

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

CRIMINAL APPEAL NO. 761 OF 2015

Krushnmurti @ Deelip s/o Gokul Chaudhari
Age – 45 years, Occ – Agri,
R/o- Khandala, Tq. Bhusawal,
Dist. Jalgaon.

... Appellant
(Ori. accused)

Versus

The State of Maharashtra,
Through Bazaarpeth Police Station,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.
Through its Police Inspector.

... Respondent

. . .

Mr. S. B. Bhapkar, Advocate for the Appellant.
Mr. A. M. Phule, APP for the Respondent-State.

. . .

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 04.01.2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Getting dissatisfied by the judgment and order of conviction passed by the learned Additional Sessions Judge, Bhusawal dated 25-08-2015 in Sessions Case No.226 of 2014, appeal has been preferred by invoking Section 374 of the Code of Criminal Procedure (Cr.PC) praying to set aside the impugned judgment and order of conviction by allowing the appeal.

FACTS GIVING RISE TO THE SESSIONS CASE

2. Accused appellant was married to deceased Archana and out of their wedlock, they had a son by name Shubham. After six months of marriage, according to the prosecution, accused started suspecting character of his wife Archana and he started beating and harassing her. The relations between them became so sour and strained that they parted their ways and started residing separately. Deceased Archana took up a job of Teacher in a School and started residing with her younger brother and son Shubham in a rented premises located in Unta Mohalla, Bhusawal. Accused appellant resided separately.

It is the case of the prosecution that on 27-05-2012, accused visited deceased Archana. There was quarrel between them and in the rage of anger, accused stabbed Archana at various places on her person in the same room occupied by her. Hearing shouts, neighbours summoned Police. Father of Archana was also given call by Police Patil of their village and as such he too reached there. He saw Archana lying in pool of blood in supine condition. Accused was also said to be sitting there. Father approached Bajar Peth Police Station, Bhusawal and lodged complaint against accused for committing murder of his daughter. On the strength of his complaint, Bajar Peth Police Station registered crime bearing No.72 of 2012 for commission of offence under Section 302 of Indian Penal Code (IPC) and investigation was carried out and finally, after completing the same, accused was charge-sheeted.

3. Case being exclusively triable by Court of Sessions, learned Judicial Magistrate First Class, committed the case to the Sessions Court and the challan came up before learned Additional Sessions Judge, Bhusawal. Learned Additional Sessions Judge framed and explained charge to the accused and after recording his plea, trial was undertaken. At the trial, in support of its case, prosecution has examined in all ten witnesses. Prosecution also sought reliance on documentary evidence like FIR, various panchanamas, CA report etc. After hearing State as well as defence, learned trial Court appreciated evidence on record and vide Judgment dated 25-08-2015 held accused appellant guilty for the said charge and therefore, convicted him under Section 302 of IPC and sentenced him to suffer life imprisonment and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for six months. Appellant is now taking exception to the above judgment and order of conviction by way of instant appeal.

SUBMISSIONS ON BEHALF OF APPELLANT

4. Pointing to the oral evidence and cross-examination of the prosecution witnesses, learned Advocate for the appellant would doubt case of the prosecution by submitting that here at the outset investigation was carried out even prior to registration of FIR and therefore, FIR is doubtful. That case of prosecution is false and after thought. It is his submission that as prosecution could not get any witness, an attempt has been made to record evidence of

neighbours infact who had not seen accused in the premises and as such they were all got up and tutored witnesses. Pointing to the evidence of informant father, it is his submission that father – informant has admitted that accused and deceased were residing separately since 2010 and when there is no witness, who had seen accused entering the house of deceased in the morning of 27-05-2012, allegations against accused are doubtful. That informant has improvised his version before the Court, which was not stated by him in the complaint, regarding accused sitting in the room after the incident.

Taking us through the testimony of PW2, learned Advocate for appellant pointed out that this witness is not reliable. He had merely heard shouts but had reached the spot at later point of time and that he gives contradictory version about presence of PW5 – Prakash Ahire, who himself is silent about being present at the spot.

He took us through the evidence of PW5 and would submit that he is interested witness and infact his examination-in-chief itself shows that he was not allowed to come to the spot by Police and moreover, he has admitted that his mother was a Councilor and they always solved quarrels of persons in the locality and that this witness was frequent visitor to the Police Station and moreover, he admitted that he gave statement at the behest of Police and thus, it is stated that his evidence is required to be discarded out right.

