Form No. J(1)

IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

Present :

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Anuj Singh

C.R.A. 16 of 2015

Kanchan Das
Versus
The State of West Bengal

For the Appellant	: Mr. Jayanta Narayan Chatterjee, Sr. Advocate Mr. Dwaipayan Biswas, Ms. Moumita Pandit, Ms. Deborshi Roy, Ms. Olivia Dutta.
The amicus curiae	: Ms. Suveni Banerjee.
For the State	: Dr. Pradip Banerjee, A.P.P. Mr. Anurag Sardar.
Heard on	: November 23, 2026.
Judgment on	: November 23, 2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against the judgment of conviction dated 26th November, 2014, and order of sentence dated 27th November, 2014, passed by the learned Additional Sessions Judge, Bankura in Sessions Trial No. 02(4) of 2013 arising out of the Sessions Case No. 4(7) of 2012. The appellant was convicted under Section 302 of the Indian Penal Code and was sentenced to rigorous

imprisonment for life and for one year for the offence punishable under Section 201 of the Indian Penal Code. The aforesaid sentences were to run concurrently.

THE PROSECUTION CASE:

2. The prosecution case in brief is that the victim wife was married to the appellant husband four years prior to her death at her matrimonial. The family of the victim wife and appellant husband negotiated the marriage as per Hindu rituals, not knowing that the victim and appellant were already in love before the marriage.
3. In course of marriage, the victim was gifted ornaments and the appellant a ring and household articles, by her family. The marriage was initially peaceful. Subsequently, however, regular altercations started to take place between the appellant and victim. It is alleged that the mother of the appellant used to tease the victim.
4. On the fateful day, i.e. 17th April, 2012, around 9.30 a.m., the appellant requested PW-4 to call the father of the victim, PW 1, and inform him that the victim is dead. The victim and the appellant lived at Netkamala village under Police Station- Saltora, District- Bankura. Upon receiving information of the death of his daughter, PW-1 along with PW-6, PW-2, and PW-13 and few other people at Deshuria village under Gangajalghati Police Station went to the matrimonial home of the victim. They found the body of the victim covered in a pink cloth.
5. Upon a hue and cry being raised, the local villagers assembled. PW-1 and his son, PW-2, along with few others went to Saltora PS and lodged a formal complaint dated April 17th, 2012 and Saltora PS registered FIR No. 33 of 2012 under Section 498A, 304B read with Section 34, IPC on the same day.
6. Two inquests were conducted on the body of the victim. The SDO who conducted the second inquest found most of the body of the victim burnt. He also found injury on the abdomen of the victim. The first inquest was conducted by Dipankar Saha,

one SI of Police attached to Saltora PS. He found an injury on the forehead of the victim apart from severe burn injuries.

7. The Investigating Officer, PW-15, took over the investigation, sent the body for postmortem. The postmortem was conducted on the victim by PW-12, Dr. Suparna Dutta. Investigation was completed and charge-sheet was filed.Charges were framed against the accused persons, namely, the appellant, his father and mother under Sections 498A, 304B, 302 read with Section 34 and Section 201 read with Section 34 of the IPC.

THE TRIAL AND THE EVIDENCE ON RECORD:-

8. **PW-1 was Dhruba Das, the father of the victim.** He did not make any allegation of any torture or demand of dowry against the accused. He deposed that he was informed by the victim about the altercations between the appellant and her and the teasing of the victim by her mother-in-law.He deposed that he gave a gold ring to the appellant at the time of marriage and ornaments to his daughter, a bed cot and Almirah. A girl child was born out of the wedlock between the victim and appellant.

9. He deposed that on 17th April, 2012, he was in his village at Deshuria when he received a phone call from a neighbor of the appellant that his daughter is seriously ill. He thereafter received another phone call informing him that the victim died and was called to the matrimonial house of the deceased. He reached Netkamala village where the victim resided with the appellant and his parents and found the victim lying in a burnt condition in the verandah of the house of the appellant. He found kerosene oil at the P.O.

10. He deposed that he went to the Saltora PS and he lodged a complaint written by **PW-2, Sanjay Das, his son.** In cross-examination, he admitted that there was a love affair between the appellant and victim prior to their marriage and that the appellant and the victim loved each other even after marriage.

11. He admitted that there was no meeting in the village(salishisabha) as regards altercation between the victim and appellant. He confirmed that he was accompanied by PW-13, PW-6 and PW-2 to the matrimonial home of the victim. He deposed that there was no mention of any altercation between the appellant and victimor any act of teasing by the mother-in-law, in the complaint.

12. He further admitted that he did not see the place where his daughter actually died. He also deposed that upon being informed of the altercations between the appellant and victim, he and his family assured the victim that everything would settle down.He, however, denied it In cross-examination,.

13. **PW-2, Sanjay Das, was the brother of the victim.** He deposed that he came to know about the altercations between the appellant and victim when the victim visited her paternal house. He identified the written complaint to the Saltora PS. In cross-examination, he admitted that there was a prior love affair between the victim and appellant before their marriage. Neither the PW-1 nor PW-2 mentioned any demand for any dowry by the family of the appellant from the victim or her family members.

14. **PW-3 was GunamoyBhuin. He was a resident of Netkamala village.** Hewas not interrogated by the police. He signed on a seizure list on instruction of the police. In cross-examination, he admitted that there was a pond in the Netkamalavillage called ‘Goyala Bandh’.

15. **PW-4 was Chandan Pramanik, a co-villager of the appellant husband.** He was asked by the appellant to inform the victim's father, PW-1, about her death. He called PW-1 from the mobile phone of the appellant. He confirmed that on the fateful day, he saw the mother-in-law going to work around 9 o' clock. He had heard that local villagers brought the body of the victim from GoyalaBandh pond to her matrimonial home.

16. **PW-5 was PravashPramanik. He was a resident of the village of the appellant**. He was declared Hostile by the Trial Court. He denied that he often heard the victim quarreling with her mother-in-law. He denied that the father-in-law of the victim told him that the victim got burnt from a gas oven when she was cooking. He confirmed having seen the victim going to the GoyalaBandh pond around 9 a.m. on the fateful day. He came to know that the local villagers had carried the body of the victim from GoyalaBandh pond and kept it in the courtyard of the house of the appellant.

17. **PW-6 was Gangadhar Singha.** He had a tailoring shop where PW-1 worked as a tailor. He accompanied PW- 1 and PW-2 to the matrimonial home of the victim.

18. **PW-7 was Kajal Karmakar**, was a local resident of Netkamala Village. He saw the victim at the courtyard of the house of the appellant. He was not interrogated by the police.

19. **PW-8 was Sunil Kumbhakar. He was a resident of the Netkamala village**. He deposed that police obtained his signature on certain blank papers. He confirmed having seen the father of the appellant to go to a neighboring village to teach music around 8.20 am on the fateful day. He also saw the body of the victim being carried from the GoyalaBandh pond to the resident around 11.30 a.m.

20. **PW-10 was Jyostna Das, cousin of the victim.** She deposed that the victim did not ever tell her about any altercation between her and her in-laws and husband. She only saw the victim become feeble. She deposed that the victim was an introvert. She deposed that she touched the body of the victim and found black marks thereon. She touched the body of the victim and did not believe that the victim was burnt. She also deposed that the victim never disclosed any torture by the appellant or his family members to her family.

21. **PW-11 was Sridham Das.** He was the uncle of the victim. He deposed that the victim was not treated well by her in-laws. He had no personal knowledge of the incident. He did not inform the police that the victim was not treated well by her in-laws.

22. **PW-12 was Dr. Suparana Dutta. She conducted the postmortem on the victim**. She found the following on the body of the victim in course of post mortem:

> "On examination of the dead body of Shibani Das I found evidence of singeing of hairs on all aspects of scalp present. Scalp hair 16" long black only present over lower part of back of scalp. Smell of kerosene oil coming out of body with deposition of soot over the burnt areas. Evidence of redness and corrugation over the superior aspect of tongue. The burn injury and deposition of soot being found over whole body including external genitalia but not over sole and toes and without any line of delineation between normal and burnt skin, therefore determining it is a postmortem burn.
>
> Body was covered with biscuit colour bed sheet with black and white prints and the greed sari with silver border. Both of which were preserved. Left writ shows presence of burnt red plastic bangles, white sankha, iron bangle. Right wrist consisted of burnt iron bangle and while sankha. Bloody discharge coming out from nostrils, hit haematoma seen over front of abdomen surrounding umbilical region without extra vacation of blood. Thereby determining it to be a postmortem injury.
>
> On dissection of the neck region extra vesation of blood of size 2" x 0.5" x muscle is seen over left side, 1.2" to the left of mid line and 2" below antgle of mandible with underlying fracture of left greater cornu of hyoid bone, haematoma surrounding fracture side, hyoid bone was preserved.
>
> On dissection of respiratory track no soot was found thereby determining that the burn being postmortem. Extensive soot deposition determines closed space burn and absence of defence injury points towards subject being made unconscious prior to death.
>
> Stomach on dissection shows tough leathery feel with smell of carbolic acid or phenol with presence of the chemical in oesophagus and stomach

> determining poisoning the viscera, wearing apparels, skin over burn area, liquid blood, blood in blotting paper, controlled blotting paper, scalp hair, vaginal swab and smear, nail cutting and scrapings all preserved and handed over to the constable, I.O. being not present for oesophagus onward transmission to the C.E., State F.S.L.
>
> In my opinion death was due to violent mechanical asphyxia by throttling. There was ante mortem intake of poison having phenolic smell. The burnt injuries were postmortem in nature.
>
> The manner of death was homicidal."

23. **PW 13 was Nirmal Kanti Singha, landlord of PW-6.** He accompanied PW-1 and 6 to the matrimonial home of the victim on the fateful day. He found an assembly of people and the mother-in-law of the victim crying. He did not find any sign of fire in the room of the victim or in the surroundings. He found several vegetables kept after being cut and utensils and clothes.

24. **PW-15 was the Investigating Officer** who detailed all steps taken in the investigation.

