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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO. 937 OF 2014

Stive Alias Lisban John Miranda, }
Age 37 years, of Mumbai, adult, Indian }
Inhabitant residing at Flat No. 401, 4th }
Floor, Nilgagan Society, D.N.Road, Opp. }
Idgah Ground, Andheri (West) Mumbai }
400 058. }

... Appellant
(Org. Accused)

Versus

The State of Maharashtra Through }
D. N. Nagar Police Station, Mumbai }
in C. R. No. 158 of 2012 }

...Respondent

Mr. M. K. Kocharekar, for the Appellant.

Ms P. P. Shinde, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.***

***RESERVED ON : 24th JANUARY 2024
PRONOUNCED ON : 22nd FEBRUARY 2024.***

J U D G M E N T

PER MANJUSHA DESHPANDE, J.:-

1. The appellant/accused herein has been convicted for the offences punishable under Sections 498-A and 302 of the Indian Penal Code

(IPC), 1860, by judgment and order dated 28th October 2014, passed by the Addl. Sessions Judge, City Civil and Sessions Court, Greater Bombay, in Sessions Case No. 642 of 2012.

2. The case of the prosecution is that deceased Bindiya was wife of accused- Lisban John Miranda. The marriage of the deceased and the accused was love marriage, which was solemnized on 05th October 2008. They had a daughter namely Angelina, from the said wedlock who was three and half years old at the time of the incident. It is alleged that the accused used to torture and demand money from the deceased. After engagement, he had made a demand of Rs. 25 lakhs from the parents of the deceased. Fearing that he may refuse to marry, the deceased convinced her parents to give Rs. 14,50,000/- to the accused at the time of marriage. The said amount was deposited in the fixed deposit account in the name of Bindiya. Bindiya was doing a job. She was employed as a Ground Staff Manager in Kingfisher Airlines. The accused was Hair Stylist by profession.

3. On the fateful day i.e. 24th May 2012, a party was arranged by

one Colin, who was a friend of the accused. The accused went to the party. His sister named Priti was also present in the party. The accused's other friends inquired about Bindiya, pursuant to which, he called Bindiya, who joined them at the party. There was liquor in the party. As the accused had consumed liquor, Bindiya informed Priti that she would be coming to stay at Priti's home with her daughter, because the accused used to quarrel and assault her after consuming liquor. Therefore, Bindiya requested Priti to let her accompany her, to her house at night. The party was over at about 12:30 to 1:00 a.m.. Since, Lisban had consumed liquor and was not in a position to drive, his friends accompanied him and dropped him at his flat, on the 4th floor of the building. Lisban was insisting them to continue the party and have some more liquor at his house. However, his friends left him at his house. At that time, Bindiya had come home to change her clothes and to collect her daughter's clothes for staying overnight at Priti's home. The friends were waiting for Bindiya to come down so that she would accompany Priti, however after some time, they heard screams from the 4th floor.

Thereafter, Priti called one person near the hotel and the said person called the police. When Priti went with the police on the 4th floor, she did not get any response despite banging on the door, she called Bindiya's parents and informed them that, Bindiya and Lisban have quarreled and they are not opening the door. The parents and brother of Bindiya came to the spot. The brother of Bindiya called Lisban on his mobile and asked him to open the door and allow his sister to come out, however, Lisban used abusive language. When brother of Bindiya threatened him that, if the accused did not open the door, he would call the police, the accused told him that, if he calls the police, then the accused would blast the gas cylinder. On receiving such threat, the fire brigade was summoned. The firemen opened the door and entered the flat. On breaking open the door of the flat, they found blood lying in the passage of the kitchen and the bedroom door locked. The firemen, broke open the bedroom door and found Bindiya lying in an injured condition in a pool of blood and the accused sitting on the bed. There was a gas cylinder nearby, and the cap of gas cylinder was open. The police took the accused into

custody and Bindiya was taken to Sion Hospital. At Sion Hospital, doctor examined Bindiya and declared her dead. Thereafter, the brother of deceased- Bindiya lodged a complaint / FIR, as against the accused. Accordingly, C.R. No. 158/12 came to be registered with the D. N. Nagar Police Station, Mumbai, for the offence punishable under Section 302 of the IPC, as against the accused. On 29th May 2012 the brother of the deceased gave a supplementary statement about the harassment meted out to his sister and the demand of money, pursuant to which, Section 498-A of IPC came to be added. The accused was apprehended on the spot and his clothes were seized under a seizure panchanama. The spot panchanama was also conducted and statements of witnesses came to be recorded.