Further taking us through the evidence of autopsy Doctor, it is submitted

that there is failure of Doctor to ascertain time since death and post mortem report is blank at various places and on crucial points and moreover, there is no signature of PW7 on the post mortem report. It is further pointed out that medical expert has admitted that fracture to the ribs and wounds on sternal are not possible due to weapon like knife and therefore, it is his submission that only one knife being seized, possibility of other weapon being used arises and same has not been laid hands on by investigating machinery. Inviting our attention to CA report, it is submitted that analysis being inconclusive, authorship of the offence cannot be attributed to accused. For all above reasons, he submits that prosecution has miserably failed to bring home the charges and to prove their case beyond reasonable doubt and therefore, according to him, the learned trial Court ought not to have recorded guilt of the appellant. That there is failure on the part of trial Judge in appreciating the oral and documentary evidence in its proper perspective and moreover, in absence of cogent and reliable evidence, conviction has been recorded. Therefore, as strong case is being made out in appeal, he prays to allow the appeal by setting aside the impugned judgment and order.

SUBMISSIONS ON BEHALF OF STATE

5. Supporting judgment of conviction, learned APP for respondent State also took us through the charge-sheet and even the judgment and order of the learned trial Judge and would submit that no error whatsoever has been

committed by the learned trial Court in reaching to finding of guilt. That there is proper evaluation of oral and documentary evidence. Learned trial Court has accepted the case of the prosecution because case had been proved by prosecution beyond reasonable doubt. Accused was apprehended from the room of deceased, who was his wife. Thus he was caught red-handed from the spot. Weapon is also seized. That neighbouring witnesses had heard quarrel and cries out of pain of the deceased lady and police was promptly informed and had approached and thereafter, actual incident came to light. That, these witnesses had no axe to grind against accused and therefore, submissions of learned Advocate for accused that they are interested witnesses holds no water. Rather it is his submission that these witnesses are independent witnesses and they have duly deposed what they saw. Their evidence has remained unshaken on crucial aspects of actual occurrence. That there was brutal assault on deceased. Thus, according to him there being no merit in the appeal he prays to dismiss the same.

6. Here we are mindful of the fact that we are dealing with the order of conviction for commission of offence under Section 302 of IPC i.e. by invoking Section 374 of Cr.P.C. which provides for appeal against conviction. As mandated by law, while dealing in first appeal under Section 374 of Cr.P.C., this Court is expected to re-appreciate and evaluate oral and documentary evidence adduced by the prosecution in the trial Court and reach to

independent assessment. As expected we have also heard both the sides to their satisfaction. The above exercise is undertaken in view of directions of Hon'ble Apex Court in the case of *Ishvarbhai Fujibhai Patni vs. State of Gujarat*; (1995) 1 SCC 178.

We have already dealt with submissions of learned Advocate for the appellant as well as learned APP for the respondent-state. Therefore, now we turn to the evidence part of the case. On going through the record, it is emerging that to establish accusation, prosecution had relied on oral testimonies of ten witnesses and also relied on documentary evidence like FIR, arrest panchanama, seizure panchanama, spot panchanama, inquest panchanama, CA report etc.

For proper appreciation, we choose to first deal with the status and role of prosecution witnesses and in short also deal with the evidence that has cropped up in the witness box during trial.

EVIDENCE

7. **PW1** is the informant and father of deceased Archana. We find him deposing in the trial Court that, marriage of his daughter Archana was performed with accused 16 years back and his daughter was blessed with a son. According to father, after six months of marriage, accused doubted chastity of his daughter and thereby harassed and beat her. She was also subjected to cruelty. Therefore, his daughter lodged complaint against

husband and thereafter, she left his company and was living separately at Unta Mohalla in Bhusawal. On 27-05-2012, he got a message from Police Patil of his village about murder of his daughter and so he came and saw his daughter lying in pool of blood and therefore, he lodged FIR. He identified his FIR at Exh.27.

