IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1237 of 2011

Arising Out of PS. Case No. -157 Year- 2008 Thana -Thakraha District- WEST CHAMPARAN (BETTIAH)

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ANIL RAI S/O SH. RAMJEE RAI RESIDENT OF VILLAGE- BARARHIYAN , P.S.- THAKRAHA (BHITAHA O.P.) , POST - CHILWANIYA , DISTRICT- WEST CHAMPARAN AT BETTIAH.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR .... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Kanhaya Pd. Singh, Sr. Adv.
Mr. Nityanand Tiwary, Adv.

For the Respondent/s : Mr. A.K. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
And
HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)

Date: 14-12-2016

Sole appellant Anil Rai has been found guilty for the offences punishable under Section 302/34 IPC, 201/34 of the IPC vide judgment of conviction dated 01.12.2011 and sentenced to undergo R.I. for life as well as fined of Rs.5000/- in default thereof, to undergo imprisonment of six months for an offence under Section 302/34 IPC, R.I. for two years for an offence punishable under Section 201/34 of the IPC with a further direction to run the sentences concurrently with a further direction of set off the period having undergone during pendency of trial in terms of Section 428 of the Cr.P.C. vide order dated 02.12.2011 by the Fourth Additional Sessions Judge, Bagaha, West Champaran in Sessions Trial No.188 of 2009 / 157 of 2010.

2. PW.6, Sudama Singh gave his fardbeyan on 21.11.2008 at 10:30 AM at the house of his daughter Guddi Devi (deceased) lying at village Bararia before police official of Bhitaha (O.P.) disclosing therein that on the same day at about 08:00 AM his another daughter Maya informed that she came across the news of murder of Guddi whereupon he along with his son

Awadhesh as well as other family members came at the house of Guddi where they saw dead body of Guddi. On query made from neighbours, he came to know that her husband Anil Rai along with his father Ramjee Rai and brother Ashok Rai committed murder of Guddi in the preceding night by throttling and then put the dead body on fire keeping it in the Aagan in order to give it a colour of suicide. The motive for occurrence has been shown as Anil Rai happens to be drunkard and was in a way to get his appointment under Shiksha Mitra and for that, he was insisting upon Guddi to bring Rs.1,50,000/- from his place. Guddi had disclosed the same, whereupon he shown his inability as, he has to marry another daughter. He also came to know that Anil Rai has developed illicit relationship with his Bhabhi and for that, he was regularly assaulting Guddi. Awadesh Kumar Singh (PW.2), Manoj Rai (PW.3) and Amar Kumar Singh (PW.13) stood as FIR attesting witness.

3. On the basis of the aforesaid fardbeyan, Thakraha (Bhitaha O.P.) P.S. Case No.157/2008 was registered under Section 302, 201/34 of the IPC whereupon investigation commenced and during course thereof, as appellant was apprehended, on account thereof, charge sheet was submitted against him keeping the investigation pending against other co-accused whereupon, cognizance of offence was taken and ultimately, the appellant put on trial by way of commitment on account of offences being exclusively triable by the court of Session which ultimately concluded adverse to him, hence this appeal.

4. The defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. Furthermore, it has also been pleaded that deceased was fade up on account of unemployment of appellant whereupon she committed suicide. However, neither any DW nor any document has been exhibited on his behalf.

5. The learned counsel for the appellant challenging the verdict of guilt and sentence recorded by the learned lower court has submitted that the finding so recorded by the learned lower court is neither substantiated by the ocular evidence available on the record nor could be found sound in accordance with law. Furthermore, it has been submitted that save and except PW.2, PW.3 and PW.6 none had supported the case of the prosecution. So far evidences of PW.2, PW.3 and PW.6 are concerned, they are inconsistent, contradictory amongst each other whereupon their evidences became unworthy, uncredible, unreliable, more so, being not an eye witness to occurrence, have got no acceptability, admissibility in the eye of law.

