

IN THE HIGH COURT AT CALCUTTA

Criminal Appeal

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 614 of 2013

With

CRA 186 of 2014

Tarak Nath Jana

Versus

The State of West Bengal

For the appellant : Mr. Jayanta Narayan Chatterjee,
(Amicus Curiae)
: Mr. Avishik Sinha, (Amicus
Curiae).
: Mr. Saryati Datta, Adv.

For the State in

CRA 614 of 2013 : Mr. Rana Mukherjee Id. APP
: Ms. Sujata Das, Adv.

For the State in

CRA 186 of 2014 : Mr. Neguive Ahmed, APP
: Ms. Z.N. Khan,
: Ms. Trina Mitra, Adv.

Heard on : February 28, 2024

Judgement on : March 21, 2024

Md. Shabbar Rashidi, J.:

1. Two appeals were filed by the same convict against the same judgment and order of sentence by learned trial court. By our order dated February 28, 2024, the appeal CRA 186 of 2014 being second in point of time was directed to be treated as an appeal by the appellant in CRA 614 of 2013. We propose to dispose of both the appeals as one.
2. The appeal is directed against the judgment of conviction dated March 22, 2013 and order of sentence dated March 25, 2013 passed by learned 4th Additional Sessions Judge, Fast Track Court, Paschim Medinipur in Sessions Trial No. XXXIV/May-2012.
3. The case of the prosecution in a nutshell is that the de facto complainant lodged a written complaint with the Kharagpur Police Station on January 17, 2012. It was stated by the de facto complainant that he gave his daughter in marriage with the accused/convict about 2 ½ years ago. At the time of such marriage, the de facto complainant gave a cash of

₹. 2 lakh, 10 bhoris of gold ornaments and furniture. It was further stated that after such marriage, the daughter of de facto complainant came to her father's house only once when she was carrying for 9 months. She was not allowed to come to her father's house by her husband and mother-in-law.

4. The de facto complainant further stated in the written complaint that once he visited the in-law's house of his daughter on the occasion of 'Annaprasan' but his son-in-law i.e. the convict avoided to talk to him. He also demanded a sum of ₹. 60,000/- for business through the victim. The de facto complainant, accordingly, paid the said sum to the appellant. However, peace did not prevail. On January 10, 2012, the de facto complainant went to the matrimonial house of his victim daughter to bring her to his house but the appellant refused to send her. Again, on January 16, 2012, elder brother and sister-in-law of the de facto complainant went to bring the victim but she was not allowed to come to her father's house.

5. The de facto complainant also stated in his written complaint that on January 17, 2012 at around 11.00 am, the appellant son-in-law informed him over phone that he had cut the daughter of de facto complainant. The de facto complainant immediately went to the matrimonial house of his daughter and found that the neck of his daughter was more than half chopped and the tongue cut off and lying near the rice-cooker. Her right cheek was also chopped. The de facto complainant was also informed by the local people that the appellant was taken by his cousin brother by his motorbike to the police station where he surrendered. He further stated that since then the appellant and his cousin brothers were absconding. The dead body of the victim was recovered by police on the statement of the appellant. It was also stated that when he went to the house of cousin brother of the appellant, he found the mother-in-law of the victim sitting with the child of the victim in her lap. Her wearing apparels were stained with blood. She is said to have stated before police that her son murdered the victim with a katari.

- 6.** On the basis of such written complaint, Kharagpore PS Case No. 25/12 dated January 17, 2012 under Sections 498A/302 of the Indian Penal Code was started against the appellant. Police took up investigation and submitted charge sheet against the appellant. Accordingly, on the basis of materials in the case diary, charges under Section 498A/302 of the Indian Penal Code were framed against the appellant on June 01, 2012.
- 7.** In order to substantiate the charges, prosecution examined 13 witnesses in all. In addition, prosecution also relied upon certain documentary as well as material evidences.
- 8.** Upon conclusion of evidence of the prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure. He pleaded innocence in such examination. He categorically made a statement in his examination under Section 313 of the Code of Criminal Procedure that he did not demand any dowry in his marriage with the victim. His father-in-law voluntarily gifted some gold ornaments. He claimed

that the allegations of demanding dowry, subjecting the victim to torture and committing her murder were all false. He proposed to adduce defense witnesses as well.

