied the circumstances. They have not even made an attempt to explain or clarify the incriminating circumstances inculcating them and connecting them with the crime. Total denial of such circumstances coupled with failure to give explanation provides a missing link for completing the chain of incriminating circumstances.

50. Learned senior counsel Shri Gupte has submitted that the

provisions of section 106 cannot be invoked since the prosecution has failed to establish that the applicant were present in the house on the date of the incident. He has relied upon the decision of ***Tomaso Bruno Vs. State of M.P. 2003 SCC (Cri) 54.***

51. Section 106 of the Evidence Act and the illustrations appended thereto read as under:

"106. Burden of proving fact specially within knowledge
- When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

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

52. In ***Shambhu Nath Mehra v. State of Ajmer, AIR 1956 SC 404***, the Apex Court has observed:

"9. This 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. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. Emperor A.I.R. 1936 P.C. 169 and Seneviratne v. R. [1936] 3 All E.R. 36, 49. ...

10. xxxx

11. *We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if*

knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be "especially" within the knowledge of the accused. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well-established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts."

53. In ***Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681***, the Apex Court has held 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 ArijitPasayat, J.in State of Punjab v. Karnail Singh 2003 Cri. LJ 3892). 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."

54. Similarly in ***Pritpal Singh v. State of Punjab (2012) 1 SCC 10***, the Apex Court, while considering the scope of section 106 India Evidence Act, has reiterated that:

"53. In State of W.B. v. Mir Mohammad Omar [(2000) 8 SCC 382 : 2000 SCC (Cri) 1516 :AIR 2000 SC 2988] this Court held that if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Section

106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. Section 106 the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. (See also Shambhu Nath Mehra v. State of Ajmer [AIR 1956 SC 404 : 1956 Cri LJ 794] , Sucha Singh v. State of Punjab [(2001) 4 SCC 375 : 2001 SCC (Cri) 717 : AIR 2001 SC 1436] and Sahadevan v. State [(2003) 1 SCC 534 : 2003 SCC (Cri) 382 : AIR 2003 SC 215] .) "

55. In the case of **State of Rajasthan v. Kashiram (2006) SCC 254** the Apex Court has held that

“If the accused fails to offer an explanation on the basis of facts within his personal knowledge, he fails to discharge the burden cast upon him by section 106 of

the evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation on the burden placed on him, that itself provides an additional link in the chain of circumstances proves against him. Section 106 does not shift the burden of proof in the criminal trial which is always on the prosecution. It lays down a rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain.”

56. It is thus well settled that Section 106 is designed to meet certain exceptional cases where the prosecution is unable to prove certain facts which are specially within the knowledge of the accused. This section however does not absolve the prosecution from discharging its initial burden of proving the guilt of the accused. The burden to establish the basic factum probans is solely and exclusively on the prosecution/State. It is from such established facts that the court can infer and presume probability about existence or non- existence of a further fact. It is only then that section 106 would

apply to cases where the accused by virtue of his special knowledge is required to offer explanation regarding such facts which are preeminently and exclusively within his knowledge. Failure to offer explanation of such facts specially within the knowledge of the accused would authorize the court to draw a different inference. It has also to be borne in mind that the said explanation is not tested or evaluated on the highest parameter but preponderance of the probability is the criteria applicable to the explanation of the accused.

57. The decision relied upon by the learned senior counsel Shri Gupte is not applicable to the facts of the present case. In the instant case, it is not in dispute that the deceased was residing in her matrimonial home along with the accused and the other family members. On 22nd October, 1999, her mother -in-law had shouted at Manjula as her minor son had broken the glass of the refrigerator. She had told her that she would be in trouble once accused No.1 returns home. She had narrated the said incident to PW11 on the same evening and thereafter she had returned to her matrimonial home. On 23.10.1999, her body was found in a gunny bag outside

the BPT gate and furthermore blood traces and other incriminating material in the form of human hair and tissue stained with human blood with same group as that of the deceased were found in the house of the accused. Under such circumstances, only the accused could have explained what had transpired within the confines of four walls of their house after Manjula had returned to the Matrimonial home on 22.10.1999 evening. The accused have failed to explain the unusual situation that led to sudden disappearance of the deceased from the matrimonial home as well as unnatural death of Manjula. As stated earlier, the accused have also not explained the above stated inculpatory circumstance viz. finding of blood, hair, tissue with same blood group as of Manjula in the house. Failure to explain the special facts within their knowledge coupled with the conduct of the accused provides for an additional link in the chain of circumstances.

