
(2014) 02 BOM CK 0015
In the Bombay High Court
Case No : Criminal Appeal No. 450 of 2011

Namdeo

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235(2) 313 428

Evidence Act, 1872 — Section 106

Penal Code, 1860 (IPC) — Section 302 34 498A

Citation : (2014) 2 BomCR(Cri) 703

Hon'ble Judges : V.M. Deshpande, J; S.S. Shinde, J

Bench : Division Bench

Advocate : Satej S. Jadhav, for the Appellant; K.M. Suryawanshi, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—The present appeal is filed challenging the judgment and order dated 23/08/2011 passed by the Additional Sessions Judge, Udgir in Sessions Case No. 54 of 2008. Originally there were three accused, however, accused Nos. 2 and 3 namely Mariba Laxman Waghmare and Kondabai Mariba Waghmare respectively, came to be acquitted from all charges levelled against them. However, appellant herein., i.e. original accused No. 1 Namdeo s/o Mariba Waghmare, is convicted u/s 235(2) of the Code of Criminal Procedure for the offence punishable u/s 498A of Indian Penal Code and sentenced to suffer Simple Imprisonment for 2 years and to pay fine of Rs. 5,000/-. In default of payment of fine, to undergo simple imprisonment for 6 months. Accused No. 1 Namdeo is also convicted for the offence punishable u/s 302 of Indian Penal Code, and sentenced to suffer Rigorous Imprisonment for life and to pay fine of Rs. 5,000/-. In default of payment of fine, to undergo further rigorous imprisonment for one year. The Sessions Court ordered that, both the sentences shall run concurrently. Set off as per Section 428 of the Code of Criminal Procedure was given to accused No. 1 Namdeo since he was in M.C.R. from 13/03/2008. Bail bonds of

original accused No. 2 Mariba and accused No. 3 Kondabai came to be cancelled. The prosecution case, in nutshell, is as under:-

On 12/03/2008 the informant Mr. Shankar Sambhaji More, resident of Hokarna, lodged report in the police station, at Jalkot, stating therein that, in the month of May-2005 his daughter Sunanda was married to accused No. 1 Namdeo as per custom. In the marriage, the complainant incurred expenses of Rs. 1,50,000/-. One tola gold and other household articles were given to accused No. 1 Namdeo. Original accused Nos. 2 and 3 are parents of accused No. 1 Namdeo. After marriage Sunanda went to the house of accused persons and started residing with them. Prior to 6 months of the incident, accused Nos. 1 to 3 started giving ill-treatment to Sunanda. Baliram, brother of accused No. 1 and neighbour Anusayabai Raju Waghmare also started giving ill-treatment to Sunanda. Accused No. 1 Namdeo told Sunanda that, he is getting employment and for that Sunanda should bring Rs. 1,00,000/- from her parents. The complainant also learnt that, accused No. 1 Namdeo was having illicit relations with Anusaya Raju Waghmare. However, the complainant did not take cognizance of it. According to the complainant, for Rs. 1,00,000/- and having illicit relations with Anusaya Waghmare, accused No. 1 Namdeo brought Sunanda to the house of complainant and left her at the said place informing the complainant that unless amount of Rs. 1,00,000/- is paid to him, the complainant should not send Sunanda to his house.

It is further alleged that, after the said incident, PW-1 informant, managed some amount, and on 11/02/2008 sent his two sons Vaijinath and Baliram alongwith Sunanda with Rs. 50,000/- to the house of accused No. 1 Namdeo. Accordingly, Vaijinath and Baliram alongwith Sunanda reached to the house of accused No. 1 Namdeo at village Dhorsangwi. Accused No. 1 Namdeo quarreled with Sunanda as to why she brought less amount from her father and then rushed towards Sunanda by taking kerosene tin in presence of brothers of Sunanda. Out of fear, Vaijinath and Baliram ran away from the house of accused and came to their village. It is specific case of the complainant that, his both sons left the house out of fear after witnessing that, accused No. 1 Namdeo by taking kerosene tin rushed towards Sunanda.