25. Based on the evidence as above, the Trial Judge disbelieved the defense story that the victim was killed outsideher house and acquitted the father-in-law and mother-in-law of the victim. The appellant was however convicted for the murder of his wife. According to the Trial Judge, the appellant husband could not explain his absence from the house and therefore must be deemed to have committed the offence.

ANALYSIS OF THIS COURT:

a) Medical Evidence does not confirm the PO.

26. The prosecution's case was based on circumstantial evidence. The prosecution has tendered the following links in evidence, discussed herein below. The first link is the medical evidence. PW-12, PM doctor, has deposed that the victim was first poisoned and became unconscious. She was thereafter strangulated and then set on fire. PW-12 has opined that the victim died as a result of strangulation and that

she was set on fire after she was dead. The investigating officer therefore had evidence before him that the victim suffered a homicidal death. The medical evidence of homicidal death is therefore required to be linked with the accused by adducing other evidence. The medical evidence, by itself, cannot sustain a conviction. In **Sashi Jena v. Khadal Swain, reported in (2004) 4 SCC 236**, it was held as follows:-

> 16.....Thus, in view of opinion of the doctor, PW 6, **we have no option but to hold that it was a case of homicide and the prosecution has succeeded in proving this circumstance against the accused persons which, *being the solitary circumstance against them*, *cannot form the basis of their conviction* as it is well settled that in a case of circumstantial evidence, there should be a chain of circumstances showing complicity of the accused persons with the crime and the chain should be complete.** In view of the foregoing discussion, we are of the view that prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in upholding conviction of the appellants.
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> Emphasis Applied

27. In the present case, the medical evidence rules out suicide.It, however, does not establish that the victim died in closed space i.e. at her matrimonial home. PW-5 and PW-8 suggested in their evidence that she died at the pond. The prosecution says she was murdered at her matrimonial home. To prove this, the prosecution relies on the following evidence of PW-12, the post-mortem doctor. She found soot on the entire body of the victim. Soot is the black, powdery residue left when something burns. PW-12 stated that extensive soot was found on the body of the victim. This was a finding of fact; from this, she inferred that the victim died in a closed space. Relying on this inference, the prosecution has argued that the victim died in her matrimonial home. The reasoning behind this inference drawn by PW-12 may be as follows. Soot in great quantity may settle on a body when it has no chance to disperse. This may mean the body was burned in an closed space. **However, if the body was at all burnt in a closed space, one would find soot in**

the surrounding areas where the body was set on fire. No such soot at all was found in the matrimonial home of the victim. The theory that the victim was burned in a closed space because of the presence of extensive sooton the body of the victim was required to be tested in light of the answers to the following questions:

a) What degree of soot deposition is ordinarily expected in an enclosed-space fire?

b) Whether an equivalent degree of deposition of soot cannot at all be found when the body is burnt in an open- space?

c) Was the quantity of soot measured, or only assessed visually?

d) Was the alleged PO examined to corroborate the alleged enclosed-space burning?

28. The aforesaid questions arise because the extent of soot deposition depends on several variables: the amount of soot generated; the duration of exposure; the distance between the body and the source of combustion; the direction and velocity of the smoke plume and wind and other atmospheric conditions. The prosecution has not placed any of these matters on evidence.

29. In present case, the prosecution relies on medical evidence to prove a fact that is not medical in nature. The fact proved is that a great quantity of soot was deposited on the body. The inference drawn is that the victim was therefore burned in a closed area and not in the open space. The evidence of the place where the crime was committed cannot ordinarily be inferred from medical evidence. Nevertheless before drawing this inference, the prosecution should have examined the questions listed above. The medical evidence therefore does not prove the PO. PW 12, therefore, travelled beyond the remit of PM examination when she concluded that the victim died in a closed space.

30. The Court gives primacy to the eyewitness account over medical evidence. Medical evidence does not replace direct testimony. Here, the medical evidence establishes homicidal death. It goes no further. It does not identify the place of occurrence.**In Abdul Sayeed v. State of M.P., reported in (2010) 10 SCC 259, it was held as follows:-**

> 33. In State of Haryana v. Bhagirath [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] it was held as follows : (SCC p. 101, para 15)
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> > "15. ***The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court.*** If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation.....
> >
> > Emphasis Applied

b) Motive of the crime not proved

31. The second link, found by the IO, was the motive of the appellant husband and his parents. In the complaint to the police, PW-1, the father of the victim, specified the motive for the commission of the crime. He stated that the appellant husband and his parents physically and mentally tortured the victim. The learned trial Judge, however, found that the prosecution has not been able to provide any evidence to demonstrate torture by the husband and in-laws, or any claim for dowry. We equally find that there is no evidence at all, that the appellant husband and the accused in-laws tortured the victim or demanded dowry from her. The evidence on the point of motive for the crime, therefore, is absent.

32. In a case based on circumstantial evidence, the motive for the crime is a link that places before the Court the reason for the commission of the crime. In the present case, the motive being absent, the further links must be vigorously proved to establish the guilt of the appellant husband. What has come on record is that the there was frequent altercation between the appellant and the deceased. This by itself

cannot be a motive to kill the victim. The prosecution therefore could not establish the motive behind the crime.

c) The evidence of PW 1, the father of the victim, suffers from material inconsistencies

33. The third link is how the information of the victim's death reached the father of the victim. PW-1 stated in the said complaint that on the fateful day at around 9:30 AM, the accused father-in-law informed him that the victim has dead. The accused father-in-law requested the family of the victim to visit the matrimonial home of the victim. In the trial, PW-1 deposed otherwise- he deposed that a neighbor of the appellant husband informed him that the victim was seriously ill. One hour thereafter, PW-1 again received a call informing him that the victim had died. PW-2 is the brother of the victim. He did not support the evidence of PW-1. He deposed that a neighbor of the appellant husband informed them that the victim had died. PW-2 accompanied PW-1 to the matrimonial home on the fateful day.

34. PW-6 was the neighbor of PW-1. PW-6 deposed that PW-1 came to him on the fateful day in the morning and informed him that he urgently need to go to the matrimonial home of the victim. PW-1 did not inform PW-6 that he had received the news of the victim's death. PW-13 was a friend of PW- 1. He deposed that PW-1 informed him in the morning of the fateful day that the victim was extremely unwell and sought his advice. PW- 13 advised PW-1 to visit the matrimonial home of the victim.

35. The exact information about the death of the victim received by PW-1, the father of the victim, on the fateful day is not clear. Despite receiving the news that the victim had died, PW 1 did not unequivocally inform the other PWs, who accompanied him to the matrimonial home of the victim, that the victim had died. We have discussed herein below as to why the presence of the appellant husband at

the matrimonial home of the victim on the fateful day is not proved due to inconsistency in the evidence of PW 1 on from whom did PW-1 receive the information of the victim'sdeath.

36. When a fact stated in the FIR is departed from during the trial, the Court must examine whether the omission or retraction is material. It must ascertain whether the fact stated or omitted in the FIR and later retracted or added was within the knowledge of the informant. In the present case, PW-4, the neighbor of the appellant husband, clearly told PW-1 that the victim had died. PW 1 was never informed by the father in law of the victim that the latter had died. PW 1, however, stated this in the FIR. He did not offer any explanation about this misinformation. PW-1 was informed that the victim is dead and that he should come to see her at her matrimonial home. He suppressed this from other PWs. He did not explain this suppression made from other PWs.

37. In view of the above, from the inception, the death of the victim was within the knowledge of the PW-1. Despite that, PW-1 did not inform PW-6 and PW-13, his friends, of the death of the victim. It, therefore, cannot be ruled out that PW-1, the father of the victim, conjured up the case against the appellant husband and her in-laws upon arriving at the place of occurrence. In **the State of Madhya Pradesh v. Ramjan Khan &Ors., reported in 2024 INSC 823,** it was held as follows:-

> 14. There can be no doubt with respect to the position that the prime object of FIR, from the point of view of the informant is to set the criminal law in motion and from the point of the investigating authorities is to obtain information about the alleged activity so as to enable to take suitable steps to trace and book the guilty. ***Thus, it can be said that FIR is an important document, though not a substantial piece of evidence, and may be put in evidence to support or contradict the evidence of its maker viz., the informant.Whether the omission(s) is one which seriously impeaches the credibility of the witness and is sufficient to reject the testimony of the informant would depend upon the question whether it is of an important fact and whether that***

fact was within the knowledge of the informant, going by the case of prosecution unraveled through the witness concerned.

Emphasis applied

38. A comparative reading of the evidence of PW-1 and PW-2, the family members of the victim, and with the evidence of PW-6 and PW-13, independent witnesses, reveals that in the trial, the family members have deposed that they were told at the very first instance that the victim had died. The other prosecution witnesses, namely PW-6 and PW 13 have deposed that PW-1 did not tell them that the victim had died. The family members of the victim thus hid the information of death of the victim from PW-6 and PW-13. The very initiation of the prosecution case is, therefore, not free from doubt.

39. PW-4 was the neighbor of the appellant husband and his parents. He deposed that he informed PW-1, the father of the victim, from the mobile of the appellant husband that the victim had died. He made the call at the request of the appellant husband. Therefore, PW-1, the father of the victim, was unequivocally communicated that the victim had died. PW-1, however, did not reveal it to his neighbor PWs. This episode creates a doubt when read with the **un**-proved allegation of PW-1 and PW-2 that the victim was tortured in her matrimonial home.

40. The allegation of PW-1 that the victim was physically and mentally tortured at her matrimonial home was conjured up to set up a case against the appellant husband and in laws of the victim. This is evident from the following- the FIR was registered at 1:05 PM on April 17th, 2012. PW-1 named the appellant and his parents as accused. The inquest proceedings under Section 174, CrPC commenced on the same date at 2:25 PM and concluded at 3:45 PM. PW-1, the father of the victim, and PW-2, the brother of the victim, signed as a witness to these

proceedings. At clause 9 of the first inquest report, under the heading "Opinion of witnesses as to the cause of death," there is no mention that the victim had been murdered by the appellant-husband and victim's in-laws. Instead, the inquest officer recorded that, according to the witness available at the place of occurrence, the case is this- the father-in-law of the victim, Tapan Das, found the door of his house locked from inside upon returning from a shop. When he shouted for the door to be opened but received no response, the door was forcibly broken open, and the body of the victim was found lying dead.

