

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.219 OF 2019

1. Prem s/o Sudam Rathod,
Aged about – 28 years, occupation – laborer,
R/o Pandhurna, taluka – Pusad, district – Yavatmal.

2. Sau.Chaya w/o Suresh Rathod,
Age – 25 years, occupation – labour,
R/o Pandhurna, taluka - Pusad,
district Yavatmal. **Appellants.**

:: V E R S U S ::

State of Maharashtra,
Through P.S.O. Pusad Rural,
TQ-Pusad, district – Yavatmal. **Respondent.**

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Shri Vivek Thote, Counsel for Appellant No.1.

Shri R.M.Daga, Counsel for Appellant No.2.

Shri T.A.Mirza, Additional Public Prosecutor for the
Respondent/State.

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CORAM : ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.

CLOSED ON : 15/12/2022

PRONOUNCED ON : 24/03/2023

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. By this appeal, appellants have challenged the judgment and order of conviction dated 20.3.2019 passed by learned Additional Sessions Judge, Pusad (learned Judge below) in Sessions Trial Case No.59/2015 whereby trial court convicted the appellants of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The appellants are also convicted and sentenced to suffer

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imprisonment for life. The Appellants are also convicted of the offence punishable under Section 201 read with Section 34 of the Indian Penal Code, and sentenced to suffer simple imprisonment for six months and to pay fine Rs.1000/- by each of them and in default of payment of the fine amount to suffer simple imprisonment for two months. The Appellants are further convicted of the offence punishable under Section 203 read with Section 34 of the Indian Penal Code, and sentenced to suffer simple imprisonment for three months and to pay fine Rs.500/ by each of them and in default of payment of the fine amount to suffer simple imprisonment for one month.

Learned Judge below also given the benefit of set-off under Section 428 of the Code of Criminal Procedure since they were in jail.

However, learned Judge below acquitted appellants of offences punishable under Sections 498-A and 304-B read with Section 34 of the Indian Penal Code.

2. Facts of the prosecution case in brief are as follows:

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Deceased Ashvini, wife of accused No.1, is daughter of informant Madhukar Bhika Jadhav. The marriage of the deceased with accused No.1 was solemnized two months prior to the incident dated 6.7.2015. Accused No.2 Chaya is also elder daughter of the informant and sister-in-law of accused No.1. Her marriage with accused No.1's brother namely Suresh was performed in the year 2011.

3. On 6.7.2015, in the morning, at about 10:00 am, the first informant had been to his agricultural field along with his elder son-in-law Suresh (husband of accused No.2 Chaya). When he was returning from his field, at about 6:00 pm, daughter of one Vasanta Tara Rathod of his village informed him that his daughter is lying on bed and nobody knows what happened to her. Immediately, he reached at the house of accused No.1 and saw the deceased lying on the bed. One electric wire was also lying near her body. The Elder daughter of the informant i.e. accused No.2 informed him that accused No.1 Prem, his parents and uncle in collusion, must have killed the deceased for illegal demands of money. It is alleged by the informant that after 7-8 days of marriage of the deceased with accused No.1, she complained about beating by

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demanding money from parents. They gave understanding to accused No.1 not to ill-treat the deceased, but even after 15 days, she was assaulted by accused No.1. The Members of the Gram Panchayat also gave understanding to accused No.1, but there was no change in the behaviour of accused No.1. After noticing the death of the deceased, he lodged the report against accused No.1.

4. Before lodging of the report by the informant, The Police Officer of Pusad Rural Police Station received a death memo from Medical Officer Bhelonde who informed about the death of the deceased. The said memo was delivered to the police station by ward boy Nandu Tukaram Sarane. As per the memo, the deceased was brought dead to the hospital by her husband Prem Rathod, that is accused No.1. On the basis of the said memo, initially merg report bearing No.22/2015 was registered. After registration of the merg report, on the next day, inquest panchanama was drawn on the dead body of the deceased. During inquest panchanama, the Investigating Officer and panchas noticed injuries on left cheek, left neck, injury below right ear, and middle portion of the neck. They also noticed the blackish mark on the body of the deceased.

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The Investigating Officer also visited the alleged spot of incident which is the house of accused No.1 at village Pandhurna. During spot panchanama, they have seized broken bangles pieces, one scarf of black colour, one green colour wire, and one toe ring (Jodwe). Thereafter, the father of the deceased approached to the police station and lodged the report. On the basis of the said report, the police have registered the offence under Sections 304-B, 302, 201, and 203 read with Section 34 of the Indian Penal Code. A query report was submitted to the Medical Officer and the Medical Officer has opined that death of the deceased is due to cardio respiratory arrest due asphyxia due to compression over respiratory track or due to cerebral anoxia due to compression over neck vessel. Relevant statements of witnesses were recorded. During investigation, it also revealed to the Investigating Officer that accused No.1 had taken illegal electric supply to his house. Accordingly, information was sought from the electricity board by issuing a letter. The Investigating Officer had also issued various letters to the Medical Officer by raising various queries and it revealed that the death of the deceased is due to pressing of neck. The

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accused were arrested and after completion of the investigation, the Investigating Officer has filed chargesheet against the accused.

