
(2012) 01 BOM CK 0155
In the Bombay High Court
Case No : Criminal Appeal No. 338 of 2007

Nandlal Bajranlal Sainy

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 01 BOM CK 0155

Hon'ble Judges : Shrihari P. Davare, J;A.P. Lavande, J

Bench : Division Bench

Advocate : D.G. Khamkar, for the Appellant; M.M Deshmukh APP for the State, for the Respondent

Final Decision : Dismissed

Judgement

Shrihari P. Davare, J.—Challenge in this appeal is to the judgment and order dated 6.5.1997 in Sessions Case No.737 of 1995 rendered by the learned Additional Sessions Judge, Thane, thereby convicting the appellant herein for the offence punishable u/s 302 of I.P.C. and sentencing him to suffer imprisonment for life and pay fine of Rs. 1,000/- and in default to undergo R.I. for one month.

2. The factual conspectus of the prosecution case is as follows: According to the prosecution the victim -deceased Pushpadevi got married with the accused about 15 years back and out of the said wedlock a son viz. Sanjaykumar was born. The accused used to reside at village Churu, Taluka and District Churu, Rajasthan State and after marriage deceased Pusphadevi went to reside with him at her matrimonial home. However, it is alleged that accused was not doing any work, and used to assault Pusphadevi. It is further alleged that PW 6 -complainant, namely, Mangilal used to reside at Block No.9 of Walchand Apartment, Ground Floor, Narona Compound, Bhayander (West) alongwith his wife and children, and deceased Pushpadevi and PW 1 Ashadevi are his sisters whereas PW 1 Ashadevi

used to reside with her husband, namely, Ramawatar on the first floor of same building. It is further alleged that about five months prior to the date of incident i.e. 20.9.1995 deceased Pushpadevi came to Bhayander at her brother's house with son - Sanjaykumar. On 20th September, 1995 the accused also came to reside at Bhayander from his native place. It is also alleged that there was quarrel between accused Nandlal and deceased Pusphadevi on the said date. Thereafter, Pushpadevi and Mangilal had dinner at 10.30 pm but Accused Nandlal went to PW 1 Ashadevi for dinner and returned late at about 12 O'clock in midnight and thereafter accused and deceased Pushpadevi went into inner room to sleep whereas PW 6 Mangilal slept in outer hall.

3. It is further alleged that at about 7 am Ashadevi rang up bell and thereupon Mangilal woke up and accused Nandlal opened the door. Thereafter PW 1 Ashadevi asked accused about Pusphadevi thereupon accused replied that she was inside. Mangilal and Ashadevi went inside the room and found Pushpadevi lying dead in pool of blood hence they asked accused Nandlal as to what had happened but the accused started running away without answering hence PW 1 Ashadevi and PW 6 Mangilal tried to catch hold of him and shout was raised and nearby people gathered including PW 3 -Ramawtar, husband of Ashadevi who caught hold of him. Thereafter matter was reported to police personnel and accused was taken in custody by them.

4. It is the case of the prosecution that PW 7 PI Dundappa Shettapy Khot was attached to Bhayandar police station at the relevant time and he registered the complaint under C.R. No.201 which was given by PW 6 Mangilal (Exhibit-21) and he sent PSI Patil to place of incident, who took search of the accused and seized his clothes and one Lungi (Art.3) on 21.9.1995 under seizure panchnama in presence of PW 3 - Shivkumar Bubana and arrested him under arrest panchnama Exhibit-17 in presence of PW 4 -Indra Shah. PSI Patil visited place of incident and drew inquest panchnama of dead body of Pushpadevi and sent it for post mortem purpose as well as he drew spot panchnama in presence of PW 3 Shivkumar Bubana and seized iron batta (Art.2) thereunder, and recorded the statement of PW 5 Ramawatar and PW 1 Ashadevi and also recorded statement of other nine persons.