4. After completion of investigation, charge-sheet was filed in the Court of the learned Metropolitan Magistrate, Esplanade 10th Court, Andheri, Mumbai, on 21st August, 2012. Since, the offence under Section 302 was triable by the Court of Sessions, the case came to be committed to the Court of Sessions.

5. Charge was framed, (Exhibit- 12) as against the accused, to which he pleaded not guilty and claimed to be tried.

6. The prosecution in support of its case, examined 26 witnesses.

PW-1-Anand Chawala- brother of deceased and the first informant; **PW-2-Harbeersingh Jaswantsingh Bhawara**, who informed the police to go to the spot of offence; **PW-3-Pushpa Kantilal Pipariya**, Panch to the inquest panchanama; **PW-4-Kiran Ishwarlal Panchal**, Neighbour; **PW-5-Amol Shashikant Khanolkar**, Fire Brigade Officer; **PW-6-Abhijeet Bhau Dalvi**, a resident of the Society in which the incident took place. He is a witness to the spot panchanama; **PW-7-Shailendra Ramnath Singh**, panch to the arrest of the accused and seizure of clothes of the accused; **PW-8- Dr. Pratap Daya Anand**, the Medical Officer who examined the appellant/accused on 25th May 2012; **PW-9-Dr. Swaroop Vishwanath Bhalepatil**, who conducted the Post Mortem on the deceased- Bindiya; **PW-10-Vijay Dinkar Bhandare**, the Police Nayak, who reached the spot at night;

PW-11-Conrade Lisban Lobo the brother of Collin Franklin, who hosted the party; **PW-12-Leise Rajendra Chandrachud Alias Priti**, sister of the accused/appellant, who was present at the time of incident but was declared hostile; **PW-13-Shekhar Dinesh Sharma**, who took photographs of the scene of offence; **PW-14-Ramchandra Laxman Gawade**, the Police Constable, who was called by PW-2 while patrolling; **PW-15-Imran Ismail Shaikh**, panch to the recovery of passport from the house of the accused; **PW-16-Vikas Narayan Phulkar**, the Nodal Officer of Vodafone India Ltd, who provided details of the mobile numbers; **PW-17-Rakeshchandra Prajapati**, the BPL Nodal Officer, who provided details of the mobile numbers; **PW-18-Vijay Eknath Shinde**, the Nodal Officer of Idea Cellular; **PW-19-Lata Rajan Chawala**, mother of the deceased, who was examined to prove demand of dowry; **PW-20- Tukaram Khando Kate**, Police Inspector attached to D. N. Nagar Police Station; **PW-21-Yogesh Rajapurkar**, the Nodal Officer of Airtel, who was examined to prove CDR; **PW-22-Prof. Dr. Shyam Desai**-Gynecologist, who was examined on the point of blood group of the deceased. **PW-23-Dilawar**

Shahanawaz Khan, a resident of the 13th floor of the building to prove the quarrels between the accused and the deceased and abuse by the accused. **PW-24-Muneer Shaikh**, handwriting expert; **PW-25-Sadashiv Tukaram Sawant**, P.S.I., who recorded the FIR and conducted the investigation; and **PW-26-Dnyanesh Murlidhar Devade**, P.S.I.- Crime-, to whom investigation was transferred on 28th May 2012 and the officer, who filed the charge-sheet.

Thereafter, the statement of the accused came to be recorded under Section 313 of the Code of Criminal Procedure. The learned Judge, after hearing the parties, concluded and sentenced the appellant as stated aforesaid in paragraph- 1.

7. Though it is undisputed that Bindiya died a homicidal death, the question that arises for consideration is, who is responsible for causing death of the deceased, since, it is the case of the accused, that his friends were responsible for Bindiya's death. Admittedly, there are no eye witness to the said incident and the prosecution case is based on circumstantial evidence. When a case is based on circumstantial

evidence, the burden is on the prosecution to prove that the chain of circumstances is complete, and in all probabilities, the person who is accused in the said crime, is the only author of the said crime and that there is no possibility of involvement of any other person.

8. Before we proceed to consider the evidence on record, we may note the cardinal principles laid down by the Hon'ble Supreme Court in the matter of *Sharad Birdichand Sarda V/s. State of Maharashtra*¹, in cases based on circumstantial evidence. The same are reproduced in paragraph 152 of the said judgment, which reads as under:

(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 Sahebrao Bobade & Anr. v. State of Maharashtra](#), (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

¹ AIR 1964 SCC 1622

"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."