5. After filing of the chargesheet, learned Magistrate committed the case to the Court of Sessions for trial. Learned Sessions Judge framed charge vide Exhibit-23. The contents of the charge are read over and explained to the accused. They pleaded not guilty and claimed to be tried. To substantiate the charge, the prosecution in all examined 11 witnesses as follows:

1	PW1 Shankar Chatru Rathod, pancha on spot	Exhibit-37
2	PW2 Madhukar Bhika Jadhav, the father of the deceased and the first informant	Exhibit-42,
3	PW3 Hari Lachhiram Rathod, neighbour	Exhibit-46
4	PW4 Sanjay Jotiram Rathod, neighbour	Exhibit-48
5	PW5 Bebibai Balu Rathod, neighbour	Exhibit-53
6	PW6 Ramrao Kaniram Rathod, neighbour	Exhibit-54
7	PW7 Kirti Vasantrao Rathod, child witness who informed the father of the deceased	Exhibit-58
8	PW8 Subhash Ganeshrao Mohade, pancha on memorandum statement	Exhibit-60
9	PW9 Sanjay Shiva Rathod, labour	Exhibit-62
10	PW10 Dr.Umesh Someshwar Madavi, Medical Officer	Exhibit-63
11	PW11 Anil Narayanrao Kuralkar, Investigating Officer	Exhibit-76

6. Besides, the oral evidence, the prosecution has also relied upon following documents:

1. spot panchanama Exhibit-38;
2. inquest panchanama Exhibit-55;
3. articles found on the and spot seizure memo of the same Exhibit-39;
4. Report Exhibit-43;
5. FIR Exhibit-44;
6. memorandum statement of the accused Exhibit-61;
7. postmortem report Exhibit-66;
8. query by the Investigating Officer Exhibit-98;
9. opinion of the Medical Officer on the said query Exhibit-67;
10. query by the Investigating Officer Exhibit-99;
11. opinion by the Medical Officer on the said query Exhibit-68;
12. query by the Investigating Officer Exhibit-100;
13. opinion by the Medical Officer on the said query Exhibit-69;
14. merg khabar Exhibit-77;
15. clothes' seizure panchanama of the deceased Exhibits-79 and 85;
16. letter to Deputy Engineer MSEB Exhibit-86;
17. muddemal receipt Exhibit-87;
18. arrest panchanama of accused No.1 Exhibit-88;
19. arrest panchanama of accused No.2 Exhibit-97;
20. letter to Deputy Executive Engineer at Pusad Exhibit-101, and
21. letter to Chemical Analyzer Exhibit-102.

7. After recording the evidence, the incriminating evidence is put to the accused for seeking their explanation.

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The defence of the accused is of total denial and false implication. It is further defence of the accused that the deceased died due to electric shock. Accordingly, their statements under Section 313 of the Code of Criminal Procedure were recorded. After hearing both sides, learned Judge below was pleased to convict both the accused as aforestated

8. Being aggrieved and dissatisfied with the judgment and order of the conviction and the sentence, present appeal is preferred by the accused on the ground that learned Judge below has not considered the evidence on record. None of the witnesses have supported the prosecution case. Admittedly, no direct evidence in the nature of eyewitnesses is available to prove the charges against the accused. The entire prosecution case is rested on circumstantial evidence. The prosecution miserably failed to prove the chain of the circumstances and thus the prosecution failed to prove the charges levelled against the accused.

9. Heard learned counsel Shri Vivek Thote for appellant No.1, learned counsel Shri R.M.Daga for appellant

No.2, and learned Additional Public Prosecutor Shri T.A.Mirza for the respondent/State.

10. Learned counsel Shri Vivek Thote for appellant No.1 submitted that to prove the charges, the prosecution has examined as many as 11 witnesses and out of them PW2 Madhukar Bhika Jadhav, who is father of the deceased as well as father of accused No.2, has not supported the prosecution case. PW3 Hari Lachhiram Rathod; PW4 Sanjay Jotiram Rathod; PW5 Bebibai Balu Rathod; PW6 Ramrao Kaniram Rathod; PW7 Kirti Vasantrao Rathod, and PW9 Sanjay Shiva Rathod who are villagers have not supported the prosecution case. The injuries sustained by the deceased that is black mark which was appearing on her body shows that she died due to the electric shock. The accused are falsely implicated in the alleged offence. Learned Judge below merely on the basis of medical evidence convicted the accused persons. As the prosecution miserably failed to adduce the evidence, the conviction awarded by learned Judge below is liable to be set aside.

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11. Learned counsel Shri R.M.Daga for appellant No.2 submitted that appellant No.2 is the sister of the deceased. Merely on suspicion, she was implicated as an accused. In fact, the dead body of the deceased was found in the bed room of accused No.1 and accused No.2 was at her parental house for delivery at the time of alleged incident. Thus, her absence in the house itself is sufficient to show she has not participated in the alleged crime. However, she was implicated falsely in the crime. Hence, she be acquitted of the charges.

12. *Per contra*, learned Additional Public Prosecutor Shri T.A.Mirza for the State vehemently submitted that admittedly neither PW2 Madhukar Jadhav, the father of the deceased, nor other witnesses, who are villagers, supported the prosecution case and left loyalty towards the prosecution. However, the evidence, which is in the circumstantial in nature, is sufficient to prove the charges against the accused. The prosecution relied upon the circumstances that the death of the deceased was caused in her matrimonial house in suspicious circumstances. The incident occurred in the bed room of the deceased and the accused No.1. The injuries

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found on person of the deceased and supported by the medical evidence are sufficient to show that the death of the deceased was homicidal one. As per the medical evidence, the death of the deceased is due to cardio respiratory arrest due asphyxia due to compression over respiratory track or due cerebral anoxia due to compression over neck vessel. To rule out the possibility, the Investigating Officer has issued various queries to the Medical Officer. The Medical Officer had answered the said queries and opined that the compression may be possible due to the scarf which was found at the spot. The Medical Officer further opined that the injuries present over clavicle region during postmortem is due to electric wire, but there is no sign of wounds of entry or exit. He specifically opined that the wound is not deep and, therefore, there is no possibility of death due to electric shock. To the another query by the Investigating officer, the Medical Officer opined that first injury described in column No.17 is due to electric burn which was 11 cm over chest. All injuries described in column Nos.17 to 20 in postmortem report, except above mentioned injury, may be due to pressure over neck. As the sign of decomposition present over chest region, it is difficult