It is further case of the prosecution that, on 12/03/2008 at about 8-00 a.m., one unknown person informed on telephone of Mr. Baburao Bhure i.e., villager of complainant's village that, Sunanda is serious and admitted in the hospital at Udgir and told PW-1 to come to the hospital at Udgir. As soon as the complainant received above said message, he alongwith his family members reached to the civil hospital, Udgir and found his daughter dead. It is alleged that, accused Nos. 1 to 3 and Baliram Mariba subjected Sunanda to cruelty for remaining amount of Rs. 50,000/- and by pouring kerosene ablaze her.

2. On the basis of report of the P.W.1 i.e., complainant, Police Station Officer of Jalkot Police Station registered a case bearing Crime No. 18/2008 for the offence punishable under Sections 302, 498A read with Section 34 of the Indian Penal

Code against the accused and handed over investigation to Police Inspector Ramkrishna Lobhaji Bhadre. The Investigating Officer visited the scene of offence and prepared panchnama at Exhibit-58 in presence of panch witnesses. He seized kerosene tin, some pieces of Saree from the spot and recorded the statement of the witnesses. Then he arrested the accused. On 14/03/2008 he recorded the statement of seven witnesses. Thereafter, he sent seized articles to Chemical Analyser, Aurangabad and received C.A. reports. On completion of investigation, he filed charge sheet in the court of Judicial Magistrate, First Class, Udgir against the accused Nos. 1 to 3.

On commitment, charge for the offence punishable under Sections 302, 498A read with Section 34 of the Indian Penal Code was framed against accused Nos. 1 to 3 at Exhibit-26, to which they pleaded not guilty and claimed to be tried. The defence of the accused was of total denial and false implication by the father of deceased Sunanda and police.

3. After considering the evidence on record and full-fledged trial, the Sessions Judge, Udgir convicted accused Namdeo Mariba Waghmare as stated in paragraph-1 herein above and acquitted accused No. 2 Mariba Laxman Waghmare and accused No. 3 Kondabai Mariba Waghmare. Hence, this appeal is filed by original accused No. 1 Namdeo.

This Court has received Record and Proceedings from the Sessions Court for perusal. In addition to that, learned Counsel appearing for the appellant has also placed on record private paper book.

4. Learned Counsel appearing for the appellant submits that, it shall be appreciated that, P.W.-1 Shankar More has admitted in his deposition that, his two daughters namely Shobha and Yashoda are married in well-to-do families, Yashoda resides at Mumbai and her husband is in service and husband of Shobha is also in service, however, accused Namdeo had no job at the time of marriage of Sunanda. Therefore, according to learned Counsel appearing for the appellant, it was natural for Sunanda to compare her financial status with that of her sisters and therefore, out of frustration, there is possibility of commission of suicide by Sunanda. It is submitted that, PW-1 has stated in his evidence that, the accused assaulted Sunanda in presence of his both sons and they got scared and left the house of accused without making any attempt to rescue her or even inquire as to what had happened to her and therefore, the story that, brothers of Sunanda visited the house of the accused, they left it being scared is concocted story. It is submitted that, P.W.-2 Sangram Patil, panch witness is declared hostile. It is further submitted that, PW-4 Narsing Podampalle has not stated the date of incident. It is submitted that, according to PW-4, PW-1 approached him four days prior to the incident and demanded amount of Rs. 30,000/- for paying dowry. It is submitted that, the evidence of PW-4 suffers from material omissions and cannot be considered as a incriminating circumstance against the accused. It is further submitted that, PW-5 Baliram More is brother of deceased Sunanda. According to him, Sunanda had disclosed him that, her husband was demanding

Rs. 1,00,000/- and similarly he had illicit relations with Anusayabai. It is submitted that, identity of Anusayabai is not disclosed nor there is any evidence to show that, she had seen Anusayabai with her husband.