5. It is also case of the prosecution that PW 2 Dr.Ramchandra Dhotre was attached to Primary Health Centre, Bhayander as medical officer at the relevant time and he performed post mortem on dead body of Pushpadevi Saini at about 1 pm on 21.9.1995 and completed it about 2.30 pm and noted external and internal injuries on said dead body in P.M. report which is produced at Exhibit-13. PW 7 PI Khot collected said P.M. report. Moreover, on 21.9.1995 he sent muddemal articles to C.A. office alongwith forwarding letter. Accordingly, C.A. report dated 8.1.1996 was received which is at Exhibit-24 and it disclosed blood stains of human blood on clothes of the accused. Accordingly, after completion of investigation PW 7 PI Khot filed charge-sheet against the accused on 14.11.1995 and since the case was exclusively triable by the Court of Sessions, it was

committed to the court of Sessions, Thane. Accordingly, the learned Additional Sessions Judge, Thane framed the charge against the accused on 5th August, 1996 at Exhibit-2 for the offence punishable u/s 302 of IPC but the accused pleaded not guilty and claimed to be tried.

6. To substantiate the charge levelled against the accused the prosecution examined as many as seven witnesses as under:

(i) PW 1 - Ashadevi, sister of victim,

(ii) PW 2 - Dr.Ramchandra Dhotre, who performed post mortem on the dead body of the deceased and produced P.M. report Exhibit-13.

(iii) PW 3 - Shivkumar Bubana, panch of scene of offence panchnama.

(iv) PW 4 - Indra Shah, panch to the panchnama of seizure of clothes of the deceased.

(v) PW 5 - Ramawatar Saini, husband of PW 1,

(vi) PW 6 - Mangilal Saini, brother of victim and first informant who lodged FIR on 21.9.1995.

7. The defence of the accused is that he was fast asleep after he had returned from dinner. He woke up in morning on 21.1.1995 due to hue and cry. It is also defence of the accused that he was invited to Bhayander by PW 1 Mangilal who had taken new premises and bhajan was to be conducted on the said count. It is further the defence of the accused that he got married with Pushpadevi about 20 years back but during the said period he never touched her and two children born to her were not his children but still he was maintaining them and claimed himself to be religious person and stated that he has been implicated in this case falsely and claimed to be innocent. It is also stated by the accused that there was back door to house of PW 6 Mangilal and a thief entered into the house from back side and committed murder of his wife and went away.

8. After scrutinising and assessing the oral and documentary evidence and considering the rival submissions advanced by learned counsel for the parties, the trial Court convicted and sentenced the accused as aforesaid. Hence, being aggrieved and dissatisfied by the said judgment and order of conviction dated 6.5.1997 the appellant preferred the present appeal challenging the same and prayed for quashment thereof.

9. Before advert to the submissions advanced by learned counsel for the parties it is necessary to take resume of the material evidence adduced/produced by the prosecution and in the said context the prosecution case mainly rest upon the testimonies of PW 6 Mangilal i.e. first informant, PW 1 Ashadevi, sister of victim Pusphadevi and PW 5 Ramawatar, husband of PW 1 Ashadevi and PW 2 Dr.Ramchandra Dhotre.

10. Coming to the evidence of PW 6 Mangilal, who is the first informant and

brother of the victim Pushpadevi has stated that he was residing in block no.9 in Walchand Apartment with his wife and children and deceased Pushpadevi, wife of the accused was residing with him at village Churu and she had come to his house at Bhayander prior to five months of the incident since the accused was not doing any work and used to assault her and used to leave her at mother's house. He also stated that accused had also come to his house at Bhayander from native place. It is further stated that Mangilal talked to accused - Nandlal and Pusphadevi till 11 pm and thereafter took dinner whereas Nandlal went to house of his sister -Ashadevi and returned after taking dinner at 1.30 pm and went to sleep in inner room which is bedroom, and at about 7 am he woke up since his sister Ashadevi came to fetch water and rang up the bell and at that time Nandlal opened the door and stood there. PW 1 Ashadevi asked the accused where was Pushpadevi and thereupon, the accused answered that she was lying dead inside, and, therefore, Ashadevi and Mangilal went in and saw dead body of Pushpadevi in pool of blood, and hence, Ashadevi and Mangilal proceeded to catch hold of accused but he tried to run away but they caught him near the gate of building and started shouting that accused killed his sister and thereupon nearby persons gathered including PW 5 Ramawatar, who gave 3-4 blows to the accused and thereafter the matter was reported to police personnel, who arrived there and took accused into custody and arrested him. Thereafter police recorded complaint of PW 6 Shri Mangilal at Exhibit-21.