41. Next, the Executive Magistrate, Shubhabrata Mondal, conducted a second inquest. The proceedings commenced at 2:35 PM and concluded at 3:15 PM. The father of the victim was present during these proceedings and signed as a witness. He did not, however, raise any allegation that the victim may have been murdered in her matrimonial home.

42. Therefore, despite PW 1 having stated in his complaint to the police, which was lodged prior to the aforesaid inquest proceedings, that the appellant-husband and his parents used to physically and mentally torture the victim and had burned her in her matrimonial home, he remained silent and did not agitate this issue during the inquest.

43. Indeed inquest proceedings are not equivalent to a criminal investigation. However, when inquest proceedings commence after the lodging of an FIR, and the FIR names the accused, it is expected that the person who lodged the FIR, if present during the inquest, would equally record his version as a witness in the inquest report. In the present case, PW-1 remained silent. This omission nips the prosecution’s case at its bud. In **Balaka Singh v. State of Punjab, reported in (1975) 4 SCC 511,** it was held as follows:-

> 5.....According to the prosecution the names of the four accused who have been acquitted by the High Court had already been mentioned **in the FIR which was lodged 4/5 hours *before* the inquest report was prepared.*Any investigating officer possessing some intelligence would have at once questioned Banta Singh as to how it is that while he had named the four accused in the FIR he had not referred to them in his brief statement in the inquest report.*** In these circumstances, therefore, ***the High Court was fully justified in holding that the omission of the names of the four accused acquitted by the High Court in the inquest report was a very important circumstance which went in favour of the four accu***sed. This omission has a two-fold reaction. In the first place it throws doubt on the complicity of the four accused acquitted by the High Court ***and secondly it casts serious doubt on the veracity and authenticity of the FIR itself***. ***It is not understandable as to why the four accused who are alleged to have taken an active part in the assault on the deceased were not at all mentioned in the inquest report and in the brief statement of the very person who had lodged the FIR four hours before.*** Counsel for the State tried to justify this omission on the ground that in the inquest report Ext. PH the names of all the nine accused appear to have been mentioned at the top of that document. There is, however, no column for mentioning the names of the accused and, therefore, there was no occasion for the Investigating Officer to have mentioned the names of the accused in that particular place.
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> Emphasis Applied

d) Substantial doubts exist on the actual place of occurrence

44. The fourth link in the chain of circumstances concerns the place from where the body of the victim was recovered and the place where the crime actually occurred. PW-1 and PW-2 deposed that they saw the dead body of the victim at the veranda of her matrimonial home. PW-6 accompanied PW-1 and PW-2. PW-6 saw the dead body of the victim at the house of the appellant husband.

45. PW-5 was a neighbor of the appellant husband. During cross-examination by the defense, he deposed that he saw the victim go to Goyalabandh pond at around 8:55 to 9 a.m. on the fateful day. He returned to his house at about 9:15 to 9:20 a.m. After returning home, he learned that the victim had died at the pond. He further heard from local villagers carrying the body of the victim and keeping it in the courtyard of the appellant husband's house.

46. PW-4 did not see the victim going to the pond. He heard that the victim died at the pond, and that the villagers took her dead body from there to her matrimonial home. PW-3 deposed that the villagers visited the pond for bathing and other purposes. PW-8 was the neighbour of the appellant husband. He deposed that he saw the local people bringing the body of the victim from the said pond at around 11:00 to 11:30 am.

47. The learned trial judge disbelieved the theory that the victim was murdered at the said pond and then her body was carried to the courtyard or veranda of her matrimonial home. PW-12, the PM doctor, specified three steps in the murder of the victim. First, the assailant(s) poisoned the victim and made her unconscious. Next, they strangulated her. Then they burned her. All these events could not take place at the pond. The public had access to the said pond. This Court is of the view that the courtyard of the house cannot be the place of occurrence either. The IO produced a rough sketch. The sketch shows the courtyard as an open place. The assailant(s) ran the risk that other villagers would see them if they had poisoned, strangulated and burned the victim in the courtyard. Indeed if the victim was set on fire inside the house of the appellant, there would have been some evidence of such fire either on the floor or in the surrounding area.

48. The learned trial Judge noted that the remains of burning were not found in the courtyard because the appellant husband had removed them. He noted that the appellant had planted a jar of kerosene oil. His purpose was to make the scene appear as though the victim had committed suicide. The learned trial judge relied to the principle that the prosecution was not called upon to establish what happened in the secrecy of the matrimonial house. This belonged to the exclusive knowledge of the appellant husband.

49. The learned trial judge, however, failed to notice that the police did not conduct a thorough search of the inner rooms of the house. The prosecution has not adduced any evidence to indicate that the victim was burnt inside the house and not in the courtyard. The learned trial judge held that the victim was first poisoned. The poison made her unconscious. She lost the power of resistance. Therefore the place of occurrence may not bear any sign of struggle. The learned trial judge relied on the evidence of thepost-mortem doctor.

50. The PM doctor found that the victim was set on fire after she died. The learned trial judge, however, did not note that the victim could have resisted when she was forcefully fed poison, leaving signs of struggle, even if we go by the evidence of the post-mortem doctor. No remains of food were found in the stomach of the victim. Therefore, it can be easily ruled out that the victim was fed food laced with poison, and therefore, did not realize that she was becoming unconscious

51. The evidence on record has established that vegetables had been cut and were kept intact in the inner portion of the matrimonial home of the victim. Thus, had the victim being killed in her matrimonial home, the cut vegetables would not have been properly arranged.

52. The learned trial Judge further noted that the post-mortem doctor opined that the victim was strangulated after she was poisoned. The learned trial judge entered the territory of conjecture by holding that the intensity of the poison was such that it completely deprived the victim of any power of resistance and conjectured that the victim was strangulated while she was unconscious. The Ld. Judge did not note that the PM Doctor did not opine that the victim was unconscious when she had been strangulated. Instead, the doctor said that the victim was unconscious and perhaps dead when she was burnt, but not when she was strangulated. The learned

trial judge therefore assumed that the victim was unconscious during the entire course of her murder. This led the learned trial Judge to hold that no sign of struggle was, thus, found at the PO.

53. The Ld. trial Judge further held that since medical evidence has proved that the victim was murdered, it follows that the appellant husband had set the victim on fire, cleaned up the remains of any burning and planted the kerosene oil to show that it was a case of suicide. This is one more conjecture. Apart from the P. M. Doctor's report, no container or poison has been seized from the house of the victim. There is therefore substantial doubt as to whether the victim was at all poisoned, throttled and set on fire inside the house of the appellant.

54. The evidence of PW-5 and 8 have been discarded by the Trial Judge on the ground that they have not named any of the villagers, who claimed that they had brought the body of the victim from the pond to the place of occurrence. The evidence of PW 5 and 8 cannot be brushed aside since the likelihood of the victim having been poisoned, strangled and burnt at a place other than the residence of the appellant cannot be ruled out, as discussed above.

55. The evidence of PW 8 indicates that he saw the victim going towards the Goyala Bandh Pond at about 8.30 in the morning. This evidence read with the evidence of other witnesses who indicated that the victim may have been brought from the Goyala Bandh Pond to the verandah of the house of the victim cannot easily be ruled out. Further, there is no clear and positive evidence before this Court to indicate how the victim was brought from inside the room of the appellant to the courtyard.

56. As discussed above, the victim could not have been murdered in the courtyard which was open to the public eyes. The evidence on record particularly that of PW-5 and 8 definitely indicate that the victim might have been assaulted, poisoned, throttled and set on fire near the Goyala Bandh Pond. All of these acts cannot be done in the courtyard without being noticed by the villagers. There is therefore no proof of the actual place of occurrence.

57. This Court notes with disappointment that no attempt was made by the I.O. to search for any other witness who may have seen the appellant commit the crime at a place other than the house or near the Goyala Bandh Pond in question. The Investigating Officer has not even chosen to inspect the banks of the Goyala Bandh Pond at the village Netkamala.

58. It can therefore reasonably be inferred that the crime may not have taken place at the veranda. It now needs to be seen whether any family member of the appellant husband was present at the house when the crime was committed. It also needs to be seen whether the appellant husband himself was present at the house at that time. In **Syed Ibrahim v. State of A.P., reported in (2006) 10 SCC 601,** it was held as follows:-

> 11. When the place of occurrence itself has not been established it would not be proper to accept the prosecution version.

e) <u>The presence of the appellant husband at the alleged PO has not been proved even at a prima facie level</u>

59. The fifth necessary link in the chain of circumstances was the presence of the appellant husband, acquitted father and acquitted in-laws of the victim in the matrimonial home at the time of the crime. The evidence on record clearly establishes that the father-in-law and the mother-in-law of the victim were not

present at the house at the time of the crime, if at all the victim was murdered in her matrimonial home. The father-in-law was at a shop. The mother-in-law was at her job. She worked as an Anganwadi worker.

60. As for the husband, the prosecution adduced no positive evidence that he was at the matrimonial home. The learned trial judge inferred his presence from his silence. The Ld. trial Judge found that the husband remained silent after finding that his wife had been murdered. He lodged no complaint. The learned trial judge expected him to take immediate steps after finding the victim murdered in her matrimonial home.

61. The learned trial judge did not examine the conduct of the appellant husband from any other point of view. The evidence of the father and the brother of the victim establish that on the request of the appellant husband, a neighbor of the husband called them to inform them that the victim was seriously had died.