6. It has further been submitted that actual manner of occurrence has been suppressed by the prosecution intentionally purposely, however defence succeeded in exposing the same, during course of cross-examination of the PWs. In order to substantiate the same, it has been submitted that from the evidence of PW.2 Para-12 and 14, it is evident that he along with Upendra (Not examined) had gone to P.S. and gave oral information regarding the occurrence which ought to have been recorded by Officer-in-charge of the Bhitaha Outpost as fardbeyan because of the fact that said information relates with commission of cognizable offence but the same has not been brought up on record. Aforesaid event is found fortified from the evidence of PW.3 Para-20 whereupon it is evident that PW.2 and PW.3 have gone to P.S. where PW.2 had submitted written information before the Officer-in-charge, Bhitaha Outpost. Again, the prosecution failed to bring aforesaid information which could be an earliest prosecution version and for that, no explanation has been furnished at the end of the prosecution. In the aforesaid facts and circumstances, the present fardbeyan could not be recognized as First Information Report as is hit by Section 162 Cr.P.C. Hence, the whole prosecution case, right from its inception is found non-entertainable in the eye

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of law and is accordingly, fit to be rejected.

7. It has also been submitted that in terms of Section 300 of the IPC there should have been proper identification of the culprit in order to array him as an accused responsible for causing death of the deceased. Because of the fact that none of the prosecution witnesses have identified the appellant to be responsible for causing death of deceased by way of strangulation as found by the doctor PW.13 so, even the death being homicidal will not attract culpability of the appellant for the same. In its continuity, it has also been submitted that finding could not be based upon conjecture and surmises that too merely on the basis of status of the appellant to be husband of the deceased nor could be held accountable therefor. In the background of the fact that majority of the prosecution witnesses have not deposed with regard to presence of appellant at the time of occurrence, as such appellant could not be fasten with the liability.

8. It has further been submitted that from the conduct of PW.14, the Investigating Officer, it is evident that he had not investigated the case in impartial way more particularly to ascertain the theme of suicide and in likewise manner, intentionally, purposely failed to incorporate the relevant objective finding relating to the P.O. In order to substantiate the same, it has been submitted that all the witnesses belonging to village of appellant have consistently said that during course of occurrence the door was closed from inside and after breaking the door, they gone inside the house and found deceased under flame lying in Aagan. Therefore, it was expected at the end of the Investigating Officer to have seen where latch having affixed over door was broken/uprooted. Furthermore, as the door was found closed from inside, and when it was broken, deceased was found under flame without having presence of Appellant, which suggests only one conclusion over commission of suicide by the deceased.

9. It has also been submitted that for attracting applicability of Section 106 of the Evidence Act, first of all the prosecution was under obligation to prove culpability of the appellant. Because of the fact that prosecution failed to identify the appellant to be author of the crime, on account thereof, the burden which lies upon the prosecution could not be allowed to stifle and further, shifted upon the appellant in terms of Section 106 of the Evidence Act thrusting upon him to explain. Therefore, the cumulative effect of the infirmities as pointed out rules out complicity of the appellant to be author of the crime whereupon, the finding so recorded by the learned trial court appears to be perverse, cryptic and is fit to be set aside. At its fag end it has also been submitted that though no document has been filed but in separate trial, the father and brother of appellant have already been acquitted and so. Appellant could not be convicted on similar nature of evidence.

10. Controverting the submission raised on behalf of appellant, it has been submitted by the learned Additional Public Prosecutor that learned lower court had minutely analyzed the prosecution evidences whereupon based its finding holding the appellant guilty for causing death of his wife inside his house by way of throttling and then, to screen himself as well as destroying the evidence of commission of murder as well as to divert the investigation set ablaze the dead body to give commission of suicide. Consequent thereupon, did not attract interference.