9. With a view to refute the charges leveled against him, the appellant adduced two defense witnesses.

10. Learned advocate for the appellants submitted that there are no eye witnesses to the incident. The entire case of the prosecution is based on circumstantial evidence. The prosecution has failed to establish the complete chain of circumstances leading to the conclusive and exclusive proof of the guilt of the appellant. In support of such contention, learned advocate for the prosecution relied upon **(2022) 5 Supreme Court Cases 438 (Satye Singh and another Vs. State of Uttarakhand)**.

11. It has also been submitted on behalf of the appellant that the offending weapon was not recovered from the scene of occurrence. Moreover, the report submitted by the Forensic Science Laboratory (FSL) is inconclusive in so far as the bloodstains were not established to be that even of human origin. There is

also no serological report either to establish the blood group matching with that of the victim.

12. Learned advocate for the appellant further submitted that the prosecution miserably failed to establish the extra judicial confession alleged to be made by the appellant.

13. It is further submitted that the prosecution failed to examine independent witnesses in support of the case of the prosecution. Even the next door neighbors of the in-laws house of the victim were not examined who could have thrown some light on the incident. On the other hand the defense has been able to sufficiently establish the alibi of the appellant to the effect that the appellant was not even present at the scene of occurrence at the relevant date and time.

14. Relying on **(2006) 12 Supreme Court Cases 306 (Vikramjit Singh alias Vicky Vs. State of Punjab)** learned advocate for the appellant also contended that since the prosecution has not been able to prove the allegations under Section 498A of the Indian Penal Code and since, the defense has amply proved the alibi

set up by the appellant, the appellant is divested of any obligations enshrined under Section 106 of the Indian Evidence Act.

15. Learned advocate for the appellant has further contended that the prosecution failed to establish a case under Section 498A of the Indian Penal Code. If that be so, according to the learned advocate for the appellant, there was no motive for the alleged occurrence.

16. Learned advocate for the appellant also relied upon the decision rendered in **1965 SCC OnLine SC 109 (Aghnoo Nagesia Vs. State of Bihar)** to contend that the alleged confessional statement allegedly made by the appellant before the police and in the custody of police, on the basis of which he is said to have been arrested and the offending weapon was recovered, is not admissible in evidence in terms inter alia of the provisions contained in Section 25, 26 and Section 27 of the Indian Evidence Act.

17. On the other hand, learned advocate for the State argued that the prosecution has convincingly proved

the case with the help of sufficient evidence. The prosecution proved that the victim was legally married wife of the appellant and that she died at her matrimonial house.

18. It was further contended that the evidence on record suggested that the victim was subjected to physical and mental torture by the appellant and ultimately she was killed by him. It was also submitted that though there was no eye witness to the occurrence, nevertheless, the prosecution has been able to establish entire chain of circumstances which points to the guilt of the appellant and only the appellant to the exclusion of any other.

19. Learned advocate for the State also submitted that the death being an unnatural death, occurred at her matrimonial house, the appellant was under obligation to explain the circumstances under which the death of victim occurred. The appellant having failed to discharge such obligation, together with the circumstances established on behalf of the prosecution, guilt of the appellant stood proved.

20. Referring to the evidence led at the trial, learned advocate for the State submitted that the prosecution has sufficiently been able to bring home the charges leveled against the appellant. The impugned judgment of conviction and the consequential order of sentence do not require any interference.

21. As noted above, in order to establish the charges, the prosecution examined 13 witnesses, besides the documentary and material evidences.

22. The de facto complainant himself deposed as **PW1**. He stated that he had one son and two daughters. The victim was his younger daughter. She was married to the convict three years ago (from July 04, 2012). After such marriage, the victim went to her matrimonial house. She had an 8 months old girl child out of the aforesaid wedlock at the time of incident. PW1 further stated that the victim was murdered by her convict husband.

23. It was further stated by PW1 that at the time of marriage of victim, he gave ₹. 2 lakh cash, 10 bhoris of gold ornaments along with other articles. However, his

victim daughter had a disturbed matrimonial life. She used to be subjected to torture by the convict. At the 'Annaprasan' ceremony of the grand child of PW1, his daughter informed that her husband wanted a further sum of ₹. 60,000/- which PW1 handed over to the convict. Nevertheless, the victim was not allowed to go to her father's house. PW1 used to visit the matrimonial house of the victim. He last visited 8 days prior to the Pous Sankranti of 2012 to bring back his daughter but the convict refused to send her back and gave out that she could be taken back forever. On return, PW1 informed his family members about the incident. Consequently, two days after the Pous Sankranti, elder brother of PW1 and his wife went to the matrimonial house of the victim to bring her but the convict refused to send her.

