

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 282 OF 2014

Sandu s/o Kisan Shelke,
Age 41 years, Occ. Service at
present in Jail,
R/o. Waghalkheda, Tal. Ambad
District Jalna

...Appellant

versus

The State of Maharashtra
Through Police Station, Ambad
Tal. Ambad, District Jalna

...Respondent

(Copy to be served on Public
Prosecutor, High Court
Bench at Aurangabad)

.....
Mr. N. S. Ghanekar, advocate for the appellant
Mr. Rajendra V. Dasalkar, A.P.P. for respondent State
.....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

**Date of Reserving
the Judgment : 30.08.2021**

**Date of pronouncing
the Judgment : 21.09.2021**

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

1. This appeal is directed against the judgment of conviction dated 21.02.2014 passed by the Additional Sessions Judge, Jalna in Sessions Case No. 35 of 2013.

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

i) Deceased Manda was the wife of the appellant-accused. They have one daughter and two sons. The appellant-accused was serving as teacher in Zilla Parishad School at village Masai at the time of incident. They were residing in a rental premises of one Kayande Sir at Ghait Nagar, Ambad.

ii) According to the prosecution case, the appellant-accused was suspecting about the character of his wife deceased Manda and he used to ill-treat her on that count. The incident had taken place on 28.11.2012 around 5.00 a.m. According to the prosecution story, the appellant-accused, in order to save him from legal punishment, caused disappearance of evidence. The appellant-accused has created a scene to show that deceased Manda died due to sustaining burns. However, deceased Manda died due to cardio respiratory arrest secondary to asphyxia due to strangulation and the burn injuries on the dead body were found to be *post-mortem* injuries.

iii) On 28.11.2012 at about 6.15 a.m. P.W. 4 Prasad had informed to his grand father P.W.1 Bajirao about serious condition of his mother. P.W.1 Bajirao had thus asked one of his relatives viz. Arun to go to Ambad and see the situation. Accordingly, said Arun had visited the hospital and informed to him on phone about death of Manda. P.W.1 Bajirao had thus gone to the Sub District Hospital,

Ambad alongwith his family members. He had seen the dead body of Manda and noticed red blackish mark over the neck of deceased Manda. He had also seen burn injuries over her chest. There was injury over right hand from where the blood was oozing. P.W.1 Bajirao had thus lodged complaint Exh.14 alleging therein that appellant-accused, by suspecting about the character of his wife deceased Manda, had committed her murder. On the basis of his report, crime No. 242 of 2012 came to be registered at Ambad police station.

iv) P.W. 12 P.I. Gajanan Jaybhaye took over the investigation of the crime. P.W.12 Jaybhaye during the course of investigation had drawn spot panchanama Exh.16 and seized certain articles. He had also seized clothes on the person of deceased Manda under panchanama Exh.18. Further, during the course of investigation, P.W.12 Jaybhaye had also seized muddemal property i.e. bed sheet, shawl, and pillow cover at the instance of the appellant-accused, who was in police custody at that time. He had also sent the dead body for postmortem examination. P.W.12 P.I. Jaybhaye had recorded the statements of witnesses and also sent the muddemaal property and viscera to C.A. for analysis. After completion of investigation, he had submitted charge sheet against the appellant-accused for the offence punishable under Sections 302 and 201 of I.P.C.

v) Learned Additional Sessions Judge, Jalna has framed charge

against the appellant-accused vide Exh.4 to which appellant-accused pleaded not guilty and claimed to be tried. The prosecution has examined in all 12 witnesses to substantiate the charge levelled against him. After recording of evidence, the learned trial court has also recorded the statement of appellant-accused under Section 313 of Cr.P.C. The defence of the appellant-accused is of total denial. It is also the defence of the appellant-accused that his son P.W. 4 Prasad had taken away his ATM card and deceased had seen him while taking away the same. Thus, P.W. 4 Prasad caused her death. According to the defence of the appellant-accused, P.W. 4 Prasad was addicted to gambling for which accused-appellant and deceased were opposing and thus he has deposed against him.

vi) By judgment and order of conviction dated 21.02.2014 in Sessions case No. 35 of 2013, the learned Additional Sessions Judge, Jalna convicted the appellant for the offences punishable under Sections 302 and 201 of I.P.C. The learned Additional Sessions Judge, Jalna has passed order to the following effect:-

- “1. Accused Sandu s/o Kisan Shelke is convicted u/s 235(1) of Cr.P.C. of the offence punishable under Section 302 of I.P.C. and he is sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- (Rupees Two thousand only) in default of payment of fine to suffer R.I. for six months.