Informant father has faced **cross-examination** at the hands of defence. He seems to be questioned about educational qualification of deceased. He has admitted that educational expenses of his daughter for completing graduation and B.Ed. were borne by accused husband, but suggestion about husband bearing delivery expenses has been denied by him. He is asked about salary earned by deceased Archana and that since 2008 she had shifted to Bhusawal from Khedi and was residing in a rented premises. He denied that his daughter's marriage was against her wish. He answered that since 2010, accused and his daughter started living separately. He is asked about maintenance proceedings instituted by deceased Archana and FIR at her instance for causing matrimonial cruelty. Witness is examined at length as to who informed him about occurrence on 27-05-2012 and how he travelled from his place to Bhusawal, at what time he reached, how much was the distance and where was rented room of his daughter. He is asked about strength of gathering outside the house and how much time it took to complete the formalities of FIR and he has duly answered the same. Omission about harassment and beating after six months of marriage has been

brought on record from the mouth of this witness. Omission of seeing accused sitting at the spot and his clothes to be bloodstained is also brought on record. Though some omissions are brought in cross of PW1, all omissions are not get proved by questioning the Investigating Officer.

8. **PW2** seems to be a neighbour and it has come in his evidence that he knew deceased and her husband and they were separated and their relations were not sound. According to him, incident took place on 27-05-2012 between 09:00 to 09:30 a.m. While he was taking bath, he claims, that he heard shouts of a lady for help and after taking bath he came out and saw crowd outside and PW-5 – Prakash Ahire accompanying 3-4 constables was going upstairs i.e. to the house of deceased Archana. He claims that he followed and saw Police knocking the door and accused opening the door from inside. Accused was in frightened condition and his hands were stained with blood. He told Police that he murdered his wife and knife was on the chair and deceased Archana was lying in pool of blood in supine condition. According to him, incident might have occurred because of dispute between them. He identified accused in the Court.

While under **cross-examination**, he was questioned about his own occupation. He denied that in his statement he gave his occupation as a labour and he could not tell why Police noted it in such a manner. He is asked about room occupied by Archana, categorical directions of said room and

surroundings. He denied visiting her house but he answered that he had heard that accused stayed in Mondhala and Archana stayed with her brother and son in Unta Mohalla. He states that Prakash Dattu Ahire is social worker and his mother is a Councilor. He answered that he had seen accused at the time of incident which occurred on Sunday. He is asked how many times he heard shouts. He answered that he heard shouts more than once. He could not tell whose voice it was. He answered that he might have left his house after 5 to 6 minutes of hearing shouts. Then he is again asked about access of room and about the doors and windows to the house. While answering in cross, he claimed that Police has seized knife in his presence. He denied that Police broke open the door. He answered that he did not see brother or son of Archana and Police did not make any inquiry to accused in his presence. He claimed that Prakash Dattu Ahire was also present there and that Doctor was called and after examination by Doctor, Archana was declared dead.

9. **PW3** has acted as spot panch stated that he and Jidesh Jain were called by Bajar Peth Police to act as panch to the spot. He narrated spot to be a room of Archana in Unta Mohalla. He described what he saw in the room and he identified panchnama at Exh.36. He has also acted as panch to the seizure of clothes of deceased (Exh.37) and the seizure of clothes of accused (Exh.38). He has identified signature over panchnamas at Exhibits 36, 37 and 38.

He too **cross-examined** at length on the point at what time he reached at

the place of incident and as to at what time he was called and where. He too is asked about description and location of the spot room. He answered that he saw Archana, who was lying with her face towards the ground. That in his presence Police drew panchnama. He is questioned about colour of clothes of the deceased, its condition, time of seizure of clothes of accused and drawing its panchanama and he has answered all questions put by cross-examiner.

10. **PW4** has acted as panch to the collection of blood samples of accused. Panchanama is at Exh.41 and he identified the same.

In **cross** he has questioned whether any entry has been made in station diary and who was Police Station Officer and to whom Doctor gave the sample. He answered all the questions put by cross-examiner.

11. **PW5** is a neighbour, who stated that he knew deceased, who was staying behind his house and that she was a Teacher. He identified accused but answered that he did not know him. He answered that he knew that husband used to visit deceased. Even according to him, incident occurred at 09:00 a.m. on 27-05-2012. It is his version that while he was returning from temple of Tuljamata, he heard noise of quarrel and he looked at all four directions. He went to the house of from where the noise came. He knocked the door of the house which was owned by Ramesh Mahajan but was taken on rent by Archana. According to him, quarrel was going on, door was not

opened and so he went to Police Station and informed about quarrel and they should visit the spot. According to him, Police accompanied him. They went to upstairs and this witness was asked to wait. He waited for some time and then went to his house. Police asked to open the door of the room. Door was opened from inside. After some time, he heard that something had happened and so he went to upstairs and saw that Archana was lying in pool of blood. He stated that Police might have taken away her husband.

