

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO.681 OF 2012**

Jalal Siddiqui Mulla	]	
Adult Indian Inhabitant, Sunni Muslim	]	
Age: 30 yrs. about, residing at	]	
Munharpur, Mallikpada, Post-Dankuni,	]	
District:- Hubli, West Bengal.	]	
(At present in Kolhapur Central Prison,	]	
Kolhapur)	]	Appellant

Vs.

The State of Maharashtra	]	
to be served through Public	]	
Prosecutor, High Court, Mumbai	]	
At the instance of Ghatkopar Police	]	
Station C.R. No.414 of 2010.	]	Respondents

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Mr. Niteen Pradhan a/w Ms. Shubhada D. Khot a/w Ms. Ameeta Kuttikrishnan a/w Mr. Danish Patel a/w Ms. Tanvi Tapkire, for Appellant.

Ms. M. M Deshmukh, A.P.P., for Respondent-State.

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**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

**RESERVED ON : 3rd DECEMBER, 2021.
PRONOUNCED ON: 16th DECEMBER, 2021.**

JUDGMENT: [Per Prithviraj K. Chavan, J.]:

1. Feeling aggrieved with and dissatisfied by the impugned judgment of conviction dated 17th March, 2012 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No.773 of 2010, the appellant has preferred this appeal, who has been sentenced to imprisonment for life with fine of Rs.3,000/- with default clause of three months simple imprisonment.

2. The prosecution story goes as under;

3. Deceased Sakina was the wife of the appellant. Their marriage was solemnized on 3rd May, 2008. It was an arranged marriage. In the marriage, deceased Sakina was given gold necklace, gold chain, gold ear rings, gold bangles, gold nose ring etc by her parents/brothers.

4. After the marriage, deceased Sakina came to co-habit with the appellant in a building known as "*Mehta Building*". It was a rented premises arranged by the brother of deceased Sakina for his sister and the appellant. However, after about a month of their marriage, the appellant started harassing deceased Sakina on the pretext that he was unable to afford rent of Rs.3000/- per month. He used to pick up quarrels on petty domestic issues. He was also insisting upon deceased Sakina that they should buy one house, obviously suggesting that his in-laws should help him. The

appellant had even sold most of her gold ornaments. Deceased Sakina, therefore, kept her remaining gold articles with her parents as she had an apprehension that the appellant might sold remaining articles also.

5. Due to the demand of the appellant, brother of deceased Sakina bought one house at Ghatkopar for her and the appellant. However, it was bought jointly in the name of deceased Sakina and her brother Mohammad Sufikar. Even though, there was no change in the behaviour and attitude of the appellant, who continued harassing deceased Sakina by insisting that house should be transferred in his name.

6. On the fateful day of 1st September, 2010, deceased Sakina was found dead in the house. Froth was emanating from her mouth. The appellant was present in the house. Deceased Sakina was taken to the Hospital. She was declared brought dead. P.W.1- Mohammad Iqbal Zagaria Mulla- brother of deceased Sakina had lodged a report against the appellant on 2nd September, 2010. A crime bearing No.414 of 2010 came to be registered against the appellant under section 304 (B) of the Indian Penal Code (for short "I.P.C").

7. P.W.6-Dinkar Krishna Chandankar - Assistant Police Inspector held investigation into the crime. He visited the scene of occurrence. He drew a spot *panchanama* (Exhibit 22). He prepared sketch of the spot of the incident (Exhibit 22-A). An inquest was drawn. Dead body of deceased Sakina was sent for

postmortem. Statements of the witnesses came to be recorded. Viscera was sent for chemical analysis to the Forensic Science Laboratory. The appellant-accused came to be arrested vide *panchanama* (Exhibit 24).

8. Further investigation was held by P.W.7-Mamta D'Souza-Police Inspector attached to Ghatkopar Police Station. She had recorded statements of some of the witnesses. She issued a letter to the Medical Officer of Rajawadi Hospital for ascertaining the exact time of death of deceased Sakina. After receiving time of death, section 302 of the Indian Penal Code was added. After the investigation, a charge-sheet was filed in the Court of 49th Metropolitan Magistrate's Court Vikhroli, Mumbai.

9. Since offence was triable exclusively by the Court of Sessions, the Magistrate committed the case to the Sessions Court.

10. A charge was framed by the learned Additional Sessions Judge below (Exhibit 6) under sections 498-A, 304-B and 302 of the Indian Penal Code. It was read over and explained to the appellant to which he pleaded not guilty and claimed a trial. His defence was of total denial and false implication in this case.

11. During his statement under section 313 of the Code of Criminal Procedure, when he was asked by the learned Additional Sessions Judge, whether he wants to say anything, he answered that he was on duty at the time of the incident and, therefore, did not know anything. He has taken a plea of alibi. He further stated

that there was a theft in his house. No defence evidence has been adduced on his behalf.

12. The learned Additional Sessions Judge, having considered the evidence on record, accepted prosecution's case and found the appellant guilty of the offence punishable under section 302 of the Indian Penal Code. The learned Additional Sessions Judge, however, in her wisdom, acquitted him of the offences punishable under sections 498-A and 304-B of the Indian Penal Code.

13. We heard Mr. Pradhan and Ms. Khot, learned Counsel for the appellant and Ms. Deshmukh, learned A.P.P, for respondent-State.