58. The prosecution has also relied upon following recoveries made under section 27 of the Indian Evidence Act:

- i) Discovery of place where the body was thrown.

(panchanama Exh.69/69A)

ii) Recovery of broken mangalsutra of the deceased
and the clothes of the accused at the instance of A3
(Panchanama Exh.44/44 A)

iii) Recovery of a cane basket and two knives pursuant
to the disclosure statement made by the accused no.1.
(panchanama Exh. 36/36A)

59. Learned Sr. Counsel Shri Gupte has submitted that the alleged discovery of the place vide panchanama Exh.69/69A has no evidentiary value as the place where the body was thrown was already known to the police. He has further submitted that the witnesses have not identified the clothes allegedly worn by the accused and as such no reliance can be placed on the recovery of clothes. He has further submitted that there is no evidence to prove that the incriminating material allegedly recovered at the instance of the accused were sealed and were kept in the same condition till the same were forwarded to CSFL, Mumbai. He therefore submits that no reliance can be placed on the said recovery panchanama. In

support of his contention he has relied upon the decision of the Apex Court in ***Sattatiya @ Satish Rajanna Kartalla v. State of Maharashtra (2008) 3 SCC 210***; the decisions of this court in ***Ashraff Hussein Shah v. State of Maharashtra 1996 Cri.L.J. 3147*** and ***Deoraj Deju Suvarna v. State of Maharashtra 1994 Cri.L.J.3602***.

60. The Apex Court in ***Anter Singh v. State of Rajasthan, (2004) 10 SCC 657***, considered the scope and ambit of Section 27 of the Indian Evidence Act and observed:

“16. The various requirements of the section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by

the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.”

61. In **Pandurang Kalu Patil Vs. State of Maharashtra (2002) 2 SCC 490**, the Apex Court has observed thus:

“5. Even the recent decision in [State of Maharashtra v. Damu](#) (2000) 6 SCC 269 this Court followed Pulukuri Kottaya AIR 1947 PC 67 with approval. The fallacy committed by the Division Bench as per the impugned judgment is possibly on account of truncating the word “fact” in [Section 27](#) of the Evidence Act from the adjoining word “discovered”. The essence of [Section 27](#) is that it was enacted as a proviso to the two preceding sections (see [Sections 25](#) and [26](#)) which imposed a complete ban on the admissibility of any confession made by an accused either to the police or

to anyone while the accused is in police custody. The object of making a provision in Section 27 to permit a certain portion of the statement made by an accused to a police officer admissible in evidence whether or not such statement is confessional or non-confessional. Nonetheless, the ban against admissibility would stand lifted if the statement distinctly related to a discovery of fact"

62. In **Ashraf Hussain Shah (supra)** the Division Bench of this Court has reiterated the principles in *Deoraj Deju Suvarna (supra)* as under:

"...in the case of Devraj Deju Suvarna Vs. State of Maharashtra, reported in 1994 Cr.L.J.3602, after considering a large number of authorities, has held that not only should the prosecution adduce evidence that after seizure the articles were sealed but should also lead link evidence to the effect that till being sent to the chemical analyst. They were throughout in a sealed condition. This is done to eliminate the suspicion that blood might not have been put on the articles subsequent to the recovery and prior to being sent to the chemical analyst".

63. Reverting to the facts of the case, it is the case of the prosecution that on 28.10.1999, while the accused no.3 was in custody, he had volunteered to show the place wherein the body of Manjula was thrown. The said panchanama allegedly under section 27 of the Evidence Act was drawn in presence of PW18. In this regard PW18 and PW19 have stated that the accused no.3 had taken them to BPT Colony and pointed out the place wherein the body was thrown. The said panchanama is produced at Exh.69/69A.

64. It may be mentioned that the place where the body was thrown was already known to the police. The information given by the accused had not led to any discovery of fact and consequently the said evidence is not admissible under section 27 of the Indian Evidence Act and the learned trial Judge has rightly not relied upon the same.