2. Accused is also convicted u/s 235(1) of Cr.P.C. of the offence punishable u/s 201 of I.P.C. and he is sentenced to suffer R.I. for one year, and, to pay fine of Rs.500/- (Rs. Five hundred only) in default of payment of fine, to suffer R.I. for two months.
3. Both the substantive sentences shall run concurrently.
4. Accused is entitled for set off u/s 428 Cr.P.C. if any.
5. Accused is acquitted u/s 235 (1) of Cr.P.C. of the offence punishable u/s 498-A of I.P.C.
6. Muddemal property being worthless be destroyed after appeal period is over.
7. Dictated & pronounced in open court.”

3. Learned counsel for the appellant submits that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. The prosecution has failed to establish the motive on the part of the appellant-accused to commit murder of his wife deceased Manda. The prosecution has also failed to prove the prosecution case on the basis of chain of circumstantial evidence. Learned counsel submits that the circumstances brought on record are not conclusive in nature. There is no satisfactory evidence about motive. The prosecution has failed to bring on record

the instances on the basis of which an inference could be drawn that the appellant-accused was suspecting about the character of deceased Manda and he has committed murder of his wife deceased Manda for the said reason.

4. Learned counsel for the appellant-accused submits that the prosecution case mainly relied upon the testimony of two child witnesses. It is cardinal principle of criminal law that the evidence of child witness needs to be scrutinized very closely. Learned counsel submits that the evidence of P.W.4 Prasad, who is 16 years of age, is not free from doubt. P.W.4 Prasad is the son of appellant-accused. He was found in possession of the ATM card and the blank cheques. He has admitted in his cross-examination that he has withdrawn the amount several times and the same might be around Rs.1,00,000/-. Learned counsel submits that the defence raised by the appellant-accused of involvement of his son P.W.4 Prasad in the alleged murder of deceased Manda stands substantiated. Learned counsel submits that P.W.11 Vaibhav, who is another son of appellant-accused, aged 13 years, had not seen the actual incident. He has admitted that as on the date of incident, there was no quarrel between his parents. His evidence is full with omissions and contradictions and further, his post incident conduct is also unnatural. Learned counsel submits that so far as recovery of certain articles at the instance of the appellant-accused is concerned, the articles so recovered are having no connection with the alleged commission of

crime. Learned counsel submits that the prosecution evidence about last seen theory is not believable. The dead body of deceased Manda was not found in the bedroom but it was in front of the bathroom. It is not the case of custodial death. Further, the last seen theory is not helpful to the prosecution case. P.W.4 Prasad and P.W. 11 Vaibhav were present in the house alongwith the appellant-accused and deceased Manda.

5. Learned counsel for the appellant-accused submits that the testimony of P.W.10 Dr. Sandhya Rajput, and the postmortem report Exh.45 do not throw light on reasons for arriving at a conclusion regarding death due to strangulation. There is no evidence of marks on entire neck. In the facts of the present case, the provisions of Section 106 of Evidence Act are not applicable.

6. Learned A.P.P. for the respondent-State submits that the prosecution case rests upon circumstantial evidence and the prosecution has proved against the appellant-accused the circumstances viz. (i) The appellant-accused was suspecting about the chastity of deceased Manda, (ii) The appellant-accused was present in the house when deceased Manda died and deceased Manda was lastly seen alive in the company of the appellant-accused in the house itself. (iii) Deceased Manda died homicidal death. (iv) Appellant-accused has himself lodged report at Exh.30 informing the police that on 28.11.2012 at about 5.00 a.m. when he was sleeping,