11. In order to substantiate its case, prosecution had examined altogether seventeen PWs out of whom PW.1 is Toppu Rai, PW.2 is Awadesh Kumar Singh, PW.3 is Manoj Rai, PW.4 is Bijali Rai, PW.5 is Santosh Rai, PW.6 is Sudama Singh, PW.7 is Prabhu Nath Rai, PW.8 is Baijnath Rai, PW.9 is Yogendra Keshri, PW.10 is Raghunath Mushahar, PW.11 is Ranawati Devi, PW.12 is Parma Nand Thakur, PW.13 is Amar Kumar Singh, PW.14 is Rameshwar Dubey, PW.15 is Uma Rai, PW.16 is Meet Verma, PW.17 is

Bishwanath Dubey. Side by side also exhibited Exhibit-1 Series – Signature of informant as well as the attesting witness over fardbeyan and other documents, Exhibit-2 –Fardbeyan, Exhibit-3–Inquest Report, Exhibit-4 – Postmortem Report. As stated above defence had not examined any witness nor exhibited any document.

12. As per evidence of PW.16, Dr. Meet Verma, he conducted postmortem over dead body of deceased Guddi on 22.11.2008 at 09:30 PM and found following ante-mortem injuries:

> External Exam – Both eyes closed, mouth open, tongue protruded out. Blood tinged froth from mouth. Finger nail marks on both sides of front of neck. Extensive postmortem burns (no sign of inflammations and burn) seen all over the body and hair burnt also. Rigor mortis present in all four limbs.
> Internal Exam - Head and Neck – Intact and congested. Bruises seen on the front and sides of neck around the larynx. No fracture of hyoid bone or laryngeal and trancheal rings found.
> Thorax: Heart intact and all four chambers filed partially with dark blood. Lungs intact and congested and dark blood.
> Abdomen: Stomach filled partially digested food material, liver, spleen and both kidneys: Intact and congested.
> Intestine: Intact and congested.
> Bladder: Partially filed urine and intact.
> Both Genetical: Intact and seen postmortem burns.
> Cause of death: Asphyxia due to throttling, extreme postmortem burns all over the body.
> Time elapsed since death: Within 48 hours.

13. During course of examination, nothing has been found to discredit his finding as, the defence could not be able to demolish his evidence on the crucial finding that deceased was done to death by means of throttling and then thereafter she was put under fire. So, burn injuries as found by the doctor happens to be postmortem and on account thereof, it rules out self inflicted and being so, it could not be a case of suicide.

14. In ***Harijan Bhala Teja v. State of Gujarat*** reported in ***2016 CRI.L.J. 2565***, it has been observed:

> "**16.** Modi's Medical Jurisprudence and Toxicology on strangulation explains that strangulation can be defined

as the compression of the neck by a force other than hanging. Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body. On internal injuries Modi's Medical Jurisprudence says that it should be noted that the hyoid bone and superior cornuae of the thyroid cartilage are not, as a rule, fractured by any other means other than by strangulation.

17. In Mandhari v. State of Chattisgarh (2002) 4 SCC 308, while appreciating somewhat similar facts, this Court observed as under: -

"4. .... The post-mortem report prepared on autopsy conducted by Dr P.C. Jain (PW 8) shows that there was ligature mark on the neck of the deceased which was ante-mortem. The opinion of the doctor is clear and definite that such ligature mark of 5 cm width in horizontal position cannot be caused by hanging but could have been caused by strangulation. Medical evidence, therefore, completely falsifies the case of the appellant that on his return from the field to his house he had found his wife hanging and thus she had committed suicide. The conduct of the accused is also not natural. When he found his wife hanging by the neck, he neither raised any hue and cry nor called any villagers living nearby. He all alone brought down the body hanging from the roof. He thereafter did not report the matter immediately. When villagers collected, he took a plea that she had committed suicide. He also did not report the matter on his own but, as is deposed by Dilboodh (PW 2), Kotwar, it is on his insistence and of the Sarpanch that he reported the matter to the police. These witnesses also stated that the wife had complained in the past to the Panchayat that the appellant was ill-treating her and was not providing her food.