11. In the cross examination, the omission was taken out that on inquiry by Ashadevi with the accused about Pushpadevi in the morning, he replied that she was lying dead inside, amounting to improvement in his testimony. He also stated that when Ashadevi and he saw dead body of Pusphadevi and asked how it happened but then accused started running away. He further stated that alongwith police personnel Ashadevi, PW 5 Ramawatar again went into bedroom and accused was standing outside with others and police were there in bedroom for 5-10 minutes. He also stated that he caught hold of accused in his arms. He also admitted that when he first went to police he did not pay attention where was iron batta in the bedroom. He also admitted that when door was opened in the morning Sanjaykumar was sleeping near him.

12. That takes us to deposition of PW 1 Ashadevi, who is the elder sister of deceased Pushpadevi, who stated that accused was residing at his native place but he came to Bhayander on 20th but since she was illiterate she could not state the month and year thereof. On 20.9.1995 at 12 O'clock in midnight deceased Pusphadevi, accused and Mangilal were talking. Thereafter accused, deceased Pushpadevi and Mangilal went to sleep in their block on the ground floor whereas Ashadevi was on the first floor. Thereafter as usual at about 7 am on the next day she went to block of Mangilal to fetch water and accused opened the door and thereupon PW 1 Ashadevi asked the accused where was Pushpadevi and accused replied that she was lying dead inside and she should take care of her. Thereupon she shouted and woke up Mangilal, who was sleeping in another room they found dead body of Pushpadevi in inner room and, therefore, they

tried to catch hold of the accused but he ran away but they caught hold of him and brought upstairs.

13. In the cross examination, two material omissions were taken out in respect of the fact that accused, Pushpadevi and their son Sanjaykumar and Mangilal were chit-chatting in the room till midnight as well as in respect of the fact, that Ashadevi asked the accused where was Pusphadevi and thereupon he replied that she was lying dead and she should take her care as well as in respect of the fact that she raised shout and thereafter PW 6 Mangilal woke up, amounting to improvements in her testimony. She is the first person who saw Pushpadevi dead. She also stated that since she was residing on first floor and she had not personally seen where the accused, her brother -Mangilal and Sanjaykumar had slept during that night. She reiterated that she and PW 6 Mangilal caught the accused at the gate of chawl. She also stated that when she went to the room, door of the bedroom was closed and accused himself opened the door at that time since he was in the hall. She further stated that accused was not doing any work at Bhayander and he was cultivating land at his native place. She asserted that there always used to be quarrel between the accused and Pusphadevi.

14. In the evidence of PW 5 Ramawatar, who is husband of Ashadevi stated that PW 1 Ashadevi is his wife and deceased Pushpadevi is sister of Ashadevi and accused is husband of deceased Pushpadevi. He was residing on the first floor whereas accused was residing on the ground floor of the building and on 21.9.1995 at 7 am when he was performing Pooja in the house at that time son of the accused came running and asked him to accompany immediately since his father was running away after injuring his mother and maternal uncle and he caught hold of the accused at the gate of building and residents also gathered and they handed over the accused to them and called the police, who took the accused in custody. After arrival of police, he saw dead body of Pushpadevi lying in pool of blood. In the cross examination, he stated that Sanjay was of the age of understanding and was of nine years at the time of incident but he stated that he always used to sleep with his mother. He stated that wife - Ashadevi had lost consciousness and she had repeated faints and said faints continued for 2-3 days. He further stated that he caught hold of the accused by holding in his arms and in the course of it blood stains had fallen on his clothes but subsequently he changed his version that no blood stains were fallen on his clothes. He has further stated that they did not hear any cry and shouts during that night. As regards lodging of the FIR, he stated that when he went to police with Mangilal at that time police did not record statement of Mangilal.