24. PW1 further stated that on January 17, 2012 at around 11.00 am the convict informed him over phone that he had murdered the victim. PW1 informed the matter to his brothers and proceeded to the place of occurrence. Reaching there, PW1 found the dead body

of the victim lying in a pool of blood in the kitchen with deep cut injuries on her body. The throat of the victim was cut open and there were injuries on her cheek. The vegetables lying in the kitchen were stained with blood. He also found a bloodstained 'Katari' lying in the kitchen with which his daughter was murdered by the convict. PW1 also stated that local people gathered there told him that his son-in-law/convict had gone to police station to surrender. He also found that the mother of the convict was sitting in the house of Nitai Jana with the child of the victim. She informed PW1 that her son had committed the murder. Thereafter, PW1 went to police station and lodged a written complaint. The written complaint was written as per his instruction which was read over and explained to him and being satisfied he signed it. On receipt of written complaint, inquest was conducted on the dead body and thereafter, it sent for post mortem examination. PW1 identified the convict in court.

25. PW1 was cross examined at great length on behalf of the defense. He appears to have withstood the test of

cross examination and nothing favorable could be extracted in such cross examination.

26. The scribe was examined as PW2. He has stated that he wrote down a written complaint at Kharagpur (Local) Police Station as per instructions of one person who was present there. After writing, he read over and explained its contents to the complainant whereupon the complainant signed on it. PW2 also signed the written complaint as scribe. PW2 proved the written complaint (Exhibit 2) and his signature thereon (Exhibit 1/1).

27. An uncle of the convict deposed as **PW3**. He stated that he knew the victim. She was married to the convict 2 ½ years prior to her death. PW3 further testified that ₹ 2 lakh cash and 90 grams of gold ornaments were given in the marriage of the victim. Subsequently, a sum of ₹. 60,000/- was further paid as dowry. PW3 further stated that the victim had a female child out of her wedlock with the convict. However, there were persistent disputes between the husband and wife. The victim was also not allowed to go to her

parent's house. He further stated that the victim was murdered by the convict in the kitchen with the help of a 'Katari'. PW3 went to the place of occurrence and found the victim lying in a pool of blood and Katari in her right hand. He proved his signature on the inquest report.

28. One paternal aunt of the convict deposed as PW 4. In her deposition, PW 4 stated that the victim was married to the convict and she was murdered at the house of the convict. She however, could not say about the details of the incident. PW 4 was declared hostile by the prosecution and in her cross-examination on behalf of the prosecution, she, denied having made any statement before police.

29. The uncle of the victim deposed as PW 5. He stated in his examination that the victim was married to the convict about 2 ½ years ago. He was present in the said marriage. The sum of ₹ 2 lakh, 10 bhoris of gold ornaments were given as dowry. He further stated that after marriage the victim went to her matrimonial house and resided there. She had of the child out of

the aforesaid wedlock. PW 5 has further stated that at the Annaprasan ceremony of the child, the convict demanded further sum of ₹ 60,000 from the father of the victim. The said amount was paid to the convict by the brother of PW 5.

30. PW 5 has also stated that there were matrimonial disputes in between the victim and her husband. The victim was not allowed to visit her father's house on January 10, 2012 when the father of the victim went to bring her back and also on January 16, 2012 when another brother of PW 5 Sudhangsu Sekhar Maity and his wife went to bring the victim back. However, she was not allowed to come to her father's house. On January 17, 2012, the convict informed the de facto complainant about the incident. Soon thereafter one relative of the convict informed over telephone to PW 5 that the victim was murdered by her husband. Being so informed, PW 5 and others went to the place of occurrence and found the dead body of the victim lying in a pool of blood. Her throat was slit, tongue was cut and there were several injuries on the person of the

victim girl. However, the convict could not be found as he fled from the scene.

31. Another uncle of the victim deposed as PW 6. He has substantially corroborated and reiterated the statement by PW5. He has also testified the marriage of the victim girl with the convict and delivery of the girl child out of the aforesaid wedlock. He further testified the quantum of dowry given in the said marriage and after the marriage. The demand of further dowry and refusing the victim to return to her father's house by the convict/ appellant and on the very next day the receipt of information with regard to the murder of the victim were all testified by PW 6.