Learned Counsel appearing for the appellant further submits that, on the day of alleged incident i.e., 11-03-2008, according to PW-5, he was at the house of accused alongwith Vaijinath and Sunanda. According to PW-5, he had taken Rs. 50,000/- to give it to accused No. 1, Namdeo. There was exchange of words between Sunanda and her husband and accused No. 1 Namdeo had beaten his sister and also neighbours had gathered there to rescue his sister. However, there is nothing on record to indicate that, PW-5 had himself flung into action to rescue his sister and therefore, it cannot be believed that, accused No. 1 Namdeo had beaten Sunanda in presence of PW-5. It is submitted that, PW-5 has stated that, after altercation Sunanda went inside the house and sat there for 45 minutes to one hour and at that time her brothers were sitting outside the house. It is submitted that, there is nothing on record to show that, her brothers made attempt to convince their sister. Therefore, according to learned Counsel appearing for the appellant, the entire story of the prosecution deserves to be discarded. It is submitted that, it has come on record that, PW-5 admitted that, Shobha and Yashoda have their own houses and that Sunanda and her husband had been to the house of Yashoda at Bombay and they had stayed there for 5 to 6 days. The husband of Yashoda is in Railway service. The husband of Shobha has agricultural land and he is in service. Therefore, due to stringent economic condition, Sunanda did not wish to return to her matrimonial home and therefore, her brothers had been to drop her at matrimonial home. It is submitted that, the aspect of accused No. 1 Namdeo beating Sunanda in presence of her brothers and telling her that, she would burn and kill her is a material omission. That moreover, brothers of Sunanda leaving her in her house after the accused had rushed towards her with a kerosene can cannot be believed, especially when it is a material omission.

5. It is further submitted that, it shall be appreciated that, PW-6 Ramkrishna Bhadre is Investigating Officer. He has proved Exhibit-80 which is a letter written by Shankar More to the Police Inspector of Jalkot Police Station. In the said letter, there is no mention that, PW-5 had been to the house of accused alongwith Rs. 50,000/-. That PW-6 also admitted his signature on Exhibit-49 and that by itself would show that, he has got the complaint written by him. It is submitted that, PW-6 has not stated before the Court that, PW-5 had disclosed him that, the accused had attempted to kill her in his presence. Therefore, there is no evidence to establish that, present appellant Namdeo has committed offence punishable u/s 302 of the Indian Penal Code. It is submitted that, case is entirely based upon circumstantial evidence and therefore, unless chain of circumstance is complete, the conviction of the appellant cannot be sustained. It is submitted that, the prosecution has not clearly established date and also time of the incident and who had taken Sunanda to Sub District Hospital, Udgir and therefore, the prosecution case suffers from serious infirmities. It is submitted

that, the evidence of PW-1 is hearsay and PW-5 has exaggerated things in his evidence. It is submitted that, the appellant was not present in the house. There is delay in lodging F.I.R., and also in recording the statement of the witnesses and also in conducting spot panchnama and therefore, benefit of doubt is required to be given to the appellant. It is submitted that, other brother who according to PW-5 was accompanied him to the house of the accused, was not examined by the prosecution. It is submitted that, no single person from neighbours of the accused has been examined.

Learned Counsel appearing for the appellant further submits that, since other accused are acquitted, unless specific overact is proved qua appellant, he is also entitled for acquittal. It is further submitted that, provisions of Section 106 of the Indian Evidence Act cannot absolve the prosecution from discharging its general or primary burden by proving its case beyond reasonable doubt. In support of this contention, learned Counsel appearing for the appellant pressed into service exposition of the Supreme Court in the case of *Sawal Das Vs. State of Bihar*, . He further invited our attention to the fact that, the prosecution has not examined neighbours of the accused though it is the case of the prosecution that, neighbours came to resolve quarrel. In support of this contention, learned Counsel appearing for the appellant placed reliance on *Dasari Siva Prasad Reddy Vs. The Public Prosecutor, High Court of A.P.*, . It is submitted that, when two views are possible, inasmuch as overact of the appellant in commission of offence has not been proved and other two accused are acquitted, benefit should certainly go to the accused. In support of this contention, learned Counsel appearing for the appellant relied upon the judgment of the Supreme Court in the case of *Narendra Singh and Another Vs. State of M.P.*, . Therefore, he submits that, the appeal deserves to be allowed.

