

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.216 OF 2014

1. Dilip s/o Ratilal Jadhav,
age 25 yrs, Occ. Agril.
2. Ratilal s/o Rama Jadhav,
age 45 yrs, Occ. Agril.
3. Dhupibai w/o. Ratilal Jadhav,
age 40 yrs, Occ. Household.
4. Jasubai @ Jayashree d/o Ratilal Jadhav,
age 27 yrs, Occ. Household.

All R/o. Mandana,
Tq. Shahada,
District-Nandurbar.

..Appellants..
(orig. accused)

Versus

State of Maharashtra,
Through Investigating Officer
of Shahada Police Station,
District Nandurbar.

..Respondent..

...

Advocate for Appellants : Mr. S S Bora (appointed)
APP for Respondents : Mr. R V Dasalkar

...

CORAM : V.K. JADHAV & SHRIKANT D. KULKARNI, JJ.

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Reserved on : 13.8.2021
Pronounced on : 06.09.2021

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JUDGMENT :- (Per V. K. JADHAV, J.)

1. This appeal is directed against the judgment and order of conviction passed by the Additional Sessions

Judge, Shahada dated 26.3.2014 in Sessions Case No.23 of 2012.

2. Brief facts of the prosecution case, are as follows :-

a] Deceased Lalitabai was given in marriage to the appellant/accused no.1 Dilip Jadhav prior to one and half years of lodging of the FIR. After marriage, deceased Lalilabai started cohabiting with the appellant/accused no.1 at his residence at village Mandane, Tq. Shahada, District Nandurbar. All the appellants/accused were residing together in a joint family in the same house at village Mandane. Deceased Lalitabai was treated well for a period of one year only. Thereafter, she was subjected to ill-treatment and torture for various reasons. Appellant/accused no.1 Dilip used to suspect about her character and on that count, all the accused used to beat deceased Lalitabai. Deceased Lalitabai had disclosed to her parents and other family members about the ill-treatment and harassment being extended to her by the accused persons when she had been to her parents home. Parents and other family members tried their level best

to persuade the appellant/accused no.1 Dilip. Further, one day prior to the incident i.e. on 3.3.2012 brother of the informant namely Dadulal Kalu Rathod went to the matrimonial home of deceased Lalitabai at village Mandane to meet her. That time, deceased Lalitabai told him about the ill-treatment and torture. Deceased Lalitabai had disclosed to him that her husband, mother-in-law, sister-in-law i.e. accused nos.1,3 and 4 had driven her out from the house. Her mother-in-law and sister-in-law i.e. appellants/accused nos.3 and 4 had pulled her hair and extended beating to her. Deceased Lalitabai also disclosed to him that the appellant/accused no.1 Dilip put a sickle on her neck and threatened her to kill her. Father-in-law/accused no.2 also abused her and asked her to leave the house. Deceased Lalitabai also disclosed that the appellant/accused no.1 Dilip Jadhav used to threaten her to kill her by strangulating her neck with rope. Thus, said brother of the complainant namely Dadulal had requested the appellant/accused no.3, who was present there as not to ill-treat and torture Lalitabai. On the very next day i.e. on 4.3.2012 at about 2 p.m.

elder brother of the complainant/informant namely Birbal Kalu Rathod had received a phone call from one Makhram Soma Banjara of village Mandane informing him about serious condition of Lalitabai. Said Makram had also informed that deceased Lalitabai was admitted in Municipal Hospital, Shahada. Thus, the informant alongwith his family members immediately rushed to the hospital. They found dead body of the deceased Lalitabai in the hospital. On examination of the dead body, they found ligature marks around her neck. Blood was also coming from her both nostrils. Thus, the informant went to Shahada police station and lodged the FIR against appellant/accused nos.1 to 5 for the offence punishable under sections 498-A, 302, 323, 504, 506 r/w 34 of the Indian Penal Code.