32. The cousin brother of the father of the victim was examined as PW 7. This witness is a resident of village where the appellants with the victim used to reside. He has also corroborated the statement made by PW 5 and 6. He has narrated the incident of the marriage of the victim with the convict husband, the part of the girl child out of the aforesaid wedlock, demand of dowry and refusal of the convict to send the victim back to

her father's house to celebrate Sankranti. This witness was also cross-examined on behalf of the defense. However, nothing favourable to the defense could be elicited on such cross examination.

33. The brother of the de facto complainant, who visited the matrimonial house of the victim on the day prior to her death deposed as **PW 8**. He stated in his the possession that the victim was married to the convict/appellant about 2 ½ /3 years and to lieu of a cash of ₹ 2lacs, 10 bhoris of gold ornaments as dowry. He further stated that after such marriage the victim went to her matrimonial house and decided in matrimonial with the appellant/convict. She gave birth to a girl child out of the aforesaid wedlock. PW8 also stated that he used to visit the matrimonial house of the victim. He last visited on January 16, 2012 accompanied by his wife. He also stated that prior to that the father of the victim had visited the matrimonial house of the victim on January 10, 2012 to invite on Pous Parban. The appellant/convict refused to send the victim back to her father's house.

34. PW 8 also stated that the matrimonial life of the victim with the appellant/convict was not smooth and there used to be frequent disputes between them. He further stated that on January 17, 2012 at about 11.00/11.30 a.m. the convict informed the father of the victim over telephone that the victim has passed away. He also stated that after some time a phone call was received from one of the relatives of the appellant namely Manju Maity informing that the victim was murdered by the convict and thereafter absconded.

35. Arriving at the matrimonial house of the victim, PW 8, father of the victim and others found that the dead body of the victim was lying in the kitchen. Her throat was slit and there were cut injuries on her cheek. The entire kitchen was filled with blood stains. A blood stained Katari was also found near the hand of the victim. The convict however could not be found as he had fled away. PW 8 also stated that the mother of the appellant was found sitting in a guest house and upon an enquiry she gave out that her son had committed the murder of the victim.

36. Thereafter, PW 8 and others went to the police station and reported the matter. Police conducted inquest over the dead body of the victim. He proved his signature on the inquest reports. Later on, the dead body was sent for post-mortem examination. There was another inquest conducted on the dead body of the victim girl in the morgue. PW 8 has also stated that on the following day at around 12.00 noon, he accompanied police and the appellant to the house of the appellant. From the house of the appellant the police recovered and seized blood stained Genji and blood stained Gamcha. Police also seized the wearing apparel of the victim under a seizure list. PW 8 has proved the two seizure lists and his signature on that. PW 8 was cross examined at length by the defense.

37. A local resident was examined as **PW9**. He stated that he knew the victim and the appellant. They were married some 2 ½ years ago. A sum of ₹ 2 lakh cash, ten bhoris of gold ornaments and other articles were given in the said marriage. After marriage the victim went to her matrimonial house. She gave birth to girl

child out of the aforesaid wedlock. PW9 further stated that on January 17, 2012, the victim was brutally murdered by her husband i.e. the appellant at her matrimonial house.

38. PW9 further stated that upon such information, he along with other relatives went to the matrimonial house of the victim and found her dead body lying in a pool of blood in the kitchen. Her throat being slit and there were cut injuries on her cheek. He also found bloodstained chopped vegetables. Bloodstained 'Katari' and 'Nora' were also seen which were later seized by the police. PW9 proved his signatures on such seizure list (Exhibit 10) and inquest report (Exhibit 11). He further submitted that police also seized bloodstained 'ganjee' of the appellant, wearing apparel of the victim. He proved his signatures on such seizure list as well as on the label attached to seized article. (Exhibit 12, 13 and 14 respectively).

39. The Executive Magistrate who conducted inquest over the dead body of the victim deposed as **PW10**. He has described the condition of the dead body and

injuries found on it. He proved the inquest report prepared by him (Exhibit 15).

40. The Recording Officer deposed as **PW11**. He stated that on January 17, 2012, he received a written complaint from one Krishna Prasad Maity (PW1) and started a specific case being Kharagpur (Local) Police Station Case No. 25 dated January 17, 2012 under Section 498A/302 of the Indian Penal Code. PW11 proved his endorsement of receipt on the written complaint (Exhibit 16) and the formal First Information Report filled up in his pen and signature (Exhibit 17).