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to comment on the subject by which the pressure was given. The Investigating Officer also made a query that whether the injury mentioned in column No.17 linear burn scar is antemortem or postmortem to which the Medical Officer opined that linear burn scar due to electric wire is after death, because there is no sign of wound of entry and exit present over body and burnt scar is linear and not extensive deep in skin means scar is after death. On the basis of this medical opinion, learned Additional Public Prosecutor submitted that this fact itself is sufficient to show that the deceased died homicidal death. As the death of the deceased was occurred in bed room, in view of Section 106 of the Indian Evidence Act, the burden is on the accused No.1 to explain the circumstances which are especially within his knowledge. The accused No.1 has not explained the same. The defence raised by the accused that she died due to the electric shock is a false defence taken by the accused which is proved in the light of medical opinion. The circumstances, which are within the special knowledge of the accused No.1, are not explained by him. Moreover, the defence raised by the accused is also false one which is sufficient to infer adverse inference against the

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accused. Thus, the evidence on record is sufficient to show that it was the accused persons who caused the death of the deceased. As such, learned Judge below has rightly convicted the accused persons, the appeal has no merits and is liable to be dismissed.

13. Having heard learned counsel appearing for both sides and perused the evidence on record, the first and foremost question arises for consideration is:

Whether the prosecution succeeded in proving the charges levelled against accused persons on the basis of the circumstantial evidence on record?

14. To prove the homicidal death of the deceased, the prosecution mainly relied upon the evidence of PW10 Dr.Umesh Someshwar Madavi examined vide Exhibit-63. As per his evidence, the dead body of the deceased was referred to postmortem examination when he was on duty as Medical Officer at the Government Hospital at Pusad. He had also received the police report and inquest panchanama. On examination of the dead body, he found that the deceased was wearing blue colour saree, blouse, and red colour petticoat. The rigor mortis was passed away and sign of

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decomposition was present over face, neck and bilateral arm. The neck veins were permanently swollen. Eyes were swollen, edematous and effusion present. The tongue was inside the mouth and swollen. The blood was oozing from bilateral nostrils. He observed linear burn scar was present over clavicle region about 11 cms more on right side. Abrasions with superficial necrosis about 5cms x 3cms over left side of neck below mandible. The abrasions with superficial necrosis about 3 cms x 2cms over left side of neck behind above wound below mandible. The abrasion with superficial necrosis about 2cms x 1 cms over right side of neck below mandible region. There were small blisters about 3cms x 2cms present on left side 3 in Nos. and above 3cms x 1cm of right side just above supra cavicular fossa over the neck. The above said injuries are noted by him while conducting the postmortem examination. The injuries were antemortem. There was no external injuries seen over scalp. He opined that probable cause of death was due to cardio respiratory arrest due asphyxia due to compression over respiratory track or due cerebral anoxia due to compression over neck vessel.

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He further stated that the above injuries over neck and changes in the body are not possible by electric shock.

15. In the further evidence, PW10 Dr.Umesh Someshwar Madavi testified that he had received the letter from the Investigating Officer wherein the query was raised whether compression is possible due to the long black scarf and he opined that the injuries present over the neck that is the compression may be possible due to black scarf which is about 70cms long. He further opined that the injury present over clavicle region during postmortem is due to electric wire, but there is no sign suggestive of wound of entry and wound of exit. The burn wound is not deep and no other sign of suggestive possibility of death due to electric shock. He further explained that the wound is not deep and, therefore, there is no possibility of death due to electric shock. His further evidence reveals that on 14.2.2015 the Investigating Officer made a query that whether injuries mentioned in column Nos.17 and 20 are possible by compression of hand and he opined that all injuries except injury No.1 may be possible due to pressure over neck. However, due to the sign of decomposition, it is difficult to comment on the subject by

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which the pressure was given. Again on 29.9.2015, letter was issued to him making query whether the injury linear burn scar is by electric wire and whether the said injury was antemortem or postmortem to which he explained that linear burn scar due to electric wire is after death, because there is no sign of wound of entry and exit over the body. Burn scar is linear and not extensive deep in skin means scar is after death.

16. Thus, the evidence of the Medical Officer shows that the death of the deceased is due to compression over neck. It is due to cerebral anoxia due to compression over neck vessel. To rule out the possibility, that the death was due to electric shock, the Investigating Officer has obtained the opinion of PW10 Medical Officer Dr.Umesh Someshwar Madavi and he specifically opined that as there was no exit and entry wound as well as the wound is not deep, the death is not due to electric shock. Though the said Medical Officer testified and mentioned in the Postmortem Report, that all injuries mentioned in column No.17 are antemortem injuries, in subsequent query report, he explained that the injury at serial No.17 i.e. linear burn scar is after death as there is no sign of

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entry or exit wound. Thus, the Medical Officer ruled out the possibility that the death of the deceased is due to electric shock. The evidence of Investigating Officer PW11 Anil Narayanrao Kuralkar shows that he received a death memo from the Medical Officer which shows that the deceased was brought dead to the hospital by her husband that is accused No.1 who narrated that the death of the deceased is due to electric shock. The defence of the accused No.1 is also that the death of the deceased is due to the electric shock.

17. Whether the death of the deceased is due to electric shock or not is already explained by the Medical Officer. The Medical Jurisprudence, that in Parikh's Text Book of Medical Jurisprudence, Forensic Medicine and Toxicology, defines the death by electric shock. It states that electric current may be direct or alternating. Alternating current is more dangerous than the direct current. It further explains that there are three kinds of electric burns, viz., (1) contact burn (2) spark burns, and (3) flash burns, depending on the nature of contract and strength of the current. All of them have one feature in common. Their depth is greater than surface appearance would suggest, and severe sloughing of

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tissues may occur later. A contact burn is due to close contact with an electrically 'live' object with domestic voltage. A characteristic injury is frequently present at the point of entry and exit. The commonest lesion at the point of entry is a raised blister containing either gas or a little fluid. The lesion is often seen on the pads of fingers or thumb. At the point of exit the tissues are frequently split in the form of punctured lacerated wound.