14. At the outset, Mr. Pradhan, learned Counsel would argue that this is a case based on circumstantial evidence wherein the prosecution has miserably failed in establishing the link and, therefore, the impugned judgment needs to be interfered with. Mr. Pradhan would argue that the appellant had already been acquitted of the offence punishable under section 498-A and 304-B of the Indian Penal Code. Only charge against him is under section 302 of the I.P.C. Postmortem had been conducted after 12 hours. Rigor mortis had been settled. There were no injury marks on the dead body of deceased Sakina. As per the evidence of P.W.6-Dinkar Chandankar - the Investigating Officer, when he reached on the spot, Sakina was unconscious and, therefore, it cannot be said to be an act committed by the appellant. The learned Counsel took us through the evidence of P.W.1-Mohammad Iqbal Zagaria Mulla, brother of deceased Sakina and the F.I.R dated 2nd September,

2010. He would submit that even there is a delay in lodging the F.I.R which remained unexplained by the prosecution. It is argued that C.A report in respect of viscera of the stomach, intestine, spleen, liver, kidney etc did not reveal any poison. However, it is the prosecution's case that froth was oozing from the mouth of deceased Sakina which creates a doubt as regards the cause of death. Even it is evident from the inquest that her tongue was entangled between her teeth and the nails were cynosed.

15. Per contra, Ms. Deshmukh, learned A.P.P supported the impugned judgment by drawing our attention to the fact that deceased Sakina was in the custody of the appellant and she was last seen alive together with the appellant in the house. She would argue that there was a motive for the appellant to commit the offence as he was insisting upon transferring the house in his name and that he had also sold her gold ornaments within a very short span of the marriage.

16. Learned A.P.P would further argue that the appellant had failed to discharge onus in view of section 106 of the Indian Evidence Act. It is submitted that the arrest *panchanama* (Exhibit 24) indicates scratches on the body of the appellant and there were three abrasions on his forehead as well as injuries to his right palm which remained unexplained and would definitely indicate his complicity in the offence of committing murder of his wife.

17. Deceased Sakina was married with the appellant on 3rd May, 2008 and breathed her last within a shot span of time i.e on 1st

September, 2010. It is quite unfortunate and tragic that a newly married girl succumbed to the fatal injuries inflicted upon her by none other than the appellant with whom she must have dreamt of leading a happy and blissful married life.

18. This is a case of circumstantial evidence since there is no direct evidence. As has been observed by catena of decisions in various pronouncements that when a case is based on circumstantial evidence, it must satisfy a few tests:

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

(b) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(c) 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

(d) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

19. The entire chain of circumstances brought forth by the prosecution established that within all human probabilities, a crime was committed by none other than the appellant. Each link of the chain unerringly points out towards the complicity and involvement of the appellant in eliminating deceased Sakina. We say so for the reasons to follow.

20. P.W.1-Mohammad Iqbal Zagaria Mulla (hereinafter referred to as "Mohammad Iqbal") is the brother of deceased Sakina who works as a reporter in a newspaper known as "*Apala Wartahar*". His evidence indicates that after the marriage of his sister Sakina with the appellant, she went to co-habit with him in one "*Mehta Building*". It was an arranged marriage. The said premises was taken on rent by P.W.1-Mohammad Iqbal along with his brothers for deceased Sakina. Within a month of their marriage, the appellant started asking Sakina and her family members to buy a house for them as he could not afford to pay rent of Rs.3000/- per month. P.W.1- Mohammad Iqbal and family members thought that everything will be alright after a few days as the marriage was quite new and, therefore, did not pay much attention to the demand of the appellant. However, the evidence further reveals that the appellant started harassing and ill-treating deceased Sakina on petty domestic matters viz; he used to ask her to wash his clothes five times a day without using a brush. He used to prohibit her from drinking extra cup of tea by saying that they should not spend more on tea.

21. Evidence of P.W.1-Mohammad Iqbal further reveals that the entire marriage expenses were borne by them and that they had also given gold necklace, gold chain, gold ear rings (*zumka*), four gold bangles, gold nose ring, silver foot chain (*payal*) in the marriage. However, the appellant had sold most of her gold and silver ornaments within seven to eight months of their marriage. The appellant was working in a Diamond Setting Company and was earning Rs.10,000/- per month. The evidence further reveals that in order to safeguard her remaining ornaments, deceased Sakina had kept rest of her ornaments in the custody of her parents. Whenever, she wanted to attend any function, she used to fetch the ornaments and again used to place the same in the custody of her parents after attending the function.

22. The evidence further reveals that in order to facilitate cordial relations between the couple, they agreed to bear half of the rent of the premises. However, the appellant even did not agree to bear 50% of the rent amount. Subsequently, parents of P.W.1-Mohammad Iqbal contributed some amount and bought a house for deceased Sakina at Ghatkopar. It was in the joint name of deceased Sakina and elder brother of P.W.1-Mohammad Iqbal namely Mohammad Sufikar. However, the appellant started insisting upon deceased Sakina and her parents that the house should be transferred in his name. On that count, he started torturing deceased Sakina.

23. On 1st September, 2010, P.W.1-Mohammad Iqbal had left the house for his work at 3.00 p.m. Around 4.00 p.m., he received a call on his mobile from his sister-in-law Hasina. She informed

him that Sakina was not well and her husband had taken her to the Hospital. She asked this witness to come home immediately. This witness contacted his other brothers and all of them reached home. Members of the family were crying. He suspected something wrong with respect to Sakina. His mother informed him that Sakina had expired and the appellant had informed them about her death.

24. All the family members went to the house of the appellant. They noticed body of deceased Sakina lying on a bed and the appellant was standing beside her. Froth was oozing from her mouth. Her body was covered with a blanket. She was not breathing. Some people had gathered over there. They informed that Police had been called. The Police came over there and took the body of Sakina to Rajawadi Hospital. Postmortem was conducted. It was revealed that her death was caused due to pressure on her neck and chest. This is the examination-in-chief of P.W.1-Mohammad Iqbal. He lodged an F.I.R (Exhibit 12-A) on 2nd September, 2010.