5. After hearing learned counsel appearing and on going through the record, we find no ground to take a different view of the evidence. The accused in his examination under Section 313 CrPC had admitted that he was in the house and on hearing a sound had rushed to find his wife hanging by the neck. His defence that his wife committed suicide has been found to be false and the same is not corroborated by medical evidence. The above facts coupled with the circumstances that they were not leading a congenial marital life, the unnatural conduct of the accused subsequent to the incident, the spot map (Ext. 7) showing the rafter of the roof to be at such height as was unapproachable for committing suicide — cumulatively lead only to one irresistible conclusion that the accused alone was the author of the crime and had taken a false defence that he had seen the deceased to have committed suicide by hanging herself."

15. So, it has conclusively been found and held that death of deceased was not suicidal rather it was homicidal by means of throttling and further, setting ablaze the dead body is subsequent events after death.

16. In the aforesaid background, now the ocular evidence is to be seen. For proper appreciation, the status of the witnesses is to be perceived. PW.2, Awadesh Kumar Singh, PW.3, Manoj Rai, PW.6, Sudama Singh, are the Naiharwala of the deceased while PW.14 is the Investigating Officer, PW.16, Doctor and remaining are of appellant's village. From the evidence of remaining witnesses save and except PW.1, it is evident that they all have stated that after hearing sound of uproar, they came to the house of appellant where door was closed from inside. They knocked the door but was not opened and on account thereof, door was pushed open and then, they saw Guddi under flame in the Aagan lying over the ground. There was no life in the body. Witnesses also stated that the P.O. happens to be thatched house but no part at it was found burnt. However, they were declared hostile as they have not supported their previous statement. PW.1 who happens to be related with PW.3 had stated that when he reached at the house of Guddi, she was under flame, but had not disclose regarding having the door closed from inside as well as having been broken by the villagers. He was also not cross-examine on that score. PW.15, uncle of appellant had not shown absence of appellant since before the occurrence.

17. Now coming to the evidences, of PW.2, PW.3 and PW.6 it is apparent that none had claimed to be an eye witness to occurrence nor they could be, as admittedly they arrived at the P.O. after occurrence so their evidences are to be independently adjudged whether they have substantiated the circumstances adverse to the appellant.

18. PW.2, brother of deceased had stated that Guddi deceased was married with appellant. The occurrence is of dated 20.11.2008. On 21.11.2008

at 7/8 A.M. they received information with regard to death of Guddi and on account thereof, they rushed and after arrival, they saw dead body of Guddi in Aagan. All the accused persons were absent. Only Uma Rai uncle of appellant (PW.15) was present. Dead body was burnt. Tongue was protruded. He had further stated that about 4-5 months ago, Guddi had disclosed that husband, in-laws were insisting upon to procure Rs.1,50,000/- from her Naihar and on account thereof, they came and explained that they are not in a position to part with money as, another sister was to be married. Appellant said that he will go outside to earn and for that at least ticket should be provided. After getting ticket of 22.11.2008 the same was handed over to the appellant on 20.11.2008. He had further stated that on query, the neighbours, have stated that on account of fire, Guddi died. He had further stated that marriage was solemnized on 26.04.2000. During cross-examination he had stated at para-11 that he proceeded over bike while others gone over jeep. In para-12 he had stated that they remained at the place of his sister about half an hour and then thereafter, he along with his cousin brother Upendra Singh gone to P.S. Other persons remained there. They have brought dead body of Guddi to P.S. In para-13 he had stated that police had recorded fardbeyan of his father at about 10-11 AM. In para-14 he had stated that he had not filed written report or fardbeyan before the police rather he simply disclosed regarding the misfortune at about 9-9:30 AM. In para-16 he had stated that after arrival at the place of his sister, they remained outside for five minutes and then thereafter, they gone inside. Door was opened since before. Cooking was being done in the Aagan and for that furnace was there. Aagan has an area of 4-5 feet long and breadth. In para-17 he had stated that body of Guddi was brunt. In para-18 he had stated that Anil was unemployed since a year. He has got thatched house. He has further stated that Guddi has one son aged about seven years and a girl aged about 5½ years. In para-19 he had stated

