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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A.188 /2018 & Crl.M.B.286/2018

SAVITRI DEVI

.....Appellant

Through: Mr. Adit S. Pujari and Ms. Surabhi Dhar,
Advocates

versus

STATE

....Respondent

Through: Mr Hirein Sharma, APP for the State

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CRL.A.1106 /2017

PAWAN SHARMA

.....Appellant

Through: Mr. Chetan Lokur with Mr Nitish
Chaudhary, Advocates

versus

STATE

....Respondent

Through: Mr Hirein Sharma, APP for the State

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CRL.A.59 /2018

SUDHIR SHARMA

.....Appellant

Through: Mr. Chetan Lokur with Mr Nitish
Chaudhary, Advocates

versus

STATE

....Respondent

Through: Mr. Hirein Sharma, APP for the State

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA**

J U D G M E N T
24.04.2018

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Dr. S. Muralidhar, J.:

1. These three appeals are directed against the impugned judgment dated 28th November, 2016 passed by the learned District & Sessions Judge (East), Karkardooma Courts, Delhi ('DSJ') in Sessions Case No.483/2016 arising out of an FIR No.271/2013 registered at Police Station ('PS') Mandawali, convicting the Appellants for the offence under Section 302/34 of the Indian Penal Code ('IPC') and the order on sentence dated 26th December, 2016 whereby each of the Appellants was sentenced to undergo imprisonment for life with a fine of Rs.10,000/- each; and in default of payment of fine, to further undergo simple imprisonment ('SI') for six months.

The charges

2. The charge framed against each of the Appellants was that between 27th June, 2012 and 10th May, 2013 at House No.357A, Top Floor, Pandit Mohalla, Mandawali, Delhi the three of them i.e. Pawan Sharma (Appellant in Crl. Appeal. No.1106/2017) (Accused No.1: 'A-1'); Smt. Savitri Devi, mother of A-1, (Appellant in Crl. Appeal. No. 188/2018) ('A-2'); and Sudhir Sharma, the brother of A-1 (Appellant in Crl. Appeal. No.59/2018) ('A-3') in furtherance of their common intention subjected the deceased Poonam Sharma, wife of A-1, to cruelty for or in connection with the demand of dowry and thereby committed an offence punishable under Section 498A read with Section 34 IPC.

3. The second charge was that the three accused in furtherance of their common intention harassed and tortured the deceased in connection with the demand of dowry to such an extent that she died on 10th May, 2013 within seven years of marriage and thereby the three accused committed the offence of dowry death punishable under Section 304-B IPC read with Section 34 IPC.

4. The third and the alternative charge was that the three accused in furtherance of their common intention murdered Poonam Sharma on 10th May, 2013 and thereby committed the offence punishable under Section 302 IPC read with Section 34 IPC.

Background facts

5. A-1 married the deceased on 27th June, 2012. According to Dev Narayan Pandey (PW-2) (the father of the deceased), they had given sufficient dowry in cash and household articles at the time of marriage. The case of the prosecution was that after the marriage was solemnized, the accused started subjecting the deceased to mental and physical harassment; pressurizing her to bring dowry. However, it must be noticed that this part of the case of the prosecution has been disbelieved by the trial Court. The Appellants have been acquitted of the offences both under Section 498A as well as Section 304-B IPC. The State has also not filed an appeal against the said acquittal.

6. Consequently the Court proceeds to narrate the case of the prosecution only so far as it is relevant for the offence punishable under Section 302 read with Section 34 IPC.

Version of PW-7

7. For this purpose, what is relevant to note is that according to Smt. Lata Dubey (PW-7), the elder sister of the deceased, on 19th April, 2013, the deceased had come to her house and stated that she had been beaten by the accused persons for dowry. PW-7 further stated that the deceased generally used to come to her residence when she was given a beating or was subjected to any physical or mental cruelty. At that time, the father and brother of PW-7 were not available in Delhi, therefore, the deceased stayed with her for 2-3 days.