25. A futile attempt has been made by the defence to rebut his testimony, however, nothing significant could be elicited which would render his testimony unworthy of credit. A few aspects surfaced during the cross-examination which are significant. It is suggested by the defence that quarrels on the issue of washing of clothes or drinking of tea are very common in early years of marriage in almost all couples. The witness accepted it as true. However, it cannot be a common phenomenon amongst newly

married couples. Rather, during early days of marriage, husband takes utmost care of wife by ensuring that she is not subjected to unnecessary troubles and household work. This suggestion implies that what has been testified by P.W.1-Mohammad Iqbal as regards asking deceased Sakina to wash clothes five times a day or prohibiting her from drinking tea is true. The evidence and even prosecution case indicates that the appellant was a spendthrift. It has been suggested that there is nothing wrong if a married person wants to spend money for shopping and purchasing clothes for himself. Obviously, there may not be anything wrong, but for fulfilling his extravagant acts, it is not expected of a husband to torture and ill-treat his wife by selling her *stridhan* i.e gold ornaments and also to demand a house to be transferred in his name.

26. There are few omissions, in the sense, P.W.1-Mohammad Iqbal had not stated before the Police as regards paying rent of the premises to the appellant. He testified that as he was disturbed at the time of recording his statement, he could not state the said fact. He admits that despite knowing about the torture to deceased Sakina by the appellant, they did not lodge any report, obviously, for the reason that, in such cases, within such a short span of marriage, nobody is expected to immediately approach the Police. The first attempt, in such cases, is always to see that the dispute and quarrels are amicably settled. It is suggested as to why no report was lodged against the appellant when he started torturing deceased Sakina for transferring the house in his name? This impliedly means that there was a torture to deceased Sakina by the

appellant for getting house transferred in his name. There is no suggestion that there was no such torture to deceased Sakina by the appellant. For that reason, P.W.1-Mohammad Iqbal volunteered that since they did not want to disturb her matrimonial life, they did not lodge any complaint. The reason given by the witness is quite convincing and acceptable.

27. A suggestion was given by the defence that father of deceased Sakina and this witness had a shop (*gala*) in Shivshakti Industrial Estate, Andheri (East). Market price of the said *gala* is about Sixty Two Lakhs. Deceased Sakina had a share in the said *gala*. P.W.1-Mohammad Iqbal and his family members did not want to pay deceased Sakina her share and, therefore, they used to torture her. However, this suggestion has been denied by P.W.1-Mohammad Iqbal.

28. P.W.2-Akkasali Zakaria Mulla is another brother of deceased Sakina who spoke in tune with P.W.1-Mohammad Iqbal on material aspects viz; marriage of deceased Sakina with the appellant, his persistent torture and harassment to deceased Sakina on account of transferring house in his name which was purchased by the witness for deceased Sakina at Ghatkopar for a consideration of Rs.3.5 lakhs. He further corroborated testimony of P.W.1-Mohammad Iqbal as regards harassment of deceased Sakina to whom the appellant used to trouble by asking her to wash his shirts five times a day. He specifically deposed that the house was purchased as per the demand of the appellant. Even though, there was no change in the behaviour and attitude of the appellant

towards deceased Sakina to whom he continued torturing and harassing. P.W.2-Akkasali Zakaria corroborated the evidence of P.W.1-Mohammad Iqbal that the house was purchased jointly in the name of deceased Sakina and Zulfikar. Despite making several attempts to persuade the appellant, it fell on deaf ears and he continued ill-treating deceased Sakina.

29. P.W.2-Akkasali Zakaria further corroborated the evidence of his brother P.W.1-Mohammad Iqbal on the aspect of selling gold ornaments of deceased Sakina given to her in the marriage. Deceased Sakina, therefore, used to keep her remaining ornaments in the custody of her parents and brothers as she had a reasonable apprehension that the appellant would sell remaining ornaments also. From the evidence of this witness, greedy and spendthrift nature of the appellant is quite apparent. We do not find any reason to disbelieve the versions of these two witnesses which remained un-rebutted in the cross-examination.

30. According to P.W.2-Akkasali Zakaria Mulla, he came to know about the incident on 1st September, 2010, when he was on his duty. At about 4.30 p.m to 5.30 p.m, his brother P.W.1-Mohammad Iqbal informed him about Sakina's bad health. When he reached the house of the appellant, they realized that she was dead. This witness also noticed deceased Sakina lying on the bed covered with a blanket. Her eyes were closed. Froth was coming from her mouth and she was not making any movements. The Police arrived at the spot. They examined Sakina and immediately moved her to Rajawadi Hospital where she was declared dead at about 7.30

p.m. He specifically testified that since they were unaware of the cause of her death, they asked the Police to make an inquiry.

31. Interestingly, in the cross-examination, it has been surfaced that the appellant was earning Rs.8,000/- to 10,000/- per month which he used to spend for purchasing his clothes, shoes and for hotelling. This evidence on record further fully corroborates the spendthrift nature of the appellant and it can easily be inferred that not only had he sold the ornaments of deceased Sakina but also wanted the house to be transferred in his name. It further strengthens the fact that he even did not allow deceased Sakina to drink another cup of tea. The cross further reveals that no complaint was lodged with the Police when the appellant started harassing deceased Sakina for demand of the house. Merely because no complaint was lodged by the parents of deceased Sakina, does not mean that deceased Sakina was not tortured or harassed by the appellant for his illegal demands.

32. Cross-examination further strengthens the prosecution case that attempts were made by the family members of deceased Sakina to convince the appellant. It has been further surfaced in the cross-examination that the ornaments which were given to deceased Sakina in her marriage were made by mother of this witness, much prior to her marriage. It has again been buttressed in the cross-examination that elder brother of this witness Mohammad Zulphikar and Mohammad Sabi had purchased the said house for Sakina.