18. Thus, in view of the medical jurisprudence, in the case of contact burns, the entry and exit injuries are frequently present which is a characteristic injury.

19. In the present case, the Medical Officer clearly opined that there was no signs of entry or exit injury and ruled out the possibility of death due to electric shock. Thus, contentions raised by learned counsel for accused persons, that the death of the deceased was due to electric shock, is ruled out by the medical evidence as well as in the light of proposition laid down in the medical jurisprudence.

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20. Now, it has to be seen whether the prosecution succeeded in proving that the death of the deceased is due to the compression of neck.

21. As per the evidence of the Medical Officer, the cause of death of the deceased is due to cardio respiratory arrest due asphyxia due to compression over respiratory track or due to cerebral anoxia due to compression over neck vessel. The lack of oxygen supply to the brain known as cerebral anoxia results in loss of consciousness within fifteen seconds of oxygen deprivation. Anoxic injury is damaged to the brain due to lack of oxygen supply. The strangulation injuries are heterogeneous set of traumatic pathology that occurs as a result of mechanical force applied externally to the neck and surrounding structures. As a type of asphyxia, these injuries may result in decreased cerebral oxygen delivery either by compression of cervical blood vessels or tracheal occlusions. The direct pressure on the larynx and trachea (throat and wind pipe) or upward displacement of the larynx (throat) against the pharynx can obstruct the air ways. This result in hypoxic – anoxic annoxia. The compression of the internal and external veins (the veins at the side of the neck)

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prevents blood flow from the head to the heart. This leads to stagnation of *inter alia* blood flow to and from the brain.

22. The throttling is defined as a form of strangulation effected by hand, and is therefore often referred to as manual strangulation. In case of strangulation, autopsy appearances may be divided into external appearances, injuries on the neck and, internal appearances. The extent and character of these signs will depend in large measure upon the pace and course of the asphyxial process. Signs of asphyxia may be very slight if death has supervened quickly from cardiac inhibition due to pressure on carotid sinus or vagus nerve. When the constricting force has been considerable, the signs are well marked. In addition, tongue may be bruised, bitten by teeth, and protruding. There may be injuries on the face, chest, etc, indicating a struggle. The face and eyes may show multiple petechial haemorrhages. The situation and extent of bruised area on neck will depend upon the relative position of the assailant and victim, manner of grasping the neck, and amount of pressure exercised on the throat. The bruises (ecchymoses) are often found on the front or sides of the neck, chiefly about the larynx, and above it. The conformation

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of neck injuries indicate the way in which the hands have been applied to the neck. When only one hand is used to throttle, there may be a single bruise on one side due to pressure of the thumb and obliquely directed multiple bruises, one below the other, on the opposite side, due to pressure of finger pads or finger tips. Their shape may be oval or round depending upon the size of the finger tips but continued bleeding into the contused area usually increases the size, merging the bruises together. When both hands are used, the bruising pattern depends upon the relative position of thumbs and fingers, and the degree of pressure applied to the throat. Strangulation is defined as a form of violent asphyxia caused by constricting the neck by some means other than body weight. The means used may be a ligature, the hand (throttling), the elbow (mugging or choke-hold), or some hard object, such as a stick. In ligature strangulation, injuries to deeper tissues of neck are more common than in hanging, as a result of considerable force which is used. Homicidal strangulation is a common form of murder. In fact, strangling should be assumed to be homicidal until the contrary is proven to be more likely under circumstances. A suspicion of

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homicide should arise when knot is tied on the back of neck, mouth is gagged, limbs are tied, other injuries are found on the body, and signs of struggle are present. Homicidal strangulation may be committed with such silence that even persons in close vicinity may not be aware of the act since sudden and violent compression of windpipe renders a person powerless to raise an alarm or call for assistance.

23. Admittedly, the entire case of the prosecution is based on the circumstantial evidence as there is no account of eyewitnesses is available. The Medical Officer has clarified that injuries sustained by the deceased, which are mentioned in column No.17, abrasions with superficial necrosis about 5cms x 3cms over left side of neck below mandible; the abrasions with superficial necrosis about 3 cms x 2cms over left side of neck behind above wound below mandible; the abrasion with superficial necrosis about 2cms x 1 cms over right side of neck below mandible region, are the antemortem injuries. The internal injuries in column No.20(c) show swollen and edematous and effusion present. The further evidence of the Medical Officer shows the Investigating Officer has issued letter referring the scarf which was found at the

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spot of incident and obtained the opinion whether the said injuries are possible by the said scarf. The Medical Officer opined that the compression may be possible due to shown black scarf about 70cms. He further explained that injury present over clavicle region during postmortem is due to electric wire, but there is no entry or exit wound. Moreover, the said wound is not deep. So, no possibility that the death is due to electric shock. While answering the another query of the Investigating Officer, the Medical Officer opined that all injuries described in column Nos.17 to 20, except the first injury mentioned in column No.17, are due to pressure over neck. He further clarified vide Exhibit-69 that linear burn scar due to electric wire is after death, because there is no sign of wound of entry and exit present over body and burnt scar is linear and not extensive deep in skin means scar is after death. He also opined that probable time of death is more than 18-24 hours as decomposition occurred at neck and maggot was present at a neck region. The evidence of the Investigating Officer also shows that while drawing the inquest panchanama, injuries on the person of the deceased are seen, which are mentioned in inquest panchanama Exhibit-55. His

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evidence further shows that it was the accused No.1 who informed in the hospital that the death of the deceased is due to electric shock. The defence of the accused that the death of the deceased is due to electric shock is not probabalized in the light of the evidence of the Medical Officer as he ruled out the possibility totally that the death of the deceased is due to electric shock. He also explained that as there was no entry and exit wound and linear scar, which was not deep, sufficiently shows that the said injury is after the death of the deceased. As per the Medical Jurisprudence also when a person sustains any injury due to the electric shock, there always occurs entry and exit wound which is missing in the present case.