63. The testimony of PW19 reveals that on 29.10.1999, the accused no.3 had volunteered to show the place wherein he had

kept the broken mangalsutra of the deceased and the clothes worn by him and the other accused as on the date of the incident. PW19 had recorded the said disclosure statement in presence of PW12 Aziz Shaikh. PW12 has confirmed the contents of the memorandum statement at Exh.44. PW 12 has deposed that the accused No.3 led them to his house at Kumbharwada, the father of the accused No.3 was present in the house. The accused No.3 took them near one drawer and removed a bundle of cloths i.e two trousers, one T shirt, one shirt, one blouse, one saree, Petticoat, two punjabi dresses and one mangalsutra. He has deposed that the said articles were packed and sealed in separate packets and that his signature was obtained on each of the packets. He has identified the clothes (Article 6 to 14) and the mangalsutra (Article 19 G). He has also identified his signature on the envelopes / packets in which these articles were packed and sealed. In his cross-examination, he has stated that he is an electrician by profession. He has further stated that he was deposing before the court for the first time, which statement clearly rules out the possibility of this witness being a stock witness. He has stated that the accused were not handcuffed

at the time of the said panchanama. He has denied the suggestion that the panchanama was already prepared and that nothing was recovered in his presence.

64. PW 12 is an independent witness. Nothing has been elucidated in his cross-examination to discredit his testimony. The testimony of PW12 as well as of PW19 vis-a-vis panchanama at Exh.44 / 44A proves that a broken mangalsutra and a bundle of clothes i.e. two trousers, one T shirt, one shirt, one saree, one blouse, petticoat, two punjabi suits were recovered pursuant to the disclosure statement made by the accused No.3. The said articles were separately packed, sealed and seized under the panchanama at Exh.44A. His statement regarding sealing of the packets has gone unchallenged.

65. The testimony of PW5 Sachin Dhanu reveals that on 30.10.1999 he was called at the police station and that the police had opened one sealed packet in his presence. The said packet contained a broken silver mangalsutra. He has deposed that the

police had shown the said mangalsutra to PW14 Suresh, and that PW14 had identified the same as that of his sister, the deceased Manjula. The testimony of PW14 also reveals that he was called to the police station about 2-3 days after identification of the body of Manjula. He has stated that the police had shown to him one mangalsutra. He has deposed that he had identified the said mangalsutra as the one given to his sister Manjula by the committee, which had performed mass marriage.

66. PW10 Velji Jethwa, was the Vice President of Prajapati Sorthiya Kumbhar Samaj, which arranges and celebrates mass marriages. He has deposed that on 6.2.1997 they had performed 67 marriages, including the marriage of accused no.1 with Manjula. He has deposed that Prajapati Samaj had given a silver mangalsutra with Ambamata pendent to Manjula. He has deposed that on 30.10.1999 the police had called him to the police station and had shown to him one Mangalsutra. He had identified the said Mangalsutra as the one given to Manjula on the date of her marriage.

67. The evidence of PW14 and PW10 proves that the said broken Mangalsutra recovered at the instance of the accused no.3 was of the deceased-Manjula. It is also pertinent to note that the testimony of said PW5 reveals that the said mangalsutra was resealed in his presence under panchanama at Exh.34. The said mangalsutra was forwarded for CA analysis. The CA report at Exh.81 reveals that the mangalsutra was received in a sealed packet with intact seals. The CA report further reveals that the said mangalsutra was stained with human blood of B group, which was same as that of the deceased-Manjula. The aforestated evidence amply proves that the accused No.3 was in possession of the mangalsutra of the deceased and that the said mangalsutra was stained with blood having same blood group as that of the deceased. The accused no.3 has not offered any explanation as to how he came in possession of the blood stained mangalsutra of the deceased.

68. The evidence of these witnesses also indicates that some washed clothes allegedly worn by accused No.3 and the other co-accused were recovered at the instance of the accused no. 3. These

clothes were also forwarded for forensic examination. The CA report at Exh.81 indicates that a shirt (article 12) and trousers (Article 14) were stained with human blood of 'B' group. The trousers and 'T' shirt at (Articles 11) and (Article 13) were also stained with human blood, however, the blood group results of the same were inconclusive.

69. It is pertinent to note that apart from ladies apparel, two trousers, a shirt and a T-shirt (Art.11 to14) were recovered under panchanama at Exh. 44 and 44A. There is no evidence on record as to which of these clothes at (Art.11 to14) were worn by the accused no. 3. It is also to be noted that the accused No.3 had himself sustained injuries and the C.A. report at Exh.54 reveals that his blood was also of 'B' group. Under the circumstances, the possibility of the clothes of the accused no.3 having been stained with his blood cannot be ruled out. Hence, we are not inclined to rely upon this circumstance to link the accused No.3.

70. Now coming to the recovery of the weapon and the cane

basket, PW19 has deposed that on 5.11.1999 at about 2 p.m. the accused no.1 had volunteered to show the weapons of offence i.e. the knives as well as the cane basket. The said statement at Exh.36 was reduced into writing in the presence of PW6. The testimony of PW6 and PW19 reveals that the accused no.1 had led them to a loft of a godown at Kumbharwada, Dharavi. The accused no.1 produced one cane basket and two knives from the loft of the said godown. PW6 has stated that the cane basket was stained with blood. These witnesses have stated that the cane basket and the knives were packed, labeled, sealed and seized under the panchanama at Exh.36A. The said knives and the cane basket were sent for chemical analysis. The CA report at Exh.81 reveals that the cane basket was stained with blood of 'B' group whereas no blood was detected on the knives.

71. It is pertinent to note that though PW19 has stated that he had sealed the said cane basket and the knives, he has admitted in the cross examination that it is not recorded in the panchanama at Exh.36A that the said cane basket and the knives were sealed. It is

also pertinent to note that the testimony of PW9, who has been examined to prove that the deceased accused no.2 and the accused no 3 were seen going from their house with a cane basket, has stated in his cross-examination that he was shown the said cane basket at the police station. This statement falsifies the contention of the Investigating Officer that the cane basket was sealed on the spot. Failure to seal the cane basket renders the CA report as well as the testimony of PW9 inconsequential and irrelevant. Furthermore, there is no other connecting evidence to prove that the said knives and the cane basket were used for commission of crime.

72. Having analysed the evidence. we would like to recapitulate and point-wise record the evidence adduced by the prosecution to implicate and show that the accused were the perpetrators of the offence in question. These circumstances are:-

1. Manjula was married to accused no.1 and since her marriage in the year 1997, Manjula was residing in her matrimonial home alongwith her husband (A1) and his family members (including A3).

2. Manjula was treated well for about six months but thereafter she was harassed and subjected to cruelty.
3. Manjula had visited her parental home on the eve of her body being found and she had complained to PW11 that her mother-in-law was angry with her because her minor son had broken the glass of the refrigerator and had further warned her that there would be trouble for her once her husband (A1) returns home.
4. On the very next day i.e. 23.10.1999, body of Manjula was found in a gunny bag outside BPT gate at Mahim.
5. Death of Manjula was homicidal.
6. The accused denied that the body was that of Manjula despite the body being recognizable.
7. Accused no. 1 had filed a false report that Manjula was missing since 24.10.1999.
8. The accused failed to give reasonable explanation about abrasions and teeth bite on their person.

9. Traces of human blood having same blood group as of Manjula were found in the house of the accused.

10. Nylon rope, which tallied with the rope on the body of Manjula was seized from the house of the accused.

11. Human hair and flesh with same blood group as Manjula seized from the house of the accused.

12. Blood stained Mangalsutra of Manjula with same blood group as that of Manjula recovered at the instance of A3.

13. The accused have not explained the above incriminating circumstances.

14. The accused have not given any reasonable explanation about the disappearance of Manjula from the matrimonial house or cause of her death.

72. The circumstances established as above unmistakably show that the appellant had committed murder of Manjula and thereafter dumped the gunny bag containing her body outside BPT Gate. We

see no reason to interfere with the judgment of the trial Court in respect of conviction and sentence of the Applicant for offences punishable under section 302 and 201 r/w. Section 34 of the IPC. Hence, the appeals are dismissed.

(ANUJA PRABHUDESSAI, J.) (SMT. V.K.TAHILRAMANI, J.)

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