33. Thus, it has been sufficiently established and proved from the testimony of this witness that deceased Sakina was subjected to continuous harassment and torture by the appellant on account of his demand of transferring house in his name and also the fact that he had sold her gold ornaments though he was earning a good salary in the year 2009 which was sufficient to lead a decent life for husband and wife. We do not find any reason to disbelieve the testimonies of P.W.1-Mohammad Iqbal and P.W.2-Akkasali Mulla. Merely because they are brothers of deceased Sakina, their evidence cannot be branded as the evidence of interested witnesses as they withstood the cross-examination.

34. It cannot be lost sight of the fact that even P.W.3-Mohammad Shoaib Mumtazali, a neighbour of the appellant testified that deceased Sakina never used to mix up with the neighbours and normally used to remain in the house. This is the most relevant fact in the given set of circumstances, which, *per se*, may not conclusively establish the strained relations between the couple, *inter se*, yet, it can very well be inferred and deduced that deceased Sakina, who was a newly married woman would normally be eager to interact with the women in the neighbourhood. However, behaviour of Sakina, as surfaced during the evidence was something unusual. The defence chose not to cross-examine this witness.

35. However, testimony of P.W.3- Mohammad Shoaib Mumtazali further finds substantial support from one more independent witness P.W.5-Razia Mohd Hayat Shaikh. She too is a resident of

the same thickly populated locality for more than 15 years along with her husband, son and a daughter. Her evidence indicates that she knows the appellant, however, she did not know the name of the deceased. Deceased used to fetch water from the public tap. She categorically testified that whenever deceased used to fetch water, she always looked sad. This witness had no occasion to talk to her. This is also something quite unusual, as normally while fetching water from public tap in any locality, women obviously would speak to each other. Why a newly married girl should look sad? The answer is obvious as has been discussed hereinabove. Not only that, P.W.5-Razia Mohd. Hayat Shaikh also testified that deceased always used to keep door of her house closed. This witness was declared hostile by the prosecution. The witness denied to have stated before the Police that deceased had informed her about harassment at the hands of the appellant as well as about quarrels between the appellant and the deceased. Evidence of this witness can be accepted partially as the maxim *falsus in uno, falsus in omnibus* is neither a rule of law nor rule of practice. Evidence of P.W.5-Razia Mohd. Hayat Shaikh can very well be accepted and relied upon to the extent of aloofness and sadness of deceased Sakina whenever she used to fetch water from the public tap.

36. Merely because P.W.5-Razia Mohd. Hayat Shaikh did not testify about alleged harassment at the hands of the appellant does not *ipso facto* mean that her entire evidence is to be outrightly rejected. The Court has to assess the worth of necessarily imperfect human testimony. Evidence of this witness cannot be rejected in

toto merely because prosecution chose to treat her as a hostile witness and then cross-examined her. Her evidence cannot be effaced or washed off altogether on the important aspect of overall nature of deceased Sakina as stated above. This is also a very important circumstance in the given set of facts.

37. The second and the most important aspect is as to whether deceased Sakina died a homicidal death and thirdly, whether the appellant was the author of the injuries on her person, meaning thereby, whether there is a direct nexus between the death of deceased Sakina and the appellant?

38. P.W.4-Dr. Baban Shavkha Tadwi was attached to Rajawadi Hospital with effect from 1st October, 2009 to 30th May, 2011. He conducted autopsy on the dead body of the deceased on 2nd September, 2010. On external examination, he noticed following injuries;

(a) Contusion left elbow region reddish colour lateral above elbow size 3 c.m x 1 c.m on cut section underneath hemorrhage;

(b) Contusion left arm lateral mid level size 4 c.m x 1 c.m reddish on cut section underneath hemorrhage;

(c) Contusion at right side of face maxilla region reddish size 2 c.m x 1 c.m;

(d) Scratch injury through left side of neck region reddish size 1 cm x 0.5 c.m.

39. On internal examination, P.W.4-Dr. Baban Tadwi, noticed following injuries;

- (a) On scalp internal contusion noted left side partial region reddish size 3 c.m x 3 c.m upto muscle deep;*
- (b) On examination of brain, intracranial hemorrhage noted on cut section hemorrhagic patch present;*
- (c) On internal examination of thorax, internal contusion left side of chest between 3rd to 7 intercostal space with a blackish reddish size 12 c.m x 5 c.m on cut section hemorrhage seen;*
- (d) In pleura there was contusion noted;*
- (e) Tracheal shows para tracheal contusion noted size 2 c.m x 1 c.m and right lung shows hemorrhagic patch;*
- (f) Left lung - whole lung was reddish black with congestion with contusion seen;*

All the aforesaid injuries according to him were antemortem. He had preserved viscera. He opined that probable cause of death was due to neck compression with chest compression and also with multiple injuries. He further clarified that the injuries which have been mentioned in column No.17 are most probably due to assault. Even internal injuries could be caused due to assault. Injuries noted in column No.20 i.e thoracic portion of the body (internal injuries) could be caused due to compression of neck by applying external pressure. The injuries in lungs were also due to compression of chest.

40. Cynosed nails is a kind of blue discolouration of nailbed which occurs when oxygen level falls down and person is on death bed. When the chest and neck were compressed by the assailant, there bound to be less supply of oxygen resulting into discolouration of nail.

41. PW.4 - Dr. Baban Tadwi further opined that injury noted in column No.19 could be due to hard and blunt object. The expert had categorically deposed that the aforesaid injuries are not possible if a person hangs himself. Accordingly, postmortem report which was signed by PW.4-Dr. Baban Tadwi and one Dr. Bagul has been proved at Exhibit 16.