Thus, the defence of the accused that the death of the deceased is due to the electric shock is falsified. On the contrary, the fact that the death of the deceased was caused in the house due to the pressure or compression on neck is sufficiently established by the prosecution. No other reason came forward before us to hold that the death of the deceased is natural death or suicidal death. The evidence on record

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sufficiently shows that the death of the deceased is homicidal one.

24. There is no dispute that the death of the deceased occurred at her matrimonial house. Admittedly, no account of eyewitnesses is available and the entire case of the prosecution is based on the circumstantial evidence.

25. To prove the circumstances on record, the prosecution mainly relied upon the evidence of PW2 Madhukar Bhika Jadhav examined vide Exhibit-42. He is not only the father of the deceased but also the father of accused No.2. The facts on record show that the deceased and accused No.2 Chaya are real sisters. Their marriage was performed with two brothers namely Suresh and Prem, i.e. the accused No.1. Suresh is husband of Chaya and accused No.1 is the husband of the deceased. There is also no dispute that both brothers were residing jointly. PW2 Madhukar Jadhav though lodged the First Information Report, regarding the alleged incident, he has not supported the prosecution case. His evidence is only to the extent that on 6.7.2015 he was in his agricultural field along with Suresh, his elder son-in-law. On that day,

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when he was returning, along with Suresh, he came to know that his daughter, the deceased, is dead. He further deposed that when he reached the house, the parents of accused No.1 were sitting near the bed. During his cross-examination, he further reiterated that his elder son-in-law Suresh was not in the house. Thus, the presence of Suresh in the house at the time of the incident was ruled out. Regarding rest of the recitals of the First Information Report, PW2 Madhukar Jadhav has not supported the prosecution case.

26. PW3 Hari Lachhiram Rathod is villager and neighbour of the deceased and the accused. He had also not supported the prosecution case. His evidence is only to the extent that accused No.1 and Suresh are residing separately in one house. He categorically stated that the parents of the accused namely Sudam and Anusaya were residing at the house of the father-in-law of Sudam. Thus, his evidence shows that only the accused No.1, along with the deceased and his brother Suresh and accused No.2 Chaya, was residing in the house where the alleged incident has taken place. Thus, the presence of the parents of the accused No.1 is also

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ruled out at the spot of the incident at the time of the incident.

27. PW4 Sanjay Jotiram Rathod, is also neighbour who has also not supported the prosecution case. However, his evidence shows electricity connection was available at the house of the accused. PW5 Bebibai Balu Rathod; PW6 Ramrao Kaniram Rathod, and PW9 Sanjay Shiva Rathod, who are villagers, have not supported the prosecution case.

28. The prosecution has relied upon the circumstances as follows:

1. The death of the deceased is caused at her matrimonial house in her bed room;
2. The death of the deceased is due to cardio respiratory arrest due asphyxia due to compression over respiratory track or due to cerebral anoxia due to compression over neck vessel;
3. The death of the deceased was occurred when the accused No.1 was present in the house;

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4. The accused No.1 took the dead body in the hospital and gave a history that the death of the deceased is caused due to electric shock on the basis of which death memo was issued by the Government Hospital and merg report was registered;

5. The accused No.1 had given a false reason about the cause of death of the deceased which is an additional circumstance, and

6. The accused No.1 has not given any explanation that how the death of the deceased is occurred.

29. We have already observed that none of above witnesses supported the prosecution case. To prove the spot panchanama, the prosecution placed reliance on the evidence of PW1 Shankar Chatru Rathod, who testified that he was called by police to act as a pancha. Another pancha was also present along with him. The spot of the incident was the house of accused No.1 Prem Rathod. As per his evidence, accused No.2 Chaya Rathod shown the spot of the incident.

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The said house was having three rooms. In front of the house, there was one shed. The room of the accused No.1 was facing East direction. Upon entering into the said room, there was one small window. Towards left hand side, the said window was situated. Towards Southern side of the room, one wooden cot was attached to wall. Clothes were scattered on that cot. Towards Western side of the room, one black colour scarf was lying at a distance of 4 feet from the door. One green colour two phase wire was coming from the Northern side. End of one wire was open and end of another wire was wrapped in tape. He further observed that towards Western Side of the room, an Almirah was fallen on the ground. Its mirror was broken. He also observed broken pieces of bangles at the said spot. One white colour metal toe's ring was also found. Accordingly, police seized all articles and drawn panchanama which is at Exhibit-39. The said witness is cross-examined at length and it is elicited during the cross-examination that the witness was also already knowing the house of the accused. The police did not write panchanama on their say. However, he stated that the situation of the spot mentioned by the police in the

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panchanama was read and, thereafter, the same was signed. He also admitted that in the spot panchanama, it is not mentioned that one end of the wire was open and other end was taped.

Thus, after going through the cross-examination, it is pertinent to note that the defence has not denied the spot of the incident which is the bed room of the accused No.1. Regarding the spot panchanama, evidence of the Investigating Officer is also corroborating. He also testified that the spot of the incident is the house of the accused situated at village Pandhurna. There were three room. The incident was occurred in the room of accused Prem Rathod. They have inspected that room carefully and described in the panchanama. They observed that one green colour wire was hanging to the wood's pillar of the roof. The clothes on the cot with bed sheet and pillow were scattered. The cupboard near the Western side of the wall was lying down and mirror was broken. One black colour scarf was lying on the ground.