It has come in his **cross-examination** that he sales vegetables and that his mother is a Councilor. He answered that he did not see accused in their area during last one and half year. He stated that house of Ramesh Mahajan was behind his house. He has admitted that whenever there is any problem, his mother solves the same as she is a Councilor. He admitted that Archana did not complain to him or his mother during last one and half month. He has questioned that at what time he visited temple, its distance and at what time he returned back to locality. He admitted that he did not see the accused on the day of incident and that he heard from talk of Police that Police had taken away husband of the lady. He also admitted that he deposed as per instructions of Police and he frequently visit Police Station.

12. **PW6** is also a resident of the same locality. He stated that he resides in front of house of Ramesh Mahajan. Husband of the lady was Krushnamurti Chaudhari. He claims that he knew him because he used to visit house of

Archana. He claims that on 27-05-2012 he heard cries of a lady who was asking for help and so he came out of house and saw crowd in front of house of Ramesh Mahajan and he saw Prakash Ahire moving in hurry and he had called Police and Police went where the lady stayed. He claims that he heard that there was a murder and therefore, finding him not supporting the case of prosecution, this witness was cross-examined and re-examined.

13. **PW7** is a autopsy Doctor, who perform post mortem over the body of Archana. He narrated number of injuries reflected in post mortem report, which is under his signature, which is at Exh.53. There were 34 external injuries as well as internal injuries. Stab wound Nos.4, 5, 9, 19, 20, 21, 22, 24, 26, 27, 28, 29, 30 and 32 were grievous and cumulative effect of such injuries was sufficient to cause death. He collected blood samples for chemical analysis and in his opinion, injuries noticed by him are possible by knife and said injuries are sufficient to cause death.

Medical expert is also **cross-examined** on the point of civil hospital administration, about necessity of two Doctors for performing autopsy when the death has taken place within seven years of marriage. He admitted that his name is not noted in the column of post mortem report and even the column of signature of Doctor is blank and signature of Dr.Saidane is not appearing. He denied that Dr.Saidane alone carried out post mortem and he was not present at the time of post mortem. He denied that rough notes at the

time of post mortem were in the handwriting of Dr.Saidane and that wounds were observed by said Doctor. Doctor expressed his ignorance about conducting investigation on finding discrepancies of injuries found in inquest panchanama and injuries found on dead body. He admitted that dead body was received at 02:40 p.m. and post mortem commenced at 03:00 p.m. He admitted that time since death is not mentioned and that from the condition of food in stomach time since death has not been ascertained. He answered that Dr.Saidane who conducted post mortem is no more. He has answered about rigor mortis and its duration to develop and vanish. He answered that death might have taken place immediately after injuries were caused. He admitted that external injuries were incise wounds or stabbed wounds and possible by sharp edged weapon. He answered that there might be internal injuries corresponding to external stab injuries and that from the shape of the stab injuries nature of weapon can be ascertained. He answered that edges of injuries noted in column 20 were clean and cut and edges of other stab injuries were also clean and cut and in such condition the weapon used should have been sharp edged one from both sides. He admitted that Investigating Officer did not send the weapon used in this case to him. He admitted that two ribs and sternal bones were found to be fractured and that it may not be caused with single weapon like knife. He is questioned whether the death of the lady was caused because of Hypovolemic shock, to which he answered that death was caused due to shock caused by bleeding due to injuries and pains by

the injuries.

14. **PW8** and **PW9** are Investigating Officers who narrated all the steps taken by them during the investigation and they are duly **cross-examined** as to what they found. **PW10** is a carrier.

Above is the oral evidence on behalf of prosecution. On appreciating above discussed oral and documentary evidence, learned trial Judge reached to a finding that prosecution succeeded in establishing guilt of offence under Section 302 of IPC and accordingly, awarded him sentence of life imprisonment.

FROM THE ABOVE DISCUSSED EVIDENCE ON RECORD, FOLLOWING CIRCUMSTANCES ARE CLEARLY EMERGING AS ESTABLISHED :

- a) Accused suspected fidelity of deceased wife and harassed her.
- b) They were residing separately since 2010 and deceased has instituted various proceedings against accused.
- c) Deceased, who had taken a job of teacher, resided at Unta Mohalla, Bhusawal in a rented room owned by one Ramesh Mahajan.
- d) On **27-05-2012** it was **Sunday** and hence, deceased herself as well as her neighbouring witnesses were all available in their respective houses.
- e) Occurrence took place at around 09:00 to 09:30 a.m.