42. A futile attempt has been made by the defence to shatter the version of the medical expert. In the cross-examination, Dr. Baban Tadwi admits that if froth is present in the mouth of the dead body, same could be the evidence to detect poison. It transpired in the evidence that death of deceased occurred within 36 hours of commencing of the postmortem. He also admits that if the dead body is examined soon after death, bruises mentioned in paragraph 17 i.e injury No.4 appears reddish and if the body is examined after some time, it appears brownish, dry and parched. He further admits that it requires 12 hours for setting rigor mortis soon after death. In the case at hand, the witness admits that rigor mortis was absent in upper limb and partially present in lower limb.

43. The incident in question had occurred on 1st September, 2010 as per the information given by the appellant and postmortem commenced at 12.00 noon on 2nd September, 2010. Thus, death could have been occurred somewhere in the midnight of 31st August, 2010. Most of the cross-examination of this witness is only with a suggestion that why the witness did not feel it necessary to mention certain things which does not, in any manner, renders his testimony unbelievable. The evidence on record is quite sufficient to establish that deceased Sakina died a homicidal death due to neck compression and chest compression with multiple injuries.

44. Once, it has been conclusively established that deceased Sakina died a homicidal death, the next important aspect would be whether she was last seen together with the appellant and was in his custody? The learned trial Judge, in the impugned judgment framed a point whether prosecution has proved that death of deceased was otherwise than under normal circumstances within seven years of her marriage? Finding to this point was answered in the affirmative. There is no doubt that deceased Sakina died within seven years of her marriage. Since, the learned Additional Sessions Judge has acquitted the appellant of the offence punishable under section 498-A and 304-B of the I.P.C, we would not venture into that aspect though it could be a relevant fact in the given set of circumstances.

45. Motive may be considered as a circumstance which is relevant for assessing the evidence. It would be apposite to extract

the observations of the Hon'ble Supreme Court in case of **State of Uttar Pradesh Vs. Kishanpal and others, 2008 (16) Supreme Court Cases, 73**. Paragraphs 38 and 39 of the said judgment read thus;

"38. Regarding the motive, according to the prosecution, the accused persons had enmity with the complainant's party including the deceased persons and their family members. There was an ancestral land of Suraj Pal Singh, Raghubir Singh and Jograj Singh. A sheesham tree was standing therein. The Chak of Daulat Singh, accused is adjacent to the said land. Daulat Singh and Yudhishtir Singh wanted to cut the said tree but they were not permitted and Raghubir Singh lodged a report against Daulat Singh, Yudhishtir Singh, Onkar Singh, Kishanpal, Naresh Singh, Suresh Singh, Gyan Singh, Sher Singh, Mahendra and Amol Singh. The said report dated 9-3-1978 has been marked as Ext. KA-15. Thereafter Naresh Singh and Onkar Singh got a false report lodged by Tok Singh under Section 392 IPC against Ranvir Singh, Balbir Singh and Rambir Singh on 6-5-1978. Onkar Singh and Daulat Singh, accused persons in the case on hand, were cited as prosecution witnesses. This is evident from Exts. KA-17. The police, however, submitted final report which infuriated Daulat Singh and Onkar Singh. Further, two days prior to the present occurrence when Raj Mahesh and Kaptan Singh were going in

front of the shop of Onkar Singh, the latter extended threat to them of dire consequences. Though it was pointed out that for such a serious crime, the said motive was highly insufficient, as rightly observed by the trial Judge, the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction".

46. Turning back to the case in hand, it has come in the evidence of P.W.1-Mohammad Iqbal that it was the appellant who had informed his mother that Sakina had expired. Undisputedly, when P.W.1-Mohammad Iqbal and P.W.2-Akkasali Mulla reached the house of the appellant, they noticed the appellant standing near her. There is no evidence as regards behaviour and reaction of the appellant at the relevant time. Nevertheless, it is apparent from the record that the appellant, though had informed his mother-in-law that Sakina had expired, did not make any attempt either to call the neighbours, the Police or immediately take his wife to the Hospital. It is not the case of the appellant that he is an illiterate rustic person. He works in a Diamond Setting Company. He was a person who was last seen in the company of the deceased when she was alive. Such conduct of the appellant is quite unusual, uncommon and unnatural. An ordinary prudent man, after noticing froth oozing from the mouth of his wife who was lying on the bed, covered with blanket, would immediately take her to the hospital or at least call some Doctor for medical assistance. The appellant did not do anything. This is a very strong circumstance as regards his unnatural conduct.

47. Next circumstance is, in his statement under section 313 of the Code of Criminal Procedure, he took a plea of alibi though there is no such suggestion given to any of the witness in the cross-examination. The last question and answer is extracted below;

"Q.16: Do you want to say anything more in your defence?

Ans : False case is lodged against me. I was on duty. I do not know anything. When I came from duty, I informed my mother-in-law. There was theft in my house".

Surprisingly, neither the appellant informed the Police about the alleged theft or robbery in the house nor, even for that matter, disclosed what are the articles alleged to have been stolen. There is no whisper to that effect.

48. It is pertinent to note that the spot *panchanama* (Exhibit 22 and Exhibit 22-A) reveals that it was a *chawl* with a dense locality. Measurement of the house was 12'x15'. The dead body was lying over a wooden bed admeasuring 4x6 feet. There is a cupboard. Doors of the cupboard as well as locker inside was found open with keys entangled in the door. Clothes and *sarees* were found scattered. It is quite obvious that the appellant had himself created a scene of robbery which no sane man would accept and believe for the simple reason that in a broad day light, that too, in a thickly populated locality, such incident could hardly occur. It was indeed a brain trick of the appellant. As already stated, neither he informed the Police nor there is any suggestion to the prosecution witnesses to that effect. It appears that the appellant tried to be over smart in creating a scene of robbery by stating that some unknown criminals entered his house and attempted to rob and kill his wife. All that was just a smokescreen.