that he had informed his father regarding demand of Rs.1,50,000/- for appointment of appellant under Shiksha Mitra. In para-21 he had stated that first of all statement of his father was recorded and then his statement was recorded. In paras-23, 24 there happen to be contradiction but not on material point. In para-26, he had stated that Guddi was dissatisfied on account of unemployment of the appellant but she was not mentally depressed.

19. PW.3 is Manoj Rai (Husband of Maya) who happens to be brother-in-law (Bahnoi) of deceased as well as PW.2. He had deposed that the occurrence is of dated 20.11.2008 at about 10:30 PM. At that very time he was at his house. On 21.11.2008 at about 08:00 AM Uma Rai (PW.15) telephonically informed regarding death of Guddi whereupon he informed his father-in-law. Then, thereafter, he left for P.O. When he reached at the place of Guddi, He found dead body of Guddi, she was murdered and to demolish the case of the murder, she was put under fire. He had further stated that appellant was persistently demanding Rs.1,50,000/- and for that, Guddi was regularly coerced to inform her Naihar. He had further stated that on query he came to know that Guddi was throttled and then thereafter, in order to annihilate the evidence of commission of murder, she was put under fire. During cross-examination, he had shown his ignorance with regard to presence of his father-in-law at the place of Guddi on the alleged date of occurrence for getting wheat seed. In likewise manner he shown his ignorance with regard to presence of Anil at his Sasural for settlement of marriage of Ragani. In para-10, he had stated that his wife had disclosed regarding death of Guddi. In para-11 he had stated that both the children of appellant were staying at his place for the last one month and since then, they are cared by him. Anil had himself carried them to his place. In para-12 he had stated that he proceeded from his place alone. In para-13 he had stated that when he reached at the place of Guddi, his brother-in-law (Sala), father-in-law along

with co-villager of the appellant were present since before. He had gone inside the house along with his brother-in-law where dead body was. He further stated that Aagan has an area of 4-5 hand long and breadth, utensils were there. Gallon of five litre having K.Oil and a burning lamp was there. Hand pipe was also there. Dead body was lying by the side of furnace. Then thereafter they came out from the house. He alone gone in the village to inquire about cause of death while Awadhesh had gone to P.S. Tappu who happens to be Sala of his younger brother had disclosed regarding the occurrence. In para-20 he had stated that Awadhesh had filed written application before Officer-in-charge. After arrival of police, he took statement of Sudama, Awadhesh, Amar Singh, Tappu and others.

20. PW.6 is the father of deceased as well as informant. He had stated that on 20.11.2008 he was at his house. The occurrence is of 20.11.2008. On 21.11.2008 he was informed by his daughter Maya regarding murder of Guddi over which he rushed to the place of Guddi and found dead body of Guddi in naked burnt condition lying in the Aagan. Thereafter, he sent his son Awadhesh to police station. On query he was informed that his daughter was throttled to death and only to screen themselves, the accused persons after pouring k. oil over her dead body lit fire. He also disclosed that he came to know that murder was committed by her husband, Bhaisur and father-in-law. He had also disclosed that Guddi had telephonically informed with regard to demand of Rs.1,50,000/- at the end of her husband as well as father-in-law for getting employment of her husband in Shiksha Mitra. He had further deposed that marriage was solemnized on 24.04.2001. He had further stated that Guddi had begotten one son and a daughter. He had further stated that after arrival of the police, he gave fardbeyan over which Awadhesh, Manoj and Amar put their signature.