- f) Hearing quarrel and cries of the lady from the room, neighbour PW5 had summoned Police.
- g) Accused husband taken in **custody** in injured condition with blood stained clothes on his person i.e. from the room taken on rent by deceased wife.
- h) Recovery of blood stained knife, T.V. cover, chadar, white button etc.
- i) On the body of the deceased autopsy Doctor noticed and noted 34 stab injuries which were reflected in post mortem report.
- j) Cause of death according to autopsy Doctor is “death due to shock due to Polytrauma”.

DEFENCE RAISED BEFORE THIS COURT COULD BE SUMMARIZED AS

UNDER :

- i) Motive is not established.
- ii) No direct or eye witness on record.
- iii) Presence of accused at the spot not cogently and firmly established.
- iv) Case being based on circumstantial evidence, heavy burden on prosecution to prove and establish all circumstances firmly and cogently but it failed to do so.
- v) Delay in FIR.
- vi) Commencement of investigation even prior to registration of FIR which is fatal to investigation.

- vii) Suppression of genesis of crime by prosecution.
- viii) Arrest not proved.
- ix) Only interested witnesses are examined and moreover material witnesses are not examined.
- x) Statements of witnesses recorded by Investigating Officer after inordinate delay without proper explanation.
- xi) Material contradiction and omissions rendering the case of prosecution doubtful.
- xii) Time of death is not established.
- xiii) Autopsy Doctor agrees about possibility of use of more than one weapon, however, investigating machinery seized only one weapon.
- xiv) CA report inconclusive.

ANALYSIS

15. Charge being under Section 302 of IPC at the threshold, it is essential to see whether death of Archana is proved to be homicidal one. To find answer to the same, we are required to visit autopsy Doctor's evidence i.e. PW7. We have minutely scrutinized the post mortem report also. In his substantive evidence, PW7 autopsy Doctor claims that dead body was received with inquest panchanama and he and Dr.Saidane carried out post mortem. There were multiple injuries on dead body. He has given number of injuries as 34 external injuries. According to him, injury of stab wound Nos.4, 5, 9, 19, 20,

21, 22, 24, 26, 27, 28, 29, 30 and 32 were **grievous**. He is categorical that cumulative effect all grievous injuries is sufficient to cause death. There was fracture to right third rib, left 9th rib and there was fracture to sternal, trachea was punctured because of stab on the neck. Both lungs had puncture wounds by stabbing. There were multiple left mesmeric tear, puncture to liver from front side and because of the injuries there was bleeding and patient went in shock and died. Intestine has come out. Injuries on the hands were so deep that bones of hand were visible. He has opined that such injuries are possible by article like knife and injuries are sufficient to cause death.

We have already discussed the cross-examination of **PW7 autopsy Doctor** taken by defence in aforesaid paragraph No.13. Initial part of the cross is devoted to incomplete columns in post mortem report. He is categorical about injuries to be possible by weapon like knife. This witness has come across 34 injuries. Vital parts like trachea, lungs, liver, intestine are found to be damaged. Corresponding injuries are also spelt out by the autopsy Doctor. He has also opined about cumulative effect of nature and number of injuries. Therefore, there is absolutely no hesitation on our part also, as like trial Court, to hold that prosecution has succeeded in establishing death of Archana to be nothing but homicidal.

16. This takes us to further assessment regarding authorship of said injuries. Prosecution has asserted that relations between deceased and accused

husband were strained due to marital discord and they have started residing separately. This is clearly established from independent witness examined by prosecution apart from informant i.e. father. Witnesses, who are neighbours are all consistent that deceased resided alone in a rented premises owned by Ramesh Mahajan. It has been brought in the cross by none other than defence that complaints had been lodged by deceased against her husband for maintenance and subjecting her to cruelty and the same are *sub judiced*. True it is that there is no witness on behalf of prosecution, who had seen accused entering the house of deceased on 27-05-2012, however, immediate neighbours i.e. PW2 Ramchandra Gurav, PW5– Praksah Ahire, who is also resident of same locality and residing in front of room rented by the deceased and PW6 – Mahendra Patil who is also resident of same locality are unanimously and unequivocally stating about hearing shouts and cries of the lady. PW2, whose evidence is already discussed in aforesaid paragraph No.8 is found to have stated that around at 09:30 a.m. on 27-05-2012, while he was taking bath, he heard shouts and after taking bath, he came out and saw crowd and PW5 going towards the house of Archana alongwith 3 to 4 constables. He is the immediate neighbour. He is further categorical that Police knocked the door, accused open the door and was found to be in frightened condition and he found his hands to be bloodstained. He seems to have visited the spot and had seen deceased Archana lying in pool of blood and in supine condition. Thus, he has confirmed the presence of accused in

the room occupied by deceased Archana.