The Investigating Officer is also cross-examined by the defence. During cross-examination, it is positively came

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on record that the black scarf was found where the electric wire was hanging and there was toe ring of the deceased.

Thus, the evidence of PW1 Shankar Chatru Rathod as well as Investigating Officer PW11 Anil Narayanrao Kuralkar shows that the alleged spot of incident was the bed room of the accused and the deceased. This evidence clearly shows that the alleged incident occurred in the bed room of the deceased and the accused No.1.

30. Another piece of evidence, on which the prosecution is relied upon, is the evidence of PW8 Subhash Ganeshrao Mohade who acted as a pancha on the memorandum statement of the accused. As per his evidence, he was called by the police to act as a pancha. Another pancha was present. In their presence, the accused No.1 made a memorandum statement that on 6.7.2015 he was present in the house along with the deceased and his sister-in-law that is accused No.2 Chaya. He had extra marital relationship with accused No.2 Chaya. On the day of the incident, his wife, the deceased, had gone out of the house to answer the nature's call. At that time, the accused No.2

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entered in his room. They were having sexual relations. At that time, the deceased entered into the bed room. As the deceased had seen their sexual relationship, she started shouting. So, he pressed the neck of the deceased and the accused No.2 Chaya pressed her mouth. He tightened the black scarf around the neck of the deceased and the deceased died.

Thus, as per the prosecution case, the said statement is recorded in view of Section 27 of the Indian Evidence Act. Section 27 is exception to the confessional statement. This Section is based on the principle that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true. The said Section comes into operation when a person in police custody produces from some place of concealment, some object which is said to be connected with the crime.

Thus, the statement made by the accused No.1 in presence of PW8 Subhash Ganeshrao Mohade which is not in respect of discovery of any fact in consequence of information

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received from a person accused of any offence, in the custody of a police officer. It is not an admissible evidence.

Sections 24, 25 and 26 of the said Act are based on principles that confession will be irrelevant and inadmissible given to the police. However, Section 27 is an exception. It says that statement of the accused made by him, when he is in police custody, may it be a confession or not, will be relevant and admissible if any fact is discovered due to his statement. But, the Section admits only that part of statement which distinctly relates to discovery of fact. For example, if any person is in police custody and makes a statement that he killed the victim with knife which is buried beneath a neem tree by the side of school near my house, the statement that I killed the victim with knife is not admissible. Thus, the evidence of PW8 Subhash Ganeshrao Mohade regarding the memorandum statement of the accused No.1 regarding the alleged incident is not admissible evidence.

31. The prosecution has examined PW11 Anil Narayanrao Kuralkar, Investigating Officer who narrated about the investigation carried out by him. His evidence shows that

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he received the death memo from Medical Officer Bhelonde about the death of the deceased. This memo was delivered by ward boy Nandu Sarane. In the said memo, it was mentioned that the deceased was brought dead to the hospital by her husband Prem Rathod. Accordingly, merger entry was taken. On the next day, he visited the hospital and drawn the inquest panchanama. During inquest panchanama, he noted injuries on left cheek, left neck, injury below right ear, middle portion of the neck and blackish mark on the body of the deceased. He seized ornaments which were on the person of the deceased. He had also drawn the spot panchanama and seized articles from spot. It further reveals to him that the accused had taken electric supply illegally and, therefore, he issued letter to Electricity Board. He had also collected report from the Electricity Board which reveals that the accused had obtained illegal connection. He also obtained the opinion from the Medical Officer whether the death is caused by strangulation or by electrocution. After obtaining the opinion, he completed the investigation and submitted the chargesheet. During cross-examination, he admitted that he has not mentioned that illegal electricity supply was taken. It

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further came in cross-examination that black scarf was found in the same room where the electric wire was hanging.

Thus, from the evidence of the Investigating Officer it came on record that the alleged incident occurred in the bed room of the accused and the deceased and incriminating articles are seized from the said bed room.

32. Learned counsel Shri Vivek Thote for appellant No.1 Prem Rathod vehemently submitted there is absolutely no evidence to connect the present accused with the alleged incident. The presence of the accused in the house is not established. There were other members in the family who are residing in the house. Thus, the accused cannot be held liable for the death of the deceased because he is the husband of the deceased. He submitted that except the circumstance that the dead body of the deceased was found in the bed room of the accused No.1, no evidence is adduced to prove the entire chain of circumstances.

33. In support of his contentions, learned counsel Shri Vivek Thote for appellant No.1 has placed reliance upon the decisions in the cases of:

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1. Satye Singh and another vs. State of Uttarakhand, reported in (2022)5 SCC 438.
2. Nagendra Sah vs. State of Bihar, reported in (2021)10 SCC 725.
3. Reena Hazarika vs. State of Assam, reported in (2019) 13 SCC 289.
4. Sujit Biswas vs. State of Assam, reported in (2013)12 SCC 406.
5. Sharad Birdhichand Sarda vs. State of Maharashtra, reported in (1984)4SCC 116.
6. Sunil Latari vs. State of Maharashtra, reported in 2016 CJ (Bom) 741.
7. Suresh Vithal Parkar vs. State of Maharashtra, reported in 2015 CJ (Bom) 882.
8. Rameshwar Jagoji Pawar vs. The State of Maharashtra in Criminal Appeal 565/2005 decided on 23.11.2011.
9. The State of Maharashtra vs. Venkat @ Meghraj Ramrao Deokate and others, reported in 2018 ALL MR (Cri) 3026.
10. sohel Mehaboob Shaikh vs. State of Maharashtra , reported in 2009(5) SCR 483.