21. During cross-examination he had stated that he had not gone to

the place of Maya (another daughter). Maya had come subsequently along with her husband, children as well as son of her Bhaisur, Pintu. He had further stated that Maya had informed regarding murder of Guddi. In para-16 he had further stated that when he reached at the place of Guddi none of her family member was present save and except Uma Rai who was sitting at his Darwaja. On query he disclosed that kindly go to Aagan and see whereupon they all came inside Aagan and seen the dead body. He had further stated that about three litre of k. oil was present in a gallon lying in the Aagan, one burning lamp, two stoves were present. Dead body was also in the Aagan. K. oil was kept there. Lamp was burning near about the same. In para-19 he had stated that head of Guddi was over stove. Body was completely burnt and was blackened. He had gone along with dead body to P.S.

22. PW.13 is the witness of inquest and had confirmed the same during course of his evidence.

23. PW.14 is the Investigating Officer. He had stated that after recording of fardbeyan, he took up investigation. He had accordingly exhibited the fardbeyan, formal FIR. He had further exhibited inquest report. He had further stated that in inquest report he had mentioned in column-9 that after committing death by throttling, the dead body was put on fire in order to vanish the evidence. Then thereafter recorded statement of the witnesses. Inspected the place of occurrence. He had stated, apart from detailing topography of the house and further having the bed of the deceased intact in a room being well managed, also found one mobile, ticket beneath pillow. Dead body of deceased was found in Aagan infront of the room, completely burnt. Cloths were also burnt. Tongue was protruded. There was swelling over neck. Head of the dead body was kept over furnace. Aagan was found smeared. Also seen one lamp lying one feet away from dead body. One the gallon was found having two litre of k. oil. He had not found any sign of burning of stove nor

any evidence of cooking. It was a thatched house. Fire had not caught, any portion of the house. Then had disclosed the boundary of the P.O. North-Open Field, South-Kitchen Garden, East-Field, West-Field of the deceased. Recorded statement of other witnesses, received P.M. report and after completing the investigation, submitted charge sheet. Then thereafter, his attention towards statement of the hostile witnesses has been drawn up. During cross-examination it is evident that nothing substantial has been elicited from his mouth save and except that no seizure list was prepared for lamp as well as bucket. Furthermore, he had not made sketch map of the P.O. He had not mentioned presence of door while describing the P.O. He had not seized the burnt items.

24. So, from the evidence available on the record, it is evident that deceased Guddi was done to death by means of throttling at her sasural and the subsequent event of letting her on fire is the event of postmortem and so, the story that deceased met with suicidal event became unreliable in the aforesaid facts and circumstances of the case.

25. Much stress has been made over the disclosure made by PW.3 under para-20 that Awadhesh PW.2 had already filed written report before the police is not at all found reliable in the background of the fact that PW.3 had not accompanied PW.2. Moreover, PW.2 had not stated like so and the aforesaid evidence is found further supported with the evidence of PW.6. Apart from this, PW.14, the Investigating Officer was not at all cross-examined on that very score. Therefore, plea of defence that before the present fardbeyan of PW.6, earlier written information was already before the police at the end of PW.2 is not at all found duly substantiated, and on account thereof, the question of non-maintainability of present FIR under guise of Section 162 Cr.P.C. is also not found irrecusable.

26. As per submission, learned counsel for the appellant happens

to be emphatic on the score that none happens to be an eye witness to occurrence and so, even the death of deceased by means of throttling is not going to encircle the appellant in a way to identify him as an author of the injury.