9. Learned Counsel for the appellant/accused submitted that, the prosecution has not proved beyond reasonable doubt that, the appellant/accused committed the murder of his wife. Learned Counsel for the appellant/accused raised certain grounds, which according to him would be relevant and decisive for deciding the guilt of the accused. According to Mr. Kocharekar;

(i) The Trial Judge did not appreciate the entire evidence in its right perspective, since there are no eye witnesses in the case. (ii) The learned Judge has erred in convicting the accused based on circumstantial evidence, in the absence of cogent evidence supporting each circumstance. (iii) There is no specific reason or motive that has come on record for the accused to commit the murder of his wife. (iv) Omissions cannot be made ground for holding the accused guilty. (v) The charge framed itself was faulty. (vi) Among the 26 witnesses, only two witnesses are examined to prove Section 498-A of the IPC. (vii) The instances which are narrated by PW-1 and PW-19 cannot be said to be amounting to cruelty or mental trauma and would not cover the offence under Section 498A of the IPC. (viii) That the deceased-Bindiya was an educated lady, who had received awards from the employer, and that such a lady would never tolerate such physical torture as alleged to have been meted out to her, for demand of dowry. (ix) No particular instance to demonstrate cruelty has been proved by the prosecution for proving cruelty and dowry demand by the accused and the fact that the accused was a nominee to the Fixed Deposit of

the deceased, cannot be termed as a dowry. (x) PW-12 Priti- sister of the accused had stated that all of them were enjoying together at the party immediately prior to the incident, makes it clear that there was no enmity between the accused and the deceased. (xi) The advocate for the appellant/accused has raised doubts about the said incident pointing out that inspite of such incident which had occurred at the night time none of the neighbours have been examined by the prosecution who could provide vital information. (xii) Though the case is of circumstantial evidence, the prosecution does not make out any hypotheses leading to the conclusion that the accused has committed the crime, merely because, the deceased and the appellant were both in the same room. (xiii) The statement of other three friends, who were present at the party, have not been recorded. (xiv) That the prosecution has examined only PW- 11, though there were two other witnesses, who happened to be there at the place of incident. (xv) The accused was in a completely drunk condition and he was not in his senses and, therefore, it was impossible for him to commit the assault, when he was in an inebriated condition and that

the accused was not even in a position to stand on his own legs, so as to cause multiple stab wounds within a couple of minutes is very unlikely.

10. The learned APP has supported the judgment and order of the Court of Sessions. He submits that the learned Judge after considering the circumstances and evidence on record has rightly convicted the accused. He submits that the prosecution has proved its case by leading cogent, legal and admissible evidence and that each of the circumstances clearly points to the complicity of the accused excluding any hypothesis.

11. We have heard both the parties at length.

12. The prosecution case is based on circumstantial evidence and, therefore, the standard of proof required in a case based on circumstantial evidence is that of the highest standard. It should leave no room for any doubt or any other interpretation or theory, other than the guilt of the accused. In the present case, the chronology of events, which unfolds the story is such that, it leaves no room for any

other interpretation, whatsoever other, than the guilt of the accused. The said story begins with the party, which is hosted by one Collin. On 24th May 2012, Collin had arranged a party, as Collin was to leave India on the next day.

13. According to PW- 11 Conrad Isebia Lobo, he was one of the invitees to the party organised by Collin. PW- 11 has deposed that he alongwith his two sisters and three other friends had gone to a restaurant at Andheri, between 9:00 p.m. to 9:30 p.m., where Lisban (accused) had also come, and that Lisban was followed by his sister Priti (PW-12) and his wife Bindiya (deceased) with their daughter. According to PW- 11, Lisban had drinks at the party and even after the bar was shutdown, he insisted for more drinks; that as Lisban was heavily drunk, the deceased- Bindiya told Priti- sister of the accused that, she would not accompany him (Lisban), as he used to physically assault her after having drinks; that Bindiya told Priti that she would come to Priti's home to stay overnight; that Lisban went to his car but as he was drunk and unable to drive, PW- 11's sister drove Lisban's car; and that he accompanied them. PW- 11 has further deposed that

when they reached Lisban's residence, they waited for the deceased-Bindiya to come, as she had the keys of the flat; that when Bindiya came, they took the help of Umesh's driver and took Lisban out of the car; that Bindiya accompanied the driver, who helped Lisban go to his flat, on the 4th floor by the lift. According to PW- 11, after the door was opened, they went inside, put the accused on bed, removed his shoes and asked him to take rest; and that after drinking water, they left the house.