3. On the basis of his complaint, crime bearing no.40 of 2012 came to be registered in the concerned police station. After completion of the investigation, Investigating officer has submitted the charge-sheet against accused nos.1 to 5 for the offence punishable under sections 498-A, 302, 323, 504, 506, 34 of the

Indian Penal Code. After committal, the learned Additional Sessions Judge, Shahada on 12.9.2012 framed the charge against all the accused persons under the aforesaid sections vide exhibit 12. All accused pleaded not guilty to the charge and claimed to be tried. Their defence is of total denial and false implication in the offence. Prosecution has examined in all 17 witnesses to substantiate the charges levelled against the accused.

4. By judgment and order dated 26.3.2014 the learned Additional Sessions Judge, Shahada in Sessions case No.23 of 2012 has convicted the appellants/accused for the offence punishable under sections 498-A, 323, 302 r/w 34 of the Indian Penal Code, which is as follows :-

- 1- The accused no.1 Dilip Jadhav is hereby convicted of the offence punishable under section 302 of the I.P.C.
- 2- He is sentenced to imprisonment for life and to pay a fine of Rs.5000/- (Rupees Five thousand only), in default to undergo further rigorous imprisonment for the period of 1 year.
- 3- The accused no.1 Dilip Ratilal Jadhav, accused no.2 Ratilal Rama Jadhav, accused No.3 Dhupibai Ratilal Jadhav and the accused no.4 Jasubai @ Jayashri

Ratilal Jadhav are hereby convicted of the offence punishable u/s 498-A r/w 34 of the I.P.C.

- 4- They are sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1000/- (Rupees one thousand) each, in default to undergo further rigorous imprisonment for a period of six months.
 - 5- The accused no.1 to 4 are acquitted of the offence punishable under sections 323, 504, 506 r/w 34 of the I.P.C.
 - 6- The accused no.5 Munna alias Dashrath Ratilal Jadhav, is acquitted of the offence punishable u/s 302, 498-A, 323, 504, 506 r/w 34 of the I.P.C.
 - 7- The accused no.1 is in jail, whereas the accused no.2 to 5 are on bail. Hence, the accused nos.2 to 4 are taken into custody. The bail bonds of accused no.5 stand cancelled.
 - 8- The accused no.1 shall undergo both the sentences i.e. sentence for offence under section 498-A and 302 of IPC concurrently.
 - 9- The accused no.1 is in jail. Hence, set off u/s 428 of Cr.P.C. be given to him, for the period he has already undergone in imprisonment, but against the substantive sentence only.
 - 11-The seized property, being worthless, be destroyed, after the period of appeal is over.
5. The learned Additional Sessions Judge, Shahada has acquitted the original accused no.5 Munna for all the offences.

6. Learned counsel for the appellants/accused submits that the prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. Learned counsel submits that except PW-1 Kailas Kalu Rathod/informant and PW-2 Dadu Kalu Rathod, who is the brother of the informant, PW 3-Makhram Rathod, PW-4 Jamunabai Rathod, PW-5 Limba Pawar, PW-6 Pundlik Marathe, PW-7 Dr. Ranjana Lendhe, PW-8 Motilal Jadhav, PW-9 Shantibai Jadhav, PW-10 Rasal Rathod, PW-12 Nago Patil, PW-14 Najmoddin Khatik, PW-15 Sanjiv Sonawane and PW-16 Dhanraj Mali have not supported the prosecution case at all. So far as PW-11 Dr. Suresh Palusing Thakre is concerned, he is the Medical Officer, who has conducted the postmortem examination on the dead body of the deceased and PW 13 Ajmal Chavan is the panch on the inquest panchnama. Learned counsel submits that even the panchas on the memorandum and recovery panchnama of the rope shown to have been recovered at the instance of the appellant/accused no.1 Dilip have also not supported the prosecution case. Learned counsel submits that in a case of circumstantial