27. It is needless to say with regard to the status of the appellant being husband of deceased. As per evidence of PW.1, Para-7, appellant was residing along with deceased separated from his parents who were residing at village-Laxmipur, Kashi Nagar in U.P. Admittedly, the occurrence took place inside the house. PW.15, Uma Singh who happens to be uncle of deceased had not spoken with regard to absence of appellant since before the occurrence. Apart from this, he under para-8 of his cross-examination corroborated evidence of PW.1 on this score. Being husband it was expected at his end to have proper explanation how deceased was throttled and then put on fire which happens to be effect at two independent stages, one ante-mortem while other postmortem. Head of deceased having hanged with stove in ideal condition, as stated PW.1, PW.2, PW.3, PW.6 and found by PW.14 Investigating Officer, confirms the same. Having no fire to thatched house, standing around the dead body, also speaks a lot about ill design. Not only this, there was no occasion for smearing the Aagan. Therefore, being inhabitant of the house along with deceased, appellant was accountable to answer, how and in what manner, the event visualized. The prosecution could not be expected to know about the event, which took place inside fore corners of the house. Section 106 of the Evidence Act deals with such situation whereunder an obligation has been put over shoulder of accused to explain the circumstances in case prosecution succeed in proving, the commission of the offence. In ***Harijan Bhala Teja*** (Supra) it has been observed:

> "19. Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant

who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly, when the prosecution has successfully proved that she died homicidal death."

28. In Gajanan ***Dashrath Kharate v. State of Maharashtra*** reported in ***2016 CRI. L.J. 1900***, it has been held:

"**12**. As seen from the evidence, appellant-Gajanan and his father-Dashrath and mother-Mankarnabai were living together. On 07.04.2002, mother of the appellant-accused had gone to another village-Dahigaon. Prosecution has proved presence of the appellant at his home on the night of 07.04.2002. Therefore, the appellant is duty bound to explain as to how the death of his father was caused. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give 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 the accused to offer. On the date of occurrence, when accused and his father Dashrath were in the house and when the father of the accused was found dead, it was for the accused to offer an explanation as to how his father sustained injuries. When the accused could not offer any explanation as to the homicidal death of his father, it is a strong circumstance against the accused that he is responsible for the commission of the crime.

13. In *Trimukh Maroti Kirkan v. State of Maharashtra* (2006) 10 SCC 681, it was held as under:-

"**22.** Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home 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. In *Nika Ram* v. *State of H.P.(1972) 2 SCC 80* it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khukhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal* v. *State of Maharashtra (1992) 3 SCC 106* the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is

under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but

consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P.* v. *Dr. Ravindra Prakash Mittal (1992) 3 SCC 300* the medical evidence disclosed that the wife died of strangulation during late night hours or early morning 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. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of T.N.* v. *Rajendran (1999) 8 SCC 679* the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime."

Same view was reiterated by this Court in *State of Rajasthan v. Parthu* (2007) 12 SCC 754."

29. In ***Jamnadas v. State of M.P.*** reported in ***2016 CRl. L.J. 3668,*** it has been held:

"**22.** In ***Trimukh Maroti Kirkan*** **v.** ***State of Maharashtra (2006) 10 SCC 681***, which is a case similar in nature to the present one, this Court has held as under: -

"**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."
>
> 24. In response to above Shri C.D. Singh, learned counsel for the State of Madhya Pradesh has referred to the case of ***Suresh and another* v. *State of Haryana 2015) 2 SCC 227***, wherein, discussing the issue in paragraph 19, this Court observed: -
>
> "**9**. ………..No doubt, the burden of proof is on the prosecution and Section 106 is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused……"

30. In ***Prithipal Singh vs. State of Pubjab*** reported in ***(2012) 1 SCC 10***, it has been held:

> "53. ……if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. *Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused*."

Same view has also been reiterated in ***Neel Kumar vs. State of Haryana*** reported in ***(2012) 5 SCC 766***, as well as in ***Gian Chand vs. State of Haryana*** reported in (***2013) 14 SCC 420***.

31. Although, PW.3 had not accompanied PW.2 in away to police station, but on his own he divulged during cross-examination that OW,2 had tendered written report to police, which is found completely controverted by the PW.2, by stating that he had simply informed the police regarding misfortune. Moreover, the police official was best person to be cross-

examined on that score. Having not cross-examined PW.14, at the end of appellant, more so in the background of casual way of speaking at the end of PW.3. Left unexplained vacuum. In ***Vinod Kumar v. State of Haryana*** reported in ***(2015) 3 SCC 138*** it has been held.

