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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.170 OF 2022

Dhananjay Pralhad Bodkhe,
Aged about 34 Years,
Occupation : Labour,
R/o. Bhapur, Taluka Risod,
District Washim,
At present Naik Wadi,
Ward No.3 Shirpur,
District Washim.

.... APPELLANT

// VERSUS //

State of Maharashtra,
through Police Station Officer,
Police Station Shirpur,
District Washim.

.... RESPONDENT

Mr. S. D. Chande, Advocate for the appellant.
Mr. S. S. Hulke, APP for the State.

CORAM : URMILA JOSHI-PHALKE AND
NIVEDITA P. MEHTA, JJ.
RESERVED ON : 27.07.2026
PRONOUNCED ON : 04.08.2026

JUDGMENT : [Per : URMILA JOSHI-PHALKE, J.]

1. The appellant has preferred this appeal challenging the judgment of Additional Sessions, Washim dated 08.12.2021 in Sessions Case No.59/2018, by which the appellant/accused is convicted of the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and fine of Rs.10,000/-, in default to suffer rigorous imprisonment for 1 year.



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2. Brief facts which are necessary for the disposal of the appeal are as under:

The informant is the father-in-law of the accused/appellant. He lodged a report against the accused on 25.05.2008 alleging that deceased Sunita @ Rupali was his daughter and her marriage with the accused was performed in the year 2012. After marriage, she begotten three daughters and on that count the accused started ill-treating her. The deceased disclosed the said ill-treatment to him on various occasions and, therefore, he brought the deceased and accused at Shirpur and the accused and deceased started residing in the tenanted house of Dhondu Tagad. Accused was working as a driver. On 24.05.2018 at about 7.15 p.m., he received a phone call of one Ankush Deshmukh informing that something was happened in the house of Sunita. Therefore, he immediately rushed to the house of the accused and saw that Sunita was in a hanged condition, therefore, he informed the police. It is further alleged by him that it was the accused who has caused her death by strangulating her and fled away from the spot of incident. On the basis of the said report, police have registered the crime against the present accused.

3. On receipt of the information, the Investigating Officer visited the alleged spot of incident and drawn the spot



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panchnama. Initially, the police have received the information that deceased was found in a hanged condition, therefore, entry was taken in Station Diary vide No.33 dated 24.05.2018. The Investigating Officer also drawn the spot panchnama and during the investigation, recorded various statements of the witnesses. The dead body of the deceased was forwarded to conduct the postmortem examination. As per the postmortem examination, death of the deceased was not due to hanging, but it was due to strangulation. Thereafter, the accused was searched and arrested. After completion of the investigation, the chargesheet came to be filed.

4. The learned Additional Sessions Judge, after committal of the case framed the charge vide Exh.8 under Section 302 read with 498-A of the Indian Penal Code (for short "IPC"). In support of the prosecution case, the prosecution has examined in all 8 witnesses which are follows:

(i)	PW-1	Jagannath Bhivaji Kathole	Exh.13	Informant and father of the deceased
(ii)	PW-2	Pushpa Jagannath Kathole	Exh.18	Mother of the deceased
(iii)	PW-3	Shraddha Dhananjay Bodkhe	Exh.19	Eye witness and child witness daughter of the deceased and the accused



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(iv)	PW-4	Parvati Dhondu Tagad	Exh.29	Landlady of the accused
(v)	PW-5	Ankush Narayanrao Deshmukh	Exh.30	Resident of the locality
(vi)	PW-6	Dr. Sandip Deorao Wadhve	Exh.31	Medical Officer, who conducted the postmortem of the deceased
(vii)	PW-7	Babusing Raten Rathod	Exh.38	Investigating Officer
(viii)	PW-8	Harish Shrikrushna Gawli	Exh.47	Investigating Officer

5. Besides the oral evidence, the prosecution placed reliance on report Exh.14, FIR Exh.15, Spot Panchnama Exh.16, Postmortem Report Exh.32, Seizure Memo Exh.39, Arrest Panchnama Exh.40, General Diary Entry Exh.41, requisition to the Medical Officer Exh.49, requisition to the Magistrate for recording statement under Section 164 of the Code of Criminal Procedure Exh.50, requisition to the Tahsildar for drawing Map Exh.51, requisition to the Director of Forensic Science Exh.52, Duty Pass Exh.53, Viscera Report Exh.56.

6. Defence of the accused is of a total denial and the death of the deceased is accidental one. In support of his defence, he examined himself as a witness vide Exh.61.



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7. The learned trial Court after recording the evidence and on appreciating the evidence held that prosecution has proved that death of the deceased is homicidal one and accused is responsible for the death and thereby convicted him of the offence punishable under Section 302 of IPC as aforesaid and acquitted him under Section 498-A of IPC.