14. PW- 11 has further deposed that Bindiya (deceased) wanted to get her and her child's clothes, as she wanted to stay overnight at Priti's house and hence they were waiting for her below the building; that while waiting down, they heard 3-4 loud screams; that Priti and Collin requested PW-11 to go and check, since Bindiya had confided that Lisban would assault her after getting drunk. Hence, he immediately went to the 4th floor, pushed the door and entered the house; that, he saw that the lights in the house were off and only the light in the bedroom was on; that on entering, he saw in the passage next to bedroom door, Bindiya lying and Lisban standing there; that

when he inquired with Lisban, “what he had done?” Lisban replied that “I killed the bitch, I killed the whore”; that when he looked down, he saw a pool of blood, and as such panicked, and ran down; that while running, he saw a dagger cover on the carpet in the hall; and that when he reached down, he told all of them who were present there, that Lisban had killed Bindiya. Thereafter, all of them, being scared, sat in two cars and went to Apna Bazar, Andheri, which was at a distance of about 3 to 4 minutes; and that on reaching there, Priti told them that it is a family matter, and that she would handle the same. PW-11 has further deposed that since they were in drunken condition and did not want to face problems with the police and Court, they went to their respective homes. According to PW- 11, the said incident had taken place approximately at 1:30 a.m. PW- 11’s statement was recorded on 3rd June 2012. Though, initially PW- 11 had not disclosed to the police, that they were present at the spot, later their mobile numbers were located by the investigating agency on the spot of the incident, pursuant to which, PW-11 alongwith his friends were summoned and their statements were recorded. PW-11’s

statement was also recorded under Section 164 of the Cr.P.C.

15. In his cross-examination, nothing material was elicited from him, so as to disbelieve his testimony. It is pertinent to note, that there is no cross whatsoever, with respect to what actually happened at the scene of offence, as narrated by him i.e. the deceased lying on the pool of blood and the words uttered by Lisban that, he killed the bitch and whore. In his cross-examination, he has stated that they had left the restaurant at about 1:00 a.m.. There is no cross-examination *vis-a-vis* the statement of PW-11 that, he left Priti at Apna Bazar, Andheri. Thus, we do not find any credible material in the cross to disbelieve the testimony of PW-11, that he has seen the accused with the deceased, soon after the incident and the disclosure made by Lisban to PW-11.

16. The next witness examined by the prosecution, who takes the chain of events further is PW-2 Harbeer Singh Jaswant Singh Bhavra. The present witness assumes importance in the background of the fact, that Priti met the present witness at the very place, where she was

dropped by PW-11. According to PW-2, he was working as a Public Relation Officer of 'Food Culture'; at the relevant time, his duty timing were from 7:30p.m. to 3:00a.m., PW-2 has stated that on 24th May 2012, at about 1:45 a.m. when he was standing on the road, one lady with one small child came there and informed him that a quarrel had taken place on the backside of the road, and that there was a possibility of her sister-in-law being done to death, by her brother. PW-2 has stated that the said lady was scared and, hence, he accompanied her in the rickshaw; that during their ride in the auto, the said lady told him that her name was, Priti; and that when she asked him to go inside the building, he told her that he would not go in the building and asked her to call the police. PW-2 has further stated that since he was not having a mobile phone with him, he asked Priti to wait there and he himself went to the police station in an auto and informed the police, pursuant to which, API sent two police constables; and that, thereafter, he returned to the hotel, and as such does not know what happened thereafter. In so far as PW-2's testimony, regarding meeting Priti and accompanying her to the

building and thereafter, calling the police is concerned, the said evidence has not been shattered in the cross-examination. Infact, his evidence has been duly corroborated by the evidence of PW-14; Police Nayak, PW-20 P.I.-Mr. Kate and PW-25 API Mr. Sawant.

17. PW-14-Ramchandra Laxman Gawade, Police Nayak, attached to D. N. Nagar Police Station, was patrolling and was working as Beat Marshal at the relevant time. According to PW-14, while patrolling, he learnt from PW-2, that one lady with one small child, had informed him that her brother was assaulting his wife, in Neel Gagan building. He further stated, that after he met PW-2, he went to Neel Gagan building where the incident had taken place. According to PW-14, when he rang the bell and banged the door of the flat, there was no response from inside, pursuant to which, he called the night Police Inspector, PW-20 Mr. Kate, who came there within 5 minutes.