62. Therefore, the husband informed the family of the victim after finding her dead. The learned trial judge assumed that the husband's failure to take prompt steps made him guilty of the crime. It therefore appears that the learned trial judge superimposed an obligation on the husband that he should have lodged a police complaint before the arrival of his in-laws, the parents of the victim. In **Krishan Kumar &Anr v. The State of Haryana reported in 2023 INSC 679,** it was held as follows:-

> 20. Before appreciating the oral testimonies of PW-10, PW-8 and PW-7 and the manner of their appreciation by the courts below we think it apposite to consider the question **whether the 'last seen theory', in its application, *could brook presumptionas to the presence of the deceased along with the accused just prior to the occurrence*, as drawn by the trial Court, in the *absence of positive ocular evidence* of prosecution witnesses of having seen the deceased in the company of the accused together and alive at a time proximate to the occurrence.**

> 21. ***We have absolutely no hesitation to answer it in the negative as otherwise the application of the theory of 'last seen' in the absence of any other positive evidence to conclude that the accused and the deceased were last seen together would be hazardous***, as held in Satish' case (supra). ***Its indirect application is also impermissible***.
>
> Emphasis applied

63. In **Ashok v. State of Maharashtra, reported in (2015) 4 SCC 393,** the Court held that the victim was last seen with the accused is not enough. The Court must note the status and condition of the relation between the victim and accused to infer whether the accused has any reason to eliminate the victim. The evidence of last seen must be clinching, free from any chink. Paragraphs 12 and 20 of **Ashok decision (supra)** is set out below**:-**

> 12.....**Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt.**
>
> 20. From the above discussion, we conclude that the prosecution has not brought ***any clinching evidence in support of the last seen together theory so as to shift the burden of proof on the appellant-accused.***
>
> Emphasis applied

64. The evidence on record has established that the appellant husband and the victim loved each other before their marriage. The learned trial judge found that the prosecution failed to prove any torture or demand for dowry by the appellant husband and his family. At the time of the victim's death, she and the appellant husband had a 2.5-year-old minor daughter. The last seen principle does not call upon the accused to prove his absence at the PO in absence of the positive evidence adduced by the prosecution that appellant husband was in the house on the fateful day. The last seen theory not corroborated by any other evidence is an unsafe

hypothesis as held in **Ganpat Singh v. State of M.P., reported in (2017) 16 SCC 353** to sustain a conviction of murder as follows:-

> 12..... The mere circumstance that the appellant was last seen with the deceased **is an unsafe hypothesis to found a conviction on a charge of murder in this case.** The lapse of time between the point when the appellant was last seen with the deceased and the time of death is not minimal. The time of death was estimated to be between two to four weeks prior to the recovery of the body.

65. The trial Court examined the appellant husband under Section 313 of the CrPC. He denied that he asked PW-4 to make a call to PW-1 and infrom the latter that the victim is dead. As stated above, in the complaint to the police, PW-1 stated that he received a call from the acquitted father–in-law that the victim is dead. In the trial, PW-1 deposed that PW-4 informed him that the victim is dead. There is therefore an utter lack of clarity as to whether PW-4 at all made any call to PW-1. This throws a doubt on whether the husband was at all near his house. None of the questions put to the appellant explicitly suggested that the appellant was in the house when the body was found.

66. An examination under Section 313 of the CrPC elicits the version of the defense.The absence of an explanation under Section 313, CrPC, may lead the court to draw an adverse inference against the accused. That inference cannot be drawn to fill up the gaps in the prosecution's case. The answers given there is not a piece of substantive evidence. Reliance on those answers to infer a positive fact is, therefore, dangerous. The silence of the accused on the questions under Section 313, CrPC, does not call for and sustain an order of conviction when the prosecution has not proved by any positive evidencethat the appellant husband was present at the alleged PO. In **Santosh Gurung Appellant Versus State Of Sikkim, reported in 2026 INSC 1073, it was held as follows:-**

> We may in this connection refer to the decision in Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan17. While explaining the relevance of statements made by the accused under Section 313 of the Code, it was held as under:
>
> > "36. In view of the above, the law on the issue can be summarised to the effect that statement under Section 313 Cr.P.C. is recorded to meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish explanation of the incriminating material which had come against him in the trial. ***However, his statement cannot be made a basis for his conviction.*****His answers to the questions put to him under Section 313 Cr.P.C. cannot be used to fill up the gaps left by the prosecution witnesses in their depositions. *Thus, the statement of the accused is not a substantive piece of evidence* and therefore, it can be used only for appreciating the evidence led by the prosecution, *though it cannot be a substitute for the evidence of the prosecution*.** *In case the prosecution's evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of his statement cannot be made the sole basis of his conviction.* The statement under Section 313 Cr.P.C. is not recorded after administering oath to the accused.
>
> An adverse inference can be taken against the accused only and only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same. However, the accused has a right to remain silent as he cannot be forced to become witness against himself." **Thus, when it is found that the chain of circumstances relied upon by the prosecution is not complete and that the same does not inspire confidence for its acceptance, *the response of the appellant recorded in his statement under Section 313 of the Code cannot be a circumstance against him, especially when other circumstantial evidence is not found to be satisfactory pointing out to the guilt of the appellant alone and none other.***
>
> Emphasis applied

67. The learned trial Judge inferred that the appellant was present at the matrimonial home because the appellant husband asked PW-4 to call the victim's father-in-law and tell PW-1 that she was dead since the house of PW-4 was opposite to the matrimonial home of the victim. PW-4 deposed that he was on the village road, directly opposite the matrimonial home, when the appellant told him to make the call. His evidence, therefore, does not establish that the appellant was actually inside the matrimonial home.

68. The father-in-law was also present outside the house. The trial Court acquitted him. The first inquest proceedings recorded that the father-in-law found the door locked from inside and had to break it open because no one responded. The appellant husband's presence in the area around the house does not place him inside it.

69. The Ld. Trial judge assumed that when an offence is committed in the matrimonial home, the husband is bound to respond and file a complaint. In ***Ranjit Singh v. State of Punjab*, reported in (2011) 15 SCC 285,** it was held that merely because the crime is committed in the matrimonial home does not call for an explanation as to where the husband was when the crime was committed and failure to furnish an answer by him will not sustain an order of conviction as follows:-

> **8.** We have heard the learned counsel for the parties very carefully and had gone through the record. The trial court had gone into the evidence and observed that there was no evidence to connect the appellant with the crime. **It is true that the incident happened in the matrimonial home and some presumption regarding the special knowledge, etc. could be raised in such a situation. But the basic onus on the prosecution is to prove its case and the onus does not change merely because the victim is the wife and the accused the husband and the incident happened in the matrimonial home.**

Emphasis Applied

70. In **Anees V. The State Govt. Of NCT, reported in 2024 INSC 368**, the Court held that the prosecution cannot adduce positive evidence on each particular of a crime committed in the close secrecy of a house. In such a case, the inmates of the house may be called upon to explain what happened to the victim. The judgment, however, immediately qualified this proposition. It held that the prosecution must prove that the husband and wife had a strained relationship. That strain extended

to the point of ending the life of one another. Paragraph 54 of **Anees**(**supra**) are set out below:-

> 54. Cases are frequently coming before the courts where the husband, **due to strained marital relations and doubt as regards the character,has gone to the extent of killing his wife.** These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, like in the case at hand, even if he is a witness of the crime, would come forward to depose against another family member.
>
> Emphasis Applied

71. The prosecution has failed to prove that the relationship between the victim and appellant husband was strianed. The invocation of the last seen theory is therefore seriously doubtful.

72. It cannot be ruled out that the victim and appellant husband experienced the ordinary wear and tear of marriage and may have entered into some squabbles. Such squabbles cannot be a ground to assume the guilt of the husband, least of all in a case of murder. In **State of M.P. v. Phoolchand Rathore, reported in (2024) 18 SCC 401,** it was held as follows:-

> 39..... Otherwise also, quarrels and disputes between husband and wife are every day phenomena and not such an event which may create a strong suspicion of an impending crime much less murder. **More so, where, as in the present case, marriage is subsisting since long with children from the wedlock**. Further, this circumstance by itself is not so clinching as to conclusively point towards the guilt of the appellant by ruling out possibility of a third-party hand in the murder.
>
> Emphasis Applied

73. In the light of the aforesaid findings, this Court is of the view that Section 106 of the Evidence Act, 1872, is not attracted, making it incumbent upon the appellant to explain that he was not in his house at the time and place where the victim was killed.

74. The victim was definitely murdered after being administered poison by throttling her. She was set on fire to eliminate the evidence. Such acts cannot be unimpeachably imputed to the appellant husband in the absence of any positive evidence of presence of the appellant husband in the matrimonial home of the victim. Even a piece of last seen evidence mustsupportedby some other evidence.

75. This Court cannot infer the guilt of the appellant husbandfor the murder of his wife solely from the fact that she died in her matrimonial home. This would amount to the proposition that a husband should invariably be held guilty of murdering his wife when he could not show that he was not with his wife in her matrimonial home. This would amount to a grave miscarriage of justice. The prosecution has to *prima facie* prove that the husband was with his wife.

76. Since most the vital and necessary links in the chain of circumstances like motive, last seen theory have not been proved, the chain of circumstances against the appellant is not complete, much less established. Even assuming for the sake of argument that the Trial judge's view may be a plausible view, in view of the discussions made hereinabove, the benefit of doubt should go the accused.

CONCLUSION

77. For the reasons stated herein above, the instant appeal being CRA 16 of 2025 succeeds and is allowed. The impugned order of judgment and conviction shall stand set aside.

78. The appellant shall be at full liberty, if not wanted in any other case.The appellant shall execute a bond to the satisfaction of the Learned Trial Court, which shall remain in force for a period of six months under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023.

79. The appellant is stated to be on bail. Appellant, He shall be discharged of his bail bonds after expiry of six months in terms of Section 437A of the Code of Criminal Procedure.

80. Let a copy of this judgment be sent down to the Court below for information.

81. Trial Court records along with copy of this judgment be sent down at once to the learned Trial Court for necessary compliance.

82. Urgent Photostat certified copy of this judgment, if applied for, be furnished to the parties expeditiously.

(*Rajasekhar Mantha,*

Anuj Singh, J.

1. I have had the advantage of reading the judgment proposed by my learned brother. I agree with His Lordship that Shibani Das died a homicidal death by throttling following antemortem intake of carbolic acid, and that her body was burnt after her death. With respect, however, I am unable to concur with the proposed order of acquittal of the Appellant.