15. That takes us to the evidence of PW 2 - Dr.Ramchandra Dhotre, who has stated that he was working as medical officer at Primary Health Centre at Bhayandar and he performed post mortem on the dead body of Pushpadevi Sainy between 1pm on 21.9.1995 and completed at 2.30 pm. On external examination. He found following injuries on the dead body:

1. Incised wound below right lower eye lid on medical aspect oblique 1 1/2" X

1/2" X 2".

2. Incised wound on lateral aspect of right upper eyebrow 1" X bone deep.
3. 1/2" above 2 incised wound transverse of size 1 1/2" X bone deep.
4. 1/2" above 3 incised wound transverse of size 1" X bone deep.
5. Incised wound between both eye below of 1 1/2" X 1/2" bone deep transverse.
6. Incised wound left forehead transverse 1 1/2" X above left upper eye brow 2 " X 1/2" X bone deep.
7. Incised wound lateral aspect of left eye of size 1" X 1/2" X 1".
8. Perforated wound on left side of face 1" in front of left ear 1/2" X 1/2".
9. Four incised wounds on lateral aspect of right angle of mouth of sized 1/2" X bone deep.
10. Linear incised wound on midline of upper lip 1/2" length.

He further stated that he found depressed compound fracture of both maxillary bones and nasal bones. On internal examination of head, he found hematoma on frontal region. According to him possible cause of death was hemorrhagic shock due to multiple injuries over face and forehead. The above said injuries were antemortem. The injuries were caused with hard and blunt object with sharp edge. He was shown Article No.2 - iron batta and he stated that injuries sustained by the deceased were possible by Article No.2 i.e. iron batta. He further stated that aforesaid injuries were sufficient in the ordinary course of nature to cause death. He produced P.M. Notes at Exhibit-13. In the cross examination, he stated that the age of injuries was within 6 hours before starting autopsy and stated that this is because rigour mortis was absent.

16. On the aforesaid background of the evidence, learned counsel for the appellant canvassed that testimony of PW 1 Ashadevi and PW 5 Ramawatar and PW 6 Mangilal is the evidence of interested witnesses since PW 1 Ashadevi is sister of deceased Pushpadevi whereas PW 5 Ramawatar is husband of PW 1 Ashadevi and PW 6 Mangilal is brother of deceased Pushpadevi and, therefore, submitted that testimonies are required to be viewed with suspicion. Moreover, it is also submitted that although it is case of the prosecution that other persons had gathered who caught hold of the accused but, none of the said persons was examined by the prosecution. Moreover, the prosecution has failed to examine son of the accused namely Sanjaykumar who is material witness although he was present at the place of incident as per the prosecution and non examination of said material witness viz., Sanjaykumar hampers the case of prosecution. Moreover, it is also argued that the testimony of PW 1 Ashadevi and PW 6 Mangilal suffer from vital and material omissions which go to the root of the matter and shatters the case of prosecution.

17. As regards motive of occurrence of incident, according to learned counsel for

appellant, the prosecution has miserably failed to prove the motive in respect of alleged murder committed by accused by causing death of his wife and, therefore, submitted that entire case of prosecution is based upon circumstantial evidence, and hence, motive plays vital role therein but the prosecution has failed to prove and establish the same. It is also canvassed that the prosecution has failed to collect blood samples of the victim as well as of the accused.

18. Learned counsel for the appellant asserted that although iron batta "Art.2", Lungi Art.3, full pant Art.No.4, half shirt Art.No.5, sari Art.No.6, blouse Art.No.7, brassier Art.No.8 found human blood thereon of blood group "B". C.A. Report cannot be tacked therewith since blood group of accused has not been established by the prosecution by cogent evidence. As regards Art.No.9 Petti-coat and Jangia Exh.No.10 blood group thereon is inconclusive. Accordingly, it is submitted that evidence of Forensic Science Laboratory i.e. C.A. Report which is corroborative piece of evidence, is not available for the prosecution. Moreover, learned counsel for the appellant further argued that the fact of blood stains on the clothes of accused although is incriminating piece of evidence, was not put to the accused while recording statement u/s 313 of the Code of Criminal Procedure (for short "the Code") and no opportunity was given to the accused to explain the same, and, therefore, prejudice is caused to the accused. It is further submitted that prosecution failed to prove and establish the charge levelled against the accused beyond reasonable doubt as the person who caused death of his wife and therefore, burden u/s 106 of Evidence Act in respect of alleged custodial death of Pushpadevi, cannot be shifted or saddled upon him. Moreover, it is submitted that other persons were also present in the house at the relevant time. To substantiate the aforesaid submissions, learned counsel for the appellant relied upon judicial pronouncement in the case of Vikramjit Singh @ Vicky V/s. State of Punjab (2006) 12 S.C.C. 306 wherein it is observed that :