49. Had there been a robbery by some unknown persons, deceased Sakina would not have been lying on a bed covered with a blanket. There are no signs of any resistance on her person. It would be too much to expect that the robbers would cover the dead body with blanket and flee away with the booty. It is not clear as to who informed the Police, as according to the prosecution, they received a message through wireless. It obviously means that somebody had dialled 100. If only the appellant was aware about death of his wife, who else would inform the Police than him? This is so because even he had informed his mother-in-law on phone that Sakina was no more.

50. As already stated, the appellant had also taken a plea of alibi by stating that he did not know anything as he was in the office. It is a false plea of alibi, as the appellant has failed to substantiate the same even on the basis of circumstances. Attendance register of Lucky Star Jewellery Exports (I) Private Limited Company where the appellant was working indicates that from 25th August, 2010 to 31st August, 2010, he was absent from the duties. He attended the duties on 1st September, 2010 at 8.00 a.m. As already discussed, in view of the postmortem report, possibility of committing murder of deceased Sakina in the night of 31st August, 2010 itself cannot be ruled out when the appellant was very much in the house and deceased Sakina was in his custody. Since he has taken a false plea of alibi, it can be taken as a circumstance against him. False and inconsistent defence taken by the accused charged for an offence of murder were held to be additional circumstance against him and strengthens the chain of circumstances already

firmly established. Plea of alibi must be proved with absolute certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence.

51. The appellant herein has not only raised a false plea of alibi but had also taken inconsistent defences viz; robbery and consequent murder of deceased Sakina in his absence. The Hon'ble Supreme Court in case of **G. Parshwanath V. State of Karnataka, AIR 2010 Supreme Court 2914** succinctly made following observations on the aspect of raising false plea by the accused as well as false and inconsistent defences taken in a case of murder. It is held that such false pleas and inconsistent defences constitute additional circumstance against the appellant and it strengthens the chain of circumstances already firmly found. It would be apposite to extract paragraphs 11 and 23 of the judgment which read thus;

"11. The evidence tendered in a court of law is either direct or circumstantial. Evidence is said to be direct if it consists of an eye-witness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum. In dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering on mind may

take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is not derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not". In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should

not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The Court thereafter has to consider the effect of proved facts. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the

accused, howsoever, extravagant and fanciful it might be. 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, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.

23. If all the circumstances mentioned above are taken together coupled with the absence of any material to indicate that Chethana had committed suicide with the child, they lead to only one inference that in all human probability the murders of the deceased were committed by the appellant alone and none else. From the evidence of PW-3 ASI Nagaraj, it is clear that the appellant knowing fully well that he had committed murder of his wife and child gave false opinion to the police on the basis of which UDR proceedings were initiated. By examining the refrigerator repairer it was sought to be suggested by the appellant that he was not present in his house when the incident had taken place. Thus, the defence of the appellant was that a fire had taken place in his

house and both the deceased had died because of inhaling of carbon monoxide after which their bodies were burnt because the house was engulfed in fire. However, at another stage the defence of the appellant was that his deceased wife with his child had committed suicide because her parents were pressurizing her to leave matrimonial home for their selfish purpose of having income of the deceased. Whereas, the deceased was not inclined to leave her matrimonial home, thus more than one and totally inconsistent defences have been taken by the appellant. All the defences were false to the knowledge of the appellant. Not a single defence was found to be probable or plausible either by the trial court or by the High Court. The appellant could not explain satisfactorily the circumstances in which his wife and child met violent deaths. Therefore, offering of false explanation by the appellant regarding death of his wife and child will have to be regarded as an additional circumstance against him strengthening the chain of circumstances already firmly found".

52. As such, the appellant had not only taken false defence of robbery or theft in the house knowingly but also false plea of alibi which strengthened the chain of circumstances already firmly

found. The defences raised are thus, improbable, unacceptable and unfounded.

53. Next, before her death, deceased Sakina and the appellant were staying together and there was no third person or element entering or staying in the house. At least, there is nothing to infer or suggest to that effect. Essentially, it was the death in the custody of the appellant. The appellant had neither adduced any evidence nor brought on record any material to substantiate his defence that either he knew nothing as to how deceased Sakina died or there is any whisper that due to the attempt of robbery by some unknown persons, Sakina had sustained injuries and succumbed to it. The appellant could have stepped into the witness box to substantiate his plea of alibi. He could have examined his employer to indicate his plea of alibi. Moreover, there is nothing brought on record to indicate as to how deceased Sakina died though she was in his custody till the night of 31st August, 2010. Those facts were especially within his knowledge of which onus was upon him which he failed to discharge. No doubt, section 106 of the Evidence Act does not cast any burden upon the accused to prove that no crime was committed by proving the facts specially within his knowledge.

54. It is difficult to understand as to how the appellant could firmly declare death of deceased Sakina to his mother-in-law when neither he is a Doctor nor has some knowledge of human physiology? This also probablizes the fact that she had already been done to death in the earlier night itself. Thereafter, on 1st

September, 2010, the appellant pretended to be going to the office and returned at 3.00 pm with a plan to inform his mother-in-law about the death of deceased Sakina as if he noticed her dead body only after his return from the office.

55. There is one more angle to this case i.e when the appellant is said to have returned home, it was not clear whether the door was already open or was latched from outside. If it was latched from outside, how the appellant locked his wife inside and went to the office, if, according to him, she was alive when he left for the office. Only inference, which an ordinary prudent man would draw from the aforesaid circumstances is that the appellant must have locked the door from outside, otherwise, had there been a robbery, the door would have remained open. He made a futile attempt, with his crooked mind, to camouflage and create a scene of attempt of robbery in his house and consequent death of deceased Sakina. The overall conduct of the appellant from each of the circumstance discussed herein unerringly points out towards his complicity and direct involvement in eliminating his wife.