> "**29.** In this context, we may usefully refer to the authority in *State of U.P.* v. *Nahar Singh (1998) 3 SCC 561*, wherein the Court has dealt with the effect of absence of cross-examination. True it is, the factual matrix was different therein, but the observations are salient. In the said case, it has been held: (SCC pp. 566-67, paras 13-14)
>
> "*13*. … In the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:
>
> (*1*) to test his veracity,
>
> (*2*) to discover who he is and what is his position in life, or
>
> (*3*) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.
>
> *14*. The oft quoted observation of Lord Herschell, L.C. in *Browne* v. *Dunn (1893) 6 R 67 (HL)* clearly elucidates the principle underlying those provisions. It reads thus:
>
> 'I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses.'"
>
> Be it stated in the said case, this Court did not approve the conclusion of the High Court that the explanation for

> the delay was not at all convincing and the said view was expressed as there was no cross-examination. In the instant case, in the absence of cross-examination of the witness, barring a bald suggestion to PW 12, we are inclined to hold that the appellant was the author of the letters and the same were not written under any pressure."

32. Though it has not been substantiated by the document but during course of argument, it has been submitted that co-accused have already been acquitted in separate trial is found not at harmonious to the Appellant, as, the evidence of separate trial is not to be considered in the present one nor the same is an exhibit of the record after confronting witnesses. Moreover evidence of PW.1, Para-11, PW.15, Para-8 is found complete answer to the plea of the appellant. Moreover, in ***Jagtar Singh v. State of Haryana*** reported in ***(2015) 7 SCC 675*** at para-22 it has been held***.***

> "**22.** As held above, the evidence on record in no uncertain terms proves that it was the appellant who was the aggressor and hit the deceased. This evidence was rightly made basis by the two courts to hold the appellant guilty for committing the offence in question. When the evidence directly attributes the appellant for commission of the act then we fail to appreciate as to how and on what basis we can ignore this material evidence duly proved by the eyewitnesses. Such was not the case so far as the co-accused is concerned. The prosecution witnesses too did not speak against the co-accused and hence he was given the benefit of doubt. It is pertinent to mention that the State did not file any appeal against his acquittal and hence that part of the order has attained finality."

33. The object of trial is collect evidence and the efforts of the judge is to search out the truth from the materials having been placed during course of trial. In ***Daya Ram v. State of Haryana*** reported in ***(2015) 12 SCC 373*** at para-23 it has been held:

> "**23.** As the eventual objective of any judicial scrutiny is to unravel the truth by separating the grain from the chaff, we are of the opinion that in the face of clinching evidence on record, establishing the culpability of the appellants, their conviction and sentence as recorded by the courts below does not call for any interference at this end. The participation in the gory brutal attack of the appellants with the lethal weapons resulting in death of two persons,

> Ashok and Rohtash, is proved beyond reasonable doubt not only by the testimony of PW 3, the eyewitness, but also by other evidence collected in course of the investigation and adduced at the trial. On an overall appreciation of the materials on record, we find ourselves in complete agreement with the findings recorded by the courts below."

34. Thus, from evidence as produced by the prosecution suggest that in all, therefore, the incriminating circumstances established by the prosecution form a complete chain of event which does not permit any confusion or doubt with regard to the involvement of appellant in this heinous crime of murder. What makes this offence abhorrent is the fact that not only the murder was committed; the same was designed to be a case of suicide by the appellant thereby trying to mislead the Investigating Officer as well as the prosecution party as well as by such activity abused the process of law. Consequent thereupon, the appeal impugned sans merit and is accordingly dismissed. Appellant is under custody which he will continue till saturation of the sentence so inflicted.

(Aditya Kumar Trivedi, J.)

I agree

(Samarendra Pratap Singh, J.)

Prakash Narayan

AFR/~~NAFR~~	AFR
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