41. The autopsy surgeon deposed as **PW12**. He stated that on January 18, 2012, he conducted post mortem on the dead body of the victim. He has described in details, the nature and extent of injuries found on the person of the victim. He proved the post mortem report prepared in his pen and signature (Exhibit 18). PW12 also opined that the injuries found on the person of the victim could be inflicted by an iron made 'Katari' and such injuries were sufficient to cause death of the victim.

42. PW12 also proved a letter dated April 13, 2012 containing certain queries from the investigating officer (Exhibit 19) and letter written by PW12 in response to such query (Exhibit 20) through which he specifically opined that the injuries found on the person of the victim were ante mortem and homicidal in nature and were sufficient to cause death.

43. The investigating officer of this case has deposed as **PW13**. He stated that on January 17, 2012 he was endorsed with the investigation of this case. During investigation, he visited the place of occurrence, prepared rough sketch map with index of the place of occurrence, examined available witnesses and recorded their statements under section 161 of the Code of Criminal Procedure. He also took the photographs of the dead body and conducted inquest over the dead body. He also proved the seizure lists prepared by him. PW13 described in details as to the steps taken in course of investigation. On completion of investigation, PW13 submitted charge sheet against the appellant on April 16, 2012. PW13 also proved the statement of the

appellant recorded under Section 161 of the Code of Criminal Procedure, on the basis of which, the wearing apparel of the appellant was recovered. PW13 was cross examined by the defense at great length.

44. On completion of the evidence on behalf of the prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure. In such examination, the appellant pleaded innocence having not been involved in the murder of his wife. The appellant made out a specific plea, in his examination under Section 313 of the Code of Criminal Procedure that he was not present in the house at the relevant date and time. He claimed to have never demanded dowry or inflicted torture upon the victim. The appellant proposed to adduce defense witnesses.

45. Defense examined two defense witnesses. The mother of the appellant was examined as **DW1**. She stated that she used to reside with her son i.e. the appellant and his victim wife. She also stated that at the time of incidence she was in the house of her 'Bhasur' Kishori Mohan Jana. She heard a sound and

rushed to her house. Going there, she found the victim lying in a pool of blood. She also saw a person running out from her house towards the pitch road. She could not identify the said person but his appearance bore a resemblance with that of the driver of power tiller at the father's house of the victim named as Lakhikanta. DW1 also stated that at the time of incident, the appellant was not present in the house. He was out working in the fields at a distance of 15/20 minutes walk from her house. Her son, Goutam had also gone to give tuition.

- 46.** DW1 also stated that upon seeing the dead body she raised alarm whereupon, her neighbours and Bhasur came there and thereafter, the matter was informed to the police. The Bhasur of DW1, Kishori Mohan Jana went to call the appellant from the fields. On his arrival, the appellant went to lodge information to the police station. He however, did not return as he was detained by the police. She also stated that the victim lead a peaceful conjugal life. She was interrogated by police.

47. In her cross examination, however, DW1 could not give the details of the land where the appellant was working or that of the house where her second son went for giving tuition.

48. The 'Bhasur' of DW1 deposed as DW2. He stated that at the time of incident, DW1 was in his house. Upon hearing a sound DW1 went to her house. Going there she shouted that the victim was cut down. Hearing the same, DW2 rushed to the house of DW1 and saw the victim lying in a pool of blood. He further stated that he was informed by DW1 that she saw someone running from her house towards the pitch road. DW2 also stated that at the time of incident, appellant was working in the fields. DW2 went to call the appellant. He also instructed the appellant to inform the parents of the victim and report the matter to the police. Subsequently, police visited the house of appellant and interrogated DW2. The appellant went to inform the police and did not return as he was detained. DW2 also stated that the victim had a good relation with the appellant.

49. In his cross examination, DW2 could not give the details of the sound they heard from the house of appellant at the relevant time. He followed DW1 to her house in 5/7 minutes. DW2 also stated in his cross examination that he was lame by birth.

50. Upon conclusion of the trial, by the impugned judgment, the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code. He was however, found not guilty of the offence punishable under Section 498A of the Indian Penal Code. By the impugned order of sentence, the appellant was sentenced to suffer Rigorous Imprisonment for life. He was also sentenced to pay a fine of ₹. 10,000/- and in default of payment of fine he was sentenced to suffer Rigorous Imprisonment for a further period of one year.