8. According to PW-7, on 20th April, 2013 at about 9.30 pm, A-1 came to her house to take the deceased back with him. After sometime, A-2 and A-3 also reached there. All three accused started quarrelling with the deceased and they also abused the family members and the neighbours of PW-7. In the meanwhile, Suresh Kumar Dubey (PW-9) (husband of PW-7) also reached there. The three accused quarrelled with him as well. This resulted in PW-7 and PW-9 calling the police. The police then reached there and all the three accused were taken to the PS. The complainants also reached the PS. According to PW-7, during the quarrel, A-3 had criminally intimidated the deceased that they would murder her. After reaching the PS, according to PW-7, the accused stated that 'they were sorry' and the matter was settled. They claimed that they would not indulge in such activities again and on their assurances, PW-7 and PW-9 sent the deceased back with them. The above narration concerning the events of 20th April 2013 is corroborated by PW-9.

9. According to PW-7 on 9th May 2013 at 2.30 pm, she received a missed call from the deceased, who at that time was staying at her matrimonial home. The next day i.e. 10th May, 2013 at around 4.45 am, PW-7 called the deceased who told her that three accused had been beating her and subjecting her to torture and that she was not feeling well. The deceased asked PW-7 to visit her. At around 7.45 am, the deceased again called PW-7 and repeated her request. At around 9 am on 10th May, 2013, PW-7 is supposed to have visited the matrimonial home of the deceased. She found the deceased in an injured condition and not even in a position to speak. At that time A-2 and A-3 were present in the house. PW-7 learnt that A-1 had gone to the parental house of the deceased at the time. When PW-7 tried to reason with A-2 and A-3, they became offensive. PW-7 then returned to her house. After about two hours, she received a call from her brother stating that the deceased had expired. The parents of the deceased and PW-7 were called to the mortuary.

The arrival of the police

10. The evidence of Sub Inspector ('SI') Vijay Kumar (PW-20), who was posted at PS Mandawali, was to the effect that at around 11.30 am, information was received at the PS by way of DD No.17A that the deceased had been "admitted to the hospital by her husband Pawan Sharma, in dead condition." On receiving information, PW-20 along with Constable ('Ct.') Rajpal reached the LBS Hospital and found the deceased dead in the emergency ward. They collected her MLC (Ex.PW3/A) which showed that the deceased had been brought there by A-1 at 11.35 am with the alleged

history of 'found still at home'. However, she was brought dead.

11. PW-20 found A-1 present at the hospital. Subsequently, Inspector Ravinder Kumar (PW-21), the Station House Officer ('SHO') of PS Mandawali also reached the hospital. Satish Pandey (PW-5), the younger brother of the deceased, also reached the hospital and informed their other family members. The crime team officials also came to the hospital and took the photographs of the deceased. By that time, A-2 had also reached the hospital.

12. In his initial statement to the police made at the hospital, PW-2 stated that the husband and in-laws of the deceased had subjected her (deceased) to torture. On this basis, both A-1 and A-2 were detained by the police.

13. According to the Investigating Officer ('IO'), Inspector Daya Sagar (PW-26), he was given the *rukka* and copy of the FIR at around 4.45 pm on 10th May 2013 and he took over the investigation from PW-20 who apprised him about what had happened till that point. PW-26 then interrogated both A-1 and A-2, who made disclosure statements and were arrested. The personal search of both the accused was also conducted. A-2 was left behind in the PS with Woman Ct. Rupa. PW-26 then reached the spot along with A-1, PW-20 and Ct. Ram Singh (PW-16) and prepared a rough site plan at the pointing out of PW-20. A1 is supposed to have pointed out the room inside which all the three accused gave the deceased beatings and strangled her.

Post mortem

14. The post-mortem of the deceased was conducted by Dr. Vinay Kumar

Singh (PW-13), who found the following external injuries on the deceased:

- “1. Injury No.1 Multiple Crecentric abrasion present over left side of neck and mandibular area of size 3 x 2.2 cm, 1.4 c.m. Above from mandible and 2.2x2.2cm, 1.8cm from left ear, 1.5x.2 c.m, 4 c.m. Below from the mandible, .4x.3 c.m., 6 cm below from the mandible, .4x.2 c.m., 8 c.m. below the mandible, 1x3 c.m., 1 c.m. From the mid line of clavicle, .3x.1 cm, 4cm from the clavicle, .8x.3 cm, 2 c.m., above from the clavicle,
2. Multiple crecentric abrasion present over right side of the neck and mandibular area of size .8x.3 c.m., 3.5cm from the mandible, 1 x.2 cm, 3.6 cm from the mandible, 1.1 x.2 cm, 3.8 cm from the mandible, 1.5x.2 c.m., 4 cm from mandible, 2x.2 cm, 1.5x.08 cm, 7 cm from the mandible.
3. Contused lacerated wound .5x.3 cm over the inner side of upper lip.
4. Contused lacerated wound .5x.6 cm over the inner side of the lower lip.
5. Bilateral sub-conjunctival haemorrhage present.
6. Abrasion over right knee patella region of size .7x.2 cm, 42 cm from the heel.”
7. Abrasion over left knee area .7x.3 cm, 41cm above the heel.
8. Abrasion over left knee of size 2x 1.4 cm above the heel.”