2. This appeal is directed against the judgment of conviction dated 26.11.2014 and the order of sentence dated 27.11.2014 passed by the learned Additional Sessions Judge, Bankura, in Sessions Trial No. 02 (04) of 2013, arising out of Sessions Case No. 04 (07) of 2012. By the impugned Judgment the Appellant was convicted for commission of offences punishable under Sections 302 and 201 of the Indian Penal Code. The appellant was sentenced to suffer rigorous imprisonment for life for commission of the offence punishable under section 302 IPC and was further sentenced to suffer rigorous imprisonment for 5 years and to pay a

fine of Rs. 50,000 i.d, to suffer rigorous imprisonment for 1 year, for the offence punishable under Section 201 IPC. The substantive sentences were directed to run concurrently.

3. Shibani, then aged about 21 years, lived with the appellant at her matrimonial home in village Netkamla. The couple had a 2 year-old daughter. On the morning of 17.4.2012, Shibani's father, Dhruba Das, PW-1, received a telephone call from Netkamla. He was initially told that Shibani was seriously ill and was asked to come to the matrimonial home immediately. Within an hourthereafter, he was informed that she had died. On reaching the matrimonial home, PW-1 saw his daughter lying dead in a burnt condition on the verandah.

4. Her father, PW-1, thereafter lodged a written complaint with Saltora police station, which was registered at 1.05 pm. Although the father of the deceased initially believed that his daughter had died of burns, the post-mortem examination subsequently disclosed a different cause of her death.

5. Immediately upon receipt of the written complaint dated 17.4.2012 and registration of the FIR, the investigating officer of the case reached the matrimonial home and found the dead body. An investigation report was prepared by SI, DipankarSaha in the presence of five witnesses, and an Inquest Report was prepared by the Block Development Officer, Saltora Development Block, in the presence of three witnesses. The dead body was sent for postmortem, and on 18.04.2012, the postmortem on the deceased was conducted, where the cause of death was identified.

6. Upon investigation of the case, the police submitted a Charge Sheet against the appellant, his father Tapan Das and mother, Suchitra Das. Charges were framed under sections 498A/304B IPC and alternatively,

302/34 IPC read with Sections 201/34 of the Indian Penal Code and were read and explained to the accused, to which each of them pleaded not guilty and claimed to be tried.

7. Mr.Jayanta Narayan Chatterjee, Sr. Advocate has submitted that in order to prove its case, the prosecution examined 15 prosecution witnesses. The defence examined one defence witness. Ld. Senior Counsel has taken the Court through the entire deposition.

8. PW-1, the father of the deceased, deposed that the couple had married five years earlier and that a female child had been born to them. He deposed that the mother-in-law had teased the deceased over domestic issues and that he had given gifts to his daughter at the time of her marriage. He further deposed "The dispute between them was increasing day by day.". On 17.04.2012, at 9.40 a.m., a neighbour of the appellant informed him that his daughter was seriously ill. An hour later, he was informed that she had died and was asked to visit her matrimonial home. On reaching the house, PW-1 saw his daughter lying dead in a burnt condition on the verandah and all the inmates of Kanchan's house were present. He also found kerosene oil there.

9. PW-2, the brother of the deceased, gave a similar account of the incident and the circumstances preceding his sister's death. He deposed that he wrote the complaint at his father's dictation and accompanied him to the police station, where they lodged it.

10. PW-3, a resident of the village, stated that the investigating officer had not interrogated him. The prosecution thereafter obtained leave to cross-examine him. In cross-examination by the defence, he stated that Goyala Bandh was a pond near his village. He further stated that he had not heard that the villagers had brought Shibani's body from the pond.

11. PW4, also a co-villager, was the person, who upon being asked by the appellant informed PW1 over the phone about the death of the deceased on the fateful day. PW4 deposed that on the date of occurrence, when he was in the village and near the appellant's house the appellant had asked him to inform the father of Shibani about the death. He deposed that after receiving the information, "the father, brother, and others from Deshuria came to the place of occurrence." He then said that he heard that local villagers had brought the body of the deceased from Goyala Bandh pond to her matrimonial home.

12. PW5 was also a resident of the village. As he deposed that he was not interrogated by the police, the prosecution sought to cross-examine this witness. Upon the prosecution cross-examining the said witness, the defence also expressed the desire to cross-examine him. In the course of cross-examination by the defence, PW5 stated that he saw Shibani going to Goyala Bandh pond at about 8.55/9.00 am. He stated that he returned to his house at 9.15/9.20 am, and after returning, he came to know that Shibani died at Goyala Bandh pond. He stated that the local villagers carried the body from there and kept it in the courtyard of Tapan's house. He further deposed that "At about 10.00 am on that day, police came to our village. I stated all those things to the police officer at that time."

13. PW6 was the person who had accompanied the PW-1, along with others, to the matrimonial home of the deceased. He went there upon being informed of her death. He denied that any local villager had mentionedthat Shibani was killed at the bathing ghat of the pond.

14. PW7 reiterated the incident of death of the deceased and stated that he was not interrogated by the IO.

15. PW8 ran a Paan shop at Chandra More, which is situated 1 or 1.5 km away from Netkamla village. In cross examination, he deposed that he saw local people bringing the body of Shibani from Goyala Bandh pond at about 11/11.30 am. It is pertinent to note that PW-8 was one of the witnesses to the investigation report prepared by the investigating officer of the case.

16. PW 9 was the Sub-Inspector and Officer-in-Charge of Saltora P.S. on 17.04.2012. That day he received a written complaint from Dhruba Das of village Deshuria, P.S. Gangajalghati, District Bankura. On that complaint he started Saltora P.S. Case No. 33/2012 dated 17.04.2012 under Sections 498A/304B/34 IPC and Sections 3 & 4 of the Dowry Prohibition Act against the accused.

17. PW10 was the aunt of the deceased who deposed that Shibani was an introvert and that she had found that Shibani had become feeble lately. She stated that she saw the dead body. She deposed "There were black marks on the body as if the body was shown having been burnt". On touching her, she felt that the body was not burnt.

18. PW 11 is the uncle of the deceased. He said the I.O. never questioned him. He identified the Appellant and the appellant's father and mother in court. He also stated that the deceased was not treated well by her in-laws.

19. PW-12, Dr Suparna Dutta, conducted the post-mortem on 18.04.2012 and stated that on dissection of the neck, she found a "fracture of left greater cornu of hyoid bone with haematoma surrounding fracture site". As to the timing of the burns, she recorded that on dissection of the respiratory tract, "no soot is found thereby determining that the burn being postmortem". On the place of burning, her words were **"**Extensive soot deposition determines closed space burn**".** She further observed that the "absence of defence injury points towards subject being made

unconscious prior to death". In her final opinion, she recorded that "death was due to violent mechanical asphyxia by throttling", that there was "ante mortem intake of poison having phenolic smell" and that "the burn injuries were postmortem in nature". She concluded, "Manner of Death - Homicidal". The expression **"closed space burn"** thus refers specifically to the burning of the body after death. The doctor attributed that inference to the extensive deposition of soot. PW-12 expressly recorded that "extensive soot deposition determines closed space burn". In her opinion, therefore, the post-mortem burning took place in an enclosed space. This circumstance weighs against the suggestion that the body was set on fire on the open bank of Goyala Bandh pond.

20. PW-13, a resident of Gangajalghati, accompanied PW-1 to Shibani's matrimonial home after PW-1 informed him that she was ill. PW-13 deposed that on their arrival, "the mother in law of Shibani was crying. The mother in law also informed us that Shibani committed suicide". They asked where Shibani was and went to the verandah, where they found her lying dead, her body covered with a cloth. PW-13 saw cut vegetables in utensils and clothes hanging. He found no sign that a fire had broken out there. This aroused their suspicion, and they rushed to Saltora Police Station.

21. PW 14 was the B.D.O. of Saltora. On 17.04.2012 on the direction of the S.D.O. Sadar Bankura and in the presence of witnesses, PW 14 held the inquest over Shibani Das, wife of Kanchan Das, in Saltora P.S. U.D. Case No. 06/12 dated 17.04.2012. He said he found the body almost fully burnt, with an injury mark on the forehead, and that his detailed observations are recorded in the report. PW-15 is the investigating officer of the case, who described the steps taken by him and all the documents collected in the course of the investigation of the case. He gave a detailed account of the case and was cross-examined by the defense. He visited the place of

occurrence and drew a rough sketch map with index. He held an inquest over Shibani Das's body, seized articles under a seizure list dated 17.04.2012 (Ext. 4/2), and took five photographs (Mat. Ext. I).

22. The prosecution had exhibited the following documents:

Ext. 1: Written complaint lodged at Saltora P.S

Ext. 1/1: Signature of the scribe, Sanjay Das, on the written complaint
Ext. 1/2: O.C.'s receiving endorsement on the written complaint

Ext. 2: PW 1's signature on the police inquest report dated 17.04.2012
Ext. 3: PW 1's signature on the inquest report prepared by the Magistrate (B.D.O.)
Ext. 3/1: Inquest report prepared by the B.D.O. Saltora
Ext. 4: PW 3's signature on the seizure list dated 17.04.2012
Ext. 4/1: PW 8's signature on the seizure list
Ext. 4/2: Seizure list dated 17.04.2012
Ext. 5: Formal FIR, Saltora P.S. Case No. 33/2012 dated 17.04.2012
Ext. 6: Post-mortem report
Ext. 7: Rough sketch map with index
Ext. 8: Viscera report
Mat. Ext. I: Five photographs of the dead body and the place of occurrence (PW 15)

23. After closure of the prosecution evidence, on 20.2.2014 the learned trial court examined the appellant under Section 313 CrPC. In the course of his examination before the trial court, the appellant admitted that PW-1 had come to his house with his son and other relatives (Question 9). He, however, denied that they had found Shibani lying dead in a burnt condition (See questions 10 and 19). When the evidence of PW-1 regarding kerosene oil was put to him, he answered, "It is totally false" (Question 12). He also categorically denied the statement of PW4 that he had asked

PW4 to inform Shibani's father of her death and that PW4 had made the call from his mobile phone. See questions 23, 24. When asked whether he had any further comment to make, he answered, "No" (Question.42). Although the defense during cross-examination had elicited evidence from PW-5 and PW-8 regarding the alleged removal of the body from Goyala Bandh pond, the appellant himself gave no account of it in his examination.