PW5 also reiterated as like PW2 that on 27-05-2012 at 09:00 a.m. while he was returning from Tuljamata temple, he heard noise of quarrel and so he went to the house from where the noise came and he himself knocked the door, as the door was not opened, he rushed to Police Station to inform about it and he claims that Police accompanied him. Therefore, version of PW2 about seeing PW5 accompanying Police and proceeding towards room of Archana gets established. PW5 states that Police asked him to wait. Therefore, after waiting for some time he went to his house and thereafter, after some time, he went to the room of Archana and there he claims to have seen Archana lying in pool of blood. However, according to him, Police might have taken her husband by them.

PW6 also confirms the occurrence as he has stated that he has heard cries of a lady asking for help and so he came out of house and saw crowd in front of house of Ramesh Mahajan. He also saw PW5 moving in hurry and bringing Police and all of them going towards the room of deceased. But he has fairly stated that he heard that there was murder and he did not visit the house and saw anything.

Therefore, PW2 and PW5, who are neighbours and independent witnesses and who had no axe to grind against accused are consistent about first hearing cries from the room of Ramesh Mahajan, which was undisputedly rented and occupied by Archana. PW2 claims to have seen accused opening

door in frightened condition. Therefore, presence of accused in the room of Archana at the time when she was found lying in pool of blood with multiple injuries is confirmed and stands established.

17. In the trial Court case was put up by the prosecution about seizure of weapon knife and it is so established by way of panchanama. To fortify such contention prosecution seems to have examined PW3 Shankar Jadhav and he has in his evidence states that he and one Jidesh Jain were called by Bajar Peth Police Station for drawing panchanama of scene of offence. Spot was on second floor of house owned by Ramesh Mahajan where deceased stayed in Unta Mohalla. Witness states that there were blood stains on the chadar, T.V. cover and white colour shirt button, knife was on chair and it was smeared with blood. Archana was lying in pool of blood. There were injuries by knife on the body of Archana and she was wearing red colour gown with flower print on it and gown was in tore condition. This witness has stated colour of her petticoat. According to him, Police performed panchanama of scene of offence and it was read over by him. Police seized all the aforesaid things from place of occurrence in his presence and after drawing panchanama, he caused signature and he identified panchanama and signature at Exh.36 i.e. seizure of blood stained chadar, shirt button, T.V. cover and knife. He further stated that panchanama of seizure of clothes, which was drawn at Police Station i.e. gown, petticoat, nicker, which were blood stained. He identified

panchanama and its contents at Exh.37. He has also acted as panch to seizure of clothes of accused at Police Station i.e. white colour shirt with full sleeves and black colour pant and both such clothes to be blood stained. He speaks of clothes being seized and panchanama to be drawn and read over to him. He identified his signature on pachanama at Exh.38. He has identified Muddemal i.e. nine articles i.e. (i) knife, (ii) T.V. cover, (iii) cotton cloth (iv) button, (v) gown of deceased (vi) petticoat of deceased (vii) nicker of deceased (viii) shirt of accused (ix) pant of accused. He has identified accused in the Court.

Though, he is cross-examined by defence, there is nothing to hold that he is either falsely deposing or that his evidence is shaky and thereby doubtful. Apart from giving the details of spot and description of the scene of occurrence, this panch witness has named articles which were seized including knife. These panchanamas are exhibited as its contents are confirmed/identified by PW-3. It appears that preparation of panchanamas of spot and seizure has been promptly done by Police Officer on the same date i.e. 27-05-2012 between 11:50 a.m. to 12:50 p.m.

18. From above discussion, it is emerging that though there is **no eye witness regarding actual assault** or account of any witness speaking about seeing accused entering the house of deceased wife, there are witnesses who are independent one and immediate neighbours who are categorical about accused to be present in the room where deceased was lying in pool of blood

and being taken in custody by Police.