PW-14-Ramchandra Laxman Gawade has further deposed that he saw one person continuously speaking on his mobile phone; that on inquiring with the said person, he learnt from the said person (PW-1)

that his brother-in-law (Lisban) was inside the house and he was talking with him. PW-14 asked him about their conversation, pursuant to which, the said person informed him that, Lisban had told him that, he had killed his wife and if he informed the police, he would blast the gas cylinder. Considering the threat, PW-14 informed PW-20, P.I. Mr. Kate, who in turn asked him to call the control room and call the fire brigade. Accordingly, the fire brigade came there and the Firemen opened the door to the flat with a machine and PW-14 alongwith other police staff entered the flat; that on entering, in the drawing room he saw the cover of Khanjeer was lying on the Teapoy. On the right side, there was kitchen and a passage and that blood was seen in the passage and kitchen; that the door of the bedroom was closed; that after knocking the door, since there was no response, the fire brigade personnel broke open the bedroom door with a machine; that on entering the bedroom, they saw a lady lying on the floor in a injured condition and one person lying on the bed; that his hands were stained with blood and the Khanjeer was lying near the said person. That one gas cylinder was seen near the said lady; that they

immediately put the lady on a stretcher and took her to Cooper Hospital and the police apprehended Lisban and took him to the police station. PW-14 has identified the cover of Khanjeer as well as Khanjeer, seen at the spot.

18. The defence has not been able to bring on record any contradiction / omission with respect to what has been deposed by PW-14 in his cross-examination. Infact, PW-14 corroborates the story of the prosecution that the door of the flat was locked from inside and inspite of banging the door and ringing the bell, there was no response from inside and hence, the fire brigade was summoned and that on opening the door, the accused and the deceased were the only two persons inside the said flat. Khanjeer was also found lying near the accused and a gas cylinder was also in the said room. The said evidence is also corroborated by PW-1, Anand Chawala- brother of the deceased-Bindiya, PW-6 Abhijeet Dalvi witness to the spot panchanama; and, by PW-5-Amol Khanolkar Assistant Station Officer of the fire brigade. PW-5 in his report at Exhibit-41, has stated that the accused and the deceased were the only two persons in the flat,

who were inside the flat, which was opened by them. It is pertinent to note, that there is no cross-examination on this issue, and as such the said evidence, having gone unchallenged, stands proved.

19. As evident from the aforesaid discussion, PW-5 Amol Khanolkar, Assistant Station Officer of the fire brigade broke open the door of the flat and submitted his Special Service Report, giving particulars of the incident, which is at Exhibit- 41. As noted above, the said evidence and report have gone unchallenged. PW-5's testimony about door of the flat being closed and fire brigade being summoned to open the door and what transpired thereafter, has been supported by PW-6- Abhijeet Dalvi, witness to the spot panchanama.

20. PW-1-Anand Chawala, is the informant and brother of the deceased- Bindiya. According to PW-1, the relations between his sister Bindiya and her husband Lisban were strained, though, it was a love marriage. PW- 1 has deposed, that on the day of the incident, Bindiya had come to his house for dinner; that at about 10:00 p.m. Lisban called Bindiya and asked her to attend a party, which was going on in a

hotel, near his house; that pursuant thereto, Bindiya left the house to attend the party in a rickshaw alongwith her daughter; that at about 2:15 a.m. his father knocked on his door and told him that he has received a call from Priti (PW-12), who told him that Lisban has threatened to kill Bindiya, and that she had called the police. Pursuant thereto, PW-1 alongwith his family, rushed to Neel Gagan Society, where the police and other people had already gathered in front of the flat no. 401 of the society. According to PW-1, he rang the door bell, but there was no response; that Priti (PW-12) was present at the spot and was crying and saying that there was a quarrel between Bindiya and Lisban and that they were not opening the door of the flat. According to PW-1, when he received a call from Lisban on his mobile at about 2:30 a.m., he requested Lisban to allow his sister to come out, but the accused did not pay attention and was talking rubbish and using abusive language; that Lisban cut the call, and thereafter, atleast two to three times, conversation took place between him and Lisban. According to PW-1, when he informed Lisban that the police had arrived on the spot, Lisban threatened that, if the police attempted to

break the door, he would set the house on fire, by using the gas cylinder. PW- 1 has stated that pursuant thereto, the fire brigade arrived and the locked door of the flat was opened by them. He has stated that, except the accused-Lisban and the deceased-Bindiya, nobody was there in the flat. The deceased-Bindiya was shifted to Cooper Hospital in an ambulance by the police and after her medical examination, the doctor declared her dead. According to PW-1, thereafter he went to D. N. Nagar police station and lodged a complaint against the accused for murder of his sister Bindiya. PW-9-Swaroop Bhalepatil, who conducted the postmortem found 13 external injuries on her person. The cause of death is stated to be 'shock due to multiple incised and stab wounds'.