6. Learned A.P.P., appearing for the State submits that, chain of circumstances is complete. The appellant-accused Namdeo is bound to explain under which circumstances the deceased died. However, accused Namdeo has failed to discharge burden cast upon him by the provisions of Section 106 of the Indian Evidence Act. It is submitted that, the evidence of PW-5, in particular coupled with the evidence of complainant and other prosecution witnesses and also C.A. report unequivocally indicate that, the appellant has committed murder of deceased Sunanda. Learned A.P.P., invited our attention to the cross examination of PW-5 and submits that, the defence in cross examination of PW-5 has brought on record the important circumstance that, accused No. 1 Namdeo dragged Sunanda in front of PW-5 and his brother and told her that, he would burn and kill her. It is submitted that, in the chain of circumstances, the aforesaid circumstance is very important which would directly connect the appellant with the commission of offence. It is submitted that, the prosecution has proved beyond reasonable doubt that, there was illegal demand of Rs. 1,00,000/- and to fulfill the said demand, the appellant has committed the offence alleged against him. Therefore, according to learned A.P.P., if the evidence on record is read in its entirety, it leads to only conclusion that, the appellant is guilty for ill-treating

Sundanda and her murder. Learned A.P.P., invited our attention to the exposition of Bombay High Court in the case of State of Maharashtra Vs. Shivaji Anandrao Chede, and in particular paragraphs-29 to 31 thereof and submits that, the circumstances which are within special knowledge of the accused, he is bound to offer explanation. It is submitted that, in the facts of the present case, the incident had taken place in the midnight as it is evident from the evidence brought on record. Therefore, the appellant is bound to explain the circumstances which are within his special knowledge. Therefore, learned A.P.P., submits that, the appeal is devoid of merits, same may be dismissed.

7. We have given anxious consideration to the rival submissions. With the able assistance of learned Counsel appearing for the appellant and learned A.P.P., for the State, we have carefully perused the entire evidence placed on record and also original record and proceedings received from the Sessions Court. PW-1 Shankar Sambhaji More, father of deceased Sunanda is informant. In his examination-in-chief he has stated that, Sunanda was his daughter. She married with accused No. 1. At the time of marriage, Rs. 1,50,000/-, one tola gold and other articles were given to accused No. 1 Namdeo. It is further stated that, accused No. 1 Namdeo was residing jointly with his parents. He further stated in his deposition that, after marriage Sunanda went to the house of accused Nos. 1 to 3. She was treated properly for 2 to 3 months and afterwards accused No. 1 demanded Sunanda Rs. 1,00,000/- for service. The accused brought Sunanda to the house of complainant and left her. Sunanda told the complainant to give her Rs. 1,00,000/-. However, the complainant told her to wait for two days and he will arrange for Rs. 1,00,000/-. PW-1 has further stated in his deposition that, he arranged Rs. 50,000/- and sent said amount with his two sons namely Baliram and Vijinath, and daughter Sunanda, who went to the house of accused Nos. 1 to 3. It is further stated that, when two sons of complainant and his daughter reached to the house of accused Nos. 1 to 3, accused No. 1 quarreled with them as to why they brought only Rs. 50,000/-. Thereafter, out of fear, his sons ran away from the house of accused and went to their house.

8. PW-1 complainant in his deposition further stated that, on the next day he received a telephone message from the shop of Baburao that, Sunanda died. It is specifically stated that, accused Nos. 1 to 3 ill-treated his daughter Sunanda and there were illicit relations of accused No. 1 Namdeo with one Anusayabai. Thereafter, he received telephone for coming to police station, Udgir. He alongwith other persons went to police station, Udgir. Thereafter, he went to civil hospital, Udgir and reaching there, he saw the dead body of Sunanda. She was completely burnt. It is specifically stated that, accused set her on fire and committed murder of Sunanda. Thereafter, he went to police station, Jalkot and lodged report. He has identified the report shown to him. He has also identified his signature on the report. He stated that, the contents of the report are correct. It appears that, he was cross examined at length by learned Counsel appearing for accused No. 1 Namdeo by giving suggestion that, Sunanda committed suicide. It further appears that, suggestion was given to him that,

PW-1 is economically sound and also other two daughters" financial condition is well and therefore, out of frustration that, financial condition of the accused is poor, Sunanda committed suicide. However, upon minute scrutiny of cross examination of PW-1 not only by Advocate for accused No. 1 but even by Advocate for accused Nos. 2 and 3, defence has not yield any material which could be said to be favourable to the defence. On the contrary, PW-1 in his evidence has emphatically denied the suggestion that, Sunanda has committed suicide out of frustration as financial condition of accused is poor.