51. The case of the prosecution is that the victim was married to the appellant some two and half years prior to her death. She used to live in matrimony with her husband and mother-in-law. She had a girl child out of the aforesaid wedlock. According to the case made out by the prosecution, the victim was killed.

52. It is the case that father of the victim was informed over phone by the appellant that the victim was no more. Father of the victim, his relatives and others went to the place of occurrence where the victim was found lying in the pool of blood in the kitchen of her matrimonial house. The matter was reported to the police authorities. The police conducted inquest report over the dead body of the victim. Later on, the dead body was sent for post-mortem examination. A second inquest by the learned magistrate was conducted at the hospital morgue.

53. Ultimately, post-mortem examination was conducted by the autopsy surgeon PW12. The evidence of PW1 discloses the minute details of the injuries found on the dead body of the victim. PW12 proved the post-mortem examination report prepared by him which was admitted in evidence as Exhibit 18. In his deposition, in consultation with the examination report prepared, PW12 opined that the injuries found on the person of the victim were possible to be inflicted by an iron made katari. He further opined that the injuries so

found were sufficient to cause death of a person and the aforesaid injuries were ante-mortem and homicidal in nature.

54. Therefore, on the basis of the deposition of PW2 together with the testimony of Exhibit 18, it is quite evident that the victim died an unnatural death due to the ante-mortem injuries inflicted upon her person. The injuries so found were in the opinion of the medical officer sufficient to cause death of a person.

55. As regards, the cause of death and the person responsible for the injuries resulting in death of the victim, according to the case made out by the prosecution, victim was married to the appellant. Undoubtedly, the victim had girl child aged below one year out of the aforesaid wedlock. It also transpires from the evidence on record that the victim used to reside at her matrimonial house with the appellant and other in-laws. The victim was found dead in the kitchen of her matrimonial house with fatal injuries caused by sharp-cutting weapon.

56. According to the prosecution case, the victim was murdered by her husband with the help of a katari. The evidence on record goes to show that the victim had strained relation with the appellant. It is consistent stand of the prosecution witnesses that the marriage of the victim with the appellant was solemnized on payment of Rs. 2 lac cash, ten bhories gold ornaments and other dowry articles. It also transpires from the evidence of the prosecution that the father of the victim once paid Rs. 60,000/- to the appellant at the time of Anna Prasan Ceremony of the child of the victim. The prosecution witnesses have consistently narrated that the victim was not allowed by the appellant to return to her father's house since after her marriage. According to such evidence, she visited her father's house only once after the marriage and that is at the time, she was carrying for 9 months. The prosecution witnesses have also corroborated each other that the appellant refused the request of PW1 and PW5 to let the victim go to her father's house on several occasions. It has also come out from the mouth

of the prosecution witnesses consistently that the appellant gave out before PW1 and PW5 that he will not allow the victim to go back to her father's house. If they went to take her back, they could take her back forever.

57. Although cash amount, gold ornaments and other articles were given in the marriage of the victim as dowry, evidence on record does not disclose an incident that the victim used to be subjected to torture on demand of dowry. There appears isolated incident of demand of Rs. 60,000/- by the appellant which was actually paid by PW1. Nevertheless, the evidence on record was not very explicit as to the infliction of torture by the appellant upon demand of the dowry. It is for this reason, possibly the Learned Trial Court did not find the appellant guilty of the offence punishable under section 498A of the Indian Penal Code.

58. However, the evidence adduced on behalf of the prosecution goes to establish that the victim was not allowed to go to her father's house on occasions which describes the kind of relationship between the victim

and the appellant, which can be termed anything but a normal relationship.

59. According to the case of the prosecution, PW1 got information from the appellant over phone that his daughter was no more. Being so informed, father of the victim went to her matrimonial house and found her lying in pool of blood with fatal cut injuries on different parts of her body. The fact that the death of the victim was reported on January 17, 2012 at about 11.00 am is consistently coming out from almost all of the material witnesses. The father of the victim PW1, PW4 and others immediately went to the matrimonial house of the victim and found her lying in pool of blood. It is also a consistence of the statement of the prosecution and witnesses that upon reaching the matrimonial house of the victim, her mother-in-law was found sitting in a neighboring house belonging to the brother of her husband. The appellant was not found in the vicinity. PW1, PW4, PW5 and others have stated that the mother of the appellant, sitting at the house of her Deor (brother-in-law), reported to them that the victim

was murdered by her husband and he had gone to police station to surrender himself. Such a story of course, was denied by the defense.