21. The testimony of the PW- 1 is corroborated by the CDR of the cell phone of the accused, which is at **Exhibit- 86** and proved by PW-21-Yogesh Rajapurkar, the Nodal Officer of Airtel company. It discloses that the accused had called PW-1 at 2:28 a.m. and 2:33 a.m.. Similarly, call details show that the PW-1 had also called the accused at 2:32 a.m. and 2:38 a.m.. PW-1's testimony regarding opening of the door by the

fire brigade man and about the scene of offence stands corroborated by the testimony of PW-14. PW-1 has identified the dagger which was lying on the floor.

22. PW-1 identified the weapon used in the offence to be the same dagger. He has also relied on the letter written by the deceased on 02nd November 2009, in which the deceased- Bindiya referred to the event of quarrel between herself and the accused. The said letter reflected that the accused had told her that, “he was not having enjoyment with her and she is cursed and she should be killed”. The said letter is at Exhibit-32.

23. The said testimony of PW-1 that, there was threat given by the accused for blasting the cylinder is corroborated by PW-4 Kiran Panchal, an occupant of the building, who has deposed that because of the threat given by the accused, the fire brigade and the police had come there, and they had vacated the building. In the cross-examination of PW-1, the defence could not elicit anything that would in anyway impair the credibility of this witness, so as to disbelieve his

testimony. The testimony of PW-1 finds corroboration in the testimony of PW-19 Lata Rajan Chawala, who is the mother of the deceased.

24. The prosecution has examined PW- 19 Lata Rajan Chawala, the mother of the deceased, who also supported the version of PW-1 regarding demand of dowry and ill-treatment meted out by the accused to the deceased. According to PW-1, after the engagement, the accused had demanded Rs.25,00,000/- (Twenty five lakhs) from his sister and that his father had deposited Rs.14,50,000/- (fourteen lakhs fifty thousand) in the name of Bindiya, in the form of Fixed Deposit. The accused has admitted about Fixed Deposit in his statement under Section 313 of the Cr.P.C.. PW-19 has also produced one chit which is written by the accused, wherein he had expressed his remorse for the treatment given by him to the deceased and had assured her that the deceased belongs to him forever and asked her forgiveness. The said letter Article- 21 was sent to PW-24 Muneer Shaikh, a hand writing expert, who has given his opinion that the said hand writing is that of the accused. PW-19 has produced a handwritten chit, which was

addressed by Lisban to Bindiya. According to PW-19, Lisban had driven Bindiya and their daughter out of his house on a number of occasions. PW- 19 has deposed that Lisban was a habitual drinker and that after drinking, he would quarrel with Bindiya and would also abuse her. Therefore, the cruel treatment meted out to Bindiya stands proved, through the testimony of PW- 1 Anand Chawala her brother and PW-19 Lata Chawala her mother. Thus, the prosecution has proved demand of money by the accused and the ill-treatment given to the deceased during her marriage with the accused through the PW- 1 and PW-19. Therefore, the offence under Section 498-A as against the accused has been proved by the prosecution.

25. PW-6 is the witness to the spot panchanama. PW- 6 has deposed that when the latch of the door was broken, a cover of knife on Teapoy, blood on the floor, one battery of mobile, one black colour pant with blood, one grey colour ladies pant, some notes of Rs.100, one black berry mobile with Airtel SIM Card, one black cover mobile with blood stains, one Khanjeer strained with blood, one gas cylinder, credit cards etc. were found at the scene of offence. Nothing contrary

is brought on record through the cross-examination of the said witness. PW- 6 has supported the evidence of PW-1 and PW-14.

26. PW-20, Police Inspector attached to D. N. Nagar police station has deposed that, on receipt of information on wireless at 2:30 a.m., he went to the said society, and on reaching there, he found Rajan Chawala, Anand Chawala (PW-1), Priti (PW-12) and some other persons present at the spot; that the door of the flat was broken by the fire brigade personnel; that on entering, they found the deceased lying on the floor and the accused sitting on the bed. The evidence of all witnesses including PW-1, who is the complainant is also supported by PW-20 and there is nothing in his cross-examination to doubt his credibility, much less disbelieve him. Similarly, PW-25, PSI- Sawant has deposed that he recorded the complaint / FIR of PW-1-Anand Chawala, and arrested the accused vide arrest panchanama at Exhibit-45-A; that he seized the clothes of the accused in presence of two witnesses. The seizure panchanama is at Exhibit-45. The clothes of the accused were stained with blood. The clothes of the accused which were seized, were sent to the Chemical Analyzer. The C.A. report at

Exhibit-127 reveals that the clothes of the accused at Exhibits- 5, 6 and 8 were stained with blood group B+, which belonged to deceased Bindiya.