evidence, the prosecution is required to establish the chain of circumstances, so as to lead to the only inescapable conclusion about involvement of the accused in the crime. Learned counsel submits that there is no satisfactory evidence about homicidal death. Prosecution has failed to establish that deceased Lalitabai was subjected to cruelty as defined under section 498-A of the Indian Penal Code prior to her death by suspecting about her character. The same is the motive for committing her murder. There are several loopholes in the prosecution case. Learned counsel submits that the trial court has proceeded on the assumptions that section 106 of the Indian Evidence Act directly operates against the appellants. Learned counsel submits that by application of section 106 of the Evidence Act, the prosecution could not be absolved from the duty of its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution is led evidence which if believed will sustain a conviction or which makes a parima facie case that question arises of considering the fact of which the burden of proof lie upon the accused.

Learned counsel submits that prosecution has failed to prove that appellant/accused no.1, who is convicted for the offence punishable under section 302 of the IPC was lastly seen in the company of his deceased wife Lalitabai. There is no evidence that deceased Lalitabai was lastly seen alive in the company of accused no.1 Dilip. Appellant/accused no.1 has also given plausible explanation about death of deceased Lalitabai in their matrimonial home. Learned counsel submits that there is no satisfactory evidence about the ill-treatment allegedly extended to the deceased Lalitabai by the appellants-accused persons. Thus, appellants/accused are entitled for the benefit of doubt.

7. Learned counsel for the appellants/accused, in order to substantiate his contentions, placed reliance on the following judgments :-

1. Reena Hazarika Vs. State of Assam reported in AIR 2018 SC 5361.
2. Digamber Vaishnav and ors. Vs. State of Chattisgarh reported in 2019 (4) SCC 522.
3. Gargi Vs. State of Haryana reported in 2019 (9) SCC 738.
4. State of Rajasthan Vs. Mahesh Kumar and ors reported in 2019 (7) SCC 678.

8. Learned APP for the respondent-State submits that the prosecution has proved its case beyond reasonable doubt against the appellants/accused. There is evidence about the homicidal death. As per the opinion given by PW 11 Dr. Suresh Thakre, the probable cause of death is due to "asphyxia and compression of cervical vasculature due to strangulation". Learned APP submits that PW 11 Dr. Suresh Thakre has noted multiple ligature marks over the left neck region. He has also noted ligature marks over left region above cricoid cartilage and ligature mark over back of neck region two in numbers. He has also noted fracture of cricothyroid cartilage on palpation, abrasions over left region iliac region of abdomen. Learned APP submits that the evidence of PW 1 Kailas/informant and PW 2 Dadu, who is the brother of the informant, is trustworthy, consistent on the point of ill-treatment being extended to the deceased Lalitabai by suspecting about her character by the appellants/accused persons. Prosecution has thus proved the motive. Learned APP submits that it was a custodial death. The appellant/accused no.1-Dilip Jadhav the husband of

deceased Lalitabai had committed the crime in complete secrecy inside the house/hut. Thus, the nature and amount of evidence required to establish the charge cannot be of the same degree as required in other cases of circumstantial evidence. There is a evidence about the ill-treatment being extended to the deceased Lalitabai by the appellant/accused no.1 by suspecting about her character. She was subjected to frequent beating, life threats, etc. The appellant/accused no.1 Dilip had not given any explanation as to how deceased Lalitabai had ligature marks around neck and how she died homicidal death. Learned APP submits that on the other hand on 4.3.2012 deceased Lalitabai was taken to Primary Health Center, Mandane and PW 7 Dr. Ranjana Lendhe had examined the deceased. It was informed to PW 7 Dr. Ranjana Lendhe that one cow had hit the woman, due to which she had suffered the bleeding injury. Learned APP submits that even the false explanation has been given to the concerned doctor of P.H.C. of village Mandane when the deceased Lalitabai was taken to P.H.C. Mandane.

9. Learned APP submits that in view of the provisions of section 106 of the Indian Evidence Act, corresponding burden is on the appellant/accused no.1 Dilip to give cogent explanation as to how homicidal death of deceased Lalitabai was occurred in the house. Learned APP submits that the prosecution has proved the case beyond reasonable doubt against all the appellants/accused. There is no substance in the appeal. Thus, the appeal is liable to be dismissed.

10. Learned APP submits that, in view of Section 106 of the Indian Evidence Act, corresponding burden is on the appellants/accused to give cogent explanation as to how the homicidal death of deceased Lalitabai occurred in the house. Furthermore, post incident conduct of the appellant no.1/accused Dilip Jadhav is also suspicious. Appellant no.1/accused has not informed the incident to anyone including the parents of the deceased. Learned APP submits that prosecution has proved the case beyond reasonable doubt against the appellants/accused. There is no substance in this appeal. Appeal is liable to be dismissed.

11. Learned APP, in order to substantiate his contentions, placed reliance on following judgments :-

1. Trimukh Maroti Kirkan Vs. State of Maharashtra reported in 2007 Cri.L.J. 20.
2. State of Rajasthan Vs. Thakur Singh in criminal appeal no.357 of 2005 decided on 30.6.2014.
3. Kalu Alias Laxminarayan Vs. State of Madhya Pradesh in criminal appeal no.1677 of 2010 dated 7.11.2019.
4. Jayantilal Verma Vs. State of M.P. (now Chattisgarh) in criminal appeal no.590 of 2015 dated 19.11.2020.

12. We have carefully considered the submissions advanced by the learned counsel for the appellants-accused and the learned APP for the respondent-State. With their able assistance, we have perused the grounds taken in the appeal, annexures thereto, the record and proceeding and the case laws cited by the respective parties.

13. The prosecution has examined PW-11 Dr. Suresh Thakre. On 5.3.2012 PW-11 Dr. Suresh Thakre had conducted the postmortem examination on the dead body of the deceased Lalitabai. He has noted following injuries on the dead body of Lalitabai.

* EXTERNAL INJURIES *

Multiple ligature marks over left neck region.

- i] Ligature over left neck region, size about 7 x 2 cm.
- ii] Ligature mark over left region above cricoid cartilage, size about 2x2 cm.
- iii] Ligature mark over back of neck region 2 in number.
- iv] Fracture of cricothyroid cartilage on palpation.
- v] Abrasions over left iliac region of abdomen.

14. According to him, nature of the above injuries are grievous and age was more than twelve hours. The cause of the injuries was due to ligature mark, caused by soft linear object like rope. All the injuries were ante-mortem. PW 11 Dr. Suresh has also recorded internal injuries as under :-

INTERNAL INJURIES

- i. Larynx, trachea and bronchi observed congested with oedematous changes.
- ii. Large vessels observed congested and red matter changes around in vessels at the site of compression.

15. According to him, internal injuries were occurred due to compression of neck. Postmortem report is marked at Exhibit 52. According to Dr. Suresh Thakre, the probable cause of death is due to "asphyxia and

compression of Cervical vasculature due to strangulation". PW 11 Dr. Suresh has further opined that injuries as mentioned in the report can be caused by rope, article 'A' now shown to him. There is nothing in the cross-examination to draw any other inference about death of deceased Lalitabai. The multiple ligature marks over the left neck region and further ligature over the back of neck region and left region alongwith fracture of cricothyroid cartilage on palpation unerringly point out that deceased Lalitabai was subjected to constriction/compression of neck till she took her last breathe. The prosecution has proved homicidal death of deceased Lalitabai. Learned counsel for the appellants has also not seriously disputed the homicidal death of deceased Lalitabai.

16. Prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. It is well settled that the circumstances from which conclusion of guilt is to be drawn should be fully established and the facts so established should be consistent only with the hypothesis of the guilt of the

accused. The circumstances should be of a conclusive nature and tendency and exclude every possible hypothesis except the one to be proved. 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.

17. Learned counsel for the appellants/accused has placed his reliance on a case Reena Hazariak Vs. State of Assam (supra) and State of Rajasthan Vs. Mahesh Kumar (supra), wherein chain of circumstantial evidence are considered. This legal position is not disputed.

18. In the instant case, the prosecution has examined PW 1 Kailas/father of the deceased Lalitabai and PW 2 Dadu, who is the brother of PW 1/informant. It is their consistent evidence that deceased Lalitabai was subjected to cruelty by suspecting about her character. She was treated well for a period of one year after marriage or till the birth of her male child. Deceased

was given in marriage to appellant/accused no.1 Dilip Jadhav one and half year prior to the date of incident. Their evidence is consistent about the ill-treatment being extended to deceased Lalitabai by suspecting about her character as against the appellant/accused no.1 Dilip. PW 1 Kailas has deposed that accused no.1 used to suspect about her chastity, whereas PW 2 Dadu has deposed that accused no.4 Jasubai @ Jayashri used to suspect chastity of Lalitabai. However, their evidence is consistent on the point that the appellant/accused no.1 Dilip used to beat deceased Lalitabai by suspecting about her chastity. PW 1 Kailas has admitted in his cross-examination that, after marriage, he had invited deceased Lalitabai and appellant/accused no.1 Dilip to celebrate the custom of 'Mandava Chipala' which is prevalent in their community. PW-1 Kailas has also admitted in his cross-examination that, appellant/accused no.1 Dilip Jadhav and deceased Lalitabai had come to his house at village Mortalai to attend the marriage of his nephew. According to him, everything was going smoothly till that time. He has further admitted that on account of birth of male child

to deceased Lalitabai, members of both the family were happy. There are allegations only against accused nos. 2 to 4 about extending beating and abuses to deceased Lalitabai. However, they have not elaborated the reasons for extending such abuses or beating to deceased Lalitabai by the appellants/accused no.2 to 4. Their evidence is consistent as against the appellant/accused no.1 Dilip Jadhav subjecting the deceased Lalitabai to cruelty by suspecting about her character. Evidence of the prosecution witnesses PW 1 and PW 2 appears to be trust worthy and reliable as against the appellant/accused no.1 Dilip for the reason that he must be the person who suspects about the chastity and none others.

19. It appears from the prosecution evidence that dead body of deceased Lalitabai was found in the hut in the threshing field of the accused. The prosecution has relied upon the spot panchnama exhibit 50 to establish the same. It has been specifically mentioned in the spot panchnama exhibit 50 that spot of the incident is in one hut situated in the threshing field owned by the

appellant/accused no.1 Dilip. There is one another panchnama exhibit 60. Said panchanama was drawn in respect of the house of the appellants/accused persons situated in the village. Prosecution has examined the villagers of village Mandane, however, none of them have supported the prosecution case, still then, their evidence can be considered to the extent that all the appellants/accused were residing jointly in their residential house situated in the village. It is thus for the appellant/accused no.1 Dilip to explain about homicidal death of his wife Lalitabai in the hut of the threshing field owned by him, which is at a considerable distance from his house.

20. Learned counsel for the appellants/accused has vehemently submitted that the burden of proof squarely rests upon the prosecution and said general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Learned counsel submits that, section 106 of the Indian Evidence Act does not absolve the prosecution of its primary burden.

Learned counsel in order to substantiate his contentions placed reliance on the judgments in case of Digamber Vaishnav and ors. Vs. State of Chattisgarh reported in 2019 (4) SCC 522 and the judgment in case of Gargi Vs. State of Haryana reported in 2019 (9) SCC 738.