9. Since there is no eye witness to the incident, the prosecution case rest upon the evidence of PW-5 Baliram i.e., son of the complainant and brother of deceased Sunanda. In his examination-in-chief, he stated that, deceased Sunanda was his sister. She was married with accused No. 1. After marriage she went to the house of accused No. 1 for cohabitation. Accused No. 1 treated her well for 1 to 1-1/2 months. It is stated that, after 1-1/2 months, accused No. 1 started ill-treating her. He went to the house of accused No. 1 to fetch his sister for Nagpanchnami festival. When he was returning with his sister to his house, on the way Sunanda told him that, they have to pay some amount to accused No. 1 since he was demanding Rs. 1,00,000/-. She further told him that, accused No. 1 has illicit relations with another woman namely Anusayabai. It is further stated that, after 2 to 3 days, accused No. 1 came to the house of complainant to take Sunanda. They convinced accused No. 1 and told him that, they will pay some amount to him. Therefore, he carried Sunanda to his house. The family of complainant was under impression that, the accused will treat Sunanda properly.

It is further stated by PW-5 Baliram in his deposition that, after 1-1/2 months accused No. 1 Namdeo came with Sunanda to the house of complainant and left her and told her to come to matrimonial house alongwith money. Thereafter, PW-5 and his brother Vaijinath alongwith Sunanda with cash of Rs. 50,000/- went to the house of accused No. 1 Namdeo on 11/03/2008. Accused No. 1 was not in the house. Accused Nos. 2 and 3 were in the house. Accused No. 1 came at 6-00 p.m., in the evening. He asked for money. PW-5 handed over him Rs. 50,000/-. However, accused No. 1 Namdeo got angry since Rs. 1,00,000/- was not given to him. There was exchange of words between accused Namdeo and his sister Sunanda. Accused No. 1 Namdeo assaulted Sunanda. The persons from nearby vicinity gathered and sister Sunanda was rescued. Thereafter, sister Sunanda went inside the house and for about 45 minutes she was there. PW-5 and his brother were sitting outside the house. Afterwards Sunanda came outside the house and told PW-5 and his brother to give remaining amount to accused No. 1 and maintain peace. Thereafter, accused No. 1 caught hold hair of Sunanda. Accused Nos. 2 and 3 also pushed Sunanda and assaulted her. Accused No. 1 dragged Sunanda and uttered words that, "he will kill her by setting her on fire". PW-5 was under impression that, accused Namdeo will not take extreme steps as stated by him. Thereafter, immediately PW-5 and his brother left the house of accused and went to their house so as to narrate the incident to their parents. They reached their house at 12-00 to 12-30 midnight.

10. It is further stated by PW-5 Baliram that, on second day when they were about to leave their house so as to go to the house of accused, they received phone call at the shop of Bapurao Patil in their village informing that, Sunanda is burnt and she was hospitalized in the hospital at Udgir. PW-5 tried to contact accused No. 1 Namdeo on his Mobile. One woman told PW-5 that, his sister has sustained burn injuries and she was taken to hospital at Udgir and told him to go to the hospital. Accordingly, they went to civil hospital, Udgir by tempo. After reaching hospital, they found that, Sunanda is dead and her body is lying in the P.M. room. After post mortem, her dead body was carried to the village. It is specifically stated by PW-5 that, accused No. 1 Namdeo killed his sister for dowry amount of Rs. 1,00,000/- and identified accused persons present in the Court.