24. Section 313 CrPC casts a duty upon the accused to furnish an explanation regarding any incriminating material that has been produced against him. Although an accused may choose to remain silent or even remain in complete denial when his statement under Section 313 CrPC is being recorded, the Court would, in such an event, be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. In this context, see *Phula Singh v. State of Himachal Pradesh* (2014) 4 SCC 9, paragraph 11

> ***"11.*** *The accused has a duty to furnish an explanation in his statement under Section 313 CrPC regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 CrPC is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide Ramnareshv. State of Chhattisgarh [(2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382] , Munish Mubar v. State of Haryana [(2012) 10 SCC 464 : (2013) 1 SCC (Cri) 52 : AIR 2013 SC 912] and Raj Kumar Singh v. State of Rajasthan [(2013) 5 SCC 722 : (2013) 4 SCC (Cri) 812 : AIR 2013 SC 3150] .)"*

25. Had the deceased died outside the matrimonial home and her body thereafter been brought there, the appellant would, in the ordinary course, have disclosed those circumstances. The most natural response would have been for the appellant to disclose:

(a) who first saw the dead body at the pond,

(b) who informed him and his family that Shibani had been found dead there,

(c) how and by whom her body was carried to the matrimonial home,

(d) given the substantial disfigurement of the face visible in the photographs, who identified the body and how the identification was made within such a short time,

(e) why the villagers carried the body to his house instead of calling him to the pond where it had been found and identified,

(f) at what time the body was brought to the house, and

(g) how it came to be placed on the covered verandah when PW5 stated that the villagers had kept her body in the courtyard.

26. Yet he offered no such explanation. The appellant's failure to do so assumes significance when considered alongside the mother-in-law's assertion that the deceased had committed suicide and the statement recorded at the Inquest that the father-in-law, upon returning from purchasing poppy seeds, found the door locked from within and after it was forcibly opened, discovered the deceased lying burnt and face down on the floor. Taken together, these circumstances weaken the veracity of the subsequent plea that the deceased died elsewhere and her body was brought home. This background lends support to an adverse inference against the appellant. The analysis of the evidence made hereunder further strengthens the adverse inference and demonstrates why the defence version cannot be accepted.

Analysis of Evidence

a) Nature and cause of death.

27. The nature and cause of death of Shibani have been proved by the postmortem report dated 18.04.2012, marked as Exhibit 6, the evidence of

the postmortem doctor, Dr. Suparna Dutta, PW-12 and the Viscera Report marked Exhibit 8. This evidence must be read together with the evidence that the relatives who initially saw an extensively burnt body of Shibani at the matrimonial home, and the written complaint was lodged on the understanding that Shibani had died of burning.

28. Upon postmortem, the injuries discovered after dissection of the neck showed the real cause of death. PW-12 found extravasation of blood on the left side of the neck, "a fracture of the left greater cornu of the hyoid bone" and a haematoma surrounding the fracture. On these findings, she expressed the opinion that "death was due to violent mechanical asphyxia by throttling" and that the manner of death was homicidal. The PM doctors opinion is based on the internal injuries recorded in the PM report. Nothing in the cross-examination shakes her evidence or forms a sufficient basis for rejecting the said conclusion. It is therefore held that Shibani suffered a homicidal death by throttling after she was poisoned.

29. The postmortem report further reveals that after the deceased died, her dead body was attempted to be burnt. PW-12, in her postmortem report, has noticed "extensive burns, external deposition of soot, and a smell of kerosene emanating from the body of the deceased". On dissection, she found no soot in the respiratory tract. Reading these observations with the other features of the burns, she concluded that "the burnt injuries were postmortem in nature". The visible condition of the body could have led the relatives to believe the cause of death to be burning. However, the subsequent internal examination disclosed that throttling preceded the burning. The PM Doctor also found poison in the body of the deceased.

30. The suggestion that the death was caused by suicidal burning is therefore demolished by the finding of the PM Doctor. The finding of poisoning provides a further circumstance in the sequence of death. PW-12 described

"a tough, leathery appearance of the stomach" and detected "a phenolic smell" associated with the contents. She recorded her opinion that there had been "ante mortem intake of poison having phenolic smell".

31. Exhibit 8 being the result of forensic examination of the viscera reads "Carbolic acid has been detected in the viscera said to be of Shibani Das. No poison has been detected in the sample preservatives used in the above viscera." The chemical examination recorded in Ext. 8 detected carbolic acid and corroborated this aspect of her opinion. The antemortem intake of carbolic acid is thus established by the forensic evidence.

32. PW12 further observed that theabsenceof defence injuries indicated that the deceased had been made unconscious before her death.In her cross-examinations, she explained the connection she drew between the findings of poisoning, throttling, and subsequent burning. This evidence completely explains the absence of evidence of resistance on the part of the deceased.

33. Something of great significance and has relevance to the place of occurrence is the opinion of PW12, where she states that "extensive soot deposition determines closed space burn". The postmortem doctor proved that the body had been burnt in an enclosed space. This evidence of an independent witness, the post-mortem doctor, which was not challenged in cross-examination,completely demolishes the suggestion that the burning occurred on the open bank of the pond.

34. The above medical and chemical evidence establishes homicidal throttling, antemortem intake of carbolic acid, and postmortem burning, with the doctor deposing that such death occurred in an enclosed space are significant pieces of evidence which cannot be ignored.

35. In light of the aforesaid medical and forensic evidence, it is now necessary to examine the evidence on the place of occurrence.

b) Placeofoccurrence: Matrimonial Home orGoyala Bandh pond.

1. Matrimonial Home

36. PW-1, 2, and 13 have deposed that upon reaching Shibani's matrimonial home, they found her lying dead in a burnt condition at the veranda. PW-6 saw her body at the house, covered with a cloth. The police report under Section 174 CrPC records the covered veranda as the place where the body was found. The inquest, being Exhibit 3/1, records that PW1 identified the body at the matrimonial home at 2:35 pm. The sketch map (Exhibit 7) and the photographs being Mat Exhibit 1 series show the position of the body within the matrimonial home. The seizure of a container of kerosene oil with a loose lid from the house, along with the smell of kerosene recorded by the doctor are other evidence that need consideration.

37. In this context, the statement recorded in the Investigation Report under Section 174 of the CrPC is also relevant.

> *"Place where body was found: On the floor of the covered veranda of a one-storied pucca building of Tapan Das at Netkamla village."*
> *"Column 9 : Opinion of witnesses as to cause of death:*
> *According to the opinion of witnesses it was known that to-day on 17.04.2012 in the morning approximately at 9 a.m. the father-in-law of the deceased, Tapan Das, saw the door closed from inside, returning from the shop. When no sound was heard from inside after calling much the door was opened forcefully from outside, and it was seen that the deceased was lying dead with the face on the floor in the concrete room. Immediately he called people and came in sight publicly (sic).*

38. These materials and evidence firmly establish the location and condition of the body when the witnesses and investigating authorities arrived and examined it.

39. The earliest document regarding the discovery of the dead body was on 17.04.2012. The police report records that Tapan Das returned from the

market after purchasing poppy seeds, found the door closed from within, and thereafter forcibly opened it to discover Shibani lying burnt and face down on the floor. Sunil Kumbhakar (PW8) is one of the witnesses to that report. The appellant herein also separately witnessed the magisterial inquest.

40. It is significant to note that neither of the reports contains any reference to discovery at the pond or removal by the villagers. This assumes importance because PW-8, for the first time at the trial on 16.05.2013, claimedthat he saw villagers bringing the body of Shibani fromGoyala Bandh pond at about 11/11.30 am. The above evidence conclusively establishes that the dead body was discovered indoors and at the matrimonial home.

41. The medical evidence of the PM doctor gives a further circumstance requiring consideration. PW-12 recorded that "extensive soot deposition determines closed space burn" and opined that the burns were post-mortem. Her opinion supports the inference that the body was burnt after death in an enclosed space. It weighs against burning on the open bank of the pond as suggested by the defence.

42. It is pertinent to note that***Pedda Narayana v. State of A.P.*** **(1975) 4 SCC 153, and** ***Shakila Khader v. Nausheer Cama*** **(1975) 4 SCC 122** hold that an inquest under Section 174 CrPC is concerned only with the apparent cause of death. It need not record the names of the accused. A three Judge Bench in ***Khujji @ Surendra Tiwari v. State of M.P.*** **(1991) 3 SCC 627** approved *PeddaNarayana*. It reiterates that the absence of a name or version in the inquest does not imply the person was absent or the case false.

43. More recently, in ***Bhagat Singh v. State of U.P.*****, 2026 SCC Online SC 918**, the Supreme Court held that omission of the accused's name from the

inquest cannot by itself be a valid reason to doubt the involvement of a person later named. On these authorities PW-1's silence at the inquest goes to weight and not to the root of the case, and the FIR remains the first information.

44. This Court is of the view that the oral evidence, the physical evidence and the contemporaneous records establish that Shibani's burnt body was found on the covered verandah of her matrimonial home when her relatives and the investigating authorities arrived. The police report additionally records an earliest narration of discovery inside a room. This must be considered with due regard to the limited purpose of the inquest. The question that remains is whether the body had been brought to the premises from Goyala Bandh pond, as subsequently asserted by PWs 5 and 8. Their evidence must therefore be examined before a final conclusion is reached on the place of occurrence.

(ii) Goyala Bandh Pond.

45. It is now necessary to examine the submissions of Mr Chatterjee, Sr. Advocate and the evidence relating to the Goyala Bandh p.ond. The story of removal of the dead body from Goyala Bandh hinges substantially upon the evidence of PWs 5 and 8. It is necessary to examine what each witness personally observed and whether their statements are in same tune with the contemporaneous records and the other testimony.

46. PW3 stated that there was a pond outside the village, but he said that he had not heard the villagers brought Shibani's body from there. PW4 expressly stated that he did not see Shibani going to the pond and had only heard of her removal. PW3 admittedly did not see anything, while the evidence of PW4 is hearsay.