60. The defence in his cross-examination took plea of alibi. It was a specific case of the appellant that at the relevant time of incident, he was not present in the house; rather he was working in the fields. In her examination, the mother of the appellant (DW1) stated that the appellant was working in the fields which were situated at a distance of 15/20 minutes' walk from her house. She has also stated that just prior to the incident; she was sitting inside the house of her Deor (brother-in-law).

61. According to the case set forth by the prosecution, the death of the victim was reported to her father. DW1 also stated that she, after discovering the dead body, asked the appellant to inform the victim's father. DW1 i.e. the mother of the appellant claimed to be in the house of her brother-in-law. She rushed to her house upon allegedly hearing some sound. Going there, she screamed whereupon, her

brother-in-law came rushing. Thereafter, DW2 was sent to inform the appellant. On the contrary, when PW1 and others came to the matrimonial house of the victim being informed of her death, they did not find any one in the house. It is the categorical statement of such prosecution witnesses that DW1 was found sitting in the house of DW2 with the baby of the victim in her lap.

62. There is no evidence as to how the mother of the appellant again came to the house of DW2 when she came to her house hearing some sound and found the victim lying in a pool of blood. She also spotted someone fleeing away from her house. She also sent her brother-in-law to inform the appellant.

63. According to the case of the prosecution, the appellant went to surrender before the police whereas, it is the case of defense that the appellant went to lodge information at the police station but he was detained in connection with the case. The incident was allegedly informed to the father of the victim at about 11.00 am. On such information, they arrived at

the matrimonial house of the victim and discovered the dead body lying in a pool of blood. As per the defense case, the occurrence was informed to the father of the victim at the instructions of DW1. The mother of the appellant (DW1) rushed to her house upon hearing some sound. On her alarm, DW2 also came to her house and was sent for the appellant. However, DW1 was found in the house of DW2 when the father of the victim and others came to her matrimonial house, being informed of the incident.

64. The incident is said to have taken place on January 17, 2012 at about 11.00 hrs. However, it was reported to the police station on January 17, 2012 at about 14.25 hrs. and that too, by the father of the victim (PW1). There appears no explanation as to why the matter was not informed to the police instantly upon discovery of the incident by DW1, the appellant or anyone from the matrimonial house of the victim.

65. So far as plea of alibi as set out by the appellant is concerned, we are in total agreement with the findings arrived at by learned trial court to the effect

that appellant has not been able to establish that he was not present in the house at the relevant time of incident or that he was actually working in the fields. The appellant failed to give the details of the land where he was allegedly working at that time. No independent witness is forthcoming to establish that he was working in the fields or anybody who saw the appellant working in the fields at the relevant time. The case set out by the evidence of defense witnesses; appear to be merely an evasive explanation rather than the conclusive proof of alibi.

66. Consequently, taking into consideration the evidence adduced on behalf of the defense, we are of considered opinion that the appellant has not been able to sufficiently prove his absence from the scene of occurrence at the relevant time, with the help of convincing evidence. At the same time, undoubtedly, the victim died an unnatural death at her matrimonial house. There is evidence on record that the victim's matrimonial life was marred with turbulence at the hands of the appellant, may be not on account of

demand of dowry. She was not allowed to visit her father's house and was allowed only once during her 2½ to 3 years of matrimonial life. The aforesaid circumstances coupled with the conduct of the appellant, his mother and other relatives after the incident, squarely puts the burden upon the appellant to explain the circumstances under which the victim died, in terms of the provisions of Section 106 of Indian Evidence Act.

67. In the case of **Vikramjit Singh (Supra)**, the Hon'ble Supreme Court observed that,

“14. Section 106 of the Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule e.g. where burden of proof may be imposed upon the accused by reason of a statute.”

69. In the aforesaid case the Hon'ble Supreme Court laid down certain guiding principles on the following terms, that's to say:

“16. In Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116 : 1984 SCC (Cri) 487 : AIR 1984 SC 1622] this Court laid down the law in the following terms: (SCC p. 185, para 153)

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033] where the observations were made: [SCC para 19, p. 807 : SCC (Cri) p. 1047]

‘Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between “may be” and “must be” is long and divides vague conjectures from sure conclusions.’

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”
(emphasis in original)

It was further observed: (SCC pp. 194-95, paras 179-80)

“179. We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any court yet suspicion, however great it may be, cannot take the place of legal proof. A moral conviction however strong or genuine cannot amount to a legal conviction supportable in law.