8. Being aggrieved and dissatisfied with the same, the present appeal is preferred.

9. Heard learned counsel Mr. Chande for the appellant/accused, who has taken us through the entire record and the evidence and submitted that as far as the ill-treatment is concerned, which is not established by the prosecution. He invited our attention towards the cross-examination and submitted that the entire cross-examination is sufficient to infer that deceased and the accused were residing together happily and the relationship between them was harmonious. He submitted that merely because death of the deceased is caused accidentally, the appellant/accused is implicated falsely in the alleged offence. He submitted that as far as the evidence of PW-3 child witness is concerned, who was tutored and, therefore, being she is of a tender age and the possibility of tutoring is not ruled out, in view of that, her evidence be discarded. He further submitted that as far as the evidence of PW-4 landlady is



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concerned, who specifically admitted that first time on that day she has seen the accused going towards his room and immediately came down and disclosed to her that see what has happened. If really the accused has done the said act, there was no reason for him to disclose the incident to the landlady. As far as the evidence of PW-5 is concerned, he was not acquainted with the accused it is admitted by him during the cross-examination. Therefore, his evidence that he has seen the accused fleeing away from the spot of incident is not believable and liable to be discarded. He submitted that the entire case is rested on circumstantial evidence and when the case of the prosecution is rested on circumstantial evidence, the entire chain requires to be established. The prosecution miserably failed to establish the said chain and, therefore, the benefit of doubts goes to the accused. In support of his contention, he placed reliance on **Satish Nirankari Vs. State of Rajasthan reported in 2017 All SCR (Cri) 1091** and **Haridas Kisan Hepte Vs. The State of Maharashtra reported in 2019 ALL MR (Cri) 3556.**

10. Per contra, learned APP Mr. Hulke, vehemently submitted that the accused has informed the landlady about the incident. She immediately rushed towards the room. The room was bolted from outside. She peeped through the window and saw



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deceased Sunita in a hanging condition and, thereafter gave a call to PW-5 Ankush. PW-5 Ankush also peeped through the window and saw deceased Sunita in a hanging condition and thereafter made a phone call to the son of PW-1, but it could not connect therefore, he called PW-1 Jagannath Kathole. As there was no communication between PW-4 Parvati Tagad and PW-1 Jagannath Kathole, therefore, she approached PW-1 at his house, thereafter PW-1 Jagannath Kathole and PW-2 Pushpa Kathole immediately rushed towards the spot of incident. It was PW-1 Jagannath Kathole, who opened the door which was closed from the outside and witnessed that the rope of cradle was encircled around the neck of deceased. He immediately informed the police and, thereafter, further investigation was carried out. He submitted that despite the lengthy cross-examination by the accused as far as the incident of causing death is concerned was not shattered. He submitted that though PW-3 Shraddha is a child witness, her competency was tested by the Court and thereafter, her evidence was recorded. Her evidence shows that the accused caught hold the neck of her mother and fastened the rope of cradle around her neck and thereafter accused bolted the room from the outside and ran away. He submitted that though during the cross-examination presence of her grand-parents was brought on record, but the child was confused and disclosed about the presence of PW-1 Jagannath Kathole and PW-2 Pushpa



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Kathole. In fact, she has mixed the earlier incident of having snacks Poha at the house of PW-1 and PW-2. However, she has specifically denied that she was tutored what to depose before the Court, therefore, though she is child witness, but her evidence was tested by way of cross-examination and which is not shattered. The evidence is further corroborated by PW-4 Parvati Tagad and PW-5 Ankush Deshmukh, both have stated that room was bolted from outside. Admittedly, deceased and the accused only were residing together along with their three daughters. There was no time for any third person to enter into and cause the death of the deceased. The alleged incident has occurred during day time. As far as any shouting or making of hue and cry by the children or the deceased are concerned, the evidence of PW-3 Shraddha itself shows that accused has raised the volume of TV and, therefore, the possibility of voice was not audible to PW-4 Parvati Tagad. He submitted that considering the case is well rested on circumstantial evidence, undisputedly prosecution has established that deceased and accused were staying together, no other third adult person was residing along with them. Accused visited the house and thereafter deceased was found dead in the house. The room was bolted outside. Death of the deceased was due to strangulation and accused fled away from the spot of incident, which is an additional circumstance. Thus, all these circumstances established by the



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prosecution and therefore, the conviction and the order of sentence calls no interference.

11. After hearing both sides and on going through the entire evidence on record, the aspect that whether the death of the deceased is homicidal or accidental requires to be answered.

12. To prove that death of the deceased is homicidal one. The prosecution mainly placed reliance on PW-6 Dr. Sandip Deorao Wadhve examined vide Exh.31. His evidence discloses that he was working as a Medical Officer at Rural Hospital, Malegaon. To show his expertise, he stated that he has conducted about 150 postmortems till 25.05.2018. On external examination of the dead body of the deceased, he found pronounced Petechiae in the white of eyes. Similarly, he found upper and lower limbs extended cynosis present. He noted following injuries:

- (i) abrasion marked over right cheek 1 X .5 c.m.
- (ii) abrasion over middle of right mandibul oval shape 1 X 1 c.m.
- (iii) multiple abrasion over left side of neck of variable size.
- (iv) two ligature mark around the neck of length 30 c.m. X 1.5 cm. intermingle with each other.
- (v) purched color scene on anterior side of neck around thyroid cartilage. Other organs were intact.



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13. He opined that from the injuries mentioned in column Nos.13, 16 and 17, the probable cause of death is asphyxia due to strangulation. Accordingly, he prepared the Postmortem Notes Exh.32. He also collected the viscera and sent for chemical analysis. His evidence further discloses that he found the struggling marks over the injuries at Serial Nos.1 to 3 in column No.17. These injuries are possible due to throttling. Throttling is one of kind of strangulation. Injury No.4 in column No.17 is possible by strangulation because of the application of the force with the help of rope. His cross-examination shows that he admitted that strangulation can be caused with the help of hands or by rope. He has not noted any fracture. He further admits that asphyxia can be caused by strangulation and hanging. But, he stated that symptoms in both the cases are different. He denied that fracture of larynx trachea occurs in every case in case of strangulation as well as hanging. He clarified that it is not mandatory in every case. He also noted the undigested food in the body. It is specifically came on record that the injuries mentioned in column No.17 are antemortem. He says that he is not sure that the injuries mentioned in the column No.17 are antemortem or postmortem. Then again he clarified that the ligature mark around the neck and the abrasions were antemortem. Thus, from the cross-examination,



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attempt was made to show that deceased was not died due to strangulation, but she died due to hanging.

14. Learned counsel for the accused/appellant submitted that the deceased died accidental death as while playing with the children, rope was encircled around her neck and she sustained the injuries. In support of his contention, he placed reliance on **Satish Nirankari Vs. State of Rajasthan** (supra) wherein the Hon'ble Apex Court observed that "Coming to the cause of death, learned counsel for the appellant had argued before us, as well as in the High Court, that as per Modi's Medical Jurisprudence & Toxicology there are 16 main distinctions in death caused by hanging or strangulation. According to medical evidence second ligature mark was ending towards back of the neck and it was oblique going upwards and ligature mark was shining. The hyoid bone was intact there was no fracture of larynx and trachea. There were no scratches, abrasions and bruises on face, mouth and ears. There were no abrasions and ecchymosed around about the edges of ligature mark. Subcutaneous tissues under ligature mark were white, hard and glistening. There were no injuries to muscles of neck. The saliva was dribbling. If the death would have been strangulation then fracture of larynx and trachea and hyoid bone was a must. There should have scratches abrasions and fingernail marks and bruises on the face



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neck and other parts of the body. Saliva would not have dribbling, ligature mark would have been horizontal and not oblique it would have lower down in the neck and not upwards to the chin. There should have been abrasions and ecchymosed round about the edges of the ligature marks. Subcutaneous tissues should have ecchymosed there should have been some injuries to muscles of neck carotid arteries, internal coat should have been ruptured, whereas there was no such rupture. Thus, he submitted that similarly in the present case, the prosecution could not prove that cause of death was homicidal.

15. Per contra, learned APP strongly opposed the said contention submitted that there is a difference between hanging and strangulation. The finding of the Medical Officer that death is due to strangulation is substantiated by the observation in Modi's Medical Jurisprudence. He submitted that in the case of strangulation face requires to be congested, livid and marked with petechiae which is present in the present case mentioned in column No.13. There were two ligature marks all around the neck. The Medical Officer specifically denied that ligature marks found on the dead body are possible by rotation by the deceased herself. Therefore, the possibility of causing of death by way of accident is remote. He submitted that the Medical Officer also admitted that it is not necessary that in every case there would



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be a fracture of larynx trachea. He submitted on the contrary, the Medical Officer has noted struggling marks over the injuries at Serial No.1 to 3 in column No.17 and throttling is one of kind of strangulation.

16. Whether the deceased died due to manual strangulation or self strangulation or by accident or by hanging is to be ascertained from the material evidence on record.

17. As per medical jurisprudence, there is difference in injuries in case of hanging and strangulation, thus:

Hanging	Strangulation
1 Suicidal usually	Homicidal usually
2 No signs of struggle	Signs of struggle
3 Ligature found in position, above thyroid cartilage, mark incomplete, directed obliquely upward with a gap indicating position of the knot with no damage to the skin in the gap	Ligature may not be with the body but when found, usually completely encircles the neck horizontally below thyroid cartilage. There may be more than one turn of ligature and there is always some damage to skin underneath.
4 Abrasions and bruises around ligature mark rare	Abrasions and bruises around ligature mark common
5 Dissection of ligature mark reveals a dry and glistening white band of subcutaneous tissue	Dissection of ligature mark reveals ecchymosed subcutaneous tissue
6 Neck usually stretched	Neck not stretched



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7	Fracture of hyoid rare	Fracture of hyoid not rare in throttling cases (in the aged)
8	Fracture of laryngeal cartilages and tracheal rings rare	Fracture of laryngeal cartilages and tracheal rings common
9	Injury to carotid arteries in cases with a long drop	Injury to carotid arteries common
10	Injury to muscles of neck rare	Injury to muscles of neck common
11	Fracture dislocation of cervical vertebrae common in judicial hanging	Fracture dislocation of cervical vertebrae rare
12	Saliva running out of the angle of the mouth vertically down along the neck and front of chest and abdomen	Saliva may not have escaped from mouth but if so, usually blood tinged and may not be vertically down
13	External signs of asphyxia may not be well marked when death is due to any cause other than asphyxia	External signs of asphyxia usually well marked because of considerable violence that is commonly employed
14	Face usually pale	Face congested and with pronounced petechiae.
15	Bleeding from nose and mouth very rare	Bleeding from nose and mouth common.

18. The throttling is defined as a form of strangulation effected by hand, and is therefore often referred to as manual strangulation. In case of strangulation, autopsy appearances may be divided into external appearances, injuries on the neck and, internal appearances. The extent and character of these



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signs will depend in large measure upon the pace and course of the asphyxia process. Signs of asphyxia may be very slight if death has supervened quickly from cardiac inhibition due to pressure on carotid sinus or vagus nerve. When the constricting force has been considerable, the signs are well marked. In addition, tongue may be bruised, bitten by teeth, and protruding. There may be injuries on the face, chest, etc, indicating a struggle. The face and eyes may show multiple petechial haemorrhages. The situation and extent of bruised area on neck will depend upon the relative position of the assailant and victim, manner of grasping the neck, and amount of pressure exercised on the throat. The bruises (ecchymoses) are often found on the front or sides of the neck, chiefly about the larynx, and above it. The confirmation of neck injuries indicate the way in which the hands have been applied to the neck. When only one hand is used to throttle, there may be a single bruise on one side due to pressure of the thumb and obliquely directed multiple bruises, one below the other, on the opposite side, due to pressure of finger pads or finger tips. Their shape may be oval or round depending upon the size of the finger tips but continued bleeding into the contused area usually increases the size, merging the bruises together. When both hands are used, the bruising pattern depends upon the relative position of thumbs and fingers, and the degree of pressure applied to the throat.



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Strangulation is defined as a form of violent asphyxia caused by constricting the neck by some means other than body weight. The means used may be a ligature, the hand (throttling), the elbow (mugging or choke-hold), or some hard object, such as a stick. In ligature strangulation, injuries to deeper tissues of neck are more common than in hanging, as a result of considerable force which is used. Homicidal strangulation is a common form of murder. In fact, strangling should be assumed to be homicidal until the contrary is proven to be more likely under circumstances. A suspicion of homicide should arise when knot is tied on the back of neck, mouth is gagged, limbs are tied, other injuries are found on the body, and signs of struggle are present. Homicidal strangulation may be committed with such silence that even persons in close vicinity may not be aware of the act since sudden and violent compression of windpipe renders a person powerless to raise an alarm or call for assistance.

19. In case of hanging, usually ligature is found in position, above thyroid cartilage, mark incomplete, directed obliquely upward with a gap indicating position of the knot with no damage to the skin in the gap. Whereas, in case of strangulation, ligature may not be with the body but when found, usually completely encircles the neck horizontally below thyroid



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cartilage. There may be more than one turn of ligature and there is always some damage to skin underneath.

20. Here in the present case, the evidence of Medical Officer, who performed postmortem examination, is a witness of fact though he gave the opinion on certain aspects of the case. This proposition of law has been stated by the Hon'ble Apex Court in the case of **Smt. Nagindra Bala Mitra and vs. Sunil Chandra Roy and another, reported at 1960 SCR (3) 1** wherein the Hon'ble Apex Court observed that "the value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. If a person is shot, at close range, the marks of tattooing found by the medical witness would show that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person." Thus, the testimony of medical witness is very important and it can be safely accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.



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21. Here in the present case, the ligature marks are shown to be two ligature marks all around the neck and length of the same is 30 c.m. and breadth 1.5 c.m. The other injuries were abrasion mark over right cheek 1X .5 c.m., abrasion mark over middle of right mandibular oval shape 1 X 1 c.m. and multiple abrasion mark over left side of neck of variable size. As per the medical evidence, these injuries are resistance injuries. The fact that ligature mark which is situated all around the neck which would clinch issue of death being the result of strangulation and would prove that death is homicidal one. The medical evidence, therefore, establishes that the death of the deceased is homicidal one.

22. The present case is one more example of a victim who lost her life in the matrimonial home. The deceased is the wife of the accused. As per the allegations, as she begotten all female children, therefore, she was subjected for ill-treatment and harassment by the accused. As per the evidence of PW-1 and PW-2, who are the parents of the deceased, the deceased disclosed to them that accused used to beat her under the influence of liquor and, therefore, PW-1 brought her as well as accused at his native place Shirpur in the year 2018 and PW-1 has obtained the rented house of one Dhondu Tagad and accused and deceased were residing there. Admittedly, the



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accused, deceased and three daughters only were residing in the said house. There was no other third adult person was residing with them.

23. It is not in dispute that the prosecution case is based on sole eye witness and other circumstances. In such cases, the prosecution is under obligation to establish chain of circumstances so complete, that it unerringly establishes the guilt of the accused and does not leave any scope for an interference consistent with the innocence of the accused. The circumstances relied upon by the prosecution must be incompatible with the hypothesis consistent with the innocence of the accused and should negate all possibilities of the innocence of the accused. The law regarding circumstantial evidence is well settled that :

"1. the circumstances from which an inference of the guilt is sought to be drawn must cogently and firmly establish;

2. though circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

3. the circumstances taken cumulatively, should form a chain so complete that there is no escape that within all probabilities the crime was committed by the accused and none else; and

4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of a guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."



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24. Sir Alfred Wills in his admirable book "Wills Circumstantial Evidence" (Chapter VI) lays down following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

25. In the light of the above settled legal position, we have to see whether the prosecution succeeded in proving the chain of circumstances to prove the guilt of the accused. The circumstances on which the prosecution relied upon can be summed up as follows:

(1) the deceased was residing along with the accused and her three daughters at the time of incident and no other third person was residing along with them;



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(2) the death of the deceased is at her matrimonial house;

(3) deceased was ill-treated and beaten under the influence of liquor.

(4) on the date of the incident accused came inside kicked the deceased, fastened the rope of cradle around her neck and bolted the room from the outside and fled away;

(5) the death of the deceased was caused in the matrimonial house is exclusively within the knowledge of the accused and the accused has not given any explanation to that effect;

(6) after the incident accused fled away from the spot of incident and was arrested on the next day by the Investigating Officer in one liquor shop.

26. To prove the alleged circumstances, implicit reliance is placed by the prosecution on the evidence of PW-1 Jagannath Bhivaji Kathole, who is the father of the deceased and who has lodged a report against the accused. His evidence discloses about the ill-treatment at the hands of the accused and disclosure by his daughter to him. As to the incident, he testified that on 24.05.2018, he received a phone call of Ankush Deshmukh i.e. PW-5 and informed him that visit the house of deceased Sunita and see what has happened there, therefore, he immediately rushed to the house of the deceased and accused and saw that door of the house was closed from the outside i.e. bolted. He opened the bolt and entered in the house. The rope of cradle was encircled around her neck. Her knees had touched



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to the ground, the three daughters of Sunita were inside the house, two elder daughters were weeping and younger daughter was lying on the cot. He immediately informed to the police about the incident and police came on the spot, thereafter he lodged a report at the Police Station. The said report is at Exh.14 and FIR is at Exh.15. During cross-examination, several admissions are brought on record which shows that as far as the ill-treatment is concerned, it came on record that he or deceased Sunita never lodged report to the Police Station that accused used to beat Sunita under the influence of liquor. He also not disclosed to anybody that accused used to beat her under the influence of liquor. It further came on record that accused was working as a driver on the vehicle of Mahesh Bhutada of Malegaon and as Shirpur was convenient place to him to attend the work and, therefore, accused and deceased were shifted at Shirpur is admitted by PW-1 Jagannath Kathole. He further admits that none of the neighbours informed him regarding the quarrel between the deceased and the accused. He further admits that deceased Sunita also not called him to her house and narrated about any quarrel between her and accused. But he stated that whenever she used to visit his house, she used to disclose about the behaviour of the accused. Prior to the incident, deceased and accused had been to the house of PW-1 Jagannath Kathole on the day of incident at about 4.30 p.m. is



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admitted by him. It was further admitted that at that time they both were there for about 30 minutes and, thereafter, left their house. The tenanted house of the accused consists of only one room. He further admits that in the room there was no sign of any quarrel. It further came in his cross-examination that when he opened the door of the house, number of people were gathered on the spot. The distance between his house and the house of deceased is only 100 fts. It further came that it is thickly populated area.

27. On the similar line, PW-2 Pushpa Jagannath Kathole, who is the mother of the deceased is examined. She reiterated that deceased has disclosed to her about the ill-treatment at the hands of accused as she has delivered only female child. Her cross-examination shows that on the day of incident i.e. on 24.05.2018 accused had not attended his duty. She also admitted that on that day Sunita and accused had been to their house at about 4.30 p.m. and they stayed there for 15 minutes and after eating the snacks left the house. She stated that she has disclosed to her relatives about the ill-treatment to the deceased. Thus, as far as the ill-treatment is concerned, the evidence of PW-1 Jagannath Kathole and PW-2 Pushpa Kathole is general in nature.



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28. The prime witness on whose evidence the prosecution relied upon is PW-3 child witness, Shraddha Dhananjay Bodkhe, who is the daughter of the deceased and accused. Before recording her evidence the trial Court has recorded the satisfaction about her competency. Her evidence is to the extent that at the time of the incident her mother was serving the food to them. Her father dealt a blow of legs at her, closed the door, raised the volume of the TV and caught hold the neck of her mother and fastened the rope of cradle around her neck. He then confined them by bolting the room from the outside and ran away. She specifically stated that she has witnessed this incident personally. During her cross-examination, an attempt was made to show that her grand-parents were also residing along with her, but she referred the grand-parents as PW-1 and PW-2. Admittedly, they were residing separately in the same village. During her cross-examination, again her competency was tested and nothing incriminating is brought on record. She specifically admitted that when her father dealt a kick blow to her mother, he was eating the Poha, her mother was also eating the Poha and her grandmother was preparing the Poha. In fact, the incident of having snacks Poha happened at the house of PW-1 Jagannath Kathole and PW-2 Pushpa Kathole. Being PW-3 Shraddha is of very tender age i.e. four years, she mixed the facts and, therefore, answered that at the time of incident



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deceased as well as accused both were eating Poha and her grandmother was preparing the Poha. On the contrary, spot panchnama drawn by the Investigating Officer shows that he has seen the rice and dal at the spot of incident. The spot panchnama is admitted by the defence and, therefore, it is marked at Exh.16. The recitals of the spot panchnama shows that there was rice and dal in one small bowl. This fact corroborates the version of PW-3 Shraddha who stated that her mother was feeding them. This fact is further corroborated by the evidence of Postmortem Report. In the Postmortem Report also it is mentioned in column No.16 that both upper and lower limbs extended cynosis in both upper and lower limbs and cooked tur dal stucked to right palm. Thus, there is corroboration to the evidence of PW-3 that at the time of incident the deceased was feeding them. Regarding the presence of any other person, the trial Court has put question to her and she specifically deposed that except her parents, no other person was present in the room at the relevant time. She specifically denied that she was tutored what is to be deposed before the Court. Thus, as far as the evidence of PW-3 Shraddha is concerned, which narrates about the incident how it happened.

29. To corroborate the version of PW Nos.1 to 3 the independent witness PW-4 Parvati Dhondu Tagad was examined.



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Her evidence shows that on 24.05.2018, in the evening, accused had gone to his room situated on first floor of her house. He came down after some time and asked her to see what happened in his room and then he fled away. She immediately gone to his room, the room was bolted from the outside. She peeped through the window and saw Sunita in hanging condition. Her daughters were around her. She then called one Ankush. Ankush tried to inform PW-1 Jagannath Kathole by calling him on phone to whom she referred as Kathole mama. He did not pick up the phone and hence PW-4 had gone to their house to inform them. The fact that she herself went to inform them is also supported by PW-2 the mother of the deceased Pushpa Kathole. During her cross-examination, she admitted that when the accused came to home, he immediately came down. She also admitted that the noise from the room of the accused was audible in her house and she did not hear any shouts or noise of Sunita or her daughters. The rope was attached to the wooden rod of roof. She specifically stated that she had not seen whether rope of swing was twisted or not. She admitted that her legs touched the ground from knee. The evidence of PW-4 that she has not heard the noise is to be appreciated in the light of the evidence of PW-3 that her father has raised the volume of TV and thereafter caught hold the neck of her mother and fastened the rope of cradle around her neck. In such circumstances,



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admittedly, there is no possibility of hearing shouts by other persons when volume of the TV was increased by the accused and during cross-examination, the evidence of PW-3 that the accused has raised the volume of the TV is not denied by the defence or she is not cross-examined on that aspect. Thus, this evidence of PW-3 Shraddha that accused has increased the volume remained unchallenged.

30. PW-5 is the another neighbouring witness Ankush Narayanrao Deshmukh whose evidence is that on 24.05.2018 at about 7.15 p.m. when he was returning towards his house, he witnessed accused running from his house and wearing baniyan and jeans pant. Thereafter, PW-4 Tagad Madam asked him to come as the sister of Mangesh (brother of the deceased) was found in hanging condition, hence he made a call to Mangesh. He also stated that when he went at the house of the accused, the door of the house was locked from outside. When he peeped through the window and found that the deceased was in a hanging condition. During cross-examination, it was brought on record that he was not acquainted with the accused Dhananjay. He was not on talking terms with him. However, he specifically stated that he had seen the accused at a distance of 10 fts. from the gate of his house. His further shows that he was knowing



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the accused as he is the brother-in-law of his friend Mangesh, therefore, these admissions are of not much relevant.

31. PW-7 Babusing Raten Rathod and PW-8 Harish Shrikrushna Gawli are the Investigating Officers, who have narrated about the investigation carried out by them. The evidence of PW-7 shows that on 24.05.2018, the complainant had informed the police that his daughter was found in a hanging condition. Thereafter, he visited the spot, drawn spot and inquest panchnama, seized the rope and drawn seizure panchnama Exh.39. On 25.05.2018 he arrested the accused by preparing the arrest panchnama and recorded the relevant statements of the witnesses. During cross-examination, he admitted that when he visited the spot the door was bolted from the inside and it was required to break. However, this admission is without any base as the entire panchnama of the spot of incident nowhere discloses that at the time of the panchnama, the door of the room was bolted from the inside. On the contrary, there is consistent evidence of PW Nos.1 to 5 that accused has bolted the door from the outside and it was opened by the PW-1. The spot panchnama is already admitted by the defence during the trial. Thus, the admission given by the Investigating Officer is without any material on record especially the spot panchnama is completely silent about the same. His further cross-examination



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specifically shows that accused was not found on the spot as he was fled away. The cross-examination itself shows that accused was arrested from one liquor shop. Thus, this fact establishes that after the incident, the accused was not at the house on the spot, but he was absconding and he was arrested from other place, which is an additional circumstances in favour of the prosecution.

32. PW-8 is also an Investigating Officer, who has narrated about the investigation. On perusal of the arrest panchnama, it reveals that accused was arrested on 25.05.2018 at about 7.51 from village Shirpur, District Washim. The said arrest panchnama is at Exh.40. The consistent evidence of PW Nos.1 to 5 discloses that accused was not found at the spot, but he was arrested on the next day from some other place. The General Diary entry bearing No.33 produced on record vide Exh.41 shows that it was the informant who gave information on 24.05.2018 itself to the police at about 19.51 that his daughter was found in the house in a hanging position and, thereafter, police staff proceeded towards the spot. Thus, the evidence on record shows that it was the PW-1 who reached at the spot before police. His evidence specifically shows that the door was bolted from outside and he opened the door. Thus, there is no reason to the Investigating Officer to break the door as it was bolted from the



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inside. Therefore, the admission given by the Investigating Officer, which is without any any base has no relevance at all. As already observed that the medical evidence which relied upon by the prosecution and discussed earlier shows that deceased has sustained the ligature mark around her neck. Admittedly, only the accused was residing along with the deceased. The evidence of PW-1 Jagannath Kathole and PW-2 Pushpa Kathole corroborated by PW-4 Parvati Tagad and PW-5 Ankush Deshmukh and PW-3 the daughter of the deceased namely Shraddha is the prime eye witness of the incident establishes the presence of the accused in the house. The cross-examination on behalf of the accused itself shows that on the day of incident accused has not attended his duty and prior to the incident, he has visited the house of PW-1 Jagannath Kathole and PW-2 Pushpa Kathole. Thus, it is not only the case of the prosecution but the defence has also supported that on the day of incident, accused has not attended the duty, but he was at the house and subsequently, the deceased was found dead. The evidence of PW-4 Parvati Tagad shows that accused came from outside and after some time he left the house and, thereafter, the deceased was found dead. The accused has not assigned any explanation regarding the injuries on the person of the deceased. The Medical Officer specifically stated that there were injuries on the



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person of the deceased which were resisted injuries i.e. injury Nos.1 to 3.

33. In the case in hand, admittedly, PW-3 eye witness of the incident. Besides her evidence the case of the prosecution rests on circumstantial evidence also. The principle based on circumstantial evidence is that the circumstances from which inference of guilt is sought to be drawn must cogently and firmly establish that those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused that the circumstances taken cumulatively should form chain of circumstances so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

34. As far as the ill-treatment at the hands of the accused is concerned, admittedly, there are general allegations. But the oral evidence of PW-1 Jagannath Kathole and PW-2 Pushpa Kathole shows that they witnessed the deceased died in the house where accused and deceased were residing along with their three minor daughters. The fact of the assault by the accused on the day of incident is narrated by PW-3 Shraddha, who is the daughter of the deceased and accused. Admittedly,



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her evidence is recorded by the trial Court after testing her competency. Admittedly, she is a child witness. The Evidence Act does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease - whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto.

35. In the case of **Pradeep v. State of Haryana reported in MANU/SC/0736/2023**, the Apex Court emphasized on the importance of preliminary examination of a child witness. It held that although oath cannot be administered to a child witness under 12-years of age yet, as per Section 118 of the Evidence Act, it is the duty of a Trial Judge to conduct a preliminary examination before recording the evidence of the child witness to ascertain if the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. It held that the Trial Judge must record its opinion and satisfaction that the child witness understands the duty of



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speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth. Here in the present case the trial Judge has put the questions and after satisfaction recorded the evidence of the child witness.

36. By catena of decisions it is held that the evidence of the child witness cannot be rejected per se, but the court, as a Rule of prudence, is required to consider such evidence with close scrutiny and on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. Here in the present case, the PW-3 is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution has rightly relied upon her testimony alone. Corroboration of the testimony of a child witness is not a Rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, which is not in a material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the possibility of the child being tutored requires to be ruled out. In the absence of any allegation regarding tutoring



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or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.