13. In the instant case, there are two versions. The learned Sessions Judge proceeded to weigh the probability of both of them and opined that the appellant having not been able to prove its case, the prosecution case should be accepted. In our opinion, the approach of the learned Sessions Judge was not correct. The High Court also appeared to have fallen into the same error. It invoked Section 106 of the Indian Evidence Act although opining:

The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.

14. Section 106 of the Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same.

Of course, there are certain exceptions to the said rule, e.g., where burden of proof may be imposed upon the accused by reason of a statute.

15. It may be that in a situation of this nature where the court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well-settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt.

23. It is now a well-settled principle of law that the circumstances which according to the prosecution lead to proof of the guilt against the accused must be put to him in his examination u/s 313 of the Code of Criminal Procedure.

Accordingly, learned counsel for the appellant urged that there are infirmities and lacunae in the prosecution case and circumstantial evidence produced by prosecution does not lead to irresistible conclusion that the accused and accused only committed alleged crime and hence, submitted that the prosecution case does not inspire any confidence, and, therefore, conviction and sentence imposed upon the accused is required to be quashed and set aside by allowing the present appeal.

19. Learned APP for the State countered the said argument and opposed present appeal vehemently and submitted that Ashadevi and Ramawtar and Mangilal are material witnesses although they are relatives of victim Pushpadevi, and their testimonies are natural which involve the accused in crime clinchingly since their evidence establishes the presence of accused at the place of incident. Moreover, it is also submitted that Inquest Panchnama and PM report categorically establish the homicidal death of the victim Pushpadevi and presence of accused at the place of incident and subsequent conduct of accused after the incident connects him to the crime. It is further submitted that Arrest Panchnama was prepared at 9.30 am on 21/09/1995 i.e. soon after the incident and natural conduct of the accused i.e. husband of Pushpadevi, does not expect that he would try to run away after the incident but so happened. Hence, the conduct of accused soon after the incident is suspicious, which amounts to incriminating circumstance against the accused.

20. As regards testimony of PW 1 Ashadevi and PW 6 Mangilal, learned APP pointed out that although some omissions were taken out, they were not duly proved and hence, same cannot be beneficial to the case of the accused.

21. As regards presence of accused at the spot of incident, it is submitted by learned A.P.P. that question No.4 put to the accused in the statement recorded u/s 313 of the Code and answer given by the accused establishes his presence at the occurrence of the evidence.

22. It is also canvassed by the learned A.P.P. that there are strong circumstances against the accused since his presence is established at the place of occurrence

of occurrence of incident and reply to question No.4 in the statement recorded u/s 313 of the Code and subsequent conduct of the accused after commission of the offence which reflects that he tried to run away which is not natural conduct after death of wife of any person lying in dead condition.

Accordingly, the said conduct of the accused is unnatural which he has not explained. Moreover, it has come in the evidence that there were blood stains on the clothes of the accused which were sent to C.A. office for examination purposes and C.A. also reported that there were blood stains of the human blood more particularly of "B" group and it is blood group of the victim, however, blood group of the accused was not tested. It was incumbent upon the accused to give explanation in respect of blood stains on the clothes of accused but accused failed to give explanation therefore, even in the statement recorded u/s 313 of the Code and the said circumstances also amount as incriminating evidence against the accused.