56. The presumption of facts is an assumption resulting from one's experience of the common course of natural events of human conducts and human character. We can definitely make use of such experience in the ordinary course of life as well as in the business of the Court. The appellant had, knowingly and intentionally, caused death of deceased Sakina. If all the circumstances herein are juxtaposed, it is quite apparent that he had every reason and motive to commit murder of his wife. Intention to cause death of

Sakina was quite obvious. The case squarely falls within the first clause of section 300 of the Indian Penal Code.

57. The law is no more *res integra* on the applicability of section 106 of the Indian Evidence Act. This section does not cast any burden on an accused person to prove that no crime was committed by proving facts especially within his knowledge; nor does it warrant conclusion that if anything is unexplained which the Court thinks the accused can explain, he ought, therefore, to be found guilty. The initial burden is always upon the prosecution and is not shifted onto the accused by reason of this section.

58. There is one more strong circumstance appearing against the appellant. Arrest *panchanama* Exhibit 24 indicates the appellant was arrested on 2nd September, 2010 and immediately after his arrest, *panchanama* was drawn. It reveals from the *panchanama* that there were three bruises/scratches on the forehead of the appellant. There were three fresh wounds on his right palm. The appellant had not explained those fresh injuries on his person. There is no whisper about the same. In a desperate attempt to save herself from the brutal assault upon her by the appellant, deceased Sakina might have, in self defence, resisted the act resulting into scratches on the person of the appellant. It was quite apparent that when she was being smothered or strangulated, she had reacted in such a manner resulting into scratches on the forehead of the appellant as well as injuries to his palm.

59. As already stated in the preceding paras, P.W.4-Dr. Baban Tadvı testified that probable cause of death was due to neck and chest compression would necessarily mean that the appellant, by mounting on the person of deceased Sakina throttled her resulting into her death.

60. C.A report (Exhibit 18) pertains to the examination of

Exhibit (1) : viscera in a plastic bottle labelled ---

Stomach, intestine and its contents;

Exhibit (2) : viscera in a plastic bottle labelled---Pieces of
spleen, liver, kidney;

Exhibit (3) : Blood in a plastic bottle labelled --- Blood.

Exhibit Nos. (1) to (3) also labelled--- Sakina Jalal Mulla.

The result of analysis is that general and specific chemical testing **does not reveal any poison** in exhibit Nos.. (1) (2) and (3).

61. This evidence rules out possibility of death due to poisoning as attempted to be put forth by the defence in view of the froth oozing from the mouth of deceased Sakina. The appellant had tried to avert suspicion from himself by taking a fake plea of alibi as well as by contending that there was an attempt of robbery. As stated above, taking a false plea of alibi and not discharging onus under section 106 of the Evidence Act itself gives rise to a strong circumstance against him.

62. It is apparent from the autopsy report especially; contusion on the left elbow region admeasuring 3 c.m x 1 c.m on cut section underneath hemorrhage, contusion on the left arm lateral mid level admeasuring 4 c.m x 1 c.m as well as contusion at the right side of face maxilla region admeasuring 2 c.m x 1 c.m that deceased was assaulted violently before she was strangled by the appellant.

63. P.W.6-Dinkar Krishna Chandankar conducted investigation of this case. He reached the scene of occurrence at about 7.30 p.m after receiving wireless message that a woman was lying in an unconscious state. After visiting the spot with the Police team, he noticed that a woman was lying in an unconscious state. Because message was received about unconscious state of woman, he also testified that she was unconscious and he noticed that froth was coming from her mouth. P.W.6 - Dinkar Chandankar is also not an expert to comment whether deceased Sakina was unconscious or dead. After noticing the froth, perhaps he must have felt that she was unconscious. Be that as it may. As a matter of fact, deceased Sakina had already died. His evidence further reveals that the appellant was present in the house. The dead body of deceased Sakina was sent to Rajawadi Hospital in Ghatkopar Mobile Van. Thereafter, he testified about drawing spot *panchanama* and sketch of the scene of occurrence which are at Exhibit 22, Exhibit 22A and Exhibit 23.

64. This witness had, after recording the complaint vide C.R. No.414 of 2010, registered an offence under section 304 of the

I.P.C against the appellant. He had recorded statements of the witnesses, collected postmortem notes, arrested the appellant in the presence of *panchas*. He had identified the clothes of deceased Sakina which were sealed during the course of investigation. His evidence remained intact as defence has failed to shatter his version during cross-examination. It is brought in the cross-examination that he had handed over gold ornaments which were on the person of deceased Sakina to P.W.1-Mohammad Iqbal. This also falsifies the defence of the appellant that there was an attempt of robbery in his house. Had there been robbery, the robbers would not have left the gold ornaments on the person of deceased Sakina.

65. P.W.7-Mamta Lorence D'Souza- Police Inspector, was attached to Ghatkopar Police Station at the relevant time. Further investigation was conducted by her. She recorded statements of some of the witnesses. After getting exact time of death from Rajawadi Hospital and details of attendance of the appellant from his office, she added section 302 of the I.P.C and moved an application before the learned Additional Sessions Judge for addition of charge under section 302 of the I.P.C.

66. To conclude, the prosecution has proved that it was the appellant who was the author of the injuries and had committed murder of deceased Sakina by strangulation. Chain of circumstances has been established, from which, inference of guilt against appellant could be drawn beyond all reasonable doubts. There cannot be any other hypothesis than that of the guilt of the appellant and the evidence on record is not only consistent with

the guilt of the appellant but is definitely inconsistent with his innocence. The learned trial Judge has appreciated the evidence and the circumstances in its correct perspective and reached a proper and legal conclusion.