11. The defence Counsel for accused No. 1 extensively cross examined PW-5 Baliram by giving suggestion that, accused No. 1 and deceased Sunanda visited house of two sisters and Sunanda realizing the financial/economical disparity compared to financial condition of parents of the deceased and also other sisters, out of frustration, realizing that, economical condition of accused No. 1 is poor, committed suicide. However, on careful perusal of cross examination of this witness, though he has admitted visit of accused No. 1 Namdeo with Sunanda to his house and also to the places of the sisters, he emphatically denied that, Sunanda committed suicide out of frustration since financial condition of the accused is poor, as compared to financial condition of the complainant's family and sisters' family. It has come in his cross examination that, distance between his place of residence and place of residence of the accused is 10 to 12 Kms. This witness has denied the suggestion that, deceased told his father and brother Vajinath that, they have selected good husband for Shobha and Yashoda and they had destroyed her life. The suggestion that, Sunanda was not willing to reside with accused No. 1, and PW-5 and his brother forcibly used to take her to their house is specifically denied by the PW-5. This witness has deposed that, in his police statement he has stated that, he had given Rs. 50,000/- to accused No. 1, there was exchange of words between accused No. 1 and his sister Sunanda, accused No. 1 told his sister Sunanda that, he would burn and kill her. He has stated in his cross examination that, he cannot assign any reason as to why the above fact is not mentioned in his police statement. However, the defence has failed to prove this omission during the examination of the Investigating Officer. It further appears that, learned defence Counsel for accused No. 1 brought on record in cross examination of PW-5 following version; "it had happened that accused No. 1 took the kerosene tin and rushed towards my sister, and we ran away from his house due to fear." Therefore, by bringing such version on record, the defence Counsel has admitted presence of accused Namdeo and also the presence of PW-5 in the house of accused on 11-03-2008. It appears that, the evidence of PW-5 has not shaken in the cross examination.

There is also evidence of PW-4 Narsing Ram Padampalle to the effect that, PW-1 Shankar More, prior to four days of the incident demanded Rs. 30,000/- for the purpose of paying to his daughter, and amount of Rs. 30,000/- was given by

PW-4 to the complainant in lieu of taking soil from the complainant for his brick kiln business.

PW-6 Ramkrishna Bhadre, Police Inspector was Investigating Officer. He has proved the spot panchnama at Exhibit-58. In his evidence, he has stated that, he seized kerosene tin, match box, pieces of bangles, soil, soil mixed with kerosene and pieces of Saree under the panchnama at Exhibit-58. He arrested accused persons and on completion of investigation, he sent charge sheet to the Court. In his cross examination, his evidence is not shaken. He has corroborated the version of PW-1, PW-4 and PW-5.

12. The memorandum of post mortem examination held at Sub District Hospital, Udgir on the dead body of deceased Sunanda is at Exhibit-63. Upon perusal of column No. 17 in the memorandum of post mortem examination at Exhibit-63 it mentions "Superficial to deep burns 100%." The opinion as to probable cause of death stated in column No. 22 is " The cause of death is due to cardio resp. arrest secondary shock due to 100% Burn." Accused Namdeo has admitted post mortem examination report of Sunanda, thereby admitting that, she sustained 100% burns.

PW-2 and PW-3, panch witnesses to the spot panchnama did not support the prosecution case and turned hostile. In their cross examination, they admitted that, police prepared panchnama at Exhibit-58. The alleged panchnama shows that, alleged incident took place in the house of accused Namdeo. Therefore, it supports the evidence of PW-1 and report at Exhibit-49. The spot panchnama is at Exhibit-58. The description of the house of accused i.e. spot of incident is given in the said spot panchnama. The spot panchnama also makes a mention of pieces of Saree and also pieces of bangles and also some part of wall has become blackish. The floor of the said place has become also blackish. The regzine bag which was in hanging condition has also become blackish since it appears that, the said bag is also burnt. Four bags of food grains appears to be burnt since at the relevant time food grains were spread over the floor. There is recovery of one five liters whit colour can having small quantity of kerosene inside, lying on the floor without cap. The cap is also lying nearby the said can. Therefore, it appears that, kerosene can, burn pieces of Saree, pieces of bangles, match box and kerosene mixed mud were recovered and seized from the spot of incident. The recovery of articles from spot is proved through Investigating Officer (PW-6).

It appears that, inquest panchnama is at Exhibit-52. In the said inquest panchnama, it is mentioned in clause-3 that, dead body was noticed in post mortem room, Sub District Hospital, Udgir on 12/03/2008 at 02-30 hours. Dead body was shown by one Dr. Jadhav, Medical Officer, Udgir working in the said hospital. The dead body was identified by Baliram Shankar More. The date of death is mentioned 12/03/2008 and time is mentioned 2-30 hours in clause-7. Other details are also mentioned in the inquest panchnama.