34. On the basis of this catena of decisions, learned counsel Shri Vivek Thote submitted that Section 106 of the Evidence Act is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused persons.

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The prosecution has to discharge primary onus of proof and establish the basic facts against the accused persons in accordance with the law and only thereafter Section 106 of the Act can be resorted to.

35. *Per contra*, learned Additional Public Prosecutor Shri T.A.Mirza for the State submitted the prosecution has proved that the death of the deceased is caused at her matrimonial house that is in the bed room of the accused No.1. The death is due to the compression of the neck. It was the accused No.1 who took the deceased in the hospital and gave a false information that the death of the deceased is due to electrocution. The prosecution has proved the cause of death that the death is due to strangulation which is occurred in matrimonial house and more specifically in the bed room of the accused No.1. Thus, the offence is committed in secrecy inside the house. In view of Section 106 of the Evidence Act, there is also corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. He submitted that there is no explanation from both the accused. Hence, adverse inference can be drawn. The false explanation by the accused is an additional

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circumstance. In support of his contentions, he placed reliance upon the decisions in the cases of Trimukh Maroti Kirkan vs. State of Maharashtra, reported in (2006)10 SCC 681 and Kalu @ Laxminarayan vs. State of Madhya Pradesh reported in (2019)10 SCC 211 wherein also it is held that facts especially within the knowledge of the accused, non-explanation of the homicidal death inside the house was another circumstances and conviction is confirmed.

36. After appreciating the entire evidence on record, there is no dispute that accused No.1 was residing along with the deceased, his brother Suresh and accused No.2 Chaya. The evidence of PW3 Hari Lachhiram Rathod shows that parents of the deceased were residing separately in the same village at the house of father-in-law of Sudam who is father of the accused No.1. It is not in dispute that the death of the deceased is caused at her matrimonial house that is also in the bed room of the deceased and the accused No.1. The evidence further shows that accused No.1 Prem was residing along with his brother in the same house separately. The alleged incident has occurred in the bed room of the accused No.1. The evidence of PW2 Madhukar Bhika Jadhav, the

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father of the deceased, shows that Suresh, the brother of the accused No.1, was along with him in agricultural field for whole day. Thus, the presence of the Suresh was ruled out in the house. At the time of the incident, accused No.1 and 2 and deceased were present in the house. There is absolutely no evidence to show the involvement of the accused No.2 Chaya in the alleged incident. The deceased was found dead in the bed room. As per the medical evidence, the death of the deceased is due to cardio respiratory arrest due asphyxia due to compression over respiratory track or due to cerebral anoxia due to compression over neck vessel. The lack of oxygen supply to the brain known as cerebral anoxia results in loss of consciousness. As a type of asphyxia, these injuries may result in decreased cerebral oxygen delivery either by compression of cervical blood vessels or tracheal occlusions. The direct pressure on the larynx and trachea (throat and wind pipe) or upward displacement of the larynx (throat) against the pharynx can obstruct the air ways. This result in hypoxic – anoxic annoxia. The compression of the internal and external veins (the veins at the side of the neck) prevents blood flow from the head to the heart. This leads to

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stagnation of *inter alia* blood flow to and from the brain. The Medical Officer had completely ruled out that the death is due to electrocution. He further opined that there was no wound as to exit or entry and linear burn is not extensive and entered into the skin. He further opined that the said injury is caused after the death. Thus, the possibility that the death is due to electrocution is completely ruled out. The fact, that it was the accused No.1 who brought the deceased in the hospital as dead, is sufficient to show his presence in the house. It is nowhere the case of the defence that the accused No.1 was not in the house and he was informed by somebody and, thereafter, he removed the deceased in the hospital. On the contrary, the evidence of the Investigating Officer shows that merg report was filed on the basis of the information from the hospital that the deceased was brought dead by the accused No.1. The accused No.1 has given the information in the hospital that the death of the deceased is due to electric shock. Exhibit-86 is letter issued by the Investigating Officer to the Deputy Engineer which shows that accused No.1 disclosed that the death of the deceased is due to the electric shock. Thus, the false reason mentioned by the accused No.1

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is an attempt by him to cover up everything. There is absolutely no explanation by the accused No.1 during his statement under Section 313 of the Code of Criminal Procedure. He has only denied the allegations.

37. Though learned Counsel Shri Vivek Thote for the appellant No.1 placed reliance on catena of decisions, the said decisions are not applicable as facts of the cited cases are not identical with the present case. The first case on which he relied upon is Satye Singh and another vs. State of Uttarakhand wherein the death of the deceased was caused at some other place when she got missing. Thus, facts are not identical. In the decision of Nagendra Sah vs. State of Bihar cited *supra*, other members of the family were present and mother of the deceased had not supported the prosecution case. In the case of Reena Hazarika vs. State of Assam cited *surpa* also the fact shows that the postmortem report shows that the deceased sustained head injury which is possible by fall. In the case of Sujit Biswas vs. State of Assam cites *supra* also facts are not identical. In case of Sharad Birdhichand Sarda vs. State of Maharashtra cited *supra* the principle regarding acceptance circumstantial evidence is laid down and

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the Honourable Apex Court has laid down the panchasheel which is to be proved when the case is rested on circumstantial evidence. Thus, the decisions on which the defence has placed reliance are not identical with the present case.

38. On the other hand, learned Additional Public Prosecutor Shri T.A.Mirza for the State rightly relied upon the decisions in the case of Trimukh Maroti Kirkan vs. State of Maharashtra and Kalu @ Laxminarayan vs. State of Madhya Pradesh cited *supra* wherein it is held that where the prosecution has been able to successfully establish a case for homicidal death inside the house, where the deceased resided with the accused, it was not the case of the accused that there had been an intruder in the house. Once the prosecution establishes a *prima facie* case, the appellants accused are obliged to furnish some explanation under Section 313 of the Code of Criminal Procedure with regard to the circumstances under which the deceased met with an unnatural death inside the house.