37. Here in the present case, the PW-3 has not only passes the test of cross-examination, but she specifically denied the suggestion of tutoring. Despite her cross-examination, nothing incriminating was brought on record to shatter her evidence. The child was able to choose between right or wrong and, therefore, that evidence deserves to be accepted. The PW-3 explained the relevant incident of the crime without any improvements or embellishments and, therefore, it inspire the confidence and, therefore, further corroboration is not required. It is pertinent to note that a child is always receptive to abnormal events which take place in his or her life and would never forget those events for the rest of his or her life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, admittedly, the further corroboration is not required. There has to be something on record to show that something had gone wrong on the date of incident and recording evidence of the child



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witness due to which the child witness wanted to implicate the accused falsely in a case of a serious nature.

38. In the light of the above test it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long the child is found to be competent to testify. Here in the present case, no such reason came forward to show that the child witness has some reason to implicate the accused falsely. On the contrary, she has witnessed the incident which she has narrated before the Court. On asking the question by the learned trial Court also she has answered that except the accused and deceased, there was nobody in the house. Therefore, the entry of any other third person in the house is ruled out.

39. Thus, the evidence on record shows that the alleged incident occurred in the matrimonial house of the deceased, wherein only the deceased and accused along with their daughters were residing. The death of the deceased occurred when the deceased was in the company of the accused. It is well settled that if an offence takes place inside the privacy of the house, in view of Section 106 of the Indian Evidence Act, burden is on the accused to give an explanation regarding the fact which is especially within the knowledge of the accused.



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40. It is observed by the Hon'ble Apex Court in the case of **Trimukh Maroti Kirkan vs. State of Maharashtra**, reported at **2006 ALL MR (Cri) 3510 (SC)**, 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. The Honourable Apex held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. The Honourable Apex Court has also referred decisions in the cases of **Stirland v. Director of Public Prosecution**, reported at **(1944)2 ALL ER 13 (HL)** and observed that the law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot



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

41. Here in the present case, to explain the facts the accused entered into witness box as a defence witness No.1 vide Exh.61 and testified that deceased cooked food and then they had lunch. In the afternoon his father-in-law called them as some guest were in his house, hence he along with Sunita and daughters had been to the house of his father-in-law wherein they had snacks and then returned to their house. He was addicted to the consumption of liquor in the evening and he left the house on the said day for the liquor. He stated that the death of the deceased is accidental as appears from the photographs. She might have circled the rope around her neck when she was playing with the daughters and taken round around herself as she might have slipped on the mat. Thus, his evidence also shows that he was



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along with the deceased when he returned at the house from his father-in-law's house and thereafter the alleged incident has occurred. He specifically admits that on the next day, he was arrested in the liquor shop. Thus, this admission also substantiates the fact that after the incident, he fled away and he was caught on the next day.

42. Thus, in the present case, though the death has occurred in the house, wherein the deceased and the accused were residing together and no other third person was residing along with them, presence of the accused prior to the incident established in the house. It is the accused who has to explain in what circumstances the death of the deceased occurred. Where the question of burden of proof, where the facts are within the personal knowledge of the accused, the provision of Section 106 of the Indian Evidence Act comes into play. It is true that the guilt of the accused must be proved beyond all reasonable doubts. However, where the incident occurred inside the house in a secrecy, then after proving material facts, burden shifts on the accused to give an explanation regarding the nature and circumstances in which the death of the deceased has occurred. In a case based on circumstantial evidence, when no eyewitness account is available, the another principle of law which must be kept in mind that when incriminating circumstances are put to



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the accused and the accused either offers an explanation which is found to be untrue or offers no explanation, the same becomes an additional link in the chain of circumstances to make it complete. By applying these principles, if evidence of the prosecution in the present case adduced is considered, the prosecution has proved that (1) the death of the deceased has occurred at her matrimonial house wherein the deceased was residing along with the accused and her three minor daughter; (2) the presence of the accused at the house prior to the incident and accused was addicted to drink liquor which is established by the evidence of prosecution witnesses as well as the accused has also admitted in his evidence (3) the house of the accused was found bolted from outside and the evidence of PW-4 specifically shows that it was the accused who has bolted the house from the outside; (4) the eyewitness PW-3 Shraddha also disclosed that after the assault on the deceased, accused has bolted the house from outside by confining them inside the house; (5) the medical evidence shows that the death of the deceased is by strangulation and external injuries are found on her person for which the accused has not assigned any explanation, and (6) the facts which are exclusively within the knowledge of the accused that how the death of the deceased occurred not explained.



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43. Thus, it is fully established that the deceased was being in the company of the accused, accused has assaulted her and thereafter caused her death by way of strangulation. Though the accused has claimed that death of the deceased is accidental one, which has no substance. The medical evidence shows that she died on account of asphyxia due to strangulation. The accused in his statement did not offer any explanation as to how she received the injuries which were found on her body. Thus, all the circumstances enumerated above unerringly point out the guilt of the accused and are inconsistent with his innocence, therefore, the appeal has no merits.

44. In the light of the above facts and circumstances, the appeal being devoid of merits, liable to be dismissed. Hence, it is **dismissed**.

45. Pending application/s, if any, shall stand disposed of accordingly.

(NIVEDITA P. MEHTA, J)**(URMILA JOSHI-PHALKE, J)**