13. It has come on record that, deceased Sunanda died on 12/03/2008 at 2-30 hours. The spot of incident is house of accused. In view of provisions Section 106 of the Evidence Act, the appellant is bound to explain under what circumstances, Sunanda died, since the incident had taken place during midnight hours, in the house of accused and those facts were within his special knowledge. However, admittedly, the appellant has not offered any explanation. The contention of the Counsel appearing for the appellant-accused Namdeo is that, probable defence was raised by cross examining the prosecution witnesses suggesting that, Sunanda out of frustration, due to financial condition of accused No. 1 Namdeo is poor compared to her sisters and brothers she committed suicide, deserves to be rejected. There is nothing on record which would even slightly suggest that, Sunanda committed suicide. On the contrary, the circumstances soon before the incident had taken place would only lead to the conclusion that, accused Namdeo is responsible for the commission of offence. The appellant-accused Namdeo in his statement u/s 313 of the Cr. P.C., has not stated or offered explanation how the deceased Sunanda died in his house at midnight. On careful perusal of deposition of PW-5 it appears that, when he alongwith his brother and Sunanda went to the house of accused with Rs. 50,000/-, there was exchange of words between Sunanda and accused No. 1 Namdeo. Thereafter, accused Namdeo beat Sunanda and thereafter Sunanda went inside the house and sat there for 45 minutes to one hour, at that time PW-5 and his brother were sitting outside the house of accused. After some time, Sunanda came outside the house and asked PW-5 and his brother to give remaining amount to accused No. 1 Namdeo and maintain peace. The aforesaid narration of PW-5 in his deposition in vernacular reads thus:

. Therefore, the conduct of Sunanda to come quietly outside the house and tell her brothers to give remaining amount to accused No. 1 Namdeo and maintain peace ruled out the possibility of commission of suicide by her. Otherwise, her version to PW-5 and his brother should have been different if she wanted to commit suicide.

14. All the adverse circumstances were put to the appellant/accused No. 1 Namdeo in his statement recorded u/s 313 of the Code of Criminal Procedure, however except stating that, everything is false, accused No. 1 Namdeo did not offer any explanation, how Sunanda died during midnight hours in his house. The prosecution has brought on record and established following circumstances against accused No. 1 Namdeo. Firstly, accused No. 1 Namdeo was ill-treating his wife for Rs. 1,00,000/-. Secondly, in the night of 11/03/2008, accused Namdeo was present in his house alongwith Sunanda and he beat Sunanda in the presence of PW-5 and his brother. The defence in cross examination of PW-5 has brought on record version that, it had happened that, accused No. 1 took kerosene tin and rushed towards sister of PW-5 and then PW-5 and his brother ran away from his house due to fear. In the series of acts of the accused No. 1, his act to take kerosene tin, and then he rushed towards Sunanda, would segregate and separate his role vis-?-vis other two accused, who are acquitted

by the Sessions Court. It has come in the evidence of PW-5 that, distance between the house of accused and house of PW-5 is 10 to 12 Kms. It appears from the evidence of PW-5 that, they reached to their village at about 12-00 to 12-30 in the midnight i.e., an intervening night of 11/03/2008 and 12/03/2008. Therefore, the act of the accused Namdeo to take kerosene tin and then he rushed towards Sunanda, would lead to only conclusion that, he is the person responsible of commission of offence punishable u/s 302 of Indian Penal Code. At the cost of repetition, it has to be observed that, Sunanda died on 12/03/2008 at 2-30 hours in the hospital at Udgir and accused Namdeo who was last seen in the company of Sunanda by PW-5 and his brother, did not offer any explanation under what circumstances Sunanda died since those facts were within the special knowledge of accused Namdeo, and therefore, when the circumstances brought on record by the prosecution unequivocally indicate that, accused Namdeo is author of commission of offence. Reliance placed by learned Counsel appearing for accused Namdeo in the case of Sawal Das (supra), is misplaced in the facts of the present case.

It is also relevant to mention that, accused Namdeo could not explain that, at what time he parted company of Sunanda at that night. He did not inform police as well as parents of Sunanda that, Sunanda burnt herself and sustained burn injuries. After arrest of the accused Namdeo, he did not offer any explanation as to when he parted company of Sunanda nor did offer explanation to discharge his burden u/s 106 of the Evidence Act. The prosecution has clearly established the circumstances right from ill-treatment by accused Namdeo to his wife Sunanda for Rs. 1,00,000/- and thereafter by other events taken place during intervening night of 11/03/2008 through evidence of PW-5 that, accused Namdeo not only assaulted Sunanda but dragged her. Subsequently, with kerosene can he rushed towards Sunanda and seeing the act of accused Namdeo that, he took kerosene tin and rushed towards Sunanda, PW-5 and his brother ran away from the house of accused due to fear and thereafter, on next day morning they received message that, Sunanda is no more. As already observed from the evidence of prosecution witnesses, the possibility of suicide by deceased Sunanda is completely ruled out. It has also come on record that, PW-5 alongwith his brother and Sunanda with Rs. 50,000/- went to the house of accused Namdeo and offered him Rs. 50,000/-. However, he got angry. Subsequently, he started beating Sunanda and thereafter continued his ill-treatment with Sunanda and lastly brought kerosene tin and rushed towards Sunanda and out of fear, PW-5 and his brother ran away from the house of accused. These circumstances lead to only hypothesis or conclusion that, accused Namdeo has committed offence.

15. The defence of accused Namdeo that Sunanda committed suicide is not probable and convincing. The presence of accused Namdeo in his house at the time of incident is proved. Sunanda died unnatural death. The possibility of accidental or suicidal death is completely ruled out and therefore, inevitable conclusion is that, Sunanda died homicidal death. In fact, it was the duty of

family members of Sunanda including accused Namdeo to take her to hospital. There is no specific case of accused Namdeo that, Sunanda committed suicide, however by way of suggestion to the prosecution witnesses they have raised the said defence. As already observed since the incident had taken place during intervening night of 11/03/2008 and 12/03/2008, accused Namdeo can only throw light on the incident and he is obliged to do so u/s 106 of Evidence Act. Learned Counsel appearing for the appellant-accused strenuously contended that, omission in the evidence of PW-4 Narsing and PW-5 Baliram are proved through the Investigating Officer. Upon perusal of the evidence of the Investigating Officer, the contention of learned Counsel appearing for the appellant deserves to be rejected. It is also relevant to mention that, accused Namdeo came to be arrested on 13/03/2008 at Jalkot. Therefore, it is clear that, accused Namdeo has ran away from his house. As already stated by PW-5 the appellant-accused Namdeo is last seen together with deceased Sunanda. Therefore, the chain of circumstances is complete. There is consistency in the evidence of PW-1, PW-5 and PW-6. The post mortem examination report shows that, Sunanda sustained 100% burn injuries. To sum-up, after reappreciating the evidence in its entirety, we are of the considered opinion that, appreciation of the evidence and conclusions reached from paragraphs-37 to 40 in the impugned judgment by the Sessions Court are completely inconformity with the evidence on record.

16. The Bombay High Court in the case of The State of Maharashtra Vs. Baban Kisan Kulvade, and also in the case of Deepak Revachand Talreja Vs. State of Maharashtra, relying upon exposition of the Supreme Court in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra, has taken a view that, if the offence is committed in secrecy inside house, the initial burden to establish case would undoubtedly upon prosecution but nature and amount of evidence to be led by it to establish charge cannot be same degree as is required in other cases of circumstantial evidence. Burden will be comparatively lighter character. In view of Section 106 of the Evidence Act there will be corresponding burden on inmates of house to give cogent explanation as to how crime was committed. We are aware about the law laid down by the Supreme Court (Constitution Bench) in the case of Govinda Reddy and Krishna and Another Vs. State of Mysore, that, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

Therefore, in the light of discussion herein above, we are of the considered view that, the evidence discussed hereinabove, would lead to only conclusion that, appellant-accused Namdeo has committed murder of his wife Sunanda.

In the light of discussion hereinabove, we are of the considered opinion that, the judgment and order passed by the Sessions Court, Udgir in Sessions Case No. 34 of 2008 on 23/08/2011 needs no interference. Hence, said judgment and order

stands confirmed. The appeal sans merit, hence rejected.

The Record and Proceedings be sent forthwith, to the Registry of the concerned Court.