15. In the uterus, there was a female foetus aged about 4/5 months. On internal examination it was noted “in neck Effusion of blood present in the tissues of neck bilaterally underneath injury Nos. 1 and 2. In lungs, right side of lung adherent to the chest wall bilateral large multiple petechial

haemorrhage. Both lungs congested.”

16. The presence of ethyl alcohol. The opinion as to the cause of death was kept pending for want of chemical analysis of the preserved viscera. Subsequently, after the receipt of the CFSL report dated 22nd August 2013 (Ex. PW-13/C), PW-13 gave an opinion that the cause of death was ‘asphyxia on manual strangulation’. He further opined: "All injuries were antemortem in nature. Deceased was under influence of ethyl alcohol 58.7 mg/100 ml of blood. Injuries 1 and 2 collectively sufficient to cause death in the ordinary course of nature. Homicidal death." It may be noted that at the trial, there was virtually no cross-examination of this witness.

17. A-3 surrendered in the Court on 18th May 2013 and was formally arrested by PW-20. He too is stated to have taken the police to the place of occurrence and also to have made a disclosure statement.

18. After the conclusion of the investigation, a charge-sheet was filed and by an order dated 28th September, 2013, charges were framed by the trial Court against the Appellants in the manner indicated hereinabove.

Statements of the accused

19. The prosecution examined 26 witnesses. In their respective statements under Section 313 Cr PC, when the incriminating circumstances were put to them, each of the Appellants denied them and claimed innocence.

20. As far as A-1 is concerned, it is interesting to note that he did not deny the incident of 20th April, 2013 but gave a different version of what

transpired on that day. He denied the charge that on that date the three accused had beaten the deceased in the house of PW-7. His answer reads as under:

“It is incorrect. In fact, Poonam was adamant and insisting to live separately from the family of accused and to pressurize for the same, she had gone to her sister's house and when accused Savitri Devi went to bring Poonam back, then Smt. Savitri Devi was beaten by the Poonam and her sister Lata Dubey at her house and Smt. Savitri Devi suffered head injuries and police in connivance with Smt. Lata Dubey and her family members concocted a false story against the accused persons to save them. The police was called on 100 number by accused Sudhir from his mobile no. 8595202251 on 20.04.2013 but police in connivance with Smt. Lata Dubey and her husband made a false story to save them.”

21. In reply to a further question about the dispute having been settled in the PS on 20th April, 2013, A-1 stated:

“It is incorrect. The call to the police on 100 number regarding the assault on accused Savitri Devi by Smt. Lata Dubey and her husband along with Poonam was made by accused Sudhir by his mobile no. 8595202251 on 20.04.2013. Though, police in connivance with Smt. Poonam and Lata Dubey and her family took signatures of accused Pawan and Sudhir and thumb impression of accused Savitri Devi on blank papers to avoid taking action against injuries sustained by accused Savitri at the hands of deceased Poonam and her sister's family.

22. In relation to the above incident, SI Om Prakash (PW-22) had produced in the trial Court copies of the DD No.55A registered at PS Mandawali on 20th April, 2013. That DD No.55A pertained to a quarrel at House No.A-1/14 Jhuggi, Railway Quarters, Mandawali. When PW-22 reached the house, he came to know that the injured had been taken to PS Mandawali. At PS, he found the deceased and the three Appellants present. A-2 was

carrying some injuries on her person. She was taken to the LBS Hospital and a medical examination was conducted by the doctor. No complaint was lodged since the parties were related and they settled the matter amicably. Another DD No.54A pertaining to the same incident had also been lodged. The attested copies of DD Nos.54A and 55A were marked as Ex.PW22/A and PW22/B. The statement of the deceased was Ex.PW22/C. The statement of A-2 and her MLC were marked as Ex.PW22/D and PW22/E respectively.

23. In relation to the above evidence, A-1 claimed that DD Nos. 54A and 55A were false and were fabricated in order to save the deceased and the family of her sister. According to A-1, the statement of A-2 was fabricated by the police by procuring her thumb impression on blank papers. However, he did not deny that A-2 was injured in the incident.

24. Another specific question was regarding A-1 making a call to PW-2 on 10th May, 2013 at 7 am and asking PW-2 to reach the house of A-1. However, PW-2 asked A-1 to reach the house of PW-2. When PW-2 then asked A-1 what had happened, A-1 is supposed to have asked PW-2 to take back the deceased, “otherwise she would be killed”. Thereafter, PW-2 asked A-1 to drop the deceased at the house of PW-2 on which A-1 is supposed to have furiously left from there.

25. In response to the above circumstance put to him under Section 313 Cr PC, A-1 replied as under:

“It is correct as far as call being made by accused Pawan to Sh. Dev Narain Pandey but all other contents are incorrect. Accused Pawan had called his father in law Dev Narain Pandey informing about Poonam who was creating scene and insisting to have separate house

and thereafter accused Pawan left for his father in law's house at 7.30 am as Dev Narain Pandey called him to talk about. There was nothing said about dropping the Poonam to her father's house by Dev Narain Pandey nor accused made any threat to kill Poonam if she is not taken back as alleged.

26. In other words, A-1 did not deny having spoken to PW-2 in the morning of 10th May, 2013 and thereafter meeting PW-2 in his house at 7.30 am. He also admitted that a quarrel did take place between the deceased and A-1 regarding her insistence on living in a separate house.

27. According to A-1, A-2 and A-3 were not present at the matrimonial home of the deceased at 9 am on 10th May, 2013 since A-2 had gone to the temple of Baba Balaknath, Chander Vihar at 7.30 am and returned only at 9.40 am. A-3 was working as a driver under one Sandeep Khurana at Madhu Vihar, Delhi. A-1 stated that A-3 had left for the house of his employer at 8 am on 10th May, 2013. When asked whether he had anything else to say, A-1 stated as under:

“The deceased was having love affair with me prior to our marriage and the marriage was performed in a very simple manner. After marriage, deceased Poonam regularly insisted and demanded me to live separately away from my widow mother and unmarried brother and due to this she used to create scene and quarrelled day to day with my mother in which her father and other family members used to instigate her. I along with my family have been falsely implicated in this case.”

28. As far as A-2 is concerned, she pleaded *alibi* and stated:

“On the date of incident i.e. 10.05.2013, I was not present at my house since at about 7:30am I had gone to a temple Baba Balak Nath, Chandra Vihar, and returned back at about 9.30am. I am not aware as to how the deceased Poonam Sharma had sustained aforesaid injuries.

However, she was suffering from fits and for that she was on regular medication and may be on that count she might have sustained injuries as mentioned above.”

29. A-3 also claimed *alibi* and stated as under:

“On the date of incident i.e. 10.05.2013, I was not present at my house since at about 8:00am I had gone for my job. I am not aware as to how the deceased Poonam Sharma had sustained aforesaid injuries. However, she was suffering from fits and for that she was on regular medication and may be on that count she might have sustained injuries as mentioned above.

30. Thus it was claimed that on 10th May, 2013 at the time of the incident, none of the accused were present in the house and were elsewhere at the time of occurrence as claimed above.

The impugned judgment of the trial Court

31. The trial Court, as already noted, acquitted the Appellants of the offences under Sections 498A and 304-B IPC. However, it concluded that as far as the offence punishable under Section 302 IPC was concerned, the following circumstances were proved beyond reasonable doubt in the following manner:

(i) The death was homicidal. There was no explanation from the side of the accused as to how the deceased received the aforementioned eight injuries as noticed in the post-mortem report, when she was present at her matrimonial home.

(ii) There was no explanation from the three accused as to how the deceased came to have consumed liquor. No suggestion was put to PW-13 that it was

a suicidal death and not homicidal.

(iii) The evidence of PW-7 was trustworthy and reliable and it was consistent with the injuries mentioned in the post-mortem report. Again, no explanation was forthcoming from the accused for the said injuries. Neither the *Pujari* of Balak Nath Temple nor Sandeep Khurana, the employer of A-3 had been examined in support of their respective plea of *alibi*. On the contrary, the testimony of PW-7 regarding the presence of both A-2 and A-3 in their house at the time of her visit and at the time she found the deceased in an injured condition remained unrebutted.

32. For the aforementioned reasons, the trial Court proceeded to convict the Appellants for the offence under Section 302/34 IPC and sentenced them in the manner indicated hereinbefore.

33. This Court has heard the submissions of Mr. Chetan Lokur and Mr. Adit S. Pujari, learned counsel appearing for the Appellants and Mr. Hirein Sharma, learned APP for the State.

Submission of counsel for the Appellants

34. The learned counsel for the Appellants focussed essentially on the deposition of PW-7 and pointed out that she was an unreliable witness. It is submitted that it is unusual that despite finding her sister in an injured condition in the morning on 10th May, 2013 PW-7 did not inform anyone of it, left the house while at the same time leaving the deceased behind and later came to know from her brother about the death of the deceased. It is

further pointed out that the call detail records (CDR) of the mobile phones of PW-7 were not collected by the IO. This could have corroborated PW-7's claims about the deceased giving her a missed call on 9th May 2013 and about her talking to the deceased in the early hours of 10th May 2013.

35. Attention was also drawn to the confrontation of this witness in cross-examination which brought out the improvements she made over the statement initially given by her to the police. It is further submitted that the incident on 20th April 2013 has been wrongly projected by the prosecution as an incident in which the accused beat up the deceased and her relatives whereas it was the other way around. It was A-2 who was injured in the said incident and the MLC brought forth by PW-22 bore this out.

36. As regards the *alibi* pleaded by the accused, it is submitted that as far as A-1 was concerned, he was at the house of his father-in-law on the morning of 10th May 2013 and this part of his assertion has been confirmed by PW-2 himself. It is submitted that A-1 came back to find that the deceased had expired and he himself immediately took her dead body to the hospital. As far as A-2 is concerned, it is pointed out that she was at the Balak Nath temple from around 7:30 a.m. for around two more hours and she too came back from the temple to find that the deceased had expired. As far as A-3 is concerned, he left for work as a driver with Mr. Sandeep Khurana at 8:00 a.m. and, therefore, was not present when the murder took place.

37. Mr. Chetan Lokur, learned counsel for the Appellants, submitted that with the trial Court having acquitted the Appellants of the offences under

Sections 498A and 304B IPC, and with the State not having challenged that acquittal, the case proceeded as one involving the offence punishable under Section 302 read with Section 34 IPC alone. It was urged that since the entire case of the prosecution was based essentially on the cruelty and harassment of the deceased by the Appellants for dowry, and that attempt failed, the motive for the murder disappeared. Therefore, an important link in the chain of circumstances did not exist.

Law relating to circumstantial evidence

38. The law regarding circumstantial evidence is fairly well settled and the duties of the Court in evaluating such evidence have been reiterated on a number of occasions. In ***Mahmood v. State of UP (1976) 1 SCC 542***, the Supreme Court observed as under:

“It is well settled that in a case dependent wholly on circumstantial evidence, the Court before recording a conviction on the bias therefore must be firmly satisfied -

- (a) that the circumstances from which the inference of guilt is to be drawn, have fully established by unimpeachable evidence beyond a shadow of doubt;
- (b) that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and
- (c) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him.”

39. The Supreme Court, in ***Shankarlal Gyarasilal Dixit v. State of Maharashtra (1981) 2 SCC 35***, explained the law thus:

“Since this is a case of circumstantial evidence, it is necessary to find whether the circumstances on which the prosecution relies are established by satisfactory evidence, often described as 'clear and cogent' and secondly, whether the circumstances

are of such a nature as to exclude every other hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such a nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him.”

40. In *Tanviben Pankaj Kumar Divetia v. State of Gujarat (1997) 7 SCC 156*, the Supreme Court reiterated the above position and went on to opine:

“The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for some times, unconsciously it may happen to be a short step between normal certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and must be true" and the same divides conjectures from sure conclusions.”

41. Reference may also be made to *Sudama Pandey v. State of Bihar (2002) 1 SCC 679* wherein the Supreme Court stated:

“It is a settled principle that in the case of circumstantial evidence, the various circumstances should be able to form a chain pointing to the guilt of the accused. In cases where there is only circumstantial evidence, the Court has to consider the evidence adduced by the prosecution and decide whether the evidence proves particular facts relevant for the purpose of the case and when such facts are proved the question arises whether the facts are capable of giving rise to any inference of the guilt of the accused person or not. An inference of guilt can be drawn only if the proved fact is wholly consistent with the guilt of the accused and certainly he is entitled to the benefit of doubt if the proved fact is consistent with his innocence.”

42. In *Gagan Kanojia v. State of Punjab (2006) 13 SCC 516*, the Supreme Court opined:

“9. ... Indisputably, charges can be proved on the basis of the circumstantial evidence, when direct evidence is not available. It is well settled that in a case based on a circumstantial evidence, the prosecution must prove that within all human probabilities, the act must have been done by the accused. It is, however, necessary for the courts to remember that there is a long gap between 'may be true' and 'must be true'. Prosecution case is required to be covered by leading cogent, believable and credible evidence. Whereas the court must raise a presumption that the accused is innocent and in the event two views are possible, one indicating to his guilt of the accused and the other to his innocence, the defence available to the accused should be accepted, but at the same time, the court must not reject the evidence of the prosecution, proceeding on the basis that they are false, not trustworthy, unreliable and made on flimsy grounds or only on the basis of surmises and conjectures. The prosecution case, thus, must be judged in its entirety having regard to the totality of the circumstances. The approach of the court should be an integrated one and not truncated or isolated. The court should use the yardstick of probability and appreciate the intrinsic value of the evidence brought on records and analyze and assess the same objectively.

10. We would proceed on the well-known principles in regard to appreciation of the circumstantial evidence which were noticed by the High Court in the following terms:

- 1) There must be a chain of evidence 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.
- 2) Circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.
- 3) There should be no missing links but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts.
- 4) On the availability of two inferences, the one in favour of the accused must be accepted.
- 5) It cannot be said that prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.”

Proved circumstances

43. The Court would first like to consider those circumstances on which there is no dispute whatsoever. The first of these is that the deceased died a homicidal death. It was death on account of injuries suffered by her. It was a death as a result of manual strangulation. In short, the medical evidence more than sufficiently establishes that the death was homicidal.

44. The second important circumstance is the presence of the accused in the

house at the time when the deceased probably died. The post mortem report indicates that the post mortem took place on 11th May 2013 at around 2.30 pm. The time since death was indicated as 28 to 30 hours prior to the examination. This would place it around 10 am on the previous morning i.e. 10th May 2013. Although PW-7 has stated that when she visited the matrimonial house of the deceased at around 9 am, she found A-2 and A-3 there, the fact remains that it is not in dispute that A-1 and the deceased was staying together with A-2 and A-3 in the same house. It is not as if A-2 and A-3 were only visiting A-1 and the deceased, they were all living together. This is not in dispute whatsoever.

45. What makes this fact even more clear is the statement made by A-1 himself that the quarrel with the deceased was on account of her insisting on A-1 and her living separately from A-2 and A-3. In fact, the incident of 20th April 2013 is a clear indication that there was a quarrel between the deceased on the one hand and the accused on the other.

46. Therefore, *de hors* the attempt by the prosecution to show that there was harassment of the deceased on account of demand of dowry which has been disbelieved by the trial Court, the evidence on record shows that there were frequent quarrels between A-1 and the deceased over the abovementioned issue and such quarrels had happened on 20th April 2013 and even on the morning of the death of the deceased, i.e. 10th May 2013, as is clear from the admission of A-1 himself.

47. The answers given by A-1 in the examination under Section 313 Cr PC

make it clear that he went to the house of his father-in-law, i.e., PW-2 on the morning of 10th May, 2013 after 7:30 a.m. to inform him about the deceased “creating scene and insisting to have separate house”. Therefore, it is plain that prior to 7:30 a.m. itself the quarrel had been going on.

Failed alibi pleas

48. Apart from the fact that A-1 was already with the deceased and they were quarrelling, the circumstance of A-2 and A-3 being present in the house is more than confirmed from the kind of pleas taken by these two accused to show to the contrary. As far as A-3 is concerned, his plea is that he left for work at 8 am. Mr. Adit Pujari, learned counsel for A-2, pointed out that an application had been filed in the trial Court to examine Mr. Sandeep Khurana, his employer, as a defence witness in order to prove the *alibi* claimed by him. However, the learned *amicus curiae* appearing for A-3 in the trial Court appears to have not pressed the application when it was taken up by the trial Court. Consequently, the plea of *alibi* could not be proved. Likewise, it is pointed out that as far as A-2 is concerned, an application was filed to examine the priest at the Baba Balak Nath Mandir to prove that she was present there from about 7:30 a.m. till 9:45 a.m. Here again the said application was not pressed. The net result was that neither A-2 nor A-3 could actually show that they were not present in their house in the morning hours of 10th May 2013 around the time when the deceased had died.

49. Mr. Pujari stated that they would explore the possibility of filing an application in these appeals for permission to lead the above evidence to show that these two accused were not present at the time of the occurrence.

However, the plea taken by the two Appellants that they were not present only from around 7:30 a.m. between 9:45 a.m. will not really help them because on A1's own admission, there was already a quarrel happening prior to 7:30 a.m. The above plea of *alibi* will, therefore, not help them to show that they were not the last persons present with the deceased.

Section 106 IEA

50. There is an added difficulty for the Appellants with A-1 having brought the deceased to the hospital only at 11.35 am on 10th May 2013 as is noted in the MLC. Therefore, all three accused were bound to explain the circumstance of the deceased being found dead in their house in which all of them were living at the time and none of them attempted to offer any alternative theory of who else could have entered the house and killed the deceased. That obligation arises as a consequence of the law in relation to Section 106 of the Indian Evidence Act, 1872 (IEA)

51. In *Shambhu Nath Mehra v. State of Ajmer AIR 1956 SC 404*, the Supreme Court explained that Section 106 of the Evidence Act was not intended to shift the burden of proof (in respect of a crime) onto the accused but to take care of a situation where a fact is known only to the accused and it is difficult for the prosecution to prove that fact. It was held:

“This Section 101 lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he

could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not."

52. In *Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681*, the wife was injured in the dwelling home where the husband ordinarily resided. The Court held:

"Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

53. Similarly, in *Dnyaneshwar v. State of Maharashtra (2007) 10 SCC 445*, the Supreme Court observed:

"It has not been disputed before us that the deceased was murdered in her matrimonial home. It is not the case of the appellant that the offence was committed by somebody else. It is also not his cause that there was a possibility of an outsider to commit the said offence. One of the circumstances which is relevant is that when the couple was last seen in a premises to which an outsider may not have any access. It is for the husband to explain the ground for unnatural death of his wife."

54. The Court, therefore, is of the view that even if the evidence of PW-7 is kept aside entirely, the prosecution having discharged the initial burden of

showing that the deceased was residing in the same house with the three accused, it was for the accused to explain how the deceased was found dead in the house where all of them lived together.

55. The site plan shows that the house was not a very big one. It is not as if the accused would not have been aware of what was happening to the deceased inside the house. If indeed A-1 found the deceased dead when he came back from the house of PW-2, that would have been around 8.15 am. A-2 returned from the temple around 9.30 am. It could not have taken them two hours thereafter to take the deceased to the hospital. Therefore, the plea of *alibi* put forth by the accused is not believable.

56. In *Tulshiram Sahadu Surywanshi v. State of Maharashtra (2012) 10 SCC 373*, the Supreme Court made the following observations about an inference being drawn regarding a fact from the prevailing circumstances:

“It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. We make it clear that this Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it 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.”

57. In the considered view of the Court, Section 106 of the Indian Evidence Act comes into play and not only *qua* A1. This was a fairly small house where the three Appellants and the deceased lived in two rooms. Therefore, it is not A-1 alone who will have to explain the unnatural death of the deceased in the house, but A-2 and A-3 as well. With each of them putting forth pleas of *alibi* which have not been successfully proved by them, the completed chain of proved circumstances point unerringly only to the guilt of the three Appellants and no one else.

Conclusion

58. Therefore, apart from the circumstance of the death being homicidal, the prosecution has also proved that the deceased was indeed with the three accused just prior to her death. The third circumstance is the failure of the accused to offer any explanation for the death of the deceased in their house with no one else being present or having entered the house. The fourth circumstance of motive is also proved by the fact that there were frequent quarrels between the accused on the one hand and the deceased on the other over the insistence of the deceased that she and A-1 should live separately from A-2 and A-3.

59. The Court is, therefore, satisfied that the prosecution has been able to bring home the guilt of the three accused beyond all reasonable doubt. The order of conviction and the order on sentence passed by the trial Court calls

for no interference.

60. The appeals are accordingly dismissed. The pending applications, if any, are also dismissed. The trial Court record be returned forthwith along with a certified copy of this order.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 24, 2018

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