21. In a case of Digamber Vaishnav and ors. Vs. State of Chattisgarh (supra) relied upon by the learned counsel for the appellants, in paragraph nos. 15 to 19 the Supreme Court has made following observations :-

“15. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

16. This Court in [Jaharlal Das v. State of Orissa](#), (1991) 3 SCC 27, has held that even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is concerned. In cases depending highly upon the circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the conjecture and suspicion do not take the place of legal proof. The court must satisfy itself that various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. In order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:

i.) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

ii.) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and

iii.) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

17. [In Varkey Joseph v. State of Kerala](#), 1993 Suppl (3) SCC 745, this Court has held that suspicion is not the substitute for proof. There is a long distance between 'may be true' and 'must be true' and the prosecution has to travel all the way to prove its case beyond reasonable doubt.

18. [In Sujit Biswas v. State of Assam](#), (2013) 12 SCC 406, this Court, while examining the distinction between 'proof beyond reasonable doubt' and 'suspicion' has held as under:

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense".

19. It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is 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 [[See Kali Ram v. State of Himachal Pradesh](#), (1973) 2 SCC 808].

22. In a case of Gargi Vs. State of Haryana (supra) relied upon by the learned counsel for the appellants in paragraph nos.28 and 28.1 has made following observations :-

“28. The prosecution has relied upon another circumstance that the deceased was lastly in the company of the appellant and she had failed to explain his whereabouts as also the circumstances leading to his death.

28.1. Insofar as the 'last seen theory' is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The Trial Court and the High Court have proceeded on the assumption that Section 106 of the Indian Evidence Act directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that [Section 106](#) of the Indian Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in Sawal Das (supra) in the following :-

“10. Neither an application of [Section 103](#) nor of 106 of the [Evidence Act](#) could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused.....”

23. The learned APP has vehemently submitted that it was a custodial death and deceased Lalitabai was murdered in complete secrecy inside the hut. Thus, the nature and evidence required to establish the charge cannot be of the same degree as required in other cases of circumstantial evidence. In view of section 106 of the Evidence Act, corresponding burden is on the

appellants/accused to give cogent explanation as to how homicidal death of deceased Lalitabai occurred in the house.

24. In a case of **Trimukh Maroti Kirkan vs. State of Maharashtra** reported in **2007 Cri.L.J. 20** relied upon by the learned APP for the respondent/State, the Supreme Court in paragraph no.12 of the judgment has made following observations :-

"12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads : 2003 AIR SCW 4065

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

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by

simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

25. In a case of **State of West Bengal Vs. Mir Mohammad Omar and Ors.** reported in **(2000) 8 SCC 382** relied upon by the learned APP, the Supreme Court has dealt with the provisions of Section 106 of the Evidence Act and laid down the following principles in paragraph nos.31 to 34 of the reports : 2000 AIR SCW 3230.

- “31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.
32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognized by the law for the court to rely on in conditions such as this.
33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the court what else happened to Mahesh at least until he was in their custody."

Applying the aforesaid principle, this Court while maintaining the conviction under Section 364 read with Section 34 IPC reversed the order of acquittal under Section 302 read with Section 34 IPC and convicted the accused under the said provision and sentenced them to imprisonment for life."

26. In a case of **State of Rajasthan Vs. Thakur Singh** reported in **2014 AIR (SCW) 4479**, relied upon by the learned APP, in paragraph nos.22 and 26, the Supreme Court has made the following observations :-

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.
26. In our opinion, the High Court has very cursorily dealt with the evidence on record and has upset a finding of guilt by the Trial Court in a situation where Thakur Singh failed to give any explanation whatsoever for the death of his wife by asphyxia in his room. Moreover, the very fact that all the relatives of Thakur Singh turned hostile clearly gives room for suspicion and an impression that there is much more to the case than meets the eye. Even the complainant, Himmat Singh who squarely blamed Thakur Singh (in the FIR) for the murder of his wife, turned hostile to the extent of denying his relationship with Thakur Singh.