47. PW5 said he saw Shibani proceeding towards the pond at about 8.55-9 am, and after returning home at about 9.15-9:20 am, he heard that she had died there. He later on went outside and stated that villagers carried the body of Shibani to Tapan's courtyard. It is pertinent to note that PW5 did not state that he 'saw' the local villagers carrying the body to the courtyard of Tapan. He further deposed that at about 10 am on that day, the police came to the village, and that "I stated all those things to the police officer at that time". In the same deposition, PW5, however, categorically stated that 'I was not interrogated by the police'. Both these statements do not reconcile. The statements of PW5 are further not believable in view of the fact that, according to him, he saw Shibani proceeding towards the pond at 8.55-9 am. By 9.20 a.m., when he reached home, he learnt that Shibani had died.Further, that the gruesome murder of the girl in broad daylight, the identification of the substantially burnt dead body and the circulation of the news of the death to the appellant and the villagers could all have taken place within an interval of 20–25 minutes is improbable and not acceptable.

48. PW8 had a Paan shopowner deposed that he saw local people bringing the body of Shibani from Goyala Bandh pond at about 11/11.30 am. It is pertinent to note that PW-8 was one of the witnesses to the investigation report conducted by the investigating officer of the case. The aforesaid deposition of PW8 does not inspire confidence when examined with the other contemporaneous records and other unimpeachable documentary evidence. PW8 also happened to be a witness to the investigation report conducted in the very afternoon.The Investigation Report contains a description of discovery of dead body at the matrimonial home, yet he made no reference to the alleged discovery of the body earlier in the day at the pond. In the considered opinion of this Court, if the dead body was found outside the matrimonial home and was carried to the residence of the accused by villagers, such fact could not have been missed in the

narration. The timing of 11.30 am, when he saw the dead body being carried, also does not reconcile with the statement of PW6, who stated that when the father of the deceased left the matrimonial home, it was about 10.45 am or thereafter. Surprisingly, neither PW8 nor any other person identified a single person from the village who allegedly saw the dead body near the pond or carried the same to the matrimonial home of the deceased.

49. There is no evidence on record as to who discovered the dead body at the said pond. A bare and/or vague assertion has been made to suggest that the local villagers carried the dead body from the pond to the matrimonial home. Such bare assertion, without any further details as to the person who discovered the dead body and carried the same to the matrimonial home further belies the case of defence.

50. Upon cumulative analysis of the oral and documentary evidence on record, this Court finds that Shibani's dead body was discovered within the matrimonial house. The police investigation report records the fact of discovery inside the house, and the relatives, the investigating officer, and the inquest officer also found the body on the covered veranda. PW8 participated in the police investigation on the same day, yet the report contains no reference to the removal of the body from the pond, which he later claimed as a witness. His statement is inconsistent with other witness on whose evidence the defence seeks to rely and the failure of either witness to identify any person who discovered or carried it, does not inspire any confidence of the court. These deficiencies become blatant and of significance when read together with the contemporaneous evidence of discovery of the body inside the room and the initial explanation of suicide given by the mother-in-law.

51. For these reasons, this Court rejects the story that the body was discovered at Goyala Bandh Pond and thereafter carried to the house. This Court holds that the place of discovery of the body was the matrimonial home.

c) The appellant's presence at the material time.

52. The above finding is on the issue where Shibani's body was discovered. A distinct question is whether the evidence on record proves that the appellant was present when she was murdered. It is therefore relevant to consider what evidence relating to the appellant's presence in the matrimonial home is available.

53. Shibani and the appellant ordinarily resided together in their matrimonial home, where his parents also lived. PW4 deposed about his conversation with the appellant when PW4 was asked to convey the news of Shivani's death to her father. PW1 deposed that the appellant was present when the family arrived and found lying Shibani dead. Both the witnesses thus describe the events after Shibani's death. The question is whether their evidence, read with the evidence relating to the movement of other occupants on the fateful morning, can lead to an inference that the appellant was present at the time of the fatal assault upon Shibani.

54. In *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681, at paragraph 22 the Supreme Court observed that *"where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show shortly before the commission of crime they were seen together or the offence takes place in the dwelling house where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."*

55. Similarly,in *Uma v. State*, 2024 SCC *Online* SC 2994 the Supreme Court observed that

> "*Undisputedly, the Appellants and the Deceased resided together since the marriage of the Deceased to Accused No.2, which substantiates their presence at the time of occurrence of the incident; and consequently the invocation of Section 106 of the Evidence Act cannot be faulted.*"

56. In *Jayantilal Verma v. State of M.P.*, (2021) 12 SCC 71, the Supreme Court considered the place of death, the occupants of the house and the possibility of access by an outsider. In paragraph 24, the Court observed that "*the most important aspect is where the death was caused and the body found. It was in the precincts of the house of the appellant herein where there were only family members staying…there was no possibility of somebody from outside coming and strangulating the deceased and that too without any commotion being caused or any valuable/jewellery missing*".

57. In the present case, the medical evidence establishes that Shibani died of throttling, and the evidence discussed above establishes that this occurred at her matrimonial home.In view of the aforesaid and given the undisputed fact that the appellant lived with the deceased at the same matrimonial home, the failure of the appellant to explain circumstances, especially within his exclusive knowledge, results in indicating a strong circumstance against the appellant.

58. It is not in dispute that the appellant ordinarily resided with the deceased at the matrimonial home. The occurrence took place in the early hours of the morning, a time when the members of a household would ordinarily be present in the home. The appellant has not set up any plea of alibi, nor has he suggested either in the cross-examination of the prosecution witnesses or in his examination under Section 313 CrPC that he was elsewhere when his wife met her death. On the contrary, the evidence of PW4 shows that within a short time of the occurrence the appellant was near the house, already aware of Shibani's death and arranging for the

news to be conveyed to her father. When PW-1 and his relatives arrived, the appellant was present at the house as he himself admitted in answer to Question 9 of his examination under Section 313 CrPC. Whether and when the appellant was away from the home on that morning are facts within his knowledge, and under Section 106 of the Evidence Act the burden of proving them remained upon him. He has offered no explanation whatsoever. In these circumstances, and in view of the principle laid down in *Trimukh Maroti Kirkan*, this Court holds that the appellant, who normally resided in the dwelling home with the deceased, was present in the matrimonial home at the time of her death.

d) Foundational facts for application of Section 106 of the Evidence Act

59. In light of the foregoing discussion, the foundational facts needed to invoke Section 106 of the Evidence Act stand established in this case, which can be summarized as under:

a) Shibani ordinarily resided with the appellant at the matrimonial home, where her body was discovered.
b) Shibani died an unnatural death with injuries to the neck, including the fractured hyoid bone, establish homicidal death by throttling.
c) The medical findings and the detection of carbolic acid in the viscera establish ante-mortem intake of poison.
d) She was then extensively burnt after her death. PM Doctor, PW12's finding of post-mortem burns, with extensive soot deposition indicating that the burning occurred in an 'enclosed space'.
e) The smell of kerosene on the body and the recovery of a kerosene jar from the matrimonial premises near the dead body.
f) The contemporaneous discovery of dead body inside the house, the relatives deposition and the official records support the conclusion that the occurrence took place within the matrimonial premises.

g) PW4 deposed that the appellant was near the house, aware of Shibani's death and arranging intimation to her father. PW1 subsequently also saw him at the premises on arrival.

h) The appellant falsely denied asking PW4 to telephone Shibani's father and providing his mobile phone for the call.

i) No steps taken by the appellant upon discovery of dead body to inform the Police.

j) The statement of the father in law that after he returned from the market on the fateful morning he found Shibani locked in her room and upon forceful entry found her lying dead with the face on the floor in the concrete room.

k) The mother-in-law told PW-13 and others that Shibani had committed suicide.

l) The Investigation Report by the Police recording the place of occurrence as the matrimonial home witnessed by four people and the Inquest Report conducted at matrimonial home witnessed inter alia by the husband.

m) No explanation given by the appellant relating to the unnatural death of Shibani who died within four corners of the matrimonial death.

n) Silence of the Appellant at the stage of examination 313 CrPC and even subsequently during the trial in explaining the circumstances of unnatural death.

60. Upon the above foundational facts having been established, the burden of proving how Shibani died inside the house is a fact, especially within the knowledge of the appellant, and as such, the burden under Section 106 of the Evidence Act stands attracted. The Supreme Court in ***Anees v. State (NCT of Delhi)*, (2024) 15 SCC 48**, (See: Para 51) held that Section 106 of the Evidence Act shall apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the guilt of the accused.

61. In ***Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681** (See: Para 15), the Supreme Court held that where murder is committed in secrecy inside a house, "*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.*" The appellant answered "False" to every incriminating question under Section 313 Cr.P.C. and gave no account of the unnatural death.

62. In ***State of U.P. v. Dr. Ravindra Prakash Mittal*, (1992) 3 SCC 300** the Supreme Court held the medical evidence disclosed that the wife died of strangulation and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time, but could not prove the same. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation.

63. In ***Jayantilal Verma v. State of M.P.*, (2021) 12 SCC 71** (Para 24), also being a case of death by strangulation wherein the family set up a false explanation, the Court said, "*the most important aspect is where the death was caused and the body found. It was in the precincts of the house of the appellant herein where there were only family members staying.* "The Court held (Para 25) that the husband "*was under an obligation to give a plausible explanation regarding the cause of the death in the statement recorded under Section 313Cr.P.C.and mere denial could not be the answer in such a situation.*"

64. In ***Gauri Shankar v. State of U.P., 2026 SCC OnLine All 20672***, the deceased, Preeti, was harassed for dowry by her husband and parents-in-law. She telephoned her father to say they were beating her and would kill her, and when he arrived he found her dead at the matrimonial home

with injuries on her neck. Several witnesses in that case turned hostile who could have provided relevant facts. The Court noted (para 16) that "*nine witnesses of fact have been examined, where a number of them are blood relatives of the deceased, but they have turned hostile in the dock evidence.*" Yet it could not dilute the burden under Section 106. The Court held (para 32) "*burden under Section 106 of the Evidence Act would lie upon the appellants to explain how the deceased came to be done to death in a most violent manner within the four corners of her matrimonial home. Absent that Explanation by the appellants, by as much as a hint even in the statements under Section 313 CrPC, this is a clinching link of circumstances pointing to the appellants' guilt.*" The court further held (para 34) that "…*The appellants having not come forward with an Explanation about the circumstances in which the victim met an unnatural death* or *was violently murdered in her matrimonial home, leads to the inescapable conclusion taken together with the other circumstances in their entirety that it was the appellants, who did her to death.*"

65. In the present case too, P.W. 3 and P.W. 5 turned hostile, and the appellant offered no explanation under Section 313Cr.P.C, as to how his wife died at their home.

