

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.454 OF 2013

1. Dnyaneshwar s/o Tulshiram Kakade,
Age : 22 years, Occu. Agriculture,
R/o Sant Nagar, Kakade Maharaj Math,
Alandi, District Pune
2. Tulshiram s/o Laxman Kakade,
Age : 62 years, Occu. Religious activities,
R/o Kakade Maharaj Math, Paithan,
Tq. Paithan, District Aurangabad
3. Ashabai Tulshiram Kakade,
Age : 60 years, Occu. Household,
R/o Kakade Maharaj Math, Paithan,
Tq. Paithan, District Aurangabad **APPELLANTS**

VERSUS

The State of Maharashtra,
through Assistant Police Inspector,
Paithan Police Station,
Tq. Paithan, District Aurangabad **RESPONDENT**

Mr. V.D. Sapkal, Advocate, holding for Mr. V.R.
Autade, Advocate for the appellants
Mr. S.Y. Mahajan, Additional Public Prosecutor
for the respondent/State

CORAM : S.S. SHINDE AND
R.G. AVACHAT, JJ.

JUDGMENT RESERVED ON : 3rd JANUARY, 2019
JUDGMENT PRONOUNCED ON : 30th JANUARY, 2019

JUDGMENT (PER : R.G. AVACHAT, J.) :

The challenge in this appeal is to the judgment and order dated 13th November, 2013, passed by the learned Additional Sessions Judge-2, Aurangabad in Sessions Case No.248 of 2010, by which the original accused Nos.1 to 3 i.e. the present appellants have been convicted for the offences punishable under Sections 302, 304-B, 498-A read with Section 34 of the Indian Penal Code ("IPC", for short) and under Sections 3 and 4 of the Dowry Prohibition Act, 1961. By the very judgment and order, original accused Nos.4 to 6 have been acquitted of the offences they were charged with. The State did not file appeal against the judgment and order of acquittal.

2. By the impugned judgment and order, the appellants herein have been sentenced to life imprisonment for the offence of murder. They have further been directed to undergo terms of imprisonment for the rest of the offences, in addition to the directions to pay fine, and in default of payment thereof to undergo imprisonment.

3. The prosecution story, in brief, is as follows:-

. Mukta (deceased), daughter of PW1-Ramesh married to Dnyaneshwar – appellant No.1 (“A1”, for short) on 23rd December, 2009. Appellant Nos.2 and 3 (“A2” and “A3”, for short) are the parents of A1. A meeting for settlement of marriage of A1 with the deceased took place on 11th December, 2009. PW1-Ramesh had agreed to pay the appellants Rupees Five Lakhs towards dowry. Part payment of Rupees Two Lakhs was made. The balance amount was agreed to be paid in instalments. A2 is a Godman (Maharaj), who is also known as Kakde Maharaj. He was running a *Math* (monastery) on the land, admeasuring 10,000 sq.foot at Paithan (temple town). He has three sons, including A1. All his sons would assist him in religious activities and running *Maths* at places, such as Pandharpur and Alandi.

. It is the case of the prosecution that the appellants illtreated the deceased for balance amount of dowry. PW1-Ramesh had visited the house of the appellants on the eve of Nath Shasthi. During the said visit, the deceased had narrated him her woes. PW1-Ramesh, therefore, requested the appellants to send the

deceased with him. The appellants refused. In April, 2010, PW1-Ramesh got Rupees two Lakhs of sugarcane bill. He paid the said amount to the appellants and assured to pay the balance amount within 8 to 15 days. It is also the case of the prosecution that the brother of the deceased had gone to fetch her for marriage of his cousin. The appellants refused to send the deceased unless the balance amount was paid. It is also the case of the prosecution that after some days, PW1-Ramesh along with his wife had gone to fetch the deceased. The appellants threatened him and told that if the amount was not paid, they would have to do something.

. The prosecution case, as is further unfolded in the evidence of PW1-Ramesh, is that on the fateful day, one person came to take him to the house of the appellants to meet A2, as he was told by that person that A2 met with an accident. At about 6.00 p.m., PW1-Ramesh accompanied that fellow to the house of the appellants. A2 told PW1-Ramesh that the deceased fell off a chair while she was about to fetch a box/tin on the loft in the kitchen. PW1-Ramesh saw his daughter lying cool. She had suffered head injury. There were marks on her throat. Her blood was spread around her

head. Some household articles were strewn in the kitchen. PW1-Ramesh, therefore, called some of his relatives. PW2-Vitthal is the maternal uncle of the deceased. He rushed to the house of the appellants to notice the very scene. He lodged report (Exh-39), based on which Accidental Death (A.D.) was registered. The inquest panchanama (Exh-37) was conducted. The mortal remains of the deceased was subjected to post-mortem examination. PW9-Dr. Balaji Phalke, Medical Officer conducted the same. He gave his report (Exh-51). In his opinion, the cause of death is "due to asphyxia due to throttling". He had also noticed ante-mortem injuries on the person of the deceased.

. PW-1 Ramesh, on the following day, lodged the F.I.R. against the appellants and others, alleging them to have had subjected his daughter to harassment with a view to coerce her, to meet the demand of the dowry and ultimately, killed her.

. Based on the complaint (Exh-32), Crime vide C.R. No.I-151/2010 was registered with Police Station, Paithan. PW10 - API Rajendra Kadam was entrusted with the investigation of the crime. The scene of offence panchanama (Exh-34) was drawn. Some articles were taken

charge of from the scene. The clothes on the person of the deceased were also seized under separate seizure panchanama (Exh-43). Pursuant to disclosure statement made by accused No.1, iron mortar (खलबत्ता) was seized. The clothes on the person of A1 were also seized under the seizure panchanama (Exh-40). All the seized articles were sent to Regional Forensic Science Laboratory, Aurangabad for analysis thereof and reports. The Chemical Analyser's reports were received. On completion of the investigation, the appellants alongwith the acquitted accused were proceeded against by filing chargesheet before the Court of Judicial Magistrate First Class, Paithan. The learned Judicial Magistrate First Class, Paithan committed the case to the Court of Session, Aurangabad.

. The learned Additional Sessions Judge-4, Aurangabad framed the charge. The appellants and the acquitted accused pleaded not guilty and claimed to be tried.

4. To bring home the charge, prosecution examined in all ten witnesses. The documents in the nature of panchanamas, disclosure statement, Chemical Analyser's Reports, etc. were produced in evidence. The appellants

did not lead any evidence in their defence. Before the Trial Court, it was defence of the appellants that the deceased accidentally fell off the chair, suffered head injury and succumbed thereto. It was also their defence that PW1-Ramesh made demand of Rupees Fifteen Lakhs. As the demand was not met, PW1 Ramesh and his relations made post-mortem marks on the neck (throat) of the deceased so as to make it appear a case of throttling/strangulation.

5. On appreciation of the evidence, the learned Trial Judge convicted and sentenced the appellants and acquitted the three others, as stated hereinabove. The acquitted accused were none other than two brothers-in-law of the deceased and wife of one of them (co-sister of the deceased). They have been acquitted as there was evidence to indicate that they were living separate at far away places.

SUBMISSIONS :

6. Mr. V.D. Sapkal, learned counsel appearing for the appellants, would submit that the F.I.R. was lodged after deliberation, implicating all the family members. The allegations of illtreatment and demand of dowry were

general in nature. Nature of alleged illtreatment has not been described, nor has it been attributed to particular appellant. Learned counsel took us through the evidence on record to suggest that PW1-Ramesh had 25 years' long acquaintance with the appellants. He was financially unsound. The appellants, on the other hand, were affluent. The marriage between the deceased and A1 took place in the *Math*. The marriage expenses were borne by A2. Learned counsel was candid enough to admit the deceased to have met with homicidal death. According to him, though the offence took place in her matrimonial home, the burden of prosecution to establish the guilt no way became lesser. According to learned counsel, the evidence of PW1-Ramesh, PW3-Bharat and PW5-Vitthal was not coherent. They are the birds of a feather. PW5-Vitthal had lodged the report on the fateful day. It was in the nature of an F.I.R. The same has been suppressed. When a pointed query was made by us as regards seizure of mortar and the Chemical Analyser's reports, learned counsel would submit that Medical Officer's opinion was not solicited as to whether head injury could be possible by hit of the mortar.

. Learned counsel for the appellants referred to evidence of PW1-Ramesh, PW3-Bharat and PW5-Vitthal and no any other evidence. He has relied upon the following citations to ultimately urge for acquittal of the appellants:-

- (i) ***Subramaniam Vs. State of Tamil Nadu & Anr.***
2009 ALL MR (Cri)2018 (S.C.)
- (ii) ***Sohel Mehaboob Shaikh Vs. State of Maharashtra***
AIR(SCW)-2009-0-4145
- (iii) ***Mulak Raj and others Vs. State of Haryana***
1996 CRI.L.J.1358
- (iv) ***Baburam Vs. State of M.P.***
AIR 2002 S.C.758
- (V) ***Prem Singh Vs. State of Haryana***
AIR 1998 SC 2628
- (vi) ***Salamat Ali and another Vs. State of Bihar***
AIR 1995 SC 1863
- (vii) ***Biswajit Halder alias Babu Halder and others***
Vs. State of W.B.
2007 CRI.L.J.2300 (1)
- (viii) ***State of H.P. Vs. Nikku Ram and others***
AIR 1996 SC 67(1)

In the view of learned counsel, the Trial Court blindly relied on the evidence of PW1-Ramesh, PW3-Bharat and PW5-Vitthal.

7. The learned Additional Public Prosecutor

(A.P.P.) would, on the other hand, support the impugned judgment and order. He took us through the evidence of PW1-Ramesh, PW3-Bharat and PW5-Vitthal to submit that the deceased had been subjected to harassment and illtreatment in connection with demand for dowry. The deceased died within four months of her marriage. It was a clear case of a dowry death.

8. There is no dispute that the marriage between A1 and Mukta (deceased) took place on 23rd December, 2009. It is also undisputed that she died within seven years, nay within four months, of her marriage. It is also beyond pale of doubt that the death was unnatural and in fact, it was homicidal one. The only question is whether the appellants or any one of them is the author of the homicidal death. The entire incriminating evidence on record had been put to the appellants in question-answer form, in their examination under Section 313 of the Code of Criminal Procedure. They simply denied the same without offering any explanation, which they owed in view of the fact of the deceased having been killed in matrimonial home.

9. Let us embark on examination of the evidence on record to find whether the Trial Court was justified in

passing the impugned judgment and order.

10. Before adverting to the evidence, we propose to refer to the relevant provisions of the Indian Penal Code and the Evidence Act.

. Section 304-B of IPC reads as under :-

"304-B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death."

Explanation.- For the purposes of this subsection, "dowry" shall have the same meaning as in section 2 of the dowry Prohibition Act, 1961.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

. Section 498-A of IPC reads as under :-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, "cruelty" means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

. Section 113-B of the Evidence Act reads as under:-

"113-B. Presumption as to dowry death - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in Section 304-B of the Indian Penal Code."

To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:-

(i) the death of a woman should be caused by burns or bodily injury or otherwise than under a

"normal circumstance";

- (ii) such a death should have occurred within seven years of her marriage;
- (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) such cruelty or harassment should be for or in connection with demand of dowry; and
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death."

. Since the deceased died within four months of her marriage, it is not necessary to interpret the words "soon before", appearing in Section 304-B IPC, so far as proximity test is concerned.

11. Having regard to the aforesaid statutory provisions, we embark on consideration of the appeal. The prosecution case, as is projected through PW1-Ramesh, the father of the deceased, is that on the fateful day, one person came to take him to the house of the appellants to meet A2, as he was told by that person that A2 met with an accident. At about 6.00 p.m., PW1-Ramesh accompanied that fellow to the house of the appellants. A2 told PW1-Ramesh that the deceased fell off a chair while she was about to fetch a box/tin on

the loft in the kitchen. PW1-Ramesh saw his daughter lying cool. She had suffered head injury. There were marks on her throat. Her blood was spread around her head. Some household articles were strewn in the kitchen. PW1-Ramesh, therefore, called some of his relatives. PW2-Vitthal is the maternal uncle of the deceased. He rushed to the house of the appellants to notice the very scene. He lodged report (Exh-39), based on which Accidental Death (A.D.) was registered.

12. On the question of illtreatment of the deceased, there was evidence only of PW1-Ramesh. So far as fixing of dowry is concerned, prosecution examined two more witnesses namely, PW3-Bharat and PW5-Vitthal to reinforce the evidence of PW1-Ramesh. PW3-Bharat testified that on 11th December, 2009, there was a meeting between A2 (Kakde Maharaj), other villagers and parents of deceased. The meeting was in respect of engagement of the deceased with A1. In the meeting, dowry amount to the tune of Rupees Five Lakhs was fixed. PW1-Ramesh paid A2 Rupees Two Lakhs. The remaining amount was to be paid lateron. In the month of March, PW1-Ramesh had narrated him (PW3-Bharat) that inlaws of the deceased were illtreating her in connection with the

balance amount of dowry. It is further in his evidence that after receiving sugarcane amount, PW1-Ramesh had paid A2 Rupees Two Lakhs.

13. Learned counsel for the appellants would submit that case of the meeting dated 11th December, 2009 has been introduced by PW3-Bharat in his evidence without there being any reference to the same in the evidence of PW1-Ramesh. Learned counsel meant to say that it was hearsay and an improvement over the evidence of the first informant. In his cross-examination, PW3-Bharat was categorical to state that the statement to the police was silent to mention as to the meeting dated 11th December, 2009. Close scrutiny of his evidence would indicate that the witness was categorical to state that there was a meeting for settlement of marriage and fixing of dowry. It, therefore, cannot be said that it was an omission amounting to contradiction, sufficient to belie evidence of PW3-Bharat. In cross-examination of PW3-Bharat, it was suggested by the defence that PW1 had paid A2 Rupees Two Lakhs for marriage expenses and not as dowry. The same indicates that the father of deceased had paid her inlaws Rupees Two Lakhs before marriage, might be for marriage expenses.

14. Then, we have the evidence of PW5-Vitthal, maternal uncle of the deceased. It is in his evidence that PW1-Ramesh paid A2 Rupees Two Lakhs. The marriage was preceded by a meeting over fixing of the amount of dowry. On receipt of sugarcane bill, PW1-Ramesh again paid Rupees Two Lakhs to A2. On the fateful day, he went to the *Math* in response to a phone call informing that Maharaj (A2) met with an accident. There, the appellants told him that deceased died of head injury as a result of her fall from a chair. He, therefore, saw the dead-body to find strangulation mark on her throat, and her tongue was protruded out of mouth. He, therefore, went to the Police Station and gave report (Exh-39).

15. As regards allegations of illtreatment, there is no direct evidence, as it cannot be, as it was a matter within the four walls. As regards illtreatment, there is evidence only of PW1-Ramesh, father of the deceased. As regards fixing of marriage and dowry and part payment thereof, prosecution tried to reinforce evidence of PW1-Ramesh, by examining PW3-Bharat and PW5-Vitthal.

16. From the evidence that has come on record,

during cross-examination of these witnesses and suggestions put to them, it is clear that PW1-Ramesh, father of the deceased had long acquaintance with A2 and his family members. A2 is a man of means. He has landed property at village Borgaon. His Math at Paithan was sprawl over 10,000 sq.foot of land. He had two more Maths at Pandharpur and Alandi. PW1-Ramesh was not so financially sound. It was an arranged marriage, performed within three days of its settlement. No invitation cards were printed. The marriage was performed in the Math i.e. at the place of A2. It is also in the evidence that it was A2, who had spent for the marriage.

17. In our view, the above referred evidence fell short to make out a case of demand of dowry and payment thereof. It is not that the case of the prosecution as regards demand of dowry and illtreatment of the deceased over the same is disproved. It is a case of not proved. The case of PW1-Ramesh may be true. For connecting the appellants with the alleged offence, it should travel from "may" to "must". There is one more reason to observe so. PW1-Ramesh was categorical to admit that he had lodged the written report (FIR) with the police.

For lodging of the report, he was accompanied by not less than 6 to 7 persons. The FIR was written in the *Math*. He himself and others, who had accompanied him to the Police Station, had given facts to draft the FIR. His brother and PW5-Vitthal had told him as to whose names should be given in the FIR. After discussion and deliberation, names of the accused were mentioned in the FIR. As such, the FIR (Exh-32) lost its legal sanctity. True, the witnesses were categorical to state that what was narrated in the FIR was as per the happenings. PW1-Ramesh is a rustic and illiterate person. He was unable to read and write. What was narrated in the FIR again can be said to be "might be" true. The FIR (Exh-32) would, therefore, only be considered as one lodged for setting the criminal law in motion. It is reiterated that the appellants admit the deceased to have met with homicidal death.

18. Learned counsel for the appellants would further submit that PW5-Vitthal claimed to have had lodged report with the police on 27th April, 2010 itself. Learned counsel meant to say that the report lodged by PW5-Vitthal was an FIR. The same has been suppressed. Close scrutiny of the evidence on record would indicate

that PW5-Vitthal lodged the report (Exh-32). Pursuant to the said report, Accidental Death (A.D.) was registered. The witnesses gave evidence about three years after the incident. By passage of time, one's memory may not serve him well. The Investigating Officer was categorical to state that on the fateful day, the report as regards death of the deceased was lodged. The FIR followed the following day.

19. Although we are of the view that the prosecution evidence is not sufficient to make out offences punishable under Sections 304-B, 498-A read with Section 34 of IPC and under Sections 3 and 4 of the Dowry Prohibition Act, there is another aspect of the matter. Admittedly, deceased Mukta had been murdered in the kitchen of her matrimonial home. It was day-time. Needless to mention that the matrimonial home was comprised of four rooms standing on the *Math* premises itself. Although there is evidence to indicate that the couple (deceased and A1) had stayed at Alandi for little over one month immediately after the marriage, admittedly, they had been to the *Math* at Paithan from at least a few days next before the fateful day. The same indicates the premises in which the deceased was

murdered, had been shared by her husband (A1) with her along with A2 and A3. It is reiterated that until conclusion of the trial, it was a case of the defence that the deceased met with accidental death. The fact was not so. The deceased was lying in the pool of blood in the kitchen room. The inquest panchanama (Exh-37) records the deceased to have suffered injuries to her head. There were nail scratch marks on her cheeks. There was mark on her throat indicating signs of compression.

20. The post-mortem report (Exh-51) records following surface wounds and injuries on the person of the deceased :-

- (i) Lacerated wound of 7 cm x 0.5 cm x 0.3 cm Anterio posterior in direction over right parietal area of scalp. The wound would be caused within 1 hour before death.
- (ii) Lacerated wound of 5 cm x 0.5 cm x 0.3 cm vertical in direction over temporo-parietal junction of scalp. The wound would be caused within 1 hr. before death. Cause : impact with hand & blunt object.
- (iii) Contusion frontal area of scalp 2 cm x 2 cm would be caused within 1 hr. before death. Cause : Impact with hard and blunt object.
- (iv) Bruise over Rt. side of neck above thyroid cartilage 4 cm x 2.5 cm, brownish in colour, skin hard parchment like. Petechial haemorrhages and bleeding in subcutaneous

tissue underneath the bruise and in the vicinity of the bruise. Age : may have caused within an hour before death. Cause : external compression with soft and firm surface.

- (v) Four semilunar (crescentic) abrasions are seen on the left half of neck each measuring about one to 1.5 cm in dimensions probably caused by crescentic objects like. The underlying tissue also show subcutaneous bleeding showing that these injuries are caused by pressure applied externally over neck. Age : within 1 hr. before death.
- (vi) Bruise : seen over Rt. Half of neck 7 cm x 2 cm. Antero-posterior in direction. This injury may be caused by pressure applied with soft and firm surface. Age : would be caused within one 1 hour before death. This injury also shows Petechial haemorrhages in the vicinity of the scar.
- (vii) Ecchymose (bruise) over anterior lower area of neck extending to suprasternal area of upper chest 15 cm x 7 cm. It is an ecchymose caused due to external forces applied over upper part of neck, as explained in injuries no.4, 5 and 6.

. The above injuries were ante-mortem. According to the Medical Officer, PW-9 Dr. Phalke, the deceased died of asphyxia due to throttling.

21. The defence took an illogical stand before the Trial court. It was their case that injury at the throat was post-mortem. It was caused by PW1-Ramesh and his men so as to make it appear to be a case of homicide. Be that as it may, before this Court, the

appellants admit, as they have to, the deceased met with homicidal death.

22. There can be no two views over the observations made by the Apex Court in the cases relied on by learned counsel for the appellants. Different fact here or there makes all the difference. The observations and views expressed by the Apex Court in a given set of facts, may not be applicable to a case of different set of facts. In the case of **Subramaniam** (supra), it was observed by the Apex Court as under :-

"So far as the circumstance that the husband and wife had been living together is concerned, indisputably, the entirety of the situation should be taken into consideration. Ordinarily when the husband and wife remained within the four walls of a house and a death by homicide takes place it will be for the husband to explain the circumstances in which she might have died. However, we cannot lose sight of the fact that although the same may be considered to be a strong circumstance but that by alone in absence of any evidence of violence on the deceased cannot be held to be conclusive. It may be difficult to arrive at a conclusion that the husband and husband alone was responsible therefor."

23. As has been observed in ***Sharad Birdhichand Sarda Vs. State of Maharashtra 1984 SC 1622***, the following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established:-

- (i) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established.
- (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- (iii) the circumstances should be of a conclusive nature and tendency.
- (iv) they should exclude every possible hypothesis except the one to be proved, and
- (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

24. In case of **Sohel Mehaboob Shaikh** (supra), it was observed as under :-

"The three circumstances brought on record by the prosecution and highlighted by the Trial Court and High Court are as follows :

"(i) Deceased Sofiya met with an unnatural death; (ii) Deceased Sofiya had died in the room which was solely and exclusively occupied by her and her husband i.e. accused No.1; (iii) The appellant has not offered any explanation in respect of the incident in which deceased Sofiya had sustained burns."

The first and third circumstances cannot be considered to be relevant either separately or collectively. So far as the second circumstance is concerned, there is no evidence to show circumstantially that accused was present in the room at the time of occurrence. The time of occurrence, even by approximation has not been established by the prosecution."

25. It is true that suspicion, howsoever, strong cannot take place of proof. It is reiterated that a conclusion is to be arrived at on appreciation of the evidence adduced. True, the legal propositions relied on have to be on the mind while appreciating the evidence.

26. Section 106 of the Evidence Act speaks as under:-

"106. Burden of proving fact especially within knowledge.- When any fact is especially

within the knowledge of any person, the burden of proving that fact is upon him."

27. In a case of murder committed in the house, the initial burden to establish the case would undoubtedly lie on the prosecution. In view of Section 106 of the Evidence Act, corresponding burden also lies on inmates of house to cogently explain as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet by 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 the accused to offer explanation. [***Gajanan Dashrath Kharate Vs. State of Maharashtra (2016)4 SCC 604***].

28. A false defence much less an illogical and improbable one reinforces the prosecution case.

. It is only before this Court that learned counsel for the appellants came around to admit the deceased to have met with homicidal death. According to learned counsel, someone else has committed offence as there was ample opportunity as some disciples of A2 would stay in the *Math*.

29. Here, when the wife of A1 and daughter-in-law of A2 and A3 was lying dead in a pool of blood, she had suffered visible injuries on her person and more so when the appellants knew that the deceased had been murdered, they remained inactive. In fact, it should have been natural on their part to rush the deceased to a nearest Medical Centre, give a call to the police and raise hue and cry. Instead of doing this, they informed the relations of the deceased that A2 met with an accident and they should come to meet him. The conduct was obviously inconsistent with the innocence, at least of A1. We observe so since there is no other evidence pointing accusing finger at A2 and A3.

30. No evidence was led by the appellants in their defence. True, they are not under statutory obligation to do so. But the facts and circumstances of the case warrant that the accused are expected not to keep quiet but to offer some explanation or adduce evidence to rebut impact of the prosecution evidence.

31. As stated above, learned counsel for the appellants, on his own, did not refer to any other evidence, except that of PW1-Ramesh, PW3-Bharat and PW5-

Vitthal. On appreciation of the entire evidence on record, we are of the view that there is some other evidence that implicates A1 in the offence of uxoricide.

32. Scene of offence panchanama (Exh-34) was drawn on 28th April, 2010. The same has been proved by the evidence of PW1-Ramesh, panch witnesses PW2-Bandu Chinchkhede, PW4 Narayan Lande and PW10- API Kadam, the Investigating Officer. During the panchanama (Exh-34), a saffron coloured pancha (large handkerchief), stained with blood, pieces of bangles, sample of the blood of the deceased were collected. On arrest of A1 on 28th April, 2010, baniyan (vest) on his person and a dhoti were taken charge of under the seizure panchanama (Exh-40). This fact has been proved by the evidence of PW5-Vitthal and PW10-ASI Kadam, the Investigating Officer. No prosecution witness was suggested that A2 did never sport dhoti, but he would put on trouser. True, while A2 was before the Trial court, during recording evidence of PW1-Ramesh, he was clad in a shirt and full pant. The fact that admittedly, A1 would assist his father (A2) in running *Math* would undoubtedly suggest that he must have been sporting dhoti. At the cost of repetition, it is stated that fact of seizure of baniyan and dhoti of A1

has been proved. The same has also not been disputed either before the Trial Court or before us.

33. The Investigating Officer – PW10-ASI Kadam was categorical to depose that all the seized articles, including mortar (खलबत्ता) and the clothes on the person of the deceased i.e. yellow coloured saree, yellow coloured blouse and yellow coloured cotton petticoat, seized under the panchanama (Exh-43) were sent to Regional Forensic Science Laboratory, Aurangabad. The Investigating Officer tendered in evidence the C.A. Reports (Exh-52, Exh-53 and Exh-54). Those have been admitted in evidence. The appellants did not raise any objection to admit the C.A. Reports in evidence. The C.A. Report (Exh-52) would indicate that the swab of blood sample of the deceased and all her articles borne blood of blood group "O". The same indicates that the blood of the deceased was of group "O". While baniyan and the dhoti of A1 seized under seizure panchanama (Exh-40), were stained with blood. True, when the dhoti was shown to the witness (PW10-ASI Kadam) before the Trial Court, he did not notice any blood stains thereon. It is but natural that the stains would not retain its red colour. The fact remains that when the expert

examined the dhoti, he found it to have had stained with human blood. The shirt and the dhoti were necessarily on the person of A1 on the fateful day. Those were taken charge of within hours of the incident, that too by taking out that from his person.

34. Soon after arrest of A1 on 28th April, 2010, he gave a disclosure statement (Exh-46) in the presence of panch witness PW7-Raghunath, one Somnath Gavane and PW10-ASI Kadam, the Investigating Officer. In the said disclosure statement, A1 has stated as follows :-

“मुक्ता हिचे डोकीत मारलेला लोंखडी खलबत्ता मी सदर खोलीचे समोर असलेल्या स्वयंपाकाच्या पत्र्याच्या शेड जवळ पोत्यात गुंडाळून ठेवला आहे. तो खलबत्ता मी काढून देतो. तुम्ही माझ्या सोबत चला.”

(Underlined portion is relevant and relied upon as well)

Pursuant to the disclosure statement, he took out mortar (खलबत्ता), kept (concealed) in a gunny bag near tin-shed of kitchen. PW10-ASI Kadam, the Investigating Officer seized the said article. The C.A. Report (Exh-52) indicates that it was mortar (खलबत्ता), stained with blood. The stains were of blood group “O”. This connects A1 with the death of his wife.

35. The post-mortem report (Exh-51) records that the injuries were caused by hard and blunt object. The article i.e. mortar (खलबत्ता) is a hard and blunt object, cannot be disputed. True, opinion of the Medical Officer was not solicited as to whether the injuries were possible by mortar (खलबत्ता) seized. The same would not be fatal to the prosecution. It was only suggested to the Medical Officer if a hard and blunt object is hit, the resultant injury has to be curvy in nature. In our opinion, this exercise, if at all to be done, ought to have been done by the defence during cross-examination of the Medical Officer since the article borne blood stains. In what way, the deceased was hit with this article is best known to A1 only.

36. It may be said that self incriminating material appearing in the aforesaid disclosure statement would be hit by Section 25 of the Evidence Act as being confession to the police. Interpretation of Section 27 of the Evidence Act would make underlined (above) statement relevant since the fact that mortar (खलबत्ता) bore blood stains of blood of blood group "O", would suggest that it was used in the commission of the offence.

37. In view of the above, we read the disclosure statement made by A1 as it is.

38. On re-appreciation of evidence, we reach such a pass that indicates that there is no evidence to implicate A2 and A3 in the offence of murder of their daughter-in-law, but the facts that A1 kept quiet when he owes explanation as to cause of death of his wife, his post-offence conduct being inconsistent with his innocence, the fact that baniyan on his person had stains of blood of the blood group of the deceased, dhoti of A1 too was having stains of human blood, the fact that soon after his arrest on 28th December, 2010, he made disclosure statement pursuant to which the mortar (खलबत्ता) was recovered, the C.A. Report indicates the said article to have had stains on it of the blood of blood group "O" which was the blood group of the deceased, undoubtedly implicate A1 in the offence of murder of the deceased.

39. Instead of critically examining the judgment and order of the Trial Court, suffice it to say that on re-appreciating the evidence on record, the appeal

partly succeeds in the terms of following order:-

ORDER

(1) The appeal is partly allowed.

(2) The impugned order of conviction and sentencing appellants for the offences punishable under Sections 304-B, 498-A r/w 34 of Indian Penal Code and 3 & 4 of Dowry Prohibition Act, is hereby set aside. The appellants are acquitted of the offences punishable under Sections 304-B, 498-A r/w 34 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act.

(3) The impugned order of conviction and sentencing appellant Nos.2 and 3 for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, is set aside. They are acquitted of the offence punishable under Section 302 r/w 34 of the Indian Penal Code. Their bail bonds to stand cancelled.

(4) Appellant Nos.2 and 3 shall execute P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen thousand) each and surety bond, each in the like amount in terms of

Section 437-A of the Code of Criminal Procedure so as to appear before the next Appellate Court.

(5) The fine amount, if any paid by appellant Nos.2 and 3 be refunded to them.

(6) The appeal, so far as challenge to appellant No.1's conviction and sentence for the offence punishable under Section 302 of the Indian Penal Code is concerned, is dismissed.

(7) The amount of compensation to be paid to the father of the deceased is reduced to Rs.10,000/-.

(8) The appeal is accordingly partly allowed and disposed of.

[R.G. AVACHAT]
JUDGE

[S.S. SHINDE]
JUDGE