As discussed above, weapon put to use is also seized and its panchanama is cogently proved. There is no material to hold that except accused there was involvement of some other person. Police have taken accused in custody and in the said room deceased was lying in pool of blood with multiple injuries. Evidence to this extent brought by prosecution has not been rendered doubtful by defence in the trial Court.

19. The second attack of appellant is regarding non-availability of motive. Learned Advocate would vehemently submit that prosecution failed to establish motive behind the crime. According to him, very case of prosecution itself is that accused and deceased resided separately. In our considered view, such submissions are without any substance for the simple reason that though accused and deceased were married and had a child, father has given evidence that accused husband suspected the fidelity of his wife and harassed her and therefore, they were residing separately. However, it has further come in his evidence while answering cross that deceased wife had launched proceeding under maintenance and for cruelty and said proceedings were pending in the Court of law. Therefore, there was reason for accused to have a grudge with deceased wife. Consequently, evidence about motive is also very much available in the prosecution evidence. PW5 in his chief is very categorical about knowing husband of deceased as he used to visit deceased. Further here

accused was found in the room at around 09:30 a.m. and was therefore, taken in custody from the room of deceased wife. He was spotted by PW2 and PW5 being brought out of the room by Police. Therefore, in the light of above material, aspect of motive is also forthcoming.

20. In the same context, when there is evidence about presence of accused in the room where deceased wife was lying dead, burden shifts on accused to explain how his wife had 34 stab injuries while he was in her company. Law is fairly settled on scope and applicability of Section 106 of Evidence Act. In catena of judgments the Hon'ble Apex Court has held and reiterated that when any fact is specially within the knowledge of any person, the burden of proving that fact is always upon him. It is corresponding burden on accused to give cogent explanation as to how incident occurred. He cannot merely escape without offering explanation. There are various pronouncements on such proposition of law and the few cases that could be taken recourse to are *State of Punjab vs. Karnail Singh*; (2003) 11 SCC 271; *Nika Ram vs. State of HiP* (1972) 2 SCC 80; *Ganeshlal vs. State of Maharashtra* (1992) 3 SCC 106; *State of T.N. vs. Rajendran* (1999) 8 SCC 679.

The principle underlying Section 106 of Evidence Act is that, the burden to establish those facts is cast on the person concerned and if he fails to establish or explain those facts, an adverse inference of facts may arise against him which coupled with presumptive evidence adduced by prosecution would

rebut the initial presumption of innocence.

Bearing in mind the above responsibility cast upon accused husband, if we go through the answers given by him to the questions raised on this count while recording statement under Section 313 of Cr.P.C. by way of question Nos.27 and 28, there is mere answer that it is false. Therefore, for the more reason finger of accusation rightly gets pointed to none other than accused husband.

21. Much emphasis is laid by learned Advocate for appellant on the aspect of commencement of investigation prior to registration of crime. According to him, this further renders genesis of the crime doubtful.

We have come across that Investigating Officer PW8 has answered in chief itself that before registering FIR, panchanama of inquest was drawn. However, we do not agree with the above submission of learned Advocate for appellant that it is fatal, for the simple reason that law is fairly and squarely settled that registration of crime is not a condition precedent for undertaking preliminary investigation, more particularly, undertaking exercise of drawing inquest panchanama. Scope and object of 174 of Cr.P.C. is very limited i.e. to ascertain as to what is the condition of the dead body. At this stage, Investigating Officer is not expected to investigate as to who is responsible for death. To support our view, we derive strength from the following rulings of the Hon'ble Apex Court -

(i) In the case of ***Sri Sambhu Das @ Bijoy Das and Another vs. State of Assam***; AIR 2010 SC 330, the Hon'ble Apex Court held that,

“Submission that F.I.R. loses its authenticity if it is lodged after inquest is recorded is a general preposition and may not be true in all cases and all circumstances and such general preposition cannot be universally applied by holding that if F.I.R. is lodged for whatever reason after recording the inquest report, the same would be fatal all proceedings arising out of I.P.C. The Hon'ble Apex Court has dealt on the object of drawing inquest u/s.174 of the Cr.P.C. i.e. its mere purpose of ascertaining how deceased died, what is cause of death and under what circumstances death has taken place. Thus, scope of inquest of said to be limited and that it is not substantive piece of evidence.”