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39. In the present case, the accused No.1 is facing the charge that he committed murder of the deceased by strangulation. The death of the deceased is caused within two months of her marriage. The fact remains that the death of the deceased is occurred at her matrimonial house that is also in the bed room. Admittedly, the alleged incident is occurred at the matrimonial house of the deceased wherein the deceased was residing along with the accused. The evidence on record shows that though the accused No.1 and 2 are residing in one house, they were residing separately. The alleged incident has occurred in the bed room which is private place of the deceased and the accused No.1. The death of the deceased is occurred when the deceased was in the company of the accused. It is well settled that if an offence takes place inside the privacy of the house, in view of Section 106 of the Indian Evidence Act, burden is on the accused to give an explanation regarding the fact which is especially within the knowledge of the accused.

40. It is observed by the Honourable Apex Court in the case of Trimnukh Maroti Kirkan vs. State of Maharashtra, 2006 ALL MR (Cri) 3510 (SC), if an offence takes place inside the

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privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. The Honourable Apex held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. The Honourable Apex Court also referred the decision in the case of *Stirland Vs. Director of Public Prosecution* (1944) 2 ALL ER 13 (HL) and observed that the law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led

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by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

41. In the present case also, though the death of the deceased has occurred in the bed room, the defence of the accused is that she died due to electrocution which is ruled out by the Medical Officer. The spot panchanama also shows that the alleged incident has occurred in the bed room. The presence of the accused No.1 in the house is established. Though it is orally submitted by the defence counsel that the accused No.1 was not present in the house, no explanation is put forth to show his presence at any other place. The circumstance, that it was the accused No.1 who brought the

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the deceased in a dead conditions in the hospital, is sufficient to show that the accused No.1 was present in the house.

42. As observed by the Honourable Apex Court that false defence taken by the accused No.1 in the statement under Section 313 of the Code of Criminal Procedure is an additional circumstance against the accused. From the scene of the offence and medical opinion only inference can be drawn that the deceased died due to the strangulation. The evidence of the Investigating Officer also sufficiently shows that he witnessed the injuries on the person of the deceased. The evidence of the Medical Officer clarifies that linear scar of burn injuries is after the death which sufficiently shows that to cover up everything it was the accused No.1 who caused the injury. Having considered the conclusion in the postmortem and the deposition of the Medical Officer analyzed in the light of principles laid down in the medical jurisprudence as well as other evidence on record depicts and falsifies the story of the defence that the death is due electrocution. At the same time, it is to be noted that there is no evidence regarding the involvement of accused No.2 Chaya in the alleged incident. There was no motive for her to commit the said offence. The

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conclusion of learned Judge below regarding her involvement deserves to be set aside as there is no evidence in support of the same.

43. We have observed earlier that the death has occurred in the house that is in the bed room which is private place of the deceased and the accused No.1. In such a circumstance, it is the accused No.1 who has to explain in what circumstance, the death of the deceased is caused. Where the question of burden of proof and where the facts are within personal knowledge of the accused and the provisions of Section 106 of the Evidence Act comes into play. It is true that the guilt of the accused must be proved beyond all reasonable doubts, however, where the incident occurred inside the house in secrecy, then after proving material facts a burden shifts on the accused to give an explanation regarding the nature and circumstances in which the death of deceased has occurred. In a case based on circumstantial evidence, when no eyewitnesses account is available, another principle of law which must be kept in mind that incriminating circumstances are put to the accused and the accused either offers explanation which is found to be untrue or offers no

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explanation, the same becomes additional link in the chain of circumstances to make it complete. By applying these principles, if evidence of the prosecution in the present case is considered the prosecution has proved that:

(1) the death of the deceased has occurred at her matrimonial house that is in the bed room which is private place of the deceased and the accused,

(2) the medical evidence shows that the death of the deceased is due to cardio respiratory arrest due asphyxia due to compression over respiratory track or due to cerebral anoxia due to compression over neck vessel,

(3) the medical evidence rules out that the death of the deceased is due to electrocution, and

(4) the fact which are exclusively within the knowledge of the accused No.1 that how the death of the deceased occurred is not explained and false reason is assigned.

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44. Thus, the evidence on record sufficiently shows that the death of the deceased is homicidal one at her matrimonial house when she was in the company of the accused No.1. Thus, the circumstances enumerated above unerringly point out that it is the accused No.1 who is author of the crime and this inference is in the light of the circumstances which are inconsistent with his innocence. Thus, the appeal to the extent of role of the accused No.1 has no merits and liable to be dismissed. However, there is absolutely no evidence against accused No.2 Chaya and, therefore, she deserves to be acquitted of the charges levelled against her.

45. In this view of the matter, we pass following order:

ORDER

(1) The criminal appeal is **partly allowed**.

(2) The judgment and order of conviction and sentence dated 20.3.2019 passed by learned Additional Sessions Judge, Pusa in Sessions Trial Case No.59/2015 convicting appellant

No.2 Chaya w/o Suresh Rathod is hereby quashed and set aside.

(3) The judgment and order of conviction and sentence dated 20.3.2019 passed by learned Additional Sessions Judge, Pusad in Sessions Trial Case No.59/2015 convicting appellant No.1 Prem s/o Sudam Rathod is maintained.

(4) Appellant No.2 Chaya w/o Suresh Rathod, who is on bail, is acquitted of offences punishable under Sections 302, 201, and 203 of the Indian Penal Code.

The criminal appeal is **partly allowed** and **disposed** of in aforestated terms.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

!! BrWankhede !!