he had heard the shouts by referring name of Prasad and then he went towards bathroom. On reaching there, the appellant-accused noticed that his wife Manda was having burn injury and accordingly he poured water on her person. The report at Exh.30 given by the accused to the police was false to his knowledge. (v) The concerned Medical Officer, who has conducted the postmortem examination has specifically opined that the said burn injuries are post-mortem injuries. (vi) Thus, the appellant-accused, in order to save him from the legal punishment, has caused disappearance of evidence and created a scene that deceased Manda had committed suicide. (vii) The incriminating articles i.e. pillow cover, mattress cover and shawl are recovered under the disclosure and recovery panchanama Exh.40 and Exh.41 respectively. (viii) The appellant-accused has not offered any explanation in respect of injuries sustained by deceased Manda. (ix) The burden of explaining the homicidal death of deceased Manda is on the appellant-accused, however, he has failed to discharge the said burden as contemplated under section 106 of Evidence Act.

7. Learned A.P.P. submits that the prosecution has proved the case against the appellant-accused beyond reasonable doubt. There is no substance in the appeal and the appeal is thus liable to be dismissed. Learned A.P.P. for the respondent State in order to substantiate his submissions, place reliance on the following judgments:-

- i) Trimukh Maroti Kirkan vs. State of Maharashtra reported in 2007 Cri.L.J. 20;
- ii) State of Rajasthan Vs. Thakur Singh reported in 2014 AIR (SCW) 4479;
- iii) Jayantilal Verma Vs. State of M.P (Now Chattisgarh) reported in 2020 (13) Scale 143

8. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses, the statement of the appellant-accused recorded under Section 313 of Criminal Procedure Code, the evidence of the appellant-accused himself and the impugned judgment. After giving our thoughtful reflection to the matter, we are wholly satisfied that there is no substance in this appeal and the same must be dismissed.

9. The prosecution has examined P.W.10 Dr. Sandhya Rajput. On 28.11.2012, Dr. Sandhya Rajput has conducted post mortem examination on the dead body of deceased Manda. On external examination, P.W.10 Dr. Sandhya Rajput has noted following injuries;-

- “i) Abrasion on right wrist joint horizontal, size: 3 x 0.2 cms red in colour;
- ii) Evidence of bruises in front of neck extending upto back from both sides and completely around the neck, size 20 x 4 cms,;

horizontal in position over about larynx with redness; Evidence of crackling fracture of Hyoid bone and cricoid cartilage to it. On cut section evidence of ecchymoses seen underneath skin.

- iii) Superficial to deep burn over right chest and left chest region and on left shoulder joint with black staining with peeling of skin. Burn about 10% with blisters;
- iv) Superficial to deep burn over abdomen near umbilicus & supra pubic region with peeling of skin burn about 5% with blisters present;
- v) Superficial to deep burn over back and right buttock about 9% with blister present. Total superficial to deep burn – 24%.”

In her opinion, injury Nos. 1 and 2 are ante mortem and injury Nos. 3, 4 and 5 (burn injuries) are post mortem injuries. In her opinion, final cause of death is “cardio respiratory arrest secondary to asphyxia due to strangulation”. P.W.10 Dr. Sandhya Rajput has also opined that ante mortem injuries as mentioned in column No.17 are sufficient in ordinary course of nature to cause death and nature of death is homicidal. Post mortem report is marked at Exh.45. P.W.10 Dr. Sandhya Rajput has deposed that post mortem notes are in her hand writing and it bears her signature.

10. So far as external injury No.2, as mentioned in column No.17 is concerned, there is evidence of bruises in front of neck extending

up to back from both sides and completely around the neck. The same is horizontal in position over about larynx with redness. There is evidence of crackling fracture of hyoid bone and cricoid cartilage to it. It is clear case of asphyxia due to strangulation and death is homicidal death. There is nothing in the cross examination of P.W.10 Dr. Sandhya Rajput to draw any other inference. The burn injuries on the person of deceased Manda are (i) Superficial to deep burn over right chest and left chest region. (ii) On left shoulder joint with black staining with peeling of skin. Burn about 10% with blisters. (iii) Superficial to deep burn over abdomen near umbilicus & supra pubic region with peeling of skin burn about 5% with blisters present. (iv) Superficial to deep burn over back and right buttock about 9% with blister present. All the burns are post mortem in nature. P.W.10 Dr. Sandhya Rajput has also opined that the strangulation has been caused by soft cloth and it is possible by use of shawl i.e. muddamal article No.3. Thus, the prosecution has proved homicidal death of deceased Manda.