23. Moreover, it was also argued by learned A.P.P. that it has come in the evidence that the accused and deceased Pushpadevi slept in inner room i.e. bedroom and during intervening night of 20.9.1995 and 21.9.1995, and at about 7 am on 21.9.1995 she was found in dead condition in pool of blood in the said bedroom, therefore, her death was in the custody of accused i.e. within special knowledge of the accused and it was incumbent upon the accused to discharge said burden cast upon him u/s 106 of the Evidence Act, but he failed to discharge the same, and hence, it is a strong incriminating circumstance against the accused which connects him with the crime.

24. To substantiate the aforesaid submissions, learned A.P.P. relied

upon judicial pronouncement in the State of Rajasthan Vs. Kashi Ram (2006) 12 SCC 254 wherein it is observed that :

23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his

innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Re. Naina Mohd.

Accordingly, learned A.P.P. urged the present appeal is devoid of merits and there is no substance, and, therefore, it be dismissed confirming the conviction and sentence imposed upon the appellant.

25. We have perused the ocular evidence, documentary evidence, medical evidence and evidence of forensic science laboratory produced by the prosecution and considered the submissions of learned counsel for the parties anxiously as well as perused the judicial pronouncements cited by learned counsel for the parties carefully and at the outset to substantiate the charge leveled against the appellant in respect causing death of his wife i.e. deceased - Pushpadevi intentionally at about 7 am on 21.9.1995 in room No.9 at Bhayander (W), the prosecution examined as many as seven witnesses, out of which PW 6 Mangilal, who is first informant and PW 1 Ashadevi is the sister of victim, PW 5 Ramawatar is husband of Ashadevi, and their testimonies establish the presence of accused at the place of incident at 7 am on 21.9.1995. Moreover, since the time of occurrence is at 7 am and the place of incident is bedroom in the house, and, therefore, the presence of independent witness and others cannot be expected there, and, therefore, testimonies of Ashadevi, Mangilal and Ramawatar are relevant in the said context. Moreover, although the said testimonies are of relatives of the victim Pushpadevi, considering the worthiness and tenor of the said testimonies and after assessing evidentiary value thereof, the said testimonies are found to be reliable and trustworthy, and hence same cannot be discarded as canvassed by learned counsel for the appellant. Moreover, as mentioned hereinabove the testimonies of Ashadevi, Mangilal and Ramawatar establish the presence of accused at the place of incident at the relevant time.

26. As regards subsequent conduct of the accused after occurrence of the incident, it has come in the evidence that PW 1 Ashadevi, and PW 6 Mangilal tried to catch hold of accused after noticing dead body of Pushpadevi at about 7 am on 21.9.1995 when accused tried to run away but they caught hold of him at the gate of the building with the assistance and help of Ramawatar and said conduct of the accused to run away from the place of incident after death of his wife in bedroom of the house is certainly unnatural and no explanation has been offered by the accused in that respect, even in the statement recorded u/s 313 of the Code. True it is, some omissions were surfaced in testimonies of PW 1 Ashadevi and PW 6 Mangilal but said omissions were not put to PW 7 - I.O. Khot and same were not duly proved, and hence, same cannot be construed as omissions in its true sense and same shall not diminish the credibility of the said prosecution witnesses.

27. Moreover, as regards the cause of death of the victim Pushpadevi, it is clear from the evidence of PW 2 Dr.Ramchand Dhotre and P.M. notes Exhibit-13 that the death of deceased Pushpadevi was unnatural death. Moreover, the external

injuries sustained by her as mentioned hereinabove were ante mortem injuries, and according to PW 2 Dr. Dhotre, her cause of death was hemorrhagic shock due to multiple injuries over face and forehead and said injuries were caused with hard and blunt object with sharp edges and when Article 2 iron batta was shown to him he stated that injuries sustained by the deceased were possible by said Article No.2 i.e. iron batta. He further stated that the said injuries are sufficient in ordinary cause of nature to cause death. He also found depressed compound fracture of both maxillary bones and nasal bones and on internal examination of head he found hematoma on frontal region and he further stated that the age of injuries is within six hours of commencement of autopsy. The said medical evidence of Dr. Dhotre, and more particularly, cause of death leaves no doubt to arrive at conclusion that deceased Pushpadevi met with homicidal death (unnatural).