(ii) Similarly, in the case of ***George vs. State of Kerala***; AIR 1998 SC 1376, it has been held that'

“Investigating Officer is not obliged to investigate, at the stage of inquest, or to ascertain as to who were the assailants.”

(iii) Likewise, in the case of ***Emperor vs. Kwaja Najir Ahmed***; AIR 1945 PC 18, it is held that,

*“Investigation of an offence can start either on information or otherwise and that receipt and **recording F.I.R. is not a condition precedent** for setting in motion the criminal investigation.” (emphasis laid)*

In the light of above discussion, though, here Investigating Officer has admitted that before FIR, inquest panchanama was drawn, that itself would

not render the case of prosecution doubtful as put-forth before us.

22. Now let us turn to the other defence raised before us that is arrest is not proved. According to the learned Advocate for appellant, accused was shown to be arrested from the spot but arrest panchanama shows otherwise.

It is clearly emerging that accused was merely taken in custody by Police from scene of occurrence and brought to the Police Station and after completing the formalities, he was formally arrested by drawing arrest panchanama. Mere taking in custody does not amount to arrest. Consequently, we are of the opinion that above submissions are also rendered insignificant.

23. As regards to objection of material contradictions, it is seen that there is contradiction on the point of presence of PW5. However, the same is not material contradiction which would go to the root of the case. Here PW2 and PW5 these two witnesses are mere neighbours and as such are not interested witnesses.

Likewise objection of failure of Doctor to note time since death is also not of much importance. When it is settled law that opinion of Doctor about time since death is always by approximation and not certainty, failure of Doctor to note about it would not affect the entire medical evidence and other trustworthy evidence laid by prosecution.

24. Another objection of learned Advocate for appellant is that autopsy Doctor has also admitted that there is possibility of use of two weapons. He pointed out that even recovered weapon knife, if used, would not cause fracture to ribs and sternal.

It is true that such nature of injuries are not possible by knife, however, taking into account assault on neck and throat parts, there is room to presume that accused might have sat on the chest part of deceased thereby putting pressure on the chest part forcibly. There might have been considerable scuffle and fall and in such act, deceased might have suffered fracture injury to ribs. Other injuries are already confirmed to be stab wounds.

25. True it is that articles on analysis were reported to be inconclusive. However, when mere analysis is inconclusive, benefit of the same cannot be extended to the accused when there is other overwhelming evidence supporting prosecution case.

26. Learned Advocate for appellant would strenuously submit that there is inordinate delay in recording statements of witnesses under Section 161 of Cr.P.C.

We have carefully gone through the entire charge-sheet. It is emerging that statements of crucial witnesses PW2 and PW5 are recorded on the same day i.e. 27-05-2012. PW9, A.P I. has answered that his statement was recorded

on 03-08-2012. However, there is requirement in law that if at all such a plea or defence of recording statement at belated stage is taken, then Investigating Officer is required to be questioned on it as to why there is delay in recording said statement. This requirement has not been complied by appellant in the trial Court. Therefore, it is not open to raise doubt on such count.

SUMMATION

27. In the totality of above discussed circumstances and on careful re-appreciation and re-evaluation of evidence by this Court, we are convinced that strained relations, suspicion on character and complaints filed by deceased wife were precisely the reasons to entertain motive. Occurrence had taken place in broad day light i.e. in the early hours of morning. Independent witnesses, who are neighbours, have heard quarrels followed by cries and within short time presence of Police is secured. Police have taken accused in custody from the room where deceased was lying with multiple injuries. FIR is lodged on the same day by the father, who reached there after an hour or so. As such, there is no delay in lodging FIR as contended before us. Each of ground raised before us in appeal has been dealt in aforesaid paragraphs. None of the ground is so sufficient so as to discredit the prosecution evidence or to interfere in the judgment of the trial Court. Therefore, by all means, none other than accused appellant is responsible for homicidal death of deceased Archana. No other inference or conclusion can be drawn from the

material before us.

28. We have also carefully gone through the Judgment under challenge. In our opinion the findings recorded by the learned trial Court are supported by cogent evidence and conclusion reached by the learned trial Court is the only possible view that could emerge on evaluation of the evidence. Required law has been considered and on appreciating oral and documentary evidence, guilt has been recorded. Therefore, we do not find any reason for interference in impugned Judgment and order passed by the learned trial Court. Hence, the following order :

ORDER

(I) Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT