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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 159 OF 2000

Shri Abbas Nawaj Shaikh

Age- 51 years, residing at Everest
Apartment, Block No.6, Hotgi Road,
Solapur, Dist. Solapur.

.. Appellant

Vs.

State of Maharashtra

.. Respondents

Mr. A. H. H. Ponda for the Appellant.

Mrs. S. V. Sonavane, APP for the Respondent-State.

**CORAM : INDRAJIT MAHANTY AND
V. K. JADHAV, JJ.**

Judgment reserved on : **27th NOVEMBER, 2018.**

Judgment pronounced on : **18th DECEMBER, 2018.**

JUDGMENT (Per V. K. Jadhav, J.)

1. This is an Appeal preferred by the sole accused against the Judgment and Order of conviction passed by the V Additional Sessions Judge, Solapur dated 30.10.1999 in Sessions Case No. 81 of 1999. The learned V Additional Sessions Judge, Solapur convicted the Appellant-accused for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and also to pay fine of Rs.2,000/- I. D. to suffer R.I. for three months.

2. The prosecution case is as under:

The Appellant-accused was prosecuted for having committed the murder of his own daughter, namely, Heena by strangulation at his residence in Block No.6, Everest Apartment, Hotgi Road, Solapur. One Gausiya Begum was given in marriage to Appellant-accused in the year 1986. The said Gausiya Begum was daughter of PW 2-Iliyas Khan. The said Gausiya Begum died on 16.07.1997 leaving behind her two daughters, namely, Reshma and Heena. Since her death, the Appellant-accused was staying with his two minor daughters in Block No.6 on the second floor in Everest Apartment at Solapur. According to the prosecution, the accused was feeling lonely after the death of his wife Gausiya Begum. Thus, he made up his mind to get remarried. He had strained relations with his first wife PW 7-Jaibunnisa and thus it was difficult for him to live in the company of his first wife along with daughters. It is also the prosecution case that the accused was thinking that his two daughters are obstacles for his remarriage. Deceased Heena was not keeping good health since 23.11.1998. She was, therefore, not attending the school. She was under the treatment and the accused himself taken her to the hospital of PW 8-Dr. Milind Kulkarni at Solapur on 2-3 occasions. On 14.12.1998, his another daughter PW 4-Reshma had complained about pains in her abdomen and she had shown her reluctance to attend the school on that day. However, the accused asked her to attend the school on that day with concession to

take off on the next day. Thus, PW 4-Reshma went to school in the morning. The accused and his younger daughter Heena remained at home. In between 10.30 a.m. to 10.45 a.m. the accused informed to PW 6-Shahanaz that Heena was dead. Thereafter the message has given to some other persons. Even the neighbours are also arrived at the flat of the accused. Some lady members removed the linen on the dead body and noticed some marks below the chin so also on the throat of the deceased Heena. PW 3-Mumtaz, maternal aunt of deceased Heena also got the information about the death of deceased Heena and thus along with her two sisters started proceeding towards the flat of the accused. On way, their father also accompanied them. They had also seen the same marks below the chin and on the throat of the deceased Heena. PW 2-Iliyas Khan Pathan suspected about the murder of deceased Heena. He has, thus, lodged the complaint against the accused. Initially on the basis of report of the accused, A. D. No. 125 of 1998 came to be registered in the concerned police station. However, on the basis of complaint lodged by PW 2-Iliyas Khan Pathan, who is witness, crime came to be registered against the accused. Thus, the Investigating Officer has carried out the investigation and submitted the charge-sheet against the accused for having committed the murder of his daughter Heena as she was hurdle for his second marriage.

3. The learned Additional Sessions Judge has framed charge against the accused for the offence punishable under Section 302 of the IPC. The accused pleaded not guilty to the charge and claimed to be tried.

4. According to the defence of the accused that his daughter deceased Heena was suffering from Malaria and it was not under control. Even though the treatment was being given, there was no improvement. Prior to the present incident, there are some instances of broad day dacoity and killing in Everest Apartment. On 14.12.1998, since 8.00 a.m. accused went to ground floor for fetching the water and whenever he goes down for fetching the water, his house remained open and deceased Heena was alone sleeping in the house. At about 10.00 a.m. he found that deceased Heena was no more. He felt that the deceased might have died due to her illness. Thus, he has called his another daughter from the school. According to the accused, the Complainant is addicted to liquor and he used to demand money from his deceased wife Gausiya. Even he had lodged complaint against him in Sakhar Peth Police Chowki, Solapur and therefore the Complainant had grudge against him. Even on 14.12.1998, after the death of Heena, the Complainant has demanded certain amount from him or otherwise threaten to lodge the complaint. He never illtreated his daughters for the reasons that he wanted to perform second marriage. The prosecution witnesses are deposing falsely at the instance of the

Complainant. PW-Reshma residing with the Complainant and as such under their pressure, she has deposed against him.

5. The prosecution has examined in all 16 witnesses to substantiate the charge levelled against the accused. The statement of the accused also came to be recorded under Section 313 of the Code of Criminal Procedure and accused also submitted his explanation vide Exhibit 58. The learned 5th Additional Sessions Judge, Solapur by his Judgment and order of conviction dated 30.10.1999 in Sessions Case No. 81 of 1999 convicted the accused under Section 302 of the IPC and sentenced him to suffer imprisonment for life and pay fine of Rs.2,000/- I. D. to suffer R. I. for three months. Hence, this Appeal.

6. The learned Counsel for the Appellant-accused submits that the prosecution case entirely rest upon the circumstantial evidence and there is no direct evidence in this case. The prosecution has failed to establish the chain of the circumstantial evidence. There is no motive for the accused to commit the murder of his own daughter. The learned Judge of the trial Court has observed that the explanation about the death of the deceased Heena tendered by the accused is not satisfactory and accordingly, convicted him. The learned Counsel submits that it is for the prosecution to prove its case beyond reasonable doubt against the accused and the

explanation about the death if found to be unsatisfactory, the same would be taken as circumstance against the accused. The learned Counsel submits that there are many circumstances pointing out the innocence of the accused. The circumstances relied upon by the prosecution are not conclusive in nature and also not consistent with the guilt of the accused. The learned Counsel submits that the trial Court has not taken into consideration the explanation Exhibit 58 tendered by the accused in its proper perspective. In view of the said explanation, the possibility of the murder of deceased committed by some other person when accused went to ground floor for fetching the tap water cannot be ruled out. The learned counsel submits that as the prosecution has failed to prove the case against the accused beyond reasonable doubt and as such the accused is entitled for the benefit of doubt.

7. The learned counsel in order to substantiate his submission placed reliance in a case of **Shankarlal Gyarsilal Dixit Vs. State of Maharashtra (1981) 2 SCC 35.**

8. Learned APP submits that the prosecution has established the chain of circumstantial evidence. There is strong motive on the part of the accused for the commission of murder of his daughter. The accused had expressed himself before his both the daughters that they are hurdle for his

remarriage. PW-Reshma, another daughter of the accused has deposed about the same. The learned Counsel submits that the accused has tried to suppress the injury below the chin and on the throat/neck of deceased Heena. Furthermore, the accused has given false explanation that deceased Heena died due to Malaria. The learned APP submits that the prosecution has proved the case beyond all reasonable doubts. The learned Judge of the trial Court has rightly convicted the accused. There is no substance in the Appeal and the Appeal is liable to be dismissed.

9. The prosecution, as it seems from the evidence and the Judgment and order of conviction, relied upon the following circumstances:

- (i) Homicidal death of deceased Heena;
- (ii) Motive – Accused wanted to remarry and he felt the responsibility of the daughters would be hurdle in the remarriage;
- (iii) Pre-post incident conduct of the accused-

(1) On the day of incident, accused did not allow his another daughter Reshma to stay in the house though she was insisting for it on the ground of her own illness or for giving company to her ailing sister deceased Heena;

(2) Accused had disclosed before the neighbours that deceased Heena died and further refused to call doctor though insisted by them under the pretext that since Heena was dead,

no purpose would be served by calling the doctor;

(3) Accused had suppressed that deceased Heena had some marks below her chin, over her neck and on the other hand disclosed to those members that due to fall, deceased Heena had sustained those marks;

(4) Accused was found scared and he was making haste for burial of the body;

(5) Accused had falsely disclosed to the relatives from his deceased wife Gausiya's side that deceased Heena died due to Malaria.

(iv) Past events-

(1) Accused was illtreating his deceased wife Gausiya during her lifetime;

(2) Accused was not allowing his daughters to meet the relatives from the side of their mother Gausiya;

(3) Accused used to put the daughters on starvation and confine in the room.

10. So far as the homicidal death of deceased Heena is concerned, the learned Counsel for the Appellant-accused has not seriously challenged the same. We have carefully perused the post mortem notes Exhibit 28. In column No. 17 of the post mortem, the following injuries have been mentioned:

“(1) Bruise on neck below thyroid eminence, horizontal 8.5” length, 3/4” breadth on left side and 1” breadth on right anterior aspect, slightly faint on right lateral and anterior aspect of neck, brown extending upto both lateral side of neck. Dissection of neck, subcutaneous tissue under bruise shows extra vasation of blood.

(2) Bruise on the left side of chin 1 1/2” x 1/2” brown.

(3) Bruise on right side of chin 1/2” x 1/2” and below chin 1/2” x 1/2” brown.”

On internal examination, the brain found congested with petechae haemorrhage. However, hyoid bone was intact larynx and trachea was containing froath, mucous membrane was congested. Both lungs were congested and all other internal organs were congested.

11. The prosecution has examined PW 5-Dr. Ashok Kanki and accordingly proved the contents of post mortem Exhibit 28. PW 5-Dr. Ashok Kanki has preserved the tissues for histopathological report. Though, the ideal signs of strangulation such as fracture of hyoid bone etc. found absent, on going through the report of histopathology, we find that the opinion with regard to cause of death, as strangulation, is correct and proper. PW 5- Dr. Ashok Kanki has referred the histopathology report and deposed that the opinion given by him and Dr. Belvi as to the death of deceased Heena by strangulation is correct. He has further clarified that there is no suggestive finding of Malaria in the histopathology report. The

prosecution has also examined PW 13-Dr. Deepak Kulkarni, Associate Professor in Pathology. He has received 7 slides of different organs like skin, brain and spleen of deceased Heena and after going through the said slides, he found that all the organs showed congestion and case of death of strangulation. In his opinion, the strangulation was due to pressing of hand on the front portion of the neck. We find no fault in the finding recorded by the trial Court about the homicidal death of deceased Heena.

12. Some of the prosecution witnesses have projected the accused in a manner that the accused was illtreating his wife Gausiya Begum during her lifetime and he was also treating his daughters in cruel manner. PW 3-Mumtaz, who happened to be a real sister of deceased Gausiya Begum, has deposed that the accused was illtreating his wife Gausiya Begum and he used to beat his wife in case her relatives see her. She has further deposed that the accused was not allowing his daughters to see them and also used to put them on starvation and confined in the room. PW 9-Sabir Patel, who happened to be a neighbour of the accused, deposed that the accused used to confine his daughters by putting the lock to the door and go out for about 4 to 5 hours. He has further deposed that once, light went off and both the daughters of the accused began to cry. He went there and saw a lock outside the door. Both the daughters of the accused were inside the house and he asked them not to raise the shout. According to him, the

accused was not behaving with his wife and daughters properly.

13. In the backdrop of these allegations, we have gone through the evidence of PW 2-Iliyas, who happened to be father of deceased Gausiya Begum and grandfather of deceased Heena and Reshma. PW 2-Iliyas in para 7 of his cross-examination has stated that the relations between the accused and his wife Gausiya Begum were cordial. Gausiya Begum died by heart attack. He has further stated that he did not suspect at any time that the accused must have committed murder of his daughter Gausiya Begum. In answer to a question he explained that “it did not happen at any time that I suspected about the death of Gausiya Begum and I kept quiet because of my two grand-daughters.” It, thus, appears that PW 3-Mumtaz has made false allegations against the accused that he was illtreating his wife Gausiya Begum. So far as the allegations about the cruel behaviour with daughters on the part of the accused is concerned, the evidence of PW 4-Reshma (second daughter of the accused) assumes importance.

14. PW 4-Reshma in para 4 of her cross-examination has deposed as under:

“I used to call my mother as “Ammi” and father as “Pappa”. I was studying for lower K.G. in “Shri. Nursery” at Vijapur Road at Solapur. Heena was getting education from lower K. G. in St. Joseph's High-School, Solapur. Both the schools are of english medium. I loved my mother more. Before coming to Everest Apartment, we stayed at

different places in Solapur. My mother used to do the household work and the father used to see the outside work. I used to take bath myself and comb the hair of myself as also of Heena. My father used to polish our shoes and prepare our school bags. We used to go to school by auto-rikshaw. Our school hours are from 8.15 a.m. to 12.15 p.m. and 1.15 p.m. to 3.30 p.m. Big interval used to be for about an hour to take lunch. My father used to take us to hotel for giving a lunch during big recess period and he also used to leave us thereafter in the school. It is true that myself and Heena used to return to home with accused on a motor-cycle. The accused used to take our home-work. It is true that in the evening myself, accused and Heena used to go towards a milkman to bring the milk. It is true that Ramzan Id is the most important and biggest festival in our community. The accused used to get stitched new clothes and provide us good and sweet food on that day. It is true that in the summer vacation of the year 1998, myself, my father and Heena had been to Hubali, Dharwar, Munoli Dam and Gokak Falls, for picnic purpose. Now I am studying in VI standard at Gulberga. Smt. Glenes was my teacher in the IV standard. She had told in a class that I was attending the school in a decent manner and every student should follow me in it.”

It appears that the accused was a caring father, he used to polish the shoes of his daughters and prepare school bags. Even he used to take both of his daughters for hotel for giving lunch during big recess and used to leave them thereafter in the school. The accused used to fetch them from the school on motor-cycle. Even the accused used to take their home-work. In the evening, all of them, PW-Reshma, accused and deceased Heena used to go towards the milkman to bring the milk. Even on festival, particularly

on Id festival, the accused used to stitch new clothes and provide them good and sweet food. Even in the summer vacation of 1998 (year of incident) the accused took both of his daughters to Hubali, Dharwar, Munoli Dam and Gokak Falls for picnic purpose. Even class teacher has appraised PW-Reshma for the reason that she was attending the school in decent manner.

15. In view of the above facts stated by PW-Reshma, we find no substance in the allegations that the accused used to put his daughters on starvation and confined them in the room. PW-Reshma has nowhere deposed like the same.

16. It further appears from the evidence of PW 4-Reshma that the accused had taken care of deceased Heena during her illness. PW 4-Reshma in para 5 of her cross-examination has stated that the accused used to take them for medical treatment to Dr. Bachuwar or Dr. Kulkarni. She has further deposed that deceased Heena was taken by the accused for treatment to the dispensary of Dr. Kulkarni before 15/20 days of the incident. Dr. Kulkarni examined deceased Heena and prescribed some tablets and the accused had purchased those tablets from the medical shop. PW 4-Reshma further deposed that the accused was asking deceased Heena to take the medicines. However, the deceased Heena refused to take those

medicines. Again the accused had taken deceased Heena to Dr. Kulkarni and Dr. Kulkarni told her to take the medicines regularly or else she would be admitted in the hospital. Thereafter deceased Heena began to take the medicines properly and regularly. PW 8- Dr. Milind Kulkarni has deposed that deceased Heena was suffering from fever and coldness and the accused had taken her to his hospital. PW- Dr. Milind Kulkarni gave her presumptive treatment of Malaria. If further appears from the evidence that during the illness of deceased Heena, the accused had taken her to the clinic of PW- Dr. Milind Kulkarni regularly.

17. So far as the motive is concerned, it has come in the evidence of PW 4-Reshma that her father (accused) used to tell her and deceased Heena that because of them, it was going difficult to get married. We have reproduced hereinabove instances indicating the caring nature and attitude of the accused towards his daughters. There is no evidence and even it is also not the prosecution case that the accused used to illtreat his daughters for the reasons that because of them, it was difficult for him to get married. The accused was doing all the possible things for his daughters including polishing their shoes, preparing them for school, taking their home work etc. We are, therefore, of the considered opinion that the prosecution has failed to establish beyond doubt the motive on the part of the accused for commission of the alleged crime. If, that is so, the accused would not have

taken care of his ailing daughter prior to the incident. It has come in the evidence of PW 4-Reshma that the illness of deceased Heena was triggered as she was not taking prescribed tablets regularly. The accused had, therefore, taken Heena to the clinic of PW-Dr. Kulkarni and after PW-Dr. Kulkarni gave understanding to deceased Heena, she began to take the tablets regularly.

18. The prosecution has further relied upon one another circumstance i.e. on the day of incident, the accused did not allow PW-Reshma to stay in the house though she was insisting. PW-Reshma has made improvement to that effect and the said statement does not find place in her police statement. However, even assuming that the accused said so, it is interesting to see as to what PW 4-Reshma stated about it. PW 4-Reshma has deposed that deceased Heena was asking her not to go to the school and therefore she told her father that she will not attend the school as there were pains in her abdomen. She further deposed that her father told her to attend the school and on the next day not to go to the school and therefore she went to the school. We do not find this particular piece of evidence as an incriminating circumstance. It is not the prosecution case that the accused has decided to eliminate deceased Heena and as a part of pre-plan rejected the request of PW-Reshma. The parents always insist their children to attend the school and refused to concede their pretext of

non attending the school. Had there been any pre-plan, the post incident conduct of the accused could have been different. We will discuss the same in the later part of the Judgment.

19. The prosecution also claims the circumstance that the accused was not allowing his daughters to meet the relatives from the side of their mother Gousiya, as an incriminating circumstance. However, we do not find any substance in it. PW 2-Ilyas (father of deceased Gousiya and grandfather of PW-Reshma and deceased Heena) has stated in his cross-examination that during the lifetime of his first wife, he had performed second marriage and both of his wives are staying separately. Gousiya Begum was the daughter of his second wife. He had performed second marriage with one Salima Begum, who was Hindu. She was converted after the marriage. He had given Talaq to the mother of deceased Gousiya Begum. Though PW-Ilyas denied that he often visited the house of Gousiya Begum and demanded the amount. However, admitted that the accused while staying in Sakhar Peth area, Solapur, lodged a complaint against him in Sakhar Peth Police Chowky. Thus, the inference could be drawn that because of these reasons, the accused was not allowing the relatives from his wife's side to see his daughters. However, it is also the part of the evidence that the accused never imposed any restrictions on his daughters to meet those relatives in the school. PW-Reshma has also

deposed that her father dislike the said relatives and therefore her grandfather and maternal aunt never used to come to their flat. She has further deposed that her grandfather (PW 2-Iliyas) used to see her and deceased Heena in their High School campus. By any stretch of imagination, we cannot treat this circumstance as an incriminating circumstance. On the other hand this helps the accused in his defence that his father-in-law had set up the case against him.

20. The prosecution is relied upon two more circumstances; (i) that the accused has given false explanation about the death of Heena and that he has suppressed the marks/injuries below the chin and over the neck by deceased Heena and (ii) that the accused was found scared and he was making haste for burial of the body by disclosing to the relatives from the side of his deceased wife Gousiya Begum that Heena died due to Malaria. In terms of provisions of Section 106 of the Indian Evidence Act, the burden of proving the fact, especially, within the knowledge would be on the accused. Section 106 of the Evidence Act, no doubt, casts a duty on the accused to explain the circumstances that are within his special knowledge about how the incident has taken place. However, this Section does not dis-spell the initial burden on the prosecution to establish its case also the burden that is cast on the accused is never as heavy as that on the prosecution.

21. In the instant case, the accused has filed his explanation in writing in response to his examination under Section 313 of the Code of Criminal Procedure and the same is marked as Exhibit 58. According to him, there are some instances of robbery and killing in his Everest Apartment prior to the incident. It is his daily routine to fetch drinking water from the ground floor. Deceased Heena was suffering from Malaria and she was under treatment of PW-Dr. Milind Kulkarni. There was no improvement since 14.12.1998 and her illness was aggravated. On the day of incident, deceased Heena slept in the house and he went to ground floor for fetching the water. At that time, the house remained open and Heena was alone in the house. He had completed his task of fetching drinking water from ground floor at about 10.00 a.m. and thereafter he was noticed that Heena was dead. He thought that deceased Heena died due to illness she was suffering from. Accordingly, he had given information in the school to call PW-Reshma and also to his father-in-law PW-Iliyas. It has further stated in the explanation that PW-Iliyas used to demand money from him and his deceased wife Gousiya and therefore he has lodged complaint against him in Sakhar Peth Police Chowki, Solapur. PW 2-Iliyas had grudge against him. Thus, PW-Iliyas has set up the case against him. He has also explained that since from the death of deceased Heena, PW-Reshma is residing with Complainant PW-Iliyas and thus she has been tutored to depose against him.

22. PW 4-Reshma in para 7 of her cross-examination has also admitted that the accused used to fetch the drinking water from the ground floor to the second floor on every day. She has also admitted that there used to be heavy rush on the ground floor and at least one or two hours required for her father to bring the water from the ground floor.

23. It, thus, appears that the accused has tendered certain explanation and the said explanation gets support from the evidence of PW 4-Reshma. The accused need not prove the contention raised in his explanation beyond doubt and suffice to say that by way of explanation, if the accused has succeeded in showing the existence of other possibility, then the same can be taken into consideration. However, it is always for the prosecution to prove its case beyond doubt and if the case rests upon the circumstantial evidence, failure on the part of the accused to explain the custodial death, would be the additional circumstance against the accused.

24. The prosecution has also relied upon one circumstance which we have discussed in the earlier part of the Judgment that the accused sent his another daughter Reshma to school though she wanted to stay in the house with ailing sister deceased Heena. We may observe here that if the said circumstance is considered as incriminating circumstance, then the

inference is necessary to be drawn to the effect that the accused has planned the murder of his daughter deceased Heena. However, the accused could have given the better explanation about the death of his daughter Heena in that event. On the other hand, the accused was found scared/frightened and he had given the false cause of death of his daughter Heena to the neighbours and other relatives. It is the part of the evidence that the Complainant PW-Iliyas and sisters of deceased wife of the accused, namely, Gousiya Begum had grudge against the accused. Thus, the possibility cannot be ruled out that the accused when found his daughter no more, anticipating the further complication, gave certain explanation in a frightened condition.

25. In a case, **Shankarlal Gyarsilal Dixit Vs. State of Maharashtra** reported in **(1981) 2 SCC 35**, the Supreme Court in paragraphs 31 and 32 of the Judgment has made the following observations:

“31. It causes us some surprise that the learned Additional Sessions Judge, Akola, who tried the case, has not shown any awareness of the fundamental principle which governs cases dependent solely on circumstantial evidence. Nowhere in his judgment has the learned Judge alluded, directly or indirectly, to the principle that in a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. It is not to be expected that in every case depending on circumstantial evidence, the whole of the law governing cases of circumstantial evidence should be set out in the judgment. Legal

principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.

32. *The High Court, it must be said, has referred to the recent decisions of this Court in Mahmood v. State of U. P. (1976) 1 SCC 542 : 1976 SCC (Cri) 72 : AIR 1976 SC 69 and Chandmal v. State of Rajasthan (1976) 1 SCC 621 : 1976 SCC (Cri) 120 : AIR 1976 SC 917 in which the rule governing cases of circumstantial evidence is reiterated. But, while formulating its own view the High Court, with respect, fell into an error in stating the true legal position by saying that what the court has to consider is whether the cumulative effect of the circumstances establishes the guilt of the accused beyond the “shadow of doubt”. In the first place, 'shadow of doubt', even in cases which depend on direct evidence is shadow of “reasonable” doubt. Secondly, in its practical application, the test which requires the exclusion of other alternative hypotheses is far more rigorous than the test of proof beyond reasonable doubt.”*

26. In the case of **Hanumant Govind Vs. State of Madhya Pradesh, 1953 Cr. L. J. 129** and also reiterated in the case of **Mohd. Mannan Vs. State of Bihar, (2011) 5 SCC 317** the Supreme Court has observed “that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established, and all the facts so established should, be consistent only with the hypothesis of the guilt of the accused. Again, the

circumstances should be of a conclusive nature and tendency and they should be such that as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.” The above said principles were reiterated in **Sudama Pandey Vs. State of Bihar, AIR 2002 SC 293, Subhash Chand Vs. State of Rajasthan, (2002) 1 SCC 702.**

27. In the case of **Vikramjit Singh Alias Vicky Vs. State of Punjab, (2006) 12 SCC 306** in paragraphs 13, 14 and 15 the Supreme Court has observed as follows:

“13. In the instant case, there are two versions. The learned Sessions Judge proceeded to weigh the probability of both of them and opined that the appellant having not been able to prove its case, the prosecution case should be accepted. In our opinion, the approach of the learned Sessions Judge was not correct. The High Court also appeared to have fallen into the same error. It invoked [Section 106](#) of the Indian Evidence Act although opining:

“The section 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.”

14. *Section 106 of the Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule, e.g., where burden of proof may be imposed upon the accused by reason of a statute.*

15. *It may be that in a situation of this nature where the court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well-settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt.”*

28. In the case of **The State of Punjab Vs. Bhajan Singh & Ors.** reported in (1975) 4 SCC 472, the Supreme Court held that, suspicion, by itself, however, strong it may be, is not sufficient to take place of proof and warrant a finding of guilt of the accused.

29. The Supreme Court, in case of **Kali Ram Vs. State of Himachal Pradesh** reported in 1973 (2) SCC 808 observed as under :

“Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance

in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.”

30. In the instant case, we find that the circumstances relied on by the prosecution are not conclusive in nature. It is a part of the evidence that many circumstances which we have discussed in the foregoing paras are consistent with the innocence and inconsistent with the guilt of the accused. The prosecution has failed to prove its case beyond doubt. Even the explanation tendered by the accused appears to be probable. In a case rest upon the circumstantial evidence, it is incumbent upon the prosecution to prove the motive like any other incriminating circumstances. We find the evidence regarding the motive is insufficient and unreasonable. There are circumstances indicating that the accused had given false cause of death to the neighbours and other relatives and further made haste of the burial of the dead body, however, at the most the same may create suspicion against the accused. It is well settled that the suspicion, by itself, however, strong it may, is not sufficient to take a place of proof and warrant a finding of the guilt of the accused. Thus, the accused is entitled for the benefit of doubt. Hence, we proceed to pass the following order:

ORDER

1. The Criminal Appeal is hereby allowed.
2. The Judgment and order of conviction dated 30.10.1999 passed by

the V Additional Sessions Judge, Solapur in Sessions Case No. 81 of 1999 is hereby quashed and set aside.

3. Appellant-accused Abbas Nawaj Shaikh is hereby acquitted of the offence punishable under Sections 302 of the Indian Penal Code.
4. Criminal Appeal is, accordingly, disposed of.

[V. K. JADHAV, J.]

[INDRAJIT MAHANTY, J.]