28. Considering the fact that Pushpadevi succumbed to homicidal death and presence of the accused at the place of incident at relevant time and subsequent conduct of the accused soon after the incident as stated hereinabove cumulatively connect him to the crime. Moreover, the weapon i.e. iron batta of 13" length and 1/2" breadth was found at the place of incident and same was seized under panchnama of the scene of offence. Moreover, the motive behind the offence is also surfaced in the evidence that the accused desired to take his wife Pushpadevi to Rajasthan but same was scuttled due to his conduct since he was not doing any work and was unemployed and not earning.

29. Moreover, it has come in the evidence of PW 1 Ashadevi and PW 6 Mangilal that accused and his wife Pushpadevi slept in inner room in house on the ground floor at about 1.00 to 1.30 am on 21.9.1995 and in the morning at 7 am when PW 1 Ashadevi went there to fetch water and on ringing bell the accused opened the door and stood there and PW 1 Ashadevi asked the accused where was Pushpadevi and thereupon he replied that she was lying dead inside. Thereafter PW 1 and PW 6 went inside and found dead body of Pushpadevi in pool of blood in the inner room. Thereafter accused tried to run away but immediately they caught hold of him at the gate of the building and the said evidence clearly reflects that victim Pushpadevi was sleeping with accused during intervening night of 20.9.1995 and 21.9.1995 in inner room of the house and death of victim Pushpadevi was caused during the said intervening night while in custody of the accused and, therefore, it was within the special knowledge of the accused, and hence, it was incumbent upon the accused to give explanation about death of his wife Pushpadevi but accused failed to discharge the said burden casted upon him u/s 106 of the Evidence Act and, therefore, reliance can be very well placed on the ruling cited by learned A.P.P. in that respect in respect of State of Rajasthan Vs. Kashi Ram (supra). Moreover, useful reference also can be made to judicial pronouncement in case of Trimurkh Vs. State of Maharashtra 2007 (1) Bom.C.R. 1046 SC wherein it is observed that :

Where an accused is alleged to have committed the murder of his wife and the

prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram Vs. State of Himachal Pradesh*, it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khokhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal Vs. State of Maharashtra*, the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement u/s 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State U.P. Vs. Dr. Ravindra Prakash Mittal*, the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him u/s 302 IPC. In *State of Tamil Nadu Vs. Rajendran*, the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.

30. Moreover, it is evident from seizure of clothes of the accused under panchnama which were sent to C.A. office for examination purpose, that the clothes of accused i.e. lungi, full pant, half shirt bore blood stains of human blood of "B" group but the accused failed to give any explanation in that respect even in his statement recorded u/s 313 of the Code. Moreover, although the said circumstance was not allegedly put to the accused during his statement recorded u/s 313 of the Criminal Procedure Code, nothing prevented the accused to give

explanation therefore, since arrest panchnama and seizure panchnama specifically disclose that the clothes of the accused bore blood stains at the time of arrest as well as seizure of the clothes and, therefore, said inaction on part of the accused speaks volumes for itself. As regards alleged defence of the accused which is reflected in the statement u/s 313 of the Criminal Procedure Code and surfaced in the cross examination that a thief entered into house from back door and committed murder of his wife and ran away, apparently, there is nothing on record that theft was committed and, therefore, there is no substance in the defence of the accused. Moreover, other defence of the accused reflected in the statement recorded u/s 313 of the Code that even after 20 years of marriage he has not touched his wife Pusphadevi but she had two children and he did not know whose children they were but still he was maintaining them, it is not digestible and not probable defence, since no basis and foundation has been laid by accused therefore during cross examination of the prosecution witnesses.

31. Having taken the survey of the entire evidence, we are of the considered view that there is no glaring mistake in the Judgment and Order of conviction rendered by the trial Court and, therefore, this is not a fit case warranting interference therein in the present appeal, and hence, we are not inclined to accept the submissions advanced by learned counsel for the appellant and, therefore, the appeal deserves to be dismissed.

32. In the result, the appeal is dismissed and conviction and sentence imposed upon the appellant by learned Sessions Judge, Thane by Judgment and Order dated 6.5.1997 in Sessions Case No. 737 of 1995 stands confirmed, the appeal stands disposed of accordingly.