180. It must be recalled that the well-established rule of criminal justice is that ‘fouler the crime higher the proof’. In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and meticulous approach was necessary to be made.”

70. In the instant case, however, the prosecution has been able to prove that the victim was living at her matrimonial house with the appellant and that her matrimonial life was anything but peaceful. Prosecution has also been able to establish that the victim died an unnatural death at her matrimonial house under suspicious circumstances. The appellant has not been able to explain such suspicious

circumstances. All such circumstances overwhelmingly points to the involvement of the appellant and appellant alone. The circumstances brought home by the prosecution on the basis of the evidence adduced by it, negates the proposition that the prosecution has not proved its case independently and the same is based merely on the failure of the appellant to explain the circumstances of death of his wife.

71. As noted, the prosecution has established that the unnatural death of the victim occurred under suspicious circumstances at her matrimonial house. The appellant being the husband of the victim failed to explain the circumstances leading to the death. Not only that the prosecution has been able to comfortably establish the circumstances that lead to the only proposition that the death was caused by none other than the appellant.

72. In the case of **Aghnoo Nagesia (Supra)**, the Hon'ble Supreme Court held that,

“18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27.”

“20. We think, therefore, that save and except Parts 1, 15 and 18 identifying the appellant as the maker of the first information report and save and except the portions coming within the purview of Section 27, the entire first information report must be excluded from evidence.”

73. Although, the bloodstained wearing apparel of the appellant was recovered and seized as per his leading statement, learned advocate for the appellant has pointed out that the entire statement instead of the relevant portion thereof, of the appellant recorded under Section 161 of the Code of Criminal Procedure,

was admitted in evidence which is not permissible in terms of the provisions of Section 27 of the Indian Evidence Act.

74. Section 27 of the Indian Evidence Act lays down that only the portion of a statement recorded under Section 161 of the Code of Criminal Procedure leading to recovery becomes admissible in evidence. The remaining portion cannot be read in evidence rendered inadmissible in terms of Section 25 of the Indian Evidence Act, made while in police custody.

75. Moreover, in the present case, though, it has come out that when PW1 and others came to the matrimonial house of the victim, they were informed that the appellant had gone to police station to surrender. However, as is evident, the case was initiated on the basis of a written complaint lodged by PW1. No statement said to be confessional statement of the appellant is forthcoming where he allegedly confessed his guilt while in custody of police. Unlike the present case, in the case of ***Aghnoo Nagesia (Supra)***, the case was initiated on the basis of a

confessional statement made by the accused himself which was considered to be a statement made while in custody of police. Therefore, in the facts of the present case, we are of the opinion that the principles laid down in the case of **Aghnoo Nagesia (Supra)** have no manner of application in the facts of the present case.

76. Learned advocate for the appellant relied upon the case of **Satye Singh (Supra)** in support of the proposition that prosecution is under obligation to prove the entire chain of circumstances which would unerringly conclude that alleged act was committed by the accused only and no one else. In as much as Section 106 is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused.

77. Applying the principles laid down in the case of **Satye Singh (Supra)**, in the present case, the prosecution has proved that the victim was married to the appellant and she was residing in her matrimonial house. Prosecution has also established that the life

of the victim in her matrimonial house was blemished with turbulence. She was not even allowed to visit her father's house. Coupled with such circumstances, she was found dead with fatal injuries in her matrimonial house.

78. Although, a plea of alibi was set out by the appellant but we are convinced that the appellant failed to explain the circumstances under which the victim received the fatal injuries inside her matrimonial house or establish his absence from the scene of occurrence at the time of incident. If that be so, Section 106 of the Indian Evidence Act, 1872 is squarely attracted in the facts and circumstances of the present case.

79. Therefore, in the light of the discussions made hereinabove, we find no justification to interfere with the impugned judgment of conviction and order of sentence. The same is hereby affirmed.

80. In the result, thus, the instant Criminal Appeal being CRA 614 of 2013 stands dismissed, however,

without any order as to costs. Connected applications, if any, shall also stand dismissed.

81. Period of detention already undergone by the appellant during the inquiry, investigation and trial shall be set off towards the substantive punishment in terms of Section 428 of the Code of Criminal Procedure.

82. Trial court records along with a copy of this judgment; be sent down at once to the learned trial court for necessary action.

83. Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

84. I agree.

[DEBANGSU BASAK, J.]