27. In a case of **Kalu @ Laxminarayan Vs. State of Madhya Pradesh** reported in **2019 (4) J.K.J. 578**, relied upon by the learned APP, by referring the observations

made in a case of Trimukh Maroti Kirkan's case (supra), in paragraph no.15, the Supreme Court has made following observations :-

15. In view of our conclusion that the prosecution has clearly established a prima facie case, the precedents cited on behalf of the appellant are not considered relevant in the facts of the present case. Once the prosecution established a prima facie case, the appellant was obliged to furnish some explanation under Section 313, Cr.P.C. with regard to the circumstances under which the deceased met an unnatural death inside the house. His failure to offer any explanation whatsoever therefore leaves no doubt for the conclusion of his being the assailant of the deceased.

28. In a case of **Jayantilal Verma Vs. State of M.P (Now Chattisgarh)** reported in **2020 (13) Scale 143** relied upon by the learned APP for the State, while referring the observations made in the case of Trimukh Maroti Kirkan (supra), the Supreme Court has observed that when the incident had taken place inside, the onus is on the person residing in the house to give such explanation. In such a situation, it is difficult for the prosecution to lead any direct evidence to establish the guilt of the accused.

29. The prosecution evidence is consistent about the ill-treatment being extended to deceased Lalitabai by suspecting about her chastity as against

appellant/accused no.1 Dilip. She was subjected to frequent beating, abuses and life threats. Soon before the death, deceased was subjected to cruelty by the appellant/accused no.1 Dilip by suspecting about her character and deceased Lalitabai had disclosed the same to PW 2 her uncle a day before the incident. The prosecution has proved the act of cruelty as defined under section 498-A of the Indian Penal Code against the appellant/accused no.1 Dilip Jadhav. However, the appellants/accused nos.2 to 4 are entitled for the benefit of doubt to the extent of the charge of cruelty as defined under section 498-A of the Indian Penal Code is concerned. The prosecution has thus proved the motive in this case.

30. Deceased Lalitabai met with the homicidal death in the hut of the threshing field of appellant/accused no.1 Dilip Jadhav. Deceased Lalitabai was brutally murdered. There were multiple ligature marks over and around the neck. She died due to “asphyxia and compression of cervical vasculature due to strangulation” as opined by PW 11 Dr. Suresh Thakare.

31. PW 11 Dr. Suresh Thakare has also opined that said ligature marks are possible by rope article 'A' before the Court. So far as recovery of article 'A' is concerned, learned counsel for the appellants has vehemently submitted that prosecution has failed to prove the memorandum and recovery panchnama since panch witnesses have not supported the prosecution case. However, PW 17 Purushottam Sonawane, Investigating Officer has deposed about it. In order to comply with the provisions of section 27, if the Investigating Officer deposed about recording of the memorandum on the basis of the information disclosed by the appellant/accused no.1 and recovery in connection thereto, we have no hesitation to hold that the prosecution has proved the recovery of rope at the instance of the appellant/accused no.1 Dilip.

32. In the instant case, the appellant/accused no.1 Dilip has not tendered his explanation about homicidal death of his wife in the hut of his threshing field. On the other hand, deceased Lalitabai was taken to P.H.C. Mandane under the false pretext that one cow hit her

and, therefore, she had sustained bleeding injury. Appellant/accused no.1 Dilip has merely stated in his statement recorded under section 313 of Criminal Procedure Code that he has been falsely implicated in this crime. The appellant/accused no.1 has not examined himself on oath. Further, the post incident conduct of the appellant/accused no.1 Dilip is also questionable. The appellant/accused no.1 has not informed to the parents of the deceased Lalitabai nor anyone in the village. In the facts and circumstances of the present case, the ratio laid down by the Supreme Court in the case of Trimukh Maroti Kirkan (supra) relied squarely applies to the present case. It was extremely difficult for the prosecution to lead the evidence to establish the guilt of the accused, if strict principle of circumstantial evidence is insisted upon. In the facts of the present case, initial burden to establish the case has been discharged by the prosecution. As held in the cases cited and relied upon by the learned APP, said initial burden on the prosecution is comparatively lighter in character.