67. Learned Counsel for the appellant has placed reliance upon two judgments on the plea of alibi and time of death. Reliance is placed on a judgment in the case of **Dasari Siva Prasad Reddy Vs. Public Prosecutor, High Court of A.P. (2004) 11 Supreme Court Cases 282** on the aspect of time of death. It has been observed by the Hon'ble Supreme Court that the trial Court, after referring to the medical evidence and Modi's jurisprudence and Toxicology observed that death could have been occurred 48 hours prior to the postmortem examination. Thus, the time was fixed at about 2. p.m on 19.04.1996. It was the evidence of the Doctor that occurrence of death between 38 to 40 hours could not be ruled out as it was summer time. It is held that the High Court's view that time of occurrence cannot be fixed with precision merely based on the opinion expressed in the textbooks on medical jurisprudence which only sets out certain broad indicators, was correct, especially in view of the clarification given by the Doctor himself. It is, thus, observed that it could be assumed that murder took place on the night of 19th April or in the early hours of 20th April.

68. We are afraid this ratio is rather squarely applicable to the present set of facts and in particular to the evidence of P.W.4 - Dr. Baban Tadwi, who had categorically opined that the death could have been occurred within 36 hours of the commencement of

postmortem. So far as plea of alibi is concerned, it has been observed that the accused had failed to establish that in the said night, he remained in the house of his parents in another village, does not necessarily lead to the inference that he must have been remained at his house on the night in question.

69. The circumstantial evidence is complete, in the sense, there is absolutely no scope to infer any other hypothesis than that of the guilt of the appellant. The appellant had indeed attempted to give a colour of robbery to the entire episode by taking a plea of alibi, creating circumstances of robbery and informing mother-in-law about death of deceased Sakina as if he came to know about it only after his return from the office, but he failed in his plan to conceal and shield himself behind the smokescreen. However, evidence and circumstances discussed hereinabove, coupled with the well corroborated medical evidence establishes beyond all doubts that it was the appellant and none other who had committed murder of deceased Sakina.

70. The next judgment pressed into service by Ms. Khot is in case of **Anwar Ali and another Vs. State of Himachal Pradesh (2020) 10 Supreme Court Cases 166** on the point of motive. In this judgment, it is held by the Hon'ble Supreme Court that absence of proving the motive cannot be a ground to reject the prosecution's case. It is also true, that if motive is proved that would supply a link in the chain of circumstantial evidence, but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, absence of motive in a case

depending on circumstantial evidence is a factor that weighs in favour of the accused.

71. Here, is the case where not only the motive is crystal clear but the chain of the circumstantial evidence is so intact that there is hardly any scope to construe absence of motive to commit the offence.

72. Ms. Deshmukh, the learned A.P.P has placed useful reliance on a judgment in a case of **Trimukh Maroti Kirkan Vs. State of Maharashtra, 2006 AIR SCW 5300**. It was a case of dowry death based on circumstantial evidence. The evidence of the prosecution witnesses fully established that wife was ill treated and often beaten and sometimes not given food on account of non fulfillment of demand of money. Accused/husband had given information to others that she died due to snake bite. However, medical evidence revealed that death was due to strangulation. Her body was kept in sitting posture with her back taking support of wall so that no one would suspect that she was strangled. There were injuries found on her body. The accused had not given any explanation as to why the wife sustained those injuries. Certain articles were recovered from the house of the accused pointing out towards his involvement. Thus, it is observed that the circumstances were pointing out towards the guilt of the accused and, therefore, his conviction has been confirmed. Paragraphs 16, 17 and 18 of the judgment are extracted;

16. In a case based on circumstantial evidence where no eye-witness account is

available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court.

"17. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram v. State of Himachal Pradesh, AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered with "khokhri" and the fact that the relations of

the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State of U.P v. Dr. Ravindra Prakash Mittal, AIR 1992 SC 2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained

and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstance was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In State of Tamil Nadu v Rajendran, (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 pm and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime".

18. In the earlier part of the judgment we have given a resume of the evidence which is available on record. The appellant was plying a tempo in order to earn his livelihood. It is fully established that the deceased Revata was being ill-treated and harassed on account of non-fulfilment of demand of Rs.25,000/- which the appellant wanted for purchasing a tempo. The deceased Revata was often beaten and was sometimes not given food. After Revata had been murdered, information was sent to her parents that she had died on account of snake bite, which was reiterated when they reached the house of the appellant in village Kikki. In fact, everyone in the village had been told that Revata had died on account of snake bite and the Police Patil, believing the said information to be true, had lodged an Accidental death Report at the police station. The medical evidence, however, showed that she had died on account of asphyxia due to strangulation. The body of the deceased was purposely placed in a sitting posture with her back taking support of the wall so that no one may suspect that she had actually been killed as a result of strangulation and may believe the version of

snake bite given by the appellant and his parents. The appellant in his statement under Section 313 Cr. P.C did not offer any explanation as to how she received the injuries which were found on her body. Recovery of some articles of the deceased was made at the pointing out of the appellant. The circumstances enumerated above unerringly point to the guilt of the accused and they are inconsistent with his innocence".

(emphasis supplied)

73. The principles discussed in the judgment (supra) are squarely applicable to the present set of facts.

74. Thus, we are of the considered view that the prosecution has proved the charge of murder against the appellant beyond all reasonable doubts. There is absolutely no scope warranting interference in the impugned judgment and order of conviction and sentence rendered by the learned Additional Sessions Judge, Greater Mumbai.

75. Consequently, the appeal stands dismissed.

[PRITHVIRAJ K. CHAVAN, J.]

[SMT. SADHANA S. JADHAV, J.]