27. According to PW-26, investigation was handed over to him on 28th May 2012. PW-7 is the witness to the arrest and seizure of clothes of the accused. PW-8-Dr. Pratap Dayanand is an important witness, who has examined the accused when the accused was produced before him for conducting his medical examination. The said medical examination is at Exhibit-47. The said witness assumes importance for the reason that in his examination in chief the said doctor has stated that the accused Lisban himself had given history that he killed his wife Bindiya at about 2:30 a.m. by knife and during the struggle, he received injuries on his body. On this part of the evidence, there is no cross-examination. The said disclosure to PW-8 Dr. Pratap Dayanand clearly amounts to *extra judicial* confession, and lends additional support to the prosecution case.

28. PW-26 is PSI (Crime), who was attached to D. N. Nagar police

station and the investigation was transferred to him on 28th May 2012. The said witness concluded the investigation and filed the charge-sheet. PW-26 has deposed that the deceased's mother, Lata Chawala (PW-19) had produced one letter dated 30th August 2011, written by the accused, which is Article-21, in support of the charge under Section 498-A of the IPC. The same is already referred to in the testimony of Lata Chawala. PW- 26 has taken the specimen signature of the accused and sent it to the hand writing expert. Nothing is elicited in his cross-examination to disbelieve the said opinion of the hand writing expert. So far as the blood group of Bindiya is concerned, PW-26 admits that the C.A. report reveals that the deceased's blood group was inconclusive and, hence, he made inquiry with the deceased's father, who informed him, that her blood group was B+, when checked at the time of her pregnancy. Accordingly, PW-26 collected the document from Dr. Desai, the Gynecologist of the deceased, who certified the blood group of the deceased from the papers in his hospital. The said doctor has been examined as PW-22, who corroborates the version of PW-26, I.O., that the blood group of

the deceased was B+. The C.A. report at **Exhibit-127** reveals that the clothes of the accused, which were stained with blood and the knife used in the offence, matched the blood group of the deceased.

29. All the witnesses examined by the prosecution not only support the case of the prosecution, but inspire confidence, and as such, their testimony cannot be doubted. Though the present case is based on circumstantial evidence, the chain of circumstances is complete and leaves no room whatsoever, to doubt the involvement of the accused in the said crime. There is nothing elicited from the witnesses during their cross-examination, which would shake the credibility of these witnesses. Even the timeline mentioned by each of the witness matches the chronological events narrated by the prosecution witnesses. The prosecution case begins with the party, for which there is testimony of PW-11, who was the first one to see the accused alongwith the deceased before and after the accused had committed the murder. Thereafter, the testimony of PW-1 Anand Chawala, the complainant and others i.e. PW-11, PW-14, PW-19 and others after breaking open the door of the flat by the fire brigade, where they

found that the accused and the deceased were the only two occupants of the flat. There is also evidence of witnesses to show that the flat was locked from inside and inspite of making requests, the accused refused to open the door and upon breaking open the door, was found with a Khanjeer, with which he brutally murdered the deceased. The accused has also given an *extra judicial* confession to the doctor PW-8, who examined the accused.

30. The present appellant/accused had an opportunity to prove his innocence and discharge the burden, which shifted on him under Section 106 of the I.P.C.. In the statement recorded under Section 313 of the Cr.P.C., the accused was questioned regarding his demand of Rs.25,00,000/- after the engagement, and the amount of Rs.14,50,000/- given by the father of the deceased, which was deposited in Fixed Deposit. The accused has accepted that a Fixed Deposit of Rs.14,50,000/- was made in the name of Bindiya and has also accepted that one month prior to the death of the deceased, he has included his name as a nominee in the bank account. The accused has further accepted that he had kept a dagger in the showcase of the

bar. The accused has also accepted that his clothes, seized from his person, were stained with blood. He has also admitted that the blood group of the deceased was B+. The accused's only answer in his statement recorded under Section 313 is that, he has been falsely implicated in the case. The accused has neither offered any explanation as to how his clothes were stained with blood, nor explained as to how Bindiya's death has occurred, when they were alone in the locked room. The accused has not taken any concrete defence in his statement recorded under Section 313 of the Cr.P.C..

31. The defence has tried to project a different story by pointing out to the evidence of PW- 11, who was the first one to go to the spot, soon after hearing the screams of the deceased, and that the possibility of PW-11 murdering Bindiya could not be ruled out. Despite the said defence being taken in the case, the accused failed to create any suspicion about PW-11. Although, PW-12 Priti, was declared hostile by the prosecution, the fact remains that, it is due to the efforts taken by Priti, that the police authorities as well as the brother of the deceased, PW- 1 reached the scene of offence, which is proved through

the deposition of PW-1, PW-2 and PW-14.