11. P.W.4 Prasad and P.W.11 Vaibhav, the sons of deceased and appellant-accused are material witnesses in this case. P.W.4 Prasad, who was 16 years of age at the time of incident. The trial court has put certain questions to him and further noted that he does understand the sanctity of oath and accordingly administered him oath. P.W.4 Prasad has deposed that on 27.11.2012, he returned to the house from school at about 5.30 p.m.. He viewed the T.V.

alongwith the parents and younger brother till 12.00 midnight. They went to sleep thereafter. At about 5.00 a.m. he woke up due to push to his leg. He had seen that his father was extinguishing the fire of her mother. He has also deposed that his mother was unmoved. P.W.4 Prasad then asked his younger brother to get up. P.W. 4 Prasad had seen the red marks around the neck of his mother. According to him, the saree and blouse of his mother were burnt and there were burn injuries over the chest of his mother. He also noted that the blood was oozing through nose and ear of his mother. P.W. 4 Prasad further deposed that his father told him about death of his mother and further explained him to see himself on his own. The appellant-accused (father) had also gave him ATM card and blank cheque. His father further told him to take him on Hero Hondo motor cycle to the police station. Accordingly, he took the father on motor cycle to the police station and his father was pillion rider. His father was holding a green bag and he thrown the said bag in the open space near BSNL tower. P.W.4 Prasad has further deposed that his father sent him back and thereafter P.W.4 Prasad had informed to his grandfather on phone about serious condition of his mother. In the cross examination, P.W. 4 Prasad has stated that there are three rooms in the house, which consist of kitchen, hall and bedroom. The latrine and bathroom are adjoining to kitchen. So he was specifically asked the question as to whether they slept jointly. P.W. 4 Prasad has stated in his cross examination that he himself alongwith his younger brother slept in the hall and his parents slept in the bed

room. He has also explained that there is no need to go to hall while proceeding to latrine or bathroom from bedroom. He has further stated that gas cylinder and gas stove are available in their house for cooking. They used the kerosene stove at sometimes to make the water hot and the said stove used to be kept in the bathroom. It is thus clear from the cross examination of P.W.4 Prasad that in the night of 27.11.2012 the parents (appellant-accused and deceased Manda) slept in the bedroom and children slept in the hall. P.W.4 Prasad has lastly seen his mother alive in the company of appellant-accused. Since the parents slept in the bedroom, in the wee hours, when P.W.4 Prasad woke up, he noticed that the appellant-accused was extinguishing the fire of his mother and mother was unmoved. It is necessary to repeat here that the burn injuries on the person of deceased Manda were post mortem in nature, as opined by P.W.10 Dr. Sandhya Rajput. Deceased Manda was unmoved at that time. It is clear that deceased Manda was already dead when the appellant-accused was making a show to extinguish the fire of deceased Manda.

12. P.W.11 Vaibhav was 13 years of age at the time of incident. He was also given oath as he does understand the sanctity of oath as observed by the trial court. He was at home, as it was holiday. He has further explained that his elder brother P.W.4 Prasad returned to home from the school at 5.30 p.m.. He has deposed that they viewed the T.V. programme till 12.00 midnight alongwith his

parents. Then they went to sleep. P.W.11 Vaibhav further deposed that his brother made him to get up at about 5.15 to 5.30 a.m.. P.W.11 Vaibhav had seen that the appellant-accused was extinguishing the fire over the body of mother. He has further explained that the appellant-accused has given blank cheque and ATM card to his brother. The appellant-accused further told them that they are now orphan and now they would be survived on the basis of education only. Thereafter, the appellant-accused alongwith his elder brother P.W.4 Prasad went to police station on motor cycle. P.W.11 Vaibhav has noticed that the blood was oozing from nose and mouth of his mother. He also noticed that there were marks over the neck of his mother and she was dead. P.W.11 Vaibhav during the course of his cross examination has stated that P.W.4 Prasad told him that since he got some push, he woke up.

