

(2014) 09 BOM CK 0181

In the Bombay High Court

Case No : Criminal Appeal No. 275/2000

State of Maharashtra

APPELLANT

Vs

Satish Purushottam Aushal

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(3)

Evidence Act, 1872 — Section 102, 106, 11, 27

Penal Code, 1860 (IPC) — Section 201, 302, 304-B, 34, 498-A

Citation : (2014) 4 BomCR(Cri) 323

Hon'ble Judges : C.V. Bhadang, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : K.S. Joshi, A.P.P, Advocate for the Appellant; S.I. Ali, Advocate h/f. R.J. Mirza, Advocate for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—Challenge in this appeal against acquittal is to a judgment and order dated 10.05.2000, delivered by the Additional Sessions Judge, Buldhana in Sessions Case No. 80/1993, acquitting the respondents/accused of offence punishable under Sections 498-A read with Section 34, 302 read with 34 and 201 read with 34 of Indian Penal Code. Deceased Renuka happened to be wife of respondent no. 1/accused no. 1 Satish. Respondent no. 2-accused no. 2 Vilas is elder brother of Satish, while respondent no. 3-accused no. 4 Sou. Sadhana is wife of Vilas. One more brother of Satish namely Rajesh was accused no. 2, but, he came to be discharged by the trial Court and he is not party respondent in the present appeal u/s 378(3) of Criminal Procedure Code filed by the appellant-State Government.

2. Incident has taken place on 07.04.1993, while marriage between Satish and deceased Renuka was solemnized on 08.05.1990. Couple has a son by name Om, nick named Salman.

3. Case of prosecution in brief is that a report was lodged at police station,

Buldhana by P.W. 2 Anand Laxminarayan Garol and one Subhash Baburao Garol about unnatural death of deceased Renuka on 07.04.1993. P.W. 2 Anand is younger brother of deceased Renuka. As per that report, parents of deceased Renuka residing at Aurangabad came to know about death of their daughter Renuka at Buldhana. Their neighbour Mr. Ashok Dhanraj received a message on that day at about 8.30 to 9.30 p.m. that as per wireless message received from Buldhana Police Station, Renuka had expired. Complainant then reached Buldhana by a private vehicle along with other family members. After observing body of the deceased they suspected foul play due to injury marks indicating pressing of neck and marks of beating on hands and legs. They made queries with accused no. 1-husband Satish, brother-in-law Vilas, his wife Sadhana, as also discharged accused Raju @ Rajesh. All these persons gave different reasons, inconsistent with each other. Renuka was facing physical and mental harassment at the hands of these persons. During her visit to her parents place at Aurangabad, Renuka was asked to demand articles like Dining Table, Fridge etc. Parents supplied some articles to keep Renuka happy. Accused had given threat to Renuka that if these articles were not brought, she would be killed.

4. After receipt of this report, Buldhana Police Station registered Crime No. 90/1993 u/s 304-B, 498-A read with Section 34 of Indian Penal Code. Investigating Officer P.S.I. Shekhar Chincholkar drew inquest panchnama Exh. 112; Spot Panchnama Exh. 136. Some articles produced by Rajesh @ Raju, were seized vide Exh. 134. P.W. 12 Dr. Umesh Navade, performed post mortem and its report is at Exh. 195. Query made by the investigating officer was replied to by Dr. Umesh, vide Exh. 196. Police constable Diwan Chand handed over dead body to father of the deceased. Accused nos. 1, 2 and 3 were arrested on 08.04.1993 at 12.45 hours, while Sadhana was arrested on 17.04.1993 at 15 hours. Accused no. 1 Satish gave a discovery statement in respect of seizure of articles gifted by Laxminarayan and in respect of a cable wire. P.S.I. Kailash Oval, drew memorandum of statement of accused no. 1 vide Exh. 144 and articles discovered have been seized as per seizure panchnama Exh. 145. In post mortem report asphyxia due to strangulation, has been recorded as a reason for death. However, viscera was preserved and it was forwarded to Chemical Analyzer. Chemical Analyzer did not find any poison in viscera. Revenue Inspector Sharad Dange prepared map on of spot of incident (Exh. 142). Dr. Vinod Kumar Ukarde, examined accused no. 1 and issued medical certificate Exh. 205; Accused no. 3 was found to be potent by the Medical Officer. Then charge sheet came to be filed in the Court of Chief Judicial Magistrate, Buldhana on 07.07.1993. Said Court in turn committed the case to Court of Sessions.

5. Before proceeding further it will be appropriate to refer to the written statement in defence filed jointly by accused no. 1 Satish and accused no. 4 Sadhana. Satish and Sadhana in their joint written statement state that on 07.04.1993 there was Satyanarayan Puja in the house of Ramkrishna Punjaji Kherdekar, residing in the same locality, and they had gone there for taking "tirthaprasad". Renuka was to come there after some time, but, she did not

arrive till Satish and Sadhana were ready to depart. They came back home and found the door of house closed. They pushed it, but there was no response, hence, they pushed the door with force. Latch on inner side of door got detached and fell down. They entered the house, found Renuka lying on the floor and back side door of the house open. Hence, Satish and a tenant residing with them namely Shri Ingle took Renuka to Dhanwantri Hospital of Dr. Wanere. Dr. Wanere examined her and at that time Renuka was alive. Renuka died when she was being taken to home from hospital of Dr. Wanere. Both the accused state that they were not aware how Renuka died.

6. Mrs. Joshi, learned A.P.P. has submitted that the prosecution case was based upon circumstantial evidence. The circumstances according to her show that the deceased Renuka was being harassed for dowry or for bringing articles from her parents. Renuka had witnessed illicit relationship between her husband Satish and Sadhana, wife of Vilas i.e. brother of Satish. Death occurred inside the family house and neither husband nor other relatives intimated it to the parents of Renuka. Through wireless of police, a message was delivered to a neighbour of parents. After parents arrived at Buldhana, different and inconsistent replies were given by in-laws of Renuka about the cause of death. There were injuries on the person of the deceased and marks of strangulation. No police complaint was filed and parents of Renuka were also asked not to file police complaint. After post mortem, body was received by father of Renuka, and in-laws did not attend funeral. The accused persons took a false plea of alibi, which has not been substantiated and which holds no water. In spot panchnama, broken bangles and black beads were found on the spot. Satish discovered a wire used for strangulation, u/s 27 of the Evidence Act. Burden was upon accused persons to explain the death in view of provisions of Section 106 of the Evidence Act. Accused no. 1 Satish was found to having some injuries and those injuries have not been explained by him. Learned A.P.P. submits that the trial Court has not recorded any finding on correctness or otherwise of the plea of alibi.

7. Learned A.P.P. has taken us through evidence of P.W. 1 Pramilabai and P.W. 2 Anand (reporter), to point out the condition of body in which it was first seen by the relatives of Renuka, who arrived from Aurangabad. Body was cleaned by the accused persons after the parents of Renuka decided to lodge police complaint and thus commission of offence u/s 201 of Indian Penal Code is established. Learned A.P.P. fairly states that though technically no case u/s 498-A of Indian Penal Code is made out; harassment to Renuka is sufficiently established on record by examining these witnesses, as also P.W. 11-Laxminarayan, who happens to be father of Renuka. She submits that as the dead body was found in a residential house, in occupation of accused persons, lying on floor in a room and not in hanging position, trial Court in this situation could not have negated the case of strangulation. She also submits that as unnatural death has taken place within the matrimonial home, provisions of Section 106 of Evidence Act are attracted. According to her, the illicit relationship between Satish and Sadhana is also sufficiently proved by the witnesses.

8. Evidence of P.W. 3-Narendra is pressed into service to show how relatives of Renuka were asked to go out of the house, as they were crying. The conduct of accused persons shows their involvement and the trial Court has ignored the settled position of law in this respect.

9. P.W. 9 Dr. Wanere has stated that she could not get pulse of patient i.e. Renuka. She gave ambulance for carrying Renuka to Government Hospital and accused persons did not carry her to government hospital, but brought her home. Satish and Sadhana claimed that Renuka expired while she was being brought home from hospital of Dr. Wanere. Strong reliance is placed upon evidence of P.W. 12-Dr. Umesh, who has conducted post mortem to show that he found all injuries on Renuka ante mortem and ligature marks suggesting strangulation. Evidence of P.W. 15-Dr. Vinod Kumar shows that accused no. 1 Satish was found with injuries during medical examination on 13.04.1993, and his injuries were 2 to 4 days old. Learned A.P.P. submits that entire evidence on record conclusively establishes guilt of accused persons. She also points out that no witness in defence has been examined. Judgment of Hon"ble Apex Court reported at Sahabuddin and Another Vs. State of Assam, particularly paragraph no. 23, is relied upon to urge that in such situation, this Court has to draw an adverse inference.

10. Shri S.I. Ali with Shri Mirza, learned Counsel for the accused persons has submitted that neither circumstances are established nor motive is brought on record. The effort to show any cruel treatment to the deceased and to invoke Section 498-A of Indian Penal Code have also failed. He comments upon evidence of P.W. 1,2, 8 and 9 and submits that their evidence show material inconsistencies, rendering it unacceptable. Attention is drawn to inquest panchnama (Exh. 112) to show that one Ramkrishna Kherdekar is shown as panch witness no. 2 and prosecution has avoided to examine him. Shri Ali, learned counsel submits that accused persons had gone to his house for attending Satyanarayan Puja. Omissions in deposition of P.W. 2 Anand are also highlighted by him. Letters at Exhs. 117 and 129 are relied upon to urge that the same show cordial relations between the two families. Evidence of P.W. 12 Dr. Umesh is also pressed into service to urge that in cross examination, he has accepted that injuries no. 2 and 3 may be possible by fall. In further cross examination he points out that P.W. 10 accepted the proposition that eyes prominently open and tongue protruding out are the signs of strangulation. As Renuka's eyes were closed and mouth was also closed, it was not a case of strangulation. Inquest panchnama is read out to show that saliva had dropped down the mouth of Renuka. Chapter No. 19 in book written by Dr. Modi (24th Edition) has been cited to point out different symptoms between death by hanging and death by strangulation. He also submits that ligature marks noted in paragraph no. 17 of the post mortem report does not mean that death is by strangulation. He has also attacked the argument of learned A.P.P. by urging that on the basis of evidence made available on record, findings recorded by the Sessions Court cannot be said to be either erroneous or perverse. Relevant

observations recorded by the Sessions Court in judgment impugned before us are also read out by him. He has also relied upon various judgments to show the scope of present appeal, extent of burden cast upon the prosecution and its not shifting to accused due to Section 106 of the Evidence Act, absence of motive, theory of last seen etc. Said judgments are Sakharam Vs. State of Madhya Pradesh, 2013 All M.R. (Cri) 2835 (Sambhaji Chinduji Pachare Vrs. State of Maharashtra), Khatri Hemraj Amulakh Vs. The State of Gujarat, and Inderjit Singh and another Vs. State of Punjab, To show how circumstantial evidence needs to be appreciated and approached, he seeks to rely upon judgments reported at Sharad Birdhichand Sarda Vs. State of Maharashtra, Hanumant Vs. The State of Madhya Pradesh, and Muralidhar @ Gidda and Another Vs. State of Karnataka,

11. Learned A.P.P. points out evidence of P.W. 2 Anand about illicit relationship between Satish and Sadhana and the alleged omissions. She contends that FIR as filed also supports the prosecution story and need for investigation. Evidence of P.W. 16 Kailash, investigating officer by which he pointed out offer of bribe of Rs. 30,000/- to tamper with the investigation process and similar deposition of P.W. 8 Shekhar P.S.I., is relied upon by her. Jagdish Vs. State of Madhya Pradesh, is pressed into service to show how motive and theory of last seen together need to be applied in present facts.

State of Rajasthan Vs. Jaggu Ram, is relied upon to comment on provisions of Section 106 of the Evidence Act along with the conduct of accused persons. Sandeep Vs. State of U.P., is also relied upon for very same purpose.

12. Shri Ali, learned counsel at this stage, with the leave of Court, invited attention to cross examination of P.W. 8-P.S.I. Shekhar on the point of bribe of Rs. 30,000/-.

13. Before proceeding to consider the rival arguments, we find it most appropriate to refer to some important findings recoded by the trial Court. Trial Court in paragraph no. 23 has found that Renuka was alive when she was taken to Dr. Wanere i.e. P.W. 9 and she expired when Satish was bringing her home. In same paragraph, the trial Court also took note of the fact that accused nos. 1 to 3 did not lodge report in respect of death of Renuka, though they were in service of public department and well educated and also happen to be sons of a retired Superintendent of Police. It also took note of evidence of P.W. 8-Shekhar Chincholkar that accused had offered him bribe of Rs. 30,000/- for not sending the dead body for post mortem. However, the said Court remarked that these facts were not sufficient to hold that accused caused death of Renuka. In paragraph no. 24 it also noted absence of any evidence on record showing that deceased Renuka was found in hanging condition by accused nos. 1 and 4, after they returned. In paragraph no. 25 it has considered the injuries found on accused no. 1 Satish. Arrest panchnama (Exh. 138) was looked into by the trial Court to gather that when accused no. 1 Satish Aushal was arrested on 08.04.1993 at 12.30 hours, slight old injury (abrasion) was seen by the panchas.

The Investigating Officer failed to immediately refer Satish to medical officer to ascertain the nature and age of the injury. Trial Court also held that the prosecution did not examine the medical officer who has seen Satish firstly on 10.04.1993. It also relied upon MLC Certificate (Exh. 213) proved by defence in cross examination of P.S.I. Kailash. It found that Satish was referred vide requisition letter Exh. 212 to the Medical Officer for his medical examination on 10.04.1993 i.e. 2 days after his arrest and medical officer examined Satish on 10.04.1993 at 10.55 p.m. and issued medical certificate at Exh. 213 which shows that there were no marks of injury over any part of the body of Satish. By placing reliance upon the panchnama Exh. 138 and this certificate, it concluded that injuries noted in the injury certificate at Exh. 205 were after 10.04.1993 and in any case after arrest of Satish on 08.04.1993. Medical Officer P.W. 15 Dr. Vinod Kumar had examined Satish on 13.04.1993 and issued injury certificate Exh. 205. Perusal of Exh. 205 shows following injuries on Satish.

"(1) Abrasion left arm posterior laterally lower third four spots of about 3 x 4 mms. About 1 cm. apart, scab found brown in colour and firm. Not fallen off;

(2) Abrasion of 2 x 2 mms.; on It. Arm posteriorly L/3 brown scab firm;

(3) Linear abrasion It. Forearm on extension surface M/3 1 x 1 cm. brown firm scab;

(4) Abrasion forearm It. M/3 3 x 2 mm. Firm brown scab;

(5) Linear abrasion It. Forearm on Jn. Of M/3 and L/3 on lunar side on Ext. surface 1.5 x 1 cm. brown firm scab."

14. Trial Court found that these injuries were at the most two days or four days old on 13.04.1993 and prosecution could not have relied upon the same to demonstrate that Satish suffered those injuries in struggle with deceased Renuka. It also found that Satish was in police custody at least till 15.04.1993 on which date his statement u/s 27 of Evidence Act came to be recorded. It also found that injuries were caused to Satish during his police custody and it was very serious conduct on the part of the investigating officer. It also found that such conduct may show attempt on the part of the investigating officer to create false evidence.

15. In paragraph no. 26, it has considered the issue of illicit relationship between Satish and Sadhana. It found that P.W. 2 Anand and P.W. 10 Subhash (reporter) do not write a single word in their police report Exh. 114 about such immoral relationship. It also found that P.W. 2 Anand did admit in cross examination that he was knowing about said relationship even before filing of the said report. In paragraph no. 27 it has looked into the evidence of father of deceased namely P.W. 11 Laxminarayan. It found that Laxminarayan never stated to the police that father of accused Satish namely Purushottam Aushal told him that he wants to separate his sons. Certain omissions about said relationship in police statement of Laxminarayan are also noted by it. In paragraph no. 28, it found that

Laxminarayan was making improvement in his version to assist the prosecution. In paragraph no. 29 it concluded that omissions amounting to contradiction attempted by Laxminarayan got substantiated by defence through the investigating officer, clearly rendered evidence of Laxminarayan unworthy in credence and reliance. In paragraph no. 32, it noted that Saliva was dropping from the mouth of Renuka, her eyes were closed and her mouth was also not open. All these facts led it to conclude that Renuka died due to hanging and not on account of strangulation. In paragraph no. 34, trial court found that evidence of P.W. 7 Pralhad More on memorandum of statement (Exh. 144) and discovery of panchnama (Exh. 145) did not stand to the test of cross examination. Trial Court took note of the fact that the investigating officer Mr. Oval along with Pralhad More while entering the house of accused disclosed his intention to take search of the house. This conclusion is based upon admission of P.W. 7-Pralhad More and according to the trial Court it created doubt about the alleged discovery of articles and cable wire u/s 27 made by Satish. It found that the said discovery cannot be said to be legal. In paragraph no. 36, it again reiterated its finding that death of Renuka was caused due to hanging and not by strangulation. In paragraph no. 37, the trial Court came to the conclusion that Renuka committed suicide. It found that the prosecution has failed to prove guilt of accused persons beyond reasonable doubt.

16. The investigation was by P.W. 16-Kailash Oval and P.W. 8-Shekhar Chincholkar. P.W. 8-Shekhar was P.S.I. attached to Buldhana Police Station. He has stated that a crime was registered u/s 304-B, 498-A, 201 read with Section 34 of Indian Penal Code at Buldhana Police Station on 08.04.1993 at 6.40 a.m. Police Station Officer handed over investigation to him. He visited the spot at about 7.30 a.m. and Raju @ Rajesh and Vilas met him at that place. He identified Advocate Rajesh (discharged accused) and accused no. 3 Vilas. According to him, these persons told him that Renuka died due to fall and they had no suspicion on any body about her death. They also communicated their desire not to have any post mortem and they would pay Rs. 30,000/- if post mortem is avoided. He refused that sum.

17. His cross examination shows his knowledge of the fact that offering bribe to a public servant constituted an cognizable offence and knowledge of his duty that he had to register such offence, he accepted that he did not register the same and explained that as the incident of offering bribe took place during investigation, he decided not to register the crime. He also accepted that no body registered any offence against Advocate Rajesh and Vilas till the date on which he was deposing.

18. Perusal of evidence of P.W. 16-Kailash shows narration of offer of bribe by PSI Chincholkar to him. It is in the light of this disclosure by two police officers that this Court needs to be consider the material made available on record by the prosecution.

19. Anand s/o Laxminarayan Garol is the younger brother of deceased Renuka.

He is also reporter at whose instance Police Station Buldhana has registered the crime. He has stated that he was in 12th standard when Renuka was married with Satish in 1990. He visited house of Renuka on 8 to 10 occasions. Purushottam Aushal and his wife, Vilas and wife of Vilas by name Sadhana and Satish, husband of Renuka were the family members. He could see Rajesh who was practicing as an Advocate at Akola only on one or two occasions. Renuka and Satish were living in one room on the first floor. He has stated that Renuka visited her parents at Aurangabad on 5 to 6 occasions. One such occasion was delivery. On one occasion, she came for marriage of her cousin brother and once for Diwali. He deposed that in 1992 Renuka had told him that her husband Satish, Vilas and Sadhana used to beat her. His father told him that Satish and others were demanding some articles and he had provided the same. Dressing table, Table fan, Cupboard etc., were the articles given to Satish by father of Renuka. He further informed that on 7 occasions he went to Buldhana either to fetch Renuka or to reach her back. Aushal family as a rule insisted that somebody should come to take Renuka and to reach her back. Open nature of Renuka before marriage underwent change after about one year and he found that she was under some pressure and frightened. She avoided to answer the question whether she was happy after marriage. He noticed that relations between Satish and Sadhana were close and very close. From it, he gathered that they had illicit relationship with each other.

20. He has further deposed that on 07.04.1993, between 9 to 10 p.m., he was at his residence when neighbour Shri Ashok Dhanraj gave a message that telephone call had come from Buldhana. Hence, he and his father went there and his father talked on phone. After finishing talks they returned to their house. Immediately after reaching house, his father started weeping. He told his mother that Renuka expired during delivery. His parents expressed impossibility of such a death as pregnancy was for only 4-5 months. His father told mother that he had asked police control room through which the phone had come, to confirm. His father again visited the house of neighbour and returned back after 4-5 minutes. After returning he started weeping loudly and stated that death of Renuka took place during delivery. Then family decided to go to Buldhana. Anand, his parents, Subhash, Pramilabai and Sarojabai arrived at Buldhana in taxi at about 4 a.m. They reached house of Renuka located in Chaitanyawadi. After knocking, the door of house was opened. Vilas, Satish, Raju and Sadhana were present in the front room who resisted them/relatives from going inside. His father pushed them aside and went further. They followed him and found body of Renuka in a room adjacent to front room. His father removed bed sheet on dead body and witness Anand saw that there was bleeding from nose and mouth of Renuka. They started weeping loudly. Face and head of Renuka was covered with end of a saree and remaining part of saree was lying by the side there only. His mother and Pramilabai removed the portion of saree on face and he noticed that face of Renuka had become green and blue due to bleeding. There was a black mark on neck of Renuka due to tying of rope. His parents

started uttering loudly that "these persons" killed Renuka. They enquired from 4 residents of house as to how Renuka died. Vilas told that she died due to fall from stairs; Rajesh stated that she fall from terrace; Satish stated that she died due to fall in Kitchen room, while Sadhana stated that Renuka died on account of poison during pregnancy. Because of these 4 different versions, the witness and his family members felt sure about the murder of Renuka. Rajesh, Satish and Vilas started pacifying them and urged that no police complaint should be made and they also had not made any complaint. His father expressed that they had killed Renuka and therefore, a police complaint would be lodged. Listening to these words, attitude of these 4 persons changed. They got annoyed and asked witness and his family members to go outside. They came in courtyard and sat there. Husband of Renuka and other family members closed the door of the house. Witness and his family members discussed about lodging of police complaint. His father asked him and Subhash to go to police station for said purpose. Accordingly Anand and Subhash proceeded to police station. He and Subhash discussed and then Subhash drew report in Marathi in the police station in his presence. Both of them read it out and then signed it. He identified the report at Exh. 114. He stated that the police officials they accompanied them to house of Renuka. He was standing outside the house when police officers entered the residence of Renuka. Panchnama was completed at 1.30 p.m. and then dead body of Renuka was forwarded for post mortem. They were present outside when post mortem was going on. Nobody from accused side were present there. After post mortem body was received by him and then funeral was performed by father of Renuka at Buldhana. They received message to attend police station. There his statement was recorded. Except P.W. 2 Anand and Subash all others left them for Aurangabad. Anand and Subash stayed at Buldhana to collect ashes of Renuka. On next day they collected the ashes and immersed it in a river near Buldhana.

21. His cross examination shows that he identified certain letters. Those letters are at Exh. Nos. 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128 and 129. He also identified the handwriting on envelopes at Exh. Nos. 131, 130 and 132. Post card dated 18.11.1992 sent by Renuka bearing her signature is at Exh. 126. He further stated that mother-in-law of Renuka by name Shobha, died 5-6 months before the death of Renuka. He denied that Vilas was absent at Buldhana when Renuka died. He was cross examined in relation to map of ground floor of the house and he pointed out the hall between living room and puja room where body of Renuka was kept, when he saw it first. He further stated that his father did not give instructions to him about the mode and manner of filing of report with police, but, there was discussion between him, Subhash and father about it. He could not remember whether there was any discussion on the subject of immoral relationship between Satish and Sadhana. He was aware about the grievance of Renuka in relation to said immoral relationship, while proceeding to lodge police complaint. He has stated that before lodging police complaint he did not feel that immoral relationship of Satish

with Sadhana may be the cause or have some connection with death of Renuka. However in next breath, he has stated that it was not in his mind. There was some objection by Public Prosecutor and counter objection by Advocate for the accused and thereafter the question was asked to the witness in Marathi and the question was repeated. Witness then asked the counsel for the accused to put the question in Hindi. Counsel for the accused then insisted that he would ask the question either in Marathi or in English, but, not in Hindi. Witness Anand stated that questions can be put to him in English. The question was accordingly put in English and Trial Court has recoded that "thereafter this witness answered the question firstly." Trial Court further observed that when it was recording the answers given by the witness, the witness stated that the question was not asked accordingly and court was required to give understanding to the witness. The court mentions that accordingly it recorded first answer given by the witness. The court takes note of request of witness that questions may be asked again. Court explained the questions in Hindi and answer given by the witness was recorded again. However, what is that answer is not apparent, as the said answer does not appear on record. In Exh. 115 of his cross examination, he stated that he was not remembering whether Pramila (PW 1) and Narendra Naidu (PW 3) were present in courtyard of Renuka's house when he and Subash came back after lodging police report. He did not remember whether police officer came there and asked Pramila and his mother, their readiness to act as Panch. He could not remember whether Pramila and Narendra Naidu then entered the house of Renuka and came out after about half an hour. He did not remember whether Narendra came out with Pramila and again went inside after about 15 minutes or thereafter he came outside of that house after one hour. He also stated that Pramila did not tell him that when she saw the dead body on second occasion, she noticed any changes in it.

22. This witness accepted that he did not inform police that Renuka had told him about beating by Satish, Sadhana and Vilas. He also did not tell police about the instructions to Aushal family to collect Renuka and to reach her back. He did not tell police that he found Renuka frightened or that upon interaction, Renuka used to avoid the answers. He stated that telephonic message about death of Renuka was given to Ashok Dhanraj. He accepted that the immoral relations between Satish and Sadhana were not written in the report. He accepted that fact of resistance to entry in the house was also not mentioned in the police report. He also accepted that fact that his father was required to enter the house by pushing aside the accused persons, is not told to police. He did not tell police about blood oozing from nose and mouth of Renuka. The fact that face and head of Renuka was covered with end of saree was also not communicated to police. He did not tell police that his parents alleged that these persons had killed Renuka. He did not inform police in report or while giving statement that his father had told accused persons that they killed his daughter, and therefore, he was going to police station. He did not tell police about changed attitude of accused persons after hearing this declaration of father or fact that they were

then driven out of the house of Renuka and door was closed by accused persons. He stated that because of failure to remember, he could not tell all these facts to police authorities. This witness accepted that while lodging report and thereafter, he has not mentioned about any ill-treatment or harassment by accused persons. It appears that the alleged immoral relations between Satish and Sadhana did not arise for consideration and was not discussed before lodging police report and was not communicated to police authorities to show the motive behind killing.

23. P.W. 2 Anand has exhibited some letters, it will be therefore, appropriate to find out whether the same in any way bring on record any ill-treatment or demand for dowry or illicit relationship. However, this exercise needs to be undertaken after considering the evidence of father of deceased namely Laxminarayan. Laxminarayan Garol, is the father of deceased Renuka and he has been examined as P.W. 11. He has informed the court that Renuka was 19 years old at the time of her marriage and beautiful. Father of accused Satish, Purushottam was on visiting terms with him since 1987. Purushottam visited Laxminarayan's house in March and April, 1987 initially and he communicated his desire to have Renuka as wife of his son either Rajesh or Satish. At that time Laxminarayan communicated settling of marriage of elder sister Vijaylaxmi. Later on he states that Purushottam in the meanwhile intimated about marriage of Rajesh with a Girl at Nanded. Laxminarayan requested Purushottam to wait till Renuka completes 18 years of her age. Marriage of Vijayalaxmi was performed in the year 1987. After completion of 18 years of her age, Renuka was married with Satish on 08.05.1990. Laxminarayan has agreed to pay price of clothes of bridegroom and accordingly paid the same. After marriage Purushottam complained about the arrangements made in the marriage. Laxminarayan deposes that he told Purushottam that he had acted as per his commitment and gave gold about 7 tolas to Renuka and Satish, and a Wristwatch to Satish. After marriage of Renuka, all family members were living jointly. 8 days after marriage, Renuka returned to Buldhana for the first time. She informed that she took table fan to her bed room and he husband Satish scolded her. He asked her to bring fan from her father. Renuka was weeping. On 22.05.1990 he purchased a fan worth Rs. 820/- and presented it to Renuka. When Vilas came to fetch Renuka, he sent fan with some other articles. On 21st or 22nd June, 1990, he went to Buldhana to bring back Renuka. On that occasion, she stayed with her parents for about one month. She stated that there was no arrangement for keeping clothes at her residence, and hence Satish and Purushottam had asked her to bring godrej almirah from her father. She also stated that members of her family were commenting that her father did not present anything to her. Her father (Laxminarayan) expressed inability to purchase Godrej almirah, but, informed that similar type of almirah would be provided. On 07.08.1990 he purchased one almirah with mirror for Rs. 3200/-. Laxminarayan has produced receipts of payment for table fan and almirah. He requested the shop owner to book almirah and forward the same to Buldhana. Transport receipt was forwarded to Renuka. Later on he received a letter Exh. 163, from Purushottam

that delivery of almirah was not taken as its mirror was broken. Laxminarayan made enquiries and learnt that the family members of Renuka had demanded Rs. 100/- to accept delivery of almirah. Laxminarayan then advised Purushottam in writing to accept the delivery of almirah and accordingly Purushottam took delivery on 19.08.1990. Purushottam paid Rs. 290/- as transport charges and Rs. 30/- as carting charges. He wrote letter at Exh. 164 and informed this to Laxminarayan. Laxminarayan then visited Purushottam in second week of September, 1990 and paid him Rs. 320/- as also Rs. 100/- for damaged mirror. Purushottam however, expressed displeasure for not sending godrej almirah. He then brought Renuka back to Aurangabad for Diwali festival and Rakhi Pournima. When Satish came, he gave gold ornament weighing half tola and clothes. Laxminarayan visited Renuka after a gap of one or two months and Purushottam used to state that Laxminarayan should carry Renuka for delivery as his wife Shoba was paralyzed, as Purushottam was suffering from blood pressure and his daughter-in-law was also pregnant. He then took Renuka to Aurangabad on 05.05.1991. At that time, he found her in frightened condition. He also stated that when ever he wrote letters to Renuka, mother of Renuka used to say that Laxminarayan did not find good in-laws for Renuka. He pointed out letters at Exh. No. 165 written by Purushottam on 29.05.1991 on his letter head as Superintendent of Police. He informed Purushottam about good health of Renuka. On 08.08.1991, Renuka delivered a son in private nursing home. He noticed that Renuka was suppressing something from him. The message was given to Purushottam by telephone as also by telegram as per directions of Purushottam. 2-3 days thereafter, Satish, Purushottam and 2 daughters of Vilas came to Aurangabad, they stayed at Shakuntal lodge. Earlier Purushottam used to stay at Laxminarayan's residence, Laxminarayan noted change in their attitude. They used to visit house of Laxminarayan for taking meals by rickshaw. Purushottam while leaving Aurangabad told Laxminarayan to pay Rs. 300/- for expenditure incurred for staying in Shakuntal lodge and for rickshaw and accordingly he paid Rs. 300/- to Purushottam. Thereafter, Purushottam visited on 2-3 occasions and told Renuka that she should demand one gold locket and earrings for her son and one dressing table for Satish. Renuka told this to Laxminarayan. He then prepared a locket of gold weighing 10 gms., earnings of gold weighing 4 gms and Renuka left for Buldhana. He purchased a dressing table on 02.10.1991 for Rs. 1500/-. He produced receipt of the same. He also proved letter at Exh. 166 written by Purushottam that he would be coming to take Renuka in second week of November by Jeep. Laxminarayan then points out regular visits by himself or his son to Renuka. He states that on 08.08.1992, he came to Buldhana for birthday of his grandson. He brought clothes for his grand son Om. Purushottam scolded Laxminarayan for not bringing clothes for son of Sadhana, who was born in the meanwhile. Renuka was also scolded and she started weeping. Laxminarayan then purchased dress for son of Sadhana at Buldhana. He has then pointed out that wife of Purushottam became serious and died on 15/16 October, 1992. He went to Buldhana in first week of November to take Renuka. He carried Renuka to Aurangabad by Bus. Renuka was weeping and when

enquired, she disclosed illicit relations between Sadhana and Satish. Renuka told that she had given idea of that relationship to her mother, when she came for delivery to Aurangabad. He pacified her by explaining that Purushottam was going to separate his sons. Renuka also informed that Satish and Sadhana had threatened her that if she disclosed their relations to anybody, her father-in-law, then a Superintendent of Police, would send Laxminarayan to jail. She also informed that Purushottam was aware of the relationship. He then points out how he came to Buldhana on 22.01.1993. At that time Renuka was pregnant for 2-3 months and at Aurangabad informed him that said illicit relationship had crossed the limit and Satish and Sadhana were romancing openly. As she had seen their illicit relations, there was danger to her life. She stayed at Aurangabad till 06.02.1993 and on that date Anand reached Renuka back to Buldhana. Till 06.04.1993 he sent two letters to matrimonial place of Renuka and he also received two letters. One such letter is at Exh. 167. On 6th April, he telephoned Renuka in the afternoon. He enquired from Renuka as to why she appeared to be frightened. Renuka informed that as Sadhana was standing near her, she could not tell. He then speaks of date of incident i.e. 07.04.1993 and as to how he got message of death of Renuka. He has stated that they reached Buldhana at 4 o'clock in the morning and door was not opened by accused persons for 4-5 minutes, though they knocked. His further evidence is consistent with what has been stated by P.W. 2 Anand. He has also pointed out 4 different reasons given by the accused persons for death of Renuka. He also points out how they were pushed outside the house and doors were closed. He then heard sound of ring of telephone and also heard that Rajesh telephoned some body. They all sat in the compound (courtyard) till 6 a.m. Friends of Laxminarayan and relatives from Aurangabad arrived till 6 AM in the morning and a decision to lodge complaint was taken. At about 6 o'clock in the morning, Subhash and Anand (PW 2) were sent to the Police Station to lodge report. They returned back at about 7 o'clock. Police officers followed them. The door was opened and police went inside. Within 2-3 minutes, police then requisitioned a lady pancha and Pramilabai acted as such as no other woman was present. Raju Narendra Naidu present with them and one man from Buldhana were also invited to act as Panchas. Police officers took panchas in the room where the dead body was lying. Laxminarayan and others came in front room and noted that police officers removed bed sheet covering the dead body. Pramilabai shouted loudly and stated that earlier there was only blouse and petticoat on the dead body, but then it was wearing a saree also. Blood oozing from noose and mouth was not there. Police officers explained that they have to draw the panchnama of the body in its existing condition and hence Pramilabai kept mum. Writing of inquest panchnama was going on from 7 a.m. till 10 to 10.30 a.m. Photographer was also called who took photographs of the dead body. Police officers then prepared spot panchnama and at about 11.30 a.m. the dead body was taken to Civil Hospital for post mortem. He then points out about funeral. He also points out a message from police station to attend, for recording statement after funeral. He explained that due to his mental condition, he could not state all facts to the police, he has stated that on 9th April, at 9

a.m. he received a telegram from Buldhana (Exh. 169) which read "Renu Serious, start immediately before noon" with name of Satish on it. Police seized it on 13th April. On 12th April, he received a letter written on 29.03.1993 by Renuka. It was addressed to Anand but posted in the name of Laxminarayan. Said letter is at Exh. 170 and it's envelope is at Exh. 171. He deposed that some body had dictated contents of Exh. 170 to Renuka and Renuka was not competent to write in that manner. He produced 12 documents before Buldhana Police on 13th April, which were seized. He exhibited 2 wedding cards Exh. 172 and 173. He also produced receipt of post office for making telephones. These 15 telephone receipts issued by the post office are at Exh. A1 to A15. He also stated that his supplementary statement was recorded on 26.08.1993.

24. Perusal of his cross examination shows that initial statement dated 08.04.1993 recorded by police was read over and he has stated that it was correctly recorded. He further stated that no further statement was then recorded by police. 6 to 8 months thereafter he realized that he failed to state further facts to police and this realization came after discussion with the family members. He did not inform police by letter or on telephone, that he wanted to state some other facts. He accepted that facts disclosed by him in deposition in Court were not stated before police and he disclosed it for the first time in Court and not to anybody else till then. He stated that he did not inform police that his mental condition was not fit when his statement was recorded on 08.04.1993. His cross examination further shows that he never felt that marriage of Renuka was solemnized against her wish. He accepted that when Renuka visited him for first delivery or for Rakhi Pournima, she did not state anything to him. He never asked Purushottam to ask his sons to separate and Renuka also never told him to initiate any dialogue about it. He has deposed that when Purushottam told him that he wanted to separate his sons due to death of his wife, he never thought that there can be some other reason for their separation. He never enquired from Satish as to why his father wanted separation. He accepted that letter dated 29.03.1993 was the last letter from Renuka exclusively written by her. He stated that Renuka never wrote that he should not make any telephone call. He accepted that Purushottam died 15 days prior to 15.03.1999, i.e. the date on which his cross examination was being recorded. He further stated that male members of the family used to do outside work like going to flour-mill or purchase of vegetables. He deposed that letter written by Renuka exclusively to parents were posted by her husband or by her father in law.

25. His further cross examination shows the large number of omissions i.e. the facts which he do not disclose to police. Those facts are-his statement that when Purushottam had asked him as to what he would present to his daughter in marriage, he told Purushottam that he would have to think about marriage; grievance allegedly made by Purushottam that marriage was not arranged properly or then that it was not celebrated as per custom; presentation of 10 tolas of gold and wrist watch in marriage; Renuka telling him that when she was taking fan to her bed room, Satish asked her to get a fan from her father;

Renuka telling witness that Satish and Purushottam were asking her to bring godrej almirah or then his answer that he would provide her local cupboard; his paying Rs. 220/- for transport charges and Rs. 100/- for damaged mirror to Purushottam in second week of November, 1990; dissatisfaction expressed by Purushottam for not supplying godrej almirah; his presenting Satish a ring of gold weighing half tola and clothes when Satish visited in Diwali and Rakhi pournima; his finding Renuka in frightened condition, when he took her for delivery on 30.05.1991; his wife always expressing that he did not give his daughter in marriage at proper place when ever he sat for writing letter or his wife mentioning that there was something wrong at her matrimonial place. He also expressed that he did not state to police that during her stay for delivery at Aurangabad, he found that Renuka was attempting to suppress some facts from him; visit of Purushottam, Satish and two daughters of Vilas to Aurangabad after Renuka delivered a boy and their stay at Shakuntal lodge; alleged change in their attitude noted by him at that juncture; Purushottam demanding from him Rs. 300/- on account of lodging and auto rickshaw charges; Purushottam prompting Renuka to demand locket of gold and earning of gold for her son and one dressing table for Satish or then Renuka disclosing those facts to him; his providing the ornaments accordingly; his presenting clothes to son of Renuka on his first birthday; scolding of Purushottam because he did not bring clothes for newly born son of Sadhana or then Renuka starting weeping; his purchase of clothes at Buldhana for son of Sadhana; absence of Satish on first birth day; his knowledge in October, 1992 that Purushottam was ousted from caste; or communication by Purushottam that he wanted to separate his sons. He also accepted that he did not tell police that when he was taking Renuka in S.T. Bus to Aurangabad, she started sweeping and told him about immoral relationship between Satish and Sadhana; Renuka informing him that during her first delivery he had communicated this relationship to her mother; his consoling Renuka by stating that Purushottam was going to separate his sons; threat given by Sadhana and Satish to Renuka that Purushottam Aushal being Superintendent of Police will sent father of Renuka to jail; his enquiry from Renuka whether Purushottam was aware of illicit relationship and answer given by Renuka, or then Purushottam telling Renuka that he was going to separate his sons and she should not communicate confidential matters in the interest of family to outsiders. He also accepted that he did not tell police that when he visited Purushottam on 22.01.1993, Purushottam told him that he could not separate his sons due to fracture of his legs or that he was going to separate them in near future or about danger to her life apprehended by Renuka. He did not tell police that on 06.02.1993 when Renuka was going to Buldhana with her brother from Aurangabad, he consoled her by pointing out that there would be a separation between sons of Purushottam soon. He stated that he disclosed to police his enquiry from Renuka as to why on 06.04.1993, she was talking in frightened manner or Renuka informing him that Sadhana was sitting near her. He could not explain why these facts were not appearing in his police statement. He further stated that he had disclosed to police that when he reached house of Aushal at 4

o'clock on 08.04.1993, he found all doors closed and nobody was present in verandah or compound. Again he could not assign any reason as to why this fact was not appearing in his police statement. His cross examination shows that following facts are claimed by him to be communicated to police and he has expressed his inability to explain why those facts were not appearing in his police statement. Those facts are-His knocking the doors 4-5 times and for about 4-5 minutes, but nobody opening the door in the morning on 08.04.1993; 4 persons namely Satish, Vilas, Rajesh and Sadhana not asking them to come inside or obstructing their entry; His pushing them to one side and forcing entry; His removing bed sheet from person of dead body; His finding no saree on body and only blouse and petticoat on person of Renuka; His removal of saree from face of dead body and his finding marks on body of fingers of hands on both the cheeks of Renuka; His shouting "meri bacchi ko maar dala, maar dala", Bharti and Parmila removing saree from around the neck of dead body and Satish informing them that as Renuka fall on her stomach in kitchen room she died; Rajesh telling them that Renuka died due to fall from terrace on stomach, Sadhana informing him that Renuka died due to poisoning of fetus; His shouting "hamari bacchi ka khoon ho gaya" and airing an intention to report to police; Satish thereupon expressing that it was not time to shout loudly; Family members of accused getting angry after hearing the word "police" and asking them to get out of house; Those persons pushing him and his family members out of the house in compound and closing the door of the house; their remaining in compound till 6 a.m.; His hearing telephone ring or noticing that Rajesh was making telephone calls to somebody and fact of accused persons watching them through grill. During this cross examination, he denied that Rajesh had told him that he returned from Akola in the evening only and therefore, was not aware how Renuka died. Portion marked "A" in his statement was read over to him and he stated that it was not correct.

26. His further cross examination reveals that he did not state to police that after police came to spot, door was opened as accused persons were watching through the grill. He accepted that he did not inform the police that police official came out of the house and stated that he wanted one woman panch and Bharti, Sarojina and Pramila were only women present outside. He did not state to police that as no other women was present outside, police official asked Pramila to act as Panch. He did not state to police that after Pramila went inside, she started shouting that earlier there was only petticoat and blouse on the person of dead body and at that juncture she was wearing a saree also, or that saying that blood oozing from ear and mouth, has disappeared. He accepted that he did not tell to police that after post mortem was over, the police officials waited for half an hour for members of Aushal members to come and claim the dead body. He also stated that he informed police that police officers asked them, as to whether they were ready to take the dead body. He stated that he did not state to police that besides 4 times, Renuka had visited on 2-3 more occasions, but, he accepted that his statement was recorded in the form of narration. He also accepted that

he never made grievance that facts spoken about by him were not recorded in his statement. He denied that facts disclosed to Court were not communicated to police as the same were not in existence and they were changing story with oblique motive. He accepted that he had seen saliva oozing from mouth of Renuka. He did not see any stain of blood on petticoat worn by the dead body. He stated that none of the 4 persons informed him that Renuka was taken to any lady Doctor during night. He denied that none of the members of Aushal family made any demand from him and articles were presented by him voluntarily because of love and affection towards Renuka. He denied that Satish and Sadhana had informed him that at the time of death Renuka they had visited house of Kherdekar for tirthaprasad or then Vilas told him that when he returned from Malkapur after finishing his duties, he found Satish and neighbour Mr. Ingle taking Renuka to hospital. He denied that Ingle brothers and their wife told him that after Satish returned from Kherdekar house, he pushed the door of house and found it latched from inside. He therefore pushed it with force and when door opened, Renuka was found lying on floor in the dining room. He denied that all the accused have shown him the broken latch of door, and therefore, he did not lodge report from 4.30 to 6.30 a.m., as the mind was wavering.

27. It will be very necessary to briefly refer to various letters written by this witness or by Purushottam or by Renuka, at this stage. These letters are proved during evidence of P.W. 2 Anand or P.W. 11-Laxminarayan. In none of these letters, there is any contention of ill treatment to Renuka or any tension in the relationship between the two families or any illicit relationship of Satish and Sadhana. Letters at the most show supply of almirah, a broken mirror and its intimation by Purushottam. However, that by itself is not sufficient to attract provisions of Section 498-A of Indian Penal Code. Infact learned A.P.P. expressly stated that in present matter the appellant State Government was not seeking conviction u/s 498-A of Indian Penal Code. It is important to note that therefore, Section 304-B of Indian Penal Code is also ruled out.

28. The other witness is P.W. 1 Pramilabai, she happens to be aunt of the deceased Renuka and a Panch witness. There is no statement given by her to police. Her examination in chief gets automatically eclipsed by the evidence of P.W. 11-Laxminarayan and P.W. 2-Anand. She has stated that when she saw the dead body of Renuka, she noticed marks of beating on both the cheeks of Renuka. Her cheeks were greenish, bluish, in colour. She had worn only petticoat and blouse and her head was covered with end of saree. There was new bindiya on her forehead. Neck of Renuka was also covered with end of saree and its remaining part was lying on left side of Renuka. There were injuries on neck, below chin of Renuka. She and mother of Renuka by name Bharti removed that end of saree and noted swelling and rope mark on the neck of Renuka at her throat. She also stated that they saw both hands of Renuka had greenish and bluish marks and thereafter Laxminarayan started weeping loudly saying "meri ladkiko inhone mar diya". She has deposed that thereafter Satish, Rajesh, Vilas and Sadhana started talking with Laxminarayan and Laxminarayan then enquired

as to how it happened. Satish stated that Renuka fell in kitchen room; Vilas stated that Renuka fell from stairs, Rajesh stated that Renuka fell from terrace and Sadhana informed that Renuka died due to poisoning of her foetus. Hence, they all started weeping. Satish enquired why they were weeping and whether it was time to do so. Laxminarayan then expressed that they would file police complaint and Rajesh told that as they did not file any police complaint, the parents of Renuka should also not file any case. Laxminarayan uttered that they killed his daughter and therefore, he would approach police. Satish, Rajesh, Vilas told them not to cry and to get out of the house. Hence, they came out of the house in courtyard and Satish closed the door. They were then in court yard for about 1 1/2 hour. At 6 a.m. Laxminarayan sent Subhash and Anand to lodge police report. Police came at 7 a.m. and went inside the house. One police officer then came out and pointed out need of a lady panch and hence, Pramila went inside. One Naidu and one resident of Buldhana acted as co-panchas with her. Police officers removed bed sheet from the dead body and then she did not see blood that had oozed from her mouth and nose. Saree seen worn by Renuka was lying earlier by her side. She informed police that she had seen blood oozing from mouth and nose and saree was lying beside Renuka. Police officers informed her that she should allow them to do their work. Police officers then asked her to find out whether there was any injury on head of Renuka, but she did not find any injury on head. They saw marks of beating on both the cheeks of Renuka and those marks were red and green in colour. They also saw dry saliva which had dribbled out of left side of her mouth. Mouth of Renuka was closed and police officers asked her to open the mouth and look inside. She found blood reddish in colour in her mouth. She also found two injuries on the neck of Renuka below chin, of length of 1 to 1 1/2 inch. She also noticed swelling on neck and mark of tying rope. She noted that skin on her cheek was reddish in colour. She did not find any mark of injury after opening the blouse of Renuka. She noticed Mangalsutra in neck with two beads of gold and one Doral of gold in between these two beads of gold with other black beads. She found marks of beating on both her hands. She was not wearing anything in her hand. There was one red bangle and green bangle in her hand. Fingers of both her hands were some what bent. She noted mark of beating on lumber region on both the sides. Court has recorded "now says I saw marks on iliac fossa". She saw swelling on her abdomen, which was due to pregnancy of 5-6 months. She also examined her private parts. Renuka had worn saree of yellow colour, petticoat of chocolate colour. There was no injury on her private part and there was no excreta. She saw marks of beating on both her thighs. She saw fresh injury to her left knee. There were two judwas of silver in her feet. Thereafter back side of the body was examined and she found marks of tying rope on her neck and swelling. It was a continuous mark. She also noted marks of beating on her back and thighs. Marks of beating of her thighs were reddish in colour. She stated that panchnama was correctly written. It was translated into Hindi, so that she can understand it. It was at Exh. 112. In her cross examination, she has stated that police had recorded statement of all persons in police station, except herself and

Naresh Naidu. She stated that facts disclosed by her were spoken by her for the first time in court and she did not state those facts in inquest panchnama. She was not aware whether Narendra Naidu, knew Marathi or not. She stated that Narendra Naidu did not inform police that he was not knowing Marathi, but she had informed that she was not knowing Marathi. She did not raise any objection about panchnama, after it was ready over to her. She accepted that no cloth worn by Renuka had any blood stain.

29. Deposition of P.W. 3 Narendra Naidu is also on same lines as that of Pramila. He has also spoken of spot panchnama. He stated that he found dead body of Renuka lying in dining hall. He deposed that he had seen the dead body of Renuka lying in second room as shown in the map. He saw two pieces of bangles of green colour lying on the floor of second room where dead body was lying and police had seized them. They also found two tops of yellow metal near water tank near compound gate, as shown in the map. One out of them was bent at its rear portion. He identified the pieces of bangles and tops as Articles 22 and 24. In cross examination, he stated that he was not remembering whether Satish, Vilas and Rajesh told Mr. Chincholkar (Investigating officer) that latch of door was broken. He denied that these three brothers were insisting that said fact should be noted in the panchnama and Mr. Chincholkar was not ready to write it, and hence, there was a quarrel. He denied that three brothers had then threatened Mr. Chincholkar with complaint to Superintendent of Police.

30. Perusal of inquest panchnama (Exh. 112) shows that it is witnessed by P.W. 3-Narendra Naidu, P.W. 1-Pramila and one Ramkrishna Kherdekar. Accused persons claim that they had gone to attend Satyanarayan Pooja at residence of this Ramkrishna Kherdekar. However, neither prosecution has examined him nor defence dared to summon him.

31. Inquest panchnama shows that eyes and mouth of Renuka were closed and saliva had oozed out on right side portion from the mouth. Liquid like that of blood was visible in the mouth. The right ear and portion below it appear greenish and bluish so also the skin below the left ear. Mark like that of print or expression of rope was visible to the extent of 6 1/2 inch on right side portion of the neck of deceased. Fresh reddish injury measuring 1 inch was seen below left side chin portion. Another fresh reddish injury measuring 1/4 inch was visible near chin. There was swelling on throat and portion of neck. Skin on the breast of deceased appeared reddish. No mark of injury was found on the breast. Skin below both the thighs of deceased appeared reddish and small reddish injury caused due to assault was visible on left ankle of back side of body. Impression of rope was seen on nape to the extent of 4 1/2 inches. Impression of rope measuring total 12 inches was seen around neck i.e. its front and back portion with swelling on skin. Skin from nape to the back appeared reddish. Skin on both the thighs below the buttocks is appearing reddish, and abdomen of deceased appear to be distended. It is also recorded that in the opinion of panchas and of the police inspector Shri Chinchoklar, death may have been occurred due to

ghatpat (culpable homicide).

32. Post mortem was performed by P.W. 12-Dr. Umesh. Post mortem report is at Exh. 195 and surface wounds noted by him are mentioned in column no. 17. The same are as under :

(1) Ligature mark encircling neck, oblique in direction in upper 1/3 of neck just above hyoid bone with abrasions and its upper and lower borders. Circumference 30 cm. Breadth 1 cm.

(2) Abrasion over anterior border of left sternocleidomastoid muscle in middle 1/2 cm x 1/2 cm.

(3) Abrasion left side of chin 1 cm x 1 cm.

(4) Abrasion left knee 1 cm x 1 cm.

Injuries were ante mortem and within 24 hours. Brain appeared to be congested, while right lung as also left lung were also found congested and blood stained froth was oozing from cut section. Right side of heart was full of blood and large veins of neck prominent and full of blood. Buckle cavity was blood stained. Doctor has stated that asphyxia due to strangulation was the cause of death. He has also mentioned that viscera was preserved for chemical analysis. On record no report of chemical analyzer is available and it appears that the viscera was not sent to chemical analyzer. Perusal of evidence of Dr. Umesh (P.W. 12) shows that wire or cable sent to him earlier along with query letter dated 19.04.1993 could have been used to cause injury no. 1 in column no. 17. He also stated that he answered query no. 1 made by the police authorities, that injuries no. 1 in column no. 17 could not have been caused by fall. He answered query no. 4 by stating that strangulation force was applied towards left side and then deceased might have been in supine position. In his cross examination, his attention was drawn to Article-9, which is a wire about 20 feet in length. The paper with wire which he stated as seal was 2 to 2 1/2 feet in length. He accepted that there was no description of that wire in that query letter. He could not state whether circumference of cable was about 1 cm. Though it was before him. He denied that it was necessary to take measurement of the length and circumference of cable before giving any opinion. He accepted that he gave opinion that injury nos. 2 and 3 were possible by fall. He stated that on the basis of injury no. 1, he had opined that force was applied from left side and that deceased ought to have been in supine position. He accepted that there was no external or internal damage around the injury no. 1 to show that any force was applied. He could not explain why police made query to him about tearing of uterus of deceased. He accepted that the medical officer has to take rough notes while conducting post mortem, as per manual of Civil Hospital Administration. He did not know whether such rough note needed to be preserved and produced before the court. He stated that he had taken rough notes and the same were with him in the court. He produced printed format filled in ink in handwriting as rough notes. He first stated that it was not the office copy of memorandum of post mortem, but, it

was rough note. Thereafter he has stated that he did not take any rough notes. Documents produced by him was office copy of memorandum of post mortem examination. This document was given Exh. 197. He accepted that when he handed over the bottle containing viscera and packet of clothes to police officers, a memorandum of post mortem examination was not given to him as the same was not ready in writing. He also stated that as mentioned in column no. 3 Babulal Raghunath Garol has stated that he was father of deceased. He accepted that inquest panchnama was accompanying the body and he read contents thereof before performing post mortem. He could not remember whether he had then noticed a writing in inquest panchnama that saliva was dripping from mouth of the deceased. He could not say whether dripping of saliva is not a sure sight of hanging. He did not notice that measurement given by him in post mortem report in respect of injury nos. 2 and 3 in column no. 17 were not tallying with the measurement given in the inquest panchnama. He did not mention that rigor mortis was present all over the body or in part of the body. However, he voluntarily stated that rigor mortis was present all over the body. He could not explain as to why this fact was not mentioned in the post mortem report. He could state whether rigor mortis was at first stage or at second stage. He did not agree with the proposition that as semi digested food was found in small intestine, therefore, death occurred within 3-4 hours of intake of solid food. He stated that presence of such semi liquid food or fluid in stomach does not show that deceased had consumed liquid food within 3 hours before her death.

33. His cross examination from paragraph no. 10 onwards is on the question of hanging or then strangulation. He stated that he was regarding Dr. Grey as best authority on Anatomy. He stated that Dr. Tailor and Dr. Modi are not regarded as authorities. He also stated that Dr. Parekh in his opinion is the best authority. He accepted that he found ligature marks just above hyoid bone i.e. necessarily above thyroid. He could not state whether the fact that ligature mark was oblique would mean from throat to mastoid and above hyoid bone, indicated with certainty hanging and not strangulation. He accepted that internally he did not find any pressure or damage to any part of anatomy of inspiration. He stated that circumference of neck of a young woman of 22 years cannot be less than 35 cms. He did not agree with the proposition of Dr. Modi that photograph of ligature should be first taken before starting post mortem and circumference of neck should also be measured. He agreed with the figure given of hyoid bone on page no. 1638 by Dr. Grey in Grey's Anatomy, 38th Edition. He accepted that in column no. 13 of the post mortem report, 2 signs i.e. eyes closed and tongue inside mouth were recorded, however, he did not accept that these signs were more consistent with hanging than strangulation. He agreed that the proposition of Dr. Modi that eyes prominently open and tongue protruding out indicated strangulation. He could not assign any reason as to why he did not mention colour of ligature mark any where. He accepted that to asses stage of abrasion, bleeding and colour are the only indications. He denied that difference between anti mortem abrasion and post mortem abrasion can be assessed only on the

basis of the bleeding present, however, he added that presence or absence of blood was the only indication to decide whether the abrasion is post mortem or ante mortem. This evidence has been appreciated by the learned Sessions Court to conclude that death was by hanging and suicidal one. However, the question as to why and how dead body was then found lying on the floor has not been gone into by that Court. The court also appears to have ignored the fact that spot panchnama does not show any broken door latch as alleged by accused persons to substantiate their syand of forcing the entry.

34. P.W. 9-Dr. Sulochana Wanere, appears to be an important witness. She possess B.A. and M.S. Degree. She and her husband are practicing at Buldhana. She states that she was not remembering whether on 07.04.1993 at 7 o'clock or 7.30 p.m. she received a message in respect of any patient. Public Prosecutor then pointed out accused no. 1 and 3 sitting in court, she stated that accused no. 1 had visited her with one woman. Compounder phoned her at her residence that one serious patient had come, therefore, she visited the hospital and saw that a patient was sleeping on the table. She could not count the pulse, as she did not hear any stroke of pulse. She therefore, asked the accused no. 1 to take the patient immediately to Government Hospital. Within few seconds, accused no. 1 took the patient from her hospital in her ambulance. She stated that accused no. 1 had told her that patient fell due to giddiness. She also stated that on next day, photograph of patient was shown to her by police officer. She, from photograph learnt that it was the same patient who was brought to her by accused no. 1 on previous day. In cross examination, she stated that she used stethoscope while examining patients. Immediately, volunteered that on that day she did not use stethoscope as she immediately entered her cabin and patient was serious. She also stated that she did not gave any emergency treatment for resuscitation. She accepted that she felt that if patient was given good treatment in government hospital, the patient may possibly recover and therefore, she directed the accused no. 1 to take patient to government hospital immediately. She could not remember whether in 1993 Sadhana was admitted to her hospital for 7 days and Dr. Gupta operated her for family planning operation on 13.03.1993.

35. It is important to note that Purushottam, in his letter dated 18.03.1993 written to P.W. 11 Laxminarayan, has stated that Sadhana underwent family planning operation on 13.03.1993 and she was to be brought home on next day i.e. 19.03.1993. He has also informed that Renuka was taking tonics and tablets and she was examined through Dr. Wanere and Dr. Gupta and everything was normal. This communication is at Exh. 167. In the light of this communication, the entire deposition of P.W. 9-Dr. Sulochana Wanere appears to be tutored one. This was not an incidence which she could have forgotten easily. The police officers have shown her photograph on 08.04.1993 itself and from the photograph she could recognize the patient who was brought to her on 07.04.1993. Her initial answers recoded in paragraph no. 2 of her examination in chief about not remembering anything therefore, cast a shadow of doubt on her intentions. We fail to understand why a patient brought to her in serious

condition was not treated or administered even the first aid. Why no efforts towards resuscitation were made. Her act of sending Renuka to government hospital in her ambulance also raises doubt.

36. We have already mentioned above that the accused no. 1 Satish and accused no. 4 Sadhana have filed their joint written statement/say u/s 313 of the Criminal Procedure Code. In said statement, at Exh. 215, both of them do not say that in ambulance given by Dr. Wanere they had taken Renuka to government hospital. Their contention that Renuka was alive in hospital of Dr. Wanere, therefore stands falsified. Their stand that Renuka died when she was being taken home from hospital of Dr. Wanere, therefore, deserves to be discarded. They have not explained why Renuka was not taken to the government hospital as advised by Dr. Wanere. Unfortunately police authorities also have not investigated or looked into this aspect. This written statement filed jointly by accused nos. 1 and 4 show that Renuka had expired already and thereafter, she was taken to Dr. Wanere.

37. Written statement at Exh. 215 also shows that accused no. 1 Satish and Sadhana wife of his brother had gone to residence of Ramkrishna Kherdekar for Satyanarayan Puja. They had mentioned that Renuka was to come there after some time. This statement attempts to indicate that everything was normal for Renuka, according to these two accused persons. We fail to understand why accused no. 1 Satish did not take his wife Renuka for such a religious function and preferred to go with Sadhana wife of his brother. Satish and Sadhana further stated that when they returned back they found door closed, hence, he pushed the door but there was no response. Therefore, the door was pushed forcibly and internal latch detached and fell down, hence, they came into the house and found Renuka lying on the floor. It is also mentioned that door which opens in the service lane at the back side of the house was also open. Satish and tenant Shri Ingle took Renuka to hospital of Dr. Wanere. When Dr. Wanere examined Renuka she was alive. There is nothing on record to show that door was pushed forcibly and its latch broke and fell down. There is nothing on record to show that door opening in service lane on the back side of the house was open. Accused persons have not examined tenant Shri Ingle as defence witness. Only in evidence of P.W. 4-Narendra Naidu effort has been made to bring on record protest lodged by the accused persons about police officers not recording that said latch or door was in broken condition. If the police officer did not record it, the accused persons could have made complaint to the Court or to superiors as allegedly threatened by them and could have also taken proper photographs and produced it on record. We cannot forget that Purushottam Aushal, a retired Superintendent of Police was very much alive on that day.

38. The panchnama of spot of occurrence, Exh. 136, has not been drawn very happily. With great difficulty, it can be appreciated because of evidence of P.W. 1, P.W. 11 and P.W. 4. Perusal of map of spot at Exh. 142 in the light of this evidence helps one to understand the panchnama. S.M. Chincholkar, Police Sub

Inspector who has drawn that panchnama has overlooked two compound gates opening on public road on its Eastern side. House appears to be facing East with a water cistern at this North-East corner. It has a courtyard on Eastern side and doors from three rooms open in this courtyard. A room in which the dead body was lying is situated on Southern half of the house portion. Hall is shown separately on Northern side of the said room in map and hall has no door opening in that room. Infact the portion having hall may be exactly 50% part of entire house situated on Northern side thereof and it has a separate kitchen with latrine and bath room. This portion on Northern side and Southern side is separated by a East-West wall, which goes right upto service lane. The two halves of the house have separate kitchen and separate latrine and bath room. This appears to be a map of ground floor only. Hall is in northern half while the room in which body was shown appears in southern half but just adjacent to the hall. It is also mentioned that there is one more floor on the said house. Portion in possession of tenant is not clearly shown in it. Spot panchnama mentions that two pieces of bangles were found in the room where dead body was lying and those pieces were seized. Pieces of green, sky blue, parrot green and water coloured glass bangles were found lying at several places in that room outside the Southern side wall of the said building. The same were also seized. Ordinary tops (karnaful) made of yellow metal with peacock feather and silver green coloured small beads was also found near the cistern in the compound. It was also taken into custody. The panchnama prepared is, therefore of ground floor of entire house than the panchnama of spot of incidence. Broken pieces of bangles or finding of earring and injury marks on deceased (inquest panchnama) all insisted a more serious and proper investigation and spot panchnama. However, we note that spot panchnama no where mentions that latch in any front door was broken and it had fallen down or was produced before the police authorities or was shown to them. Accused did not even attempt to introduce any evidence in this regard before the Trial Court.

39. Taking over all view of the matter, we find that the defence of finding dead body of Renuka lying on a floor in room after coming from tirthaprasad, is not sufficiently brought on record. The learned counsel for the accused has insisted on plea of alibi. Alibi as defence in the eyes of law must show presence of accused at some other place from where his return to the place of crime is not possible. Thus distance between the place of crime and such other place is a material factor. Though the accused persons have preferred to file written statement of defence, they have failed to bring on record distance between the residence of Ramkrishna Kherdikar where Satyanarayan pooja was performed and their residence. Thus their plea of alibi has to fall to ground. Reference in this respect can be made to various judgments, however, we find that reference to following judgment of the Hon''ble Supreme Court is more than sufficient.

40. In Munshi Prasad and Others Vs. State of Bihar, the Hon''ble Apex Court while explaining what defence of "alibi" means, observes :--

"2. The judgment under appeal stands criticized on three major counts: the first of the three counts relates to the plea of alibi. The word "alibi", a Latin expression means and implies in common acceptation "elsewhere": it is a defence based on the physical impossibility of participation in a crime by an accused in placing the latter in a location other than the scene of crime at the relevant time, shortly put, the presence of the accused elsewhere when an offence was committed. This Court in *Dudh Nath Pandey v. State of U.P.* has the following to state in regard to the plea of alibi: (SCC p. 173, para 19)

"The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed...."

Distance thus would be a material factor in the matter of acceptability of the plea of alibi. Interestingly, this plea as raised by----- there after we reached there."

3. Without attributing any motive and taking the evidence on its face value, therefore, it appears that the place of occurrence was at 400-500 yards from the place of Panchayat and it is on this piece of evidence, the learned advocate for the State heavily relied upon and contended that the distance was far too short so as to be an impossibility for the accused to be at the place of occurrence -- we cannot but lend concurrence to such a submission: a distance of 400-500 yards cannot possibly be said to be "presence elsewhere" -- it is not an impossibility to be at the place of occurrence and also at the Panchayat meet, the distance being as noticed above: the evidence on record itself negates the plea and we are thus unable to record our concurrence as regards acceptance of the plea of alibi as raised in the appeal. Before drawing the curtain on this score, however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution -- a lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecutors' witnesses."

41. In *Binay Kumar Singh and others Vs. State of Bihar*, Hon''ble Apex Court observes :--

"22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

"The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant."

23. The Latin word *alibi* means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of *alibi*. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of *alibi*, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of *alibi*. This Court has observed so on earlier occasions (*vide* *Dudh Nath Pandey v. State of U.P.*; *State of Maharashtra v. Narsingrao Gangaram Pimple*.)"

Thus, when these parameters are applied to present facts, lack of merit in the defence of Accused nos. 1 and 4 i.e., appellant nos. 1 and 3 is apparent. They have not brought on record the distance between their house and place where Ramkrishna held tirthaprasad. Their defence is therefore liable to be discarded.

42. Before proceeding further, we find it suitable to refer to the precedents on Section 106 of the Evidence Act. In *Rajkumar Vs. State of M.P.*, Hon"ble Apex Court observes as under on Section 106 Evidence Act :

"23. In the instant case, as the appellant did not take any defence or furnish any explanation as to any of the incriminating material placed by the trial court, the courts below have rightly drawn an adverse inference against him. The appellant has not denied his presence in the house on that night. When the children were left in the custody of the appellant, he was bound to explain as under what circumstances Gounjhi died.

24. In *Prithipal Singh v. State of Punjab*, this Court relying on its earlier judgment in *State of W.B. v. Mir Mohammad Omar*, held as under: (*Prithipal*

Singh case, SCC p. 30, para 53)

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

43. Joshinder Yadav Vs. State of Bihar, , shows :

"17. In Balram Prasad Agrawal v. State of Bihar the prosecution had established the cruel conduct of the accused i.e. her husband and members of his family and the sufferings undergone by the deceased at their hands. The unbearable conduct of the accused ultimately resulted in her death by drowning in the well in the courtyard of the accused's house. This Court observed that what happened on the fateful night and what led to the deceased's falling in the well was wholly within the personal and special knowledge of the accused. But they kept mum on this aspect. This Court observed that it is true that the burden is on the prosecution to prove the case beyond reasonable doubt. But once the prosecution is found to have shown that the accused were guilty of persistent conduct of cruelty qua the deceased spread over years as was well established from the unshaken testimony of father of the deceased, the facts which were in the personal knowledge of the accused who were present in the house on that fateful night could have been revealed by them to disprove the prosecution case. This Court observed that the accused had not discharged the burden which had shifted to them u/s 106 of the Evidence Act. While coming to this conclusion, this Court relied on Shambhu Nath Mehra.

18. In the present case, the deceased was admittedly in the custody of the accused. She disappeared from their house. As to how her dead body was found in the river was within their special and personal knowledge. They could have revealed the facts to disprove the prosecution case that they had killed Bindula Devi. They failed to discharge the burden which had shifted to them u/s 106 of the Evidence Act. The prosecution is not expected to give the exact manner in which the deceased was killed. Adverse inference needs to be drawn against the accused as they failed to explain how the deceased was found dead in the river in one foot deep water.

19. Pertinently, the post-mortem notes do not indicate presence of huge amount of water.....prior to the occurrence and she disappeared from that house.

All the circumstances leading to her unnatural death were within the special and personal knowledge of the accused which they chose not to disclose. Instead, the gave a totally false explanation that when Bindula Devi had gone for bath, she slipped, god drowned in the water and died. This story is palpably false. The false explanation offered by the accused further strengthens the prosecution by the as it becomes an additional link in the chain of circumstances. "

44. In Ponusamy Vs. State of Tamil Nadu, Hon"ble Apex Court observes:-

22. In Trimukh Maroti Kirkan v. State of Maharashtra it was observed: (SCC p. 694, para 22)

"22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

45. In 2013 (8) LJSOFT 27 : 2013 All MR (Cri) 2835 (Sambhaji s/o Chindhuji Pachare Vs. State of Maharashtra) relied upon by Shri Ali, the Division Bench ruled out death due to asphyxia. It has observed that in the case of excessive use of kerosene and higher flames surrounded with body, the person cannot see and suffer asphyxia. In such a situation, person immediately becomes unconscious and after becoming the patient unconscious the injuries mentioned in column No. 17 were possible. It found that the learned trial Judge only considered one sentence in the evidence of the said witness PW-6, but totally ignored the admission in his cross-examination. It held that the evidence of this witness was not sufficient to conclusively find the death to be homicidal. Gradwohl"s Legal Medicine, edited by F E Camps, 1968, (John Wright and Sons Ltd.) stated that in case of death due to asphyxia, the eyes are prominent and open while the tongue is often swollen, bruised, protruding and dark in colour, showing pratches of extravasation and occasionally bitten by the teeth. The Division Bench noted that PW-6 had himself stated that the eyes were totally closed, non protruding tongue. Thus, apart from the evidence of PW-6, there was no other material on record and charge u/s 201 was found not substantiated. Facts in present matter are distinct.

46. In Sakharam Vs. State of Madhya Pradesh, cited by Shri Ali, there was no direct evidence against the appellant. There was no reason, conscious or sub-conscious, for the appellant to commit the murder. He and victim were together in the one room house for about 8/10 days. The appellant denied having committed the offence but gave no explanation as to how and under what circumstances the deceased got the fatal gunshot injury. At the trial it was suggested that the deceased committed suicide and plea of alibi was also raised. The courts on appreciation of evidence, rejected both the pleas and Hon"ble

Apex Court did not see any infirmity in the said findings. It found absolutely no motive on the part of the appellant to murder the deceased. It held that absence of motive may not be relevant in a case where the evidence is overwhelming but it is a plus point for the accused in a case where the evidence against him is only circumstantial. Its observations in para 10 are important:--

"10. The appellant, on the date of occurrence, was a young boy and the deceased was his aunt in the same age group. Both were children as defined under the Children Act, 1960. When presumption of juvenile innocence is sought to be displaced by the prosecution on the basis of circumstantial evidence the circumstances must unmistakably prove the guilt beyond doubt."

Thus, there was no attempt to mislead the Court in this matter and hence, ruling does not assist the accused.

47. Shri Ali also pointed out Khatri Hemraj Amulakh Vs. The State of Gujarat, on effect of not proving motive. Hon''ble Apex Court found that motive was to be proved through the evidence of Lakhmanji (PW 7) who had deposed that Thakari deceased used to complain to him that the accused was maltreating her. Lakhmanji, however, admitted that he never stated before the police that the deceased had complained to him regarding maltreatment by the accused. Hence, Hon''ble Apex Court held that evidence of Lakhmanji regarding maltreatment smacked of after-thought and carried no weight. No motive on the part of the accused to murder the deceased was consequently held to have been proved. As we are not holding that State has proved any motive on part of Satish and Sadhana to kill Renuka, it is not necessary for us to dwell more on this aspect.

48. In Inderjit Singh and another Vs. State of Punjab, Hon''ble Apex Court holds that only circumstance that deceased was last seen in the company of accused by itself is not sufficient to establish guilt of accused. Here, we may mention that last seen together is not the only circumstance being used against Satish and Sadhana.

49. From Sharad Birdhichand Sarda Vs. State of Maharashtra, law on the point of circumstantial evidence as settled by the Hon''ble Apex Court shows the approach to be adopted that Court should scrutinize entire evidence on record link wise without any prejudice against the accused and by keeping in mind the presumption of their innocence. If each such link is established beyond reasonable doubt then exercise to find out whether these links can be put together to form a chain could have been undertaken. Presumption could have been then drawn about involvement of the appellant if no other view of the matter was possible on the basis of such chain. In very judgment, Hon''ble Apex Court also observes :--

"159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as

additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case where this Court observed thus: [SCC para 30, p. 43: SCC (Cri) p. 322]

"Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstances, if other circumstances point unflinchingly to the guilt of the accused."

50. The law regarding the nature and character of proof of circumstantial evidence has been settled by several authorities of Hon'ble Apex Court and the locus classicus of the decision of is the one rendered in the case of Hanumant Vs. The State of Madhya Pradesh, where Mahajan, J. clearly expounded the various concomitants of the proof of a case based purely on circumstantial evidence, and pointed out thus: "...the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved...it must be such as to show that within all human probability the act must have been done by the accused." Sharad Birdhichand Sarda v. State of Maharashtra (supra) considers this judgment. Hon'ble Apex Court also in Muralidhar @ Gidda and another Vrs. State of Karnataka (supra), also considers these judgments and follow this law only. In present matter, we have noted some positive acts and conduct on part of accused Satish and Sadhana which is incompatible with presumption of their innocence and demonstrates a deliberate attempt to suppress their complicity. These judgments therefore can not save the situation for Respondent accused Satish and Sadhana as also Vilas.

51. Learned APP has invited attention to Section 102 r/w Section 106 Evidence Act relied upon the judgment of Hon'ble Apex Court in Jagdish Vs. State of Madhya Pradesh, where in para 22, the Hon'ble Apex Court observes that in a case of circumstantial evidence motive does have extreme significance but to say that in the absence of motive, the conviction based on circumstantial evidence cannot, in principle, be made is not correct. It points out that the appellant before it and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to tender some explanation in order to avoid any suspicion as to his guilt. Other judgment relied upon by APP is

State of Rajasthan Vs. Jaggu Ram, where in para 26 and 27, the Hon"ble Apex Court observes :--

"26. The conduct of the accused and his family members in not informing the parents of the deceased about the injuries caused on her head and consequential death and the fact that the cremation of the dead body was conducted in the were hours of 30-3-1993 without informing the parents or giving an intimation to the police so as to enable it to get the post-mortem of the dead body conducted go a long way to show that the accused had deliberately concocted the story that Shanti @ Gokul was suffering from epilepsy and she suffered injuries on her head by colliding against the door bar during the bout of fits. The disposal of dead body in a hush-hush manner clearly establishes that the accused had done so with the sole object of concealing the real cause of the death of Shanti @ Gokul.

27. In our considered view, this was a fit case for invoking Section 106 of the Evidence Act, which lays down that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In Ram Gulam Chaudhary v. State of Bihar this Court considered the applicability of Section 106 of the Evidence Act in a case somewhat similar to the present one. This Court noted that the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they had murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be 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 like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the court to draw a different inference."

52. Conduct of accused persons noted by us squarely attracts this dictum and observations of Hon"ble Apex Court. Another important judgment on conduct of accused, his failure to substantiate his defence and Section 106 of Evidence Act is Sandeep Vs. State of U.P., Hon"ble Apex Court states as under in this ruling :--

"43. If the theory of theft of Indica car is ruled out and the presence of the car on the spot was indisputable, it should automatically follow that the car could have been brought at that place along with the deceased, driven by accused Shashi Bhushan along with Sandeep only in the manner narrated by the prosecution. Apart from merely suggesting that the Indica car was stolen which was not fully supported by any legally admissible evidence, no other case was suggested by the appellants.

44. When the accused Sandeep took a positive stand that he was not present at the place of occurrence by relying upon a fact situation, namely, he was not responsible for bringing the Indica car belonging to his mother at the place of occurrence along with the deceased, the burden was heavily upon him to establish the plea that the car was stolen on that very date of occurrence, namely, 17-11-2004 and, therefore, he could not have brought the deceased in that car at that place. Unfortunately, by merely making a sketchy reference to the alleged theft of the car in the written statement and the so-called complaint said to have been filed with Geeta Colony Police Station, nothing was brought out in evidence to support that stand. In this situation, Section 106 of the Evidence Act gets attracted. When according to the accused, they were not present at the place of occurrence, the burden was on them to have established the said fact since it was within their special knowledge.

45. In this context, the recent decision of this Court reported in *Prithipal Singh v. State of Punjab* can be usefully referred to where it has been held as under in para 53: (SCC p. 30)

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

(emphasis in original)

The contention of accused Sandeep was, therefore, bound to fail and the said defence taken was not proved to the satisfaction of the Court. The failure of the accused Sandeep in not having taken any steps to prove the said fact strikes at the very root of the defence, namely, that he was not present at the place of occurrence. As a sequel to it, the case of the prosecution as demonstrated before the court stood fully established."

The failure of appellant 1 Satish and appellant 3 Sadhana before us to prove that they did attend the Tirthaprasad at residence of one Ramkrishna Kherdekar and that Sadhana was very much alive when they left coupled with the clandestine mode and manner of disposal of dead body of Renuka proposed by them without proper doctor's certificate or post-mortem squarely call for adopting the same perspective even here.

53. Section 106 of the Evidence Act places burden upon the accused persons to explain how unnatural death of Renuka occurred. Though the prosecution has failed to bring on record any motive, that by itself is not sufficient to let the accused persons free. The Sessions Court has found that Renuka died of hanging and then she committed suicide. However, the accused persons have not explained how the body which should have been seen in hanging condition, was found lying on the floor of the room. In any case there would have been some rope or other material used for hanging tied around the neck or then at least tied to some object near ceiling or at some height. There would have been a chair or stool used by the deceased to reach the loop of such