32. No doubt, the burden is always on the prosecution to prove the case beyond reasonable doubt and the same has been proved by the prosecution, by leading cogent and admissible evidence. In addition, the failure of the accused to disclose the reason and circumstances leading to the death of the deceased Bindiya, since he and the deceased were alone at home, attracts Section 106 of the Evidence Act. In the present case, the accused has failed to discharge the said burden under Section 106 of the Evidence Act.

33. The accused was in the company of deceased. It was for him to explain how so many injuries were found on her person. He has totally failed to explain the said injuries. As many as 13 injuries were found on her body and all the said 13 injuries were stab incised injuries. Since, the doors were found locked from inside, and on breaking open of the two doors, the accused was found alone with the deceased, it was necessary for the accused to explain what happened, facts, which were well within his special knowledge to explain, as

required under Section 106 of the Evidence Act. In an identical matter in *The State of Himachal Pradesh V/s. Rajiv Jassi*², the Hon'ble Supreme Court was pleased to hold that, failure to explain coupled with other evidence is a circumstance mitigating against the accused.

Thus, the same can be considered as an additional circumstance, in the chain of circumstance already proved by the prosecution, by leading cogent, admissible and legal evidence.

34. After taking into consideration the evidence led by the prosecution and the witnesses examined in support thereof, the irresistible conclusion which can be drawn is that it was the appellant and the appellant alone involved in the commission of the offence. We, in the facts, find that the prosecution has proved the following chain of events: (i) The deceased was found dead and the accused was the only person in the house alongwith the deceased (ii) The deceased had expressed her apprehension of assault, as the accused was in habit of assaulting after consuming liquor, therefore, she was about to

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accompany her sister-in-law PW-12 to her house. (iii) The door of the flat was broken by the fire brigade and the deceased was found dead inside the bedroom. (iv) The accused was found near the deceased and there was the dagger lying nearby. (v) The injuries on the body of the deceased were caused by the weapon, i.e. the dagger and the doctor performing the postmortem, has given opinion that stab injuries and incised injuries are possible by the weapon Article-1 shown to him. (vi) The clothes of the accused and the Khanjeer used for the offence were stained with blood and the blood group was B+, i.e. the blood group of the deceased. (vii) The accused had given a threat of blasting the cylinder and the said cylinder was found in the bedroom, with its cap open. The additional circumstance in the chain of events is, that no explanation has been given by the accused as to how the death of the deceased occurred, i.e. facts within his knowledge, since he and the deceased were the only two persons in the flat. The chain of circumstances being complete, the offence under Section 302 against the accused stands proved.

35. Therefore, the conviction of the accused for the offence under

Section 302 and 498-A of the IPC stands proved against the accused, and there is no case for interference in the order of conviction passed by the Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay. As a result, the challenge to the order of conviction fails.

However, while sentencing the accused, the learned Additional Sessions Judge sentenced the appellant to suffer rigorous imprisonment for life, till his death. So far as the said sentence is concerned, the learned Counsel for the appellant has brought to our notice that, Section 302 of the Indian Penal Code provides punishment for murder with death or imprisonment for life. In the present case, the learned Judge sentenced the accused for life imprisonment, 'till his death', which was legally impermissible. Mr. Kocharekar submits that such a sentence can only be awarded by the High Court or the Supreme Court. It is submitted that the power to modify punishment providing for specific term of incarceration or till the end of his life, as an alternate to death penalty can be exercised only by the High Court and the Supreme Court. In support of the said submission, the learned

Counsel for the appellant placed reliance on the judgment in *Gauri Shankar V/s. State of Punjab*³, wherein the Hon'ble Supreme Court was pleased to reiterate the view taken in the case of *Union of India Vs. V. Sriharan*⁴, wherein the majority in a decision has held that, special category of sentence can be imposed only by the High Court or Supreme Court and not by the trial Court. Thus, it is clearly evident that the trial Court had no power in law, to award such a sentence. Hence, it is necessary to modify the sentence in respect of offence punishable under Section 302 of the IPC, in so far as, it sentences the accused to life, until death. Accordingly we pass the following order:

: ORDER :

- (i) The judgment and order of conviction under Sections 302 and 498-A of IPC, is confirmed;
- (ii) As far as the sentence awarded to the appellant under Section 498-A of IPC is concerned, the same is maintained and as far as the sentence awarded by the trial Court for

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the offence punishable under Sections 302 is concerned for imprisonment for life “until death”, the same stands modified;

(iii) The appellant/accused is now sentenced to undergo imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code;

(iv) Rest of the order to remain as it is;

(v) Appeal is partly allowed to the extent aforesaid and is disposed of.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.