13. P.W.1 Bajirao, father of deceased Manda, has deposed that deceased Manda was given in marriage to appellant-accused in 1992. The appellant-accused is teacher by occupation. Deceased and appellant-accused stayed for five years at village Waghalkheda and thereafter, the appellant-accused came to be transferred to village Maher Jawala. The appellant-accused used to attend the duty by making up and down. After five years, both of them started residing at Ambad in the rented room of the house of one Kayande sir in Dhait Nagar, Ambad. P.W.1 Bajirao has deposed that the appellant-accused used to suspect the character of deceased

Manda. The appellant-accused started suspecting the character of deceased Manda after 4 to 5 years of their marriage. The appellant-accused used to abuse and mentally harass deceased Manda. Deceased Manda used to inform about the ill-treatment to P.W. 1 Bajirao. However, P.W.1 Bajirao convinced deceased Manda that after the birth of child everything will be all right. The couple was blessed with two sons and a daughter. Even thereafter, the appellant-accused was suspecting the character while their stay at Ambad. P.W.1 Bajirao has further deposed that on 28.11.2012 at about 6.15 a.m. his grandson Prasad informed him that his mother is serious and asked him to come down to their house immediately. P.W.1 Bajirao asked his one of the relatives viz. Arun to go and to see the situation. After some time, the said relative Arun has informed over phone to P.W.1 Bajirao that deceased Manda is in the hospital and she is no more. P.W.1 Bajirao and family members had been to the Sub District Hospital, Ambad. He had seen the dead body. P. W. 1 Bajirao has further deposed that he had seen the red blackish mark over the neck of Manda. He had also seen burn injuries over the chest of Manda. There was injury over right hand and blood was oozing. The P.W.1 Bajirao has thus lodged the complaint Exh.14.

14. The prosecution has examined P.W.7 the Police Head Constable Babasaheb Khandagade. P.W.7 Babasaheb has deposed that on 28.11.2012 when he was on duty, at about 5.15 a.m. the

appellant-accused came to the police station. He recorded his statement as per his say. On the basis of his statement, he has registered A.D. No. 63 of 2012. The appellant-accused has filed the said report Exh.30 stating therein that his son P.W.4 Prasad made him to get up and both of them went to bathroom and they noticed that deceased Manda was having burn injuries. The appellant-accused thus taken the water from kitchen and poured it on her person. The report Exh. 30 is not confessional report/F.I.R.. It can be looked into and the contents thereof can be read in evidence. Deceased Manda had sustained post mortem burn injuries as opined by P.W.10 Dr. Sandhya Rajput. It is thus clear that afterthought the appellant-accused has filed a false report Exh.30 in the concerned police station to mislead the police.

15. The appellant-accused in reply to question No.33 in his examination under Section 313 of Cr.P.C. has stated that P.W.4 Prasad has made him to wake up. He was sleeping in the bedroom. P.W.4 Prasad told him that his mother had burns. The appellant-accused thus went to bedroom, his wife had burns. Thus, he intimated the police. According to him, the shawl and bed sheet are the articles belonging to P.W.4 Prasad. He has not committed any offence. In reply to question No. 36, as to whether he want to say anything more as to why the witnesses are deposing against him, the appellant-accused explained that since prior to 6/7 months of incident, P.W.4 Prasad became addicted to gambling, he himself and

deceased Manda were opposing him, so P.W.4 Prasad is deposing against him. It appears from the defence taken by the appellant-accused and particularly, the reply given by him during his examination under Section 313 of Cr.P.C. that deceased Manda died near bathroom by sustaining burns. P.W.4 Prasad and P.W.11 Vaibhav have deposed that while leaving the house alongwith P.W.4 Prasad, the appellant-accused took his green bag with him. P.W.4 Prasad has further deposed that the appellant-accused has thrown the said bag at open space near B.S.N.L. tower.