66. The appellant's attempt to move the place of occurrence outside the house was rejected in the unreported judgment of a Division Bench of the Allahabad High Court in ***Indrajeet v. State of U.P.****Criminal Appeal No. 4518 of 2012, decided on 15.12.2022*. There it was argued that the murder took place outside the house because the body lay in the courtyard. The Court found that the deceased was throttled inside her room, and that (para 96) "*the body was brought in the Aangan (Courtyard) and the scene of the crime was made up by the appellants in such a manner that it would appear to be the case of hanging. The villagers and other family members initially informed the informant and other family members of the deceased that she had committed suicide.*" The Court held (para 87) that even if the death had occurred

outside the house, it was their duty to report to the police. The court invoked section 106 of the Evidence Act to hold the husband guilty of murder.

67. Further, in ***Hasmat Molla v. State of West Bengal,*****2023 SCC OnLine Cal 1735** a co-ordinate Bench of this High Court found that the wife's body was recovered from a pond near the matrimonial home, and the Court held (para 41) "*it was incumbent, by dint of Section 106 of the Evidence Act, 1872, for the appellant no.1 to explain how the victim came to be found murdered and her dead body was discovered from the pond nearby her matrimonial home.*" The Court invoked the principles of Section 106 Evidence Act to hold the husband guilty of murder.

68. In ***Ramkishan Digambar Jadhav v. State of Maharashtra*****, 2026 SCC OnLine SC 2307,** the defence of the husband was "*categorically excluded and refuted by the medical evidence and post-mortem findings*" (para 38), and the Court held (para 40) that "*The failure of the appellant-Ramkishan to furnish a plausible explanation and in discharging the burden cast upon him by virtue of Section 106 of the Evidence Act coupled with the introduction of a false defence, provides an additional incriminating link that completes the chain of circumstantial evidence.*"

69. Recently the Supreme Court in ***Gour Acharjee v. State of Tripura*****, (2026) 8 SCC 149 held as follows"**

> **"30.** It is well settled that if an offence takes place inside the privacy of a house, though the initial burden to establish the case would be on the prosecution there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the victim succumbed.
>
> **31.** In the landmark judgment of *Trimukh Maroti Kirkan* v. *State of Maharashtra* [*Trimukh Maroti Kirkan* v. *State of Maharashtra*, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] , this Court had the following telling observations to make: (SCC pp. 689-91, paras 13-15)
> "*13.* ……..

14. If an offence takes place inside the 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. 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. (See *Stirland* v. *Director of Public Prosecutions* [*Stirland* v. *Director of Public Prosecutions*, 1944 AC 315 (HL)] , quoted with approval by Arijit Pasayat, J. in *State of Punjab* v. *Karnail Singh* [*State of Punjab* v. *Karnail Singh*, (2003) 11 SCC 271 : 2004 SCC (Cri) 135] .) 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. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (*b*) appended to this section throws some light on the content and scope of this provision and it reads:

'(*b*) *A* is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.'

15. 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 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*."

(emphasis supplied)

33. In the present case, PW 14 clearly states of the presence of the appellant when the body of the deceased was found hanging. It was also early morning and it is believable that the appellant would be in the house. In any event, that fact is not denied by him because it was the appellant who informed PW 7, though he told PW 7 that the deceased had committed suicide. When confronted with the circumstances under Section 313CrPC, the appellant did not choose to offer any explanation. The appellant did not endeavour to

> discharge the burden and to explain the injuries on the deceased by offering a plausible explanation. His defence that it was a case of suicide has been belied by the overwhelming medical evidence. Even if we discount the aspect of discovery of the hammer that does not carry the case of the appellant any further."

70. Applying these principles, this court accepts the evidence of PW 4 that on the fateful day, the appellant asked him to inform PW1 of Shibani's death and gave his mobile phone to make the call. PW 4 personally made that call, which establishes that the Appellant knew of her death before her family arrived and found Appellant near the dead body.

71. The Appellant had personal knowledge of all the circumstances. The examination under Section 313 Cr P. C. specifically afforded him an opportunity to explain them. He denied to come up with any explanation or prove story of death at the Goyala Bandh pond, which was eventually run at the trial. The Court, on appreciation of the evidence has rejected the case of the defence that the death occurred at the said pond, for lack of any cogent and believable evidence in support thereof. This court also finds several false and contradictory stands taken by the appellant and his family members. This Court accordingly holds that the Appellant has failed to discharge the evidentiary burden under section 106 of the Evidence Act.

e) Cumulative assessment of the evidence.

72. The facts and circumstances proved by the prosecution must now be considered together. Shibani suffered a homicidal death by throttling after she was given anti-motem carboxylic acid. Her dead body was thereafter burnt, and the doctor's findings conclusively prove that the burning was in an enclosed space. For all the reasons discussed above, this Court has rejected the story that the villagers discovered the body at the pond and carried it to the matrimonial home. The contemporaneous evidence of

discovery of the dead body at the matrimonial home, the physical condition of the body, the evidence of the relatives and the villagers, the forensic and medical evidence all lead to support the finding that the offense took place within the matrimonial home.

73. The fact that the appellant was present at the place of occurrence is also well established. PW4's evidence proves that the appellant was beside his house when the news of Shibani's death was first communicated to the father. The appellant was the first person who disclosed and circulated the news of the death. It was he who requested PW-4 to call PW-1 to call PW1. Soon thereafter, everybody who reached the matrimonial home found the appellant there with the dead body.

74. The appellant's examination under Section 313 CrPC must also be considered. He admitted that PW1 had come to his house with his son and relatives, but denied their statement that Shibani was lying burnt on the veranda. The said statement also goes contrary to the documentary records, namely the investigation report, the inquest report and other reports that conclusively prove that the dead body was found at the matrimonial home. This court, therefore, accepts the testimony of PW4 regarding interaction and finds the appellant's denial false. The answers given by the appellant in examination under Section 313 CrPC gave no explanation of the circumstances in which his wife suffered the injuries, within the matrimonial home or otherwise. The adverse inference arising from the failure substantiates the prosecution case, which is otherwise independently established against him.

75. I have also considered the absence of an established motive to kill. The evidence of matrimonial discord does not, by itself, establish the intention or motive to kill. However, it is also now well-settled that if the offense is otherwise proved, the failure to establish a motive does not render the

judgment of conviction bad or make it liable to be set aside. In this context, reference can be had to**Sukhpal Singh v. State of Punjab (2019) 15 SCC 622** for this proposition.

76. On a cumulative analysis of evidence, this court finds that Shibani was murdered. She died of homicidal throttling inside her matrimonial home, and her body was burnt after death. The circumstances narrated above indicate that the appellant, being the husband, killed Shibani, and such an inference excludes all reasonable hypotheses that any other person committed the offense. This Court is accordingly satisfied that the prosecution has proved the charge of murder against the appellant beyond reasonable doubt. This Court therefore confirms and affirms his conviction under Section 302 IPC.

f) The offence under Section 201 IPC

77. The conviction of the appellant under Section 201 IPC is now taken up for consideration. In order to establish the said offence, the prosecution is required to prove that the offence was committed, that the accused knew or had reason to believe that it has been committed, and that he has caused evidence of its commission to disappear with the intention of screening the offender from legal punishment.

78. PW12's evidence establishes that Shibani's body was burnt after death. A substantial part of the body was burnt. The smell of the kerosene and the presence of soot corroborate the conclusion that the body was deliberately set on fire, after the murder of the victim. The burning of the deceased’s body had covered external signs of violence and showed that the death was caused by fire only.

79. In fact, the PW1 and others present at the matrimonial home initially understood that the death was caused by fire. The father's initial complaint to the Police also attributed the death to burning only. It was only the postmortem report that disclosed that the death was caused by poisoning and throttling. The medical report has conclusively proved that the dead body of Shibani was set on fire only after the death was caused. The sequence of these acts clearly establishes and/or proves that burning was done to conceal the dead body.

80. The role of the appellant in burning the dead body must be assessed upon an overall examination of the circumstances discussed above, namely, the discovery of the burnt dead body inside the home, the medical opinion of PW12 stating that the burning took place in an enclosed space, the kerosene found at the matrimonial home near the dead body, the presence of the appellant and the knowledge when the death was communicated to the family at the instance of the appellant.

81. For the above reasons, this Court finds that murder of the deceased and the subsequent act of burning the dead body formed part of successive acts orchestrated by the appellant. Having murdered his wife, the appellant knew of the offense, and the deliberate burning of the body was intended to conceal its evidence and/or to screen himself from punishment. This court accordingly affirms the conviction under Section 201 IPC.

g) Conclusion

82. For reasons as aforesaid, CRA 16 of 2015 is dismissed, and the Judgment and Order of conviction dated 26.11.2014, along with the order of sentence dated 27.11.2014, passed by the learned Additional Sessions Judge, Bankura, in Sessions Trial No. 02 (04) of 2013, arising out of Sessions Case

No. 04 (07) of 2012are affirmed. The sentences of rigorous imprisonment for life under Section 302 IPC and rigorous imprisonment for 5 years with fine of Rs. 50,000 under Section 201 IPC, with rigorous imprisonment of 1 year in case of default in payment, hereby stand affirmed. The sentences would run concurrently as directed by the learned Trial court.

83. The appellant, who is stated to be on bail, shall surrender before the trial court within a period of 4 weeks from the date of this Judgment to serve the remaining part of his sentence. In the event the appellant fails to surrender before the trial court within the time stipulated herein, the learned trial court shall issue a warrant of arrest and take steps in accordance with law to compel his appearance before the Court and execute the sentence.

84. In view of the difference of opinion between us, let the Appeal, together with both opinions, be placed before the Hon'ble Chief Justice for appropriate orders in terms of Section 392 of the Code of Criminal Procedure, 1973.

85. Urgent certified copy of this judgment, if applied for, shall be supplied to the parties upon compliance with all requisite formalities.

Anuj Singh, J.