33. In the instant case, the prosecution has proved the circumstances against the appellant/accused no.1-Dilip Jadhav, which are as follows :-

- i. Deceased Lalitabai was subjected to ill-treatment, beating and life threats by the appellant/accused no.1 Dilip by suspecting about her character.
- ii. The prosecution has established the motive of the appellant/accused no.1 Dilip to commit murder of his wife deceased Lalitabai.
- iii. Homicidal death of deceased Lalitabai.
- iv. Dead body of deceased Lalitabai was found in the hut of the threshing field of the appellant/accused no.1 Dilip having multiple ligature marks over and around the neck with the corresponding internal injuries.
- v. Recovery of the article 'A' rope at the instance of the appellant/accused no.1 Dilip Jadhav, which can be used for compression of the neck of the deceased as opined by PW 11, who conducted postmortem examination on the dead body of the deceased Lalita.
- vi. Questionable post incident conduct of the deceased.

34. Thus, in terms of the provisions of section 106 of the Indian Evidence Act, there is corresponding burden on the appellant/accused no.1 Dilip to give cogent explanation. The appellant/accused no.1 has failed to discharge the burden by giving cogent explanation. It is a strong circumstance pointing out his guilt. However,

the appellants/accused nos.2 to 4 who are convicted for the offence punishable under section 498-A of the IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1000/- (Rupees one thousand) each, in default to undergo further rigorous imprisonment for a period of six months are concerned, they are entitled for the benefit of doubt. The appeal is partly allowed to their extent. We upheld the conviction and sentence passed by the Additional Sessions Judge, Shahada as against the appellant/accused no.1 Dilip Jadhav. Hence, we proceed to pass the following order.

ORDER

- i. Criminal Appeal is hereby partly allowed.
- ii. The judgment and order passed by the Additional Sessions Judge, Shahada dated 26.3.2014 in Sessions Case No.23 of 2012 convicting thereby the appellant/accused no.1 Dilip Jadhav for the offence punishable under section 302 of the Indian Penal Code and sentencing him to imprisonment for life and to pay a fine of Rs.5,000/- (Rs. Five Thousand only), in default to undergo further rigorous imprisonment for a period of one year and also

convicting him under section 498-A of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months stands confirmed.

- iii. The judgment and order passed by the Additional Sessions Judge, Shahada dated 26.3.2014 in Sessions Case No.23 of 2012 convicting thereby the appellant/accused no.2-Ratilal Rama Jadhav, appellant/accused no.3 Dhupibai Ratilal Jadhav and appellant/accused no.4 Jasubai @ Jayshree Ratilal Jadhav thereby convicting them under section 498-A of the I.P.C. and sentencing them to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- (Rupees one thousand) each, in default to undergo further rigorous imprisonment for a period of six months, is hereby quashed and set aside.
- iv. Appellant/accused no.2-Ratilal Rama Jadhav, appellant/accused no.3-Dhupibai Ratilal Jadhav and appellant/accused no.4-Jasubai @ Jayshree Ratilal Jadhav are hereby acquitted for the offence punishable under section 498-A r/w 34 of the Indian Penal Code.

- v. The appellant/accused no.2-Ratilal Rama Jadhav, appellant/accused no.3 Dhupibai Ratilal Jadhav and appellant/accused no.4 Jasubai @ Jayshree Ratilal Jadhav shall execute a P.B. of Rs.15,000/- (Rs. Fifteen Thousand) each with one surety each of the like amount to appear before the higher Court as and when the notice is issued in respect of any appeal or petition filed against the judgment of this court. Such bail bonds shall remain in force for a period of six months from the date of its execution.
- vi. Fine amount if deposited shall be refunded to them.
- vii. Criminal appeal is accordingly disposed off.
- viii. Since Advocate Mr. S.S.Bora is appointed to represent the cause of the appellants/accused, we quantify his legal fees and expenses @ Rs.10,000/- (Rs. Ten Thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(**SHRIKANT D. KULKARNI, J.)** (**V.K. JADHAV, J.)**

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