16. The prosecution has examined P.W.9 Bhagwan Gatkar, who is a panch witness on the memorandum panchanama Exh.40 and recovery panchanama Exh.41. P.W.9 Bhagwan has deposed that the appellant-accused Sandu has made disclosure statement before them that he is ready to produce the bag consisting of shawl, pillow cover and mattress cover. Accordingly, the appellant-accused led the Panch witnesses, police party near the place in between Municipal council, Ambad and B.S.N.L. office. On reaching there, the appellant-accused Sandu went into shrubs. He had produced one bag from that spot containing pillow cover, mattress cover and shawl. All these articles were having blood stains. Thus, all these articles came to be seized under recovery panchanama Exh.41. There is nothing in the cross examination to disbelieve the testimony of P.W.9 Bhagwan Gatkar.

17. It is thus clear from the evidence of P.W.4 Prasad, P.W.11 Vaibhav, memorandum Panchnama Exh.40 and recovery Panchnama Exh.41 that deceased Manda was subjected to strangulation with the help of soft ligature like shawl in the bed room itself and thereafter purposely a scene was created that deceased Manda died by sustaining burns near the bathroom. The partially burnt pieces of saree, blouse and petticoat of deceased Manda came to be seized during the course of investigation and were sent for C.A. purpose. We have carefully perused the C.A. report Exh.57. The said C.A. report indicates that the tests for the detection of kerosene residues on burnt pieces of saree, blouse and petticoat are positive. It is thus clear that after death of deceased Manda, kerosene was poured on her person and she was set on fire.

18. The said articles 1 to 4 viz. shawl, bed sheet, pillow cover and bag respectively, were sent for C.A. purpose. The C.A. report is marked at Exh.58. On perusal of the same, it appears that articles Exh.1 to 3 i.e. shawl, bed sheet and pillow cover are having blood stains and the said blood detected is human with blood group "O".

19. We agree with the submissions made on behalf of the State that the prosecution has proved the case by establishing the chain of circumstances, in the following manner:-

i) The appellant-accused was suspecting the character of deceased

Manda. Thus, the prosecution has established the motive on the part of the appellant-accused to commit murder of deceased Manda.

- ii) Deceased Manda died due to cardio respiratory arrest secondary to asphyxia due to strangulation and the death is homicidal in nature.
- iii) The appellant-accused was present in the house when deceased Manda died.
- iv) Deceased Manda was lastly seen alive in the company of appellant-accused in the house itself.
- v) The burn injuries on the person of deceased Manda are post mortem injuries.
- vi) The appellant-accused in order to save him from legal punishment has caused disappearance of evidence and created a scene that deceased Manda had committed suicide.
- vii) The incriminating articles i.e. pillow cover, bed sheet, shawl having blood stains were recovered under memorandum Panchnama Exh.40 and recovery panchnama Exh.41 respectively.
- viii) The appellant-accused has offered false explanation in respect of homicidal death of deceased Manda by filing report Exh.30.
- ix) Explaining the homicidal death of deceased Manda is on the appellant-accused, however, he has failed to discharge the said burden as contemplated under section 106 of Evidence Act. This additional circumstance goes against the appellant-accused.

20. In a case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra reported in 1984 SC 1622***, the Supreme Court has

laid down the following principles to appreciate the evidence when the prosecution case rests upon the circumstantial evidence.

The following conditions must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence.

- “1. The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ‘may be’ fully established.
2. 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;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. 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.”

21. In a case of **Trimukh Maroti Kirkan vs. State of Maharashtra** reported in **2007 Cri.L.J. 20** relied upon by the learned APP, 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."

22. 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."

23. 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.

24. In our considered opinion, the ratio laid down by the Supreme court in the cases cited above, squarely applies to the facts and circumstances of the present case. In the facts of the present case, the initial burden to establish the case against the appellant-accused has been discharged by the prosecution. Furthermore, the prosecution has proved the case against the appellant-accused through the chain of circumstantial evidence. The circumstances brought on record are cogent and based upon the reliable and trustworthy evidence. We are of the opinion that the approach of the Trial Court is the correct approach. We upheld the conviction and sentence passed by the Trial Court. Hence, we proceed to pass the following order.

ORDER

- i. Criminal Appeal is hereby dismissed.
- ii. Criminal appeal is accordingly disposed of.

(SHRIKANT D. KULKARNI J.)

(V. K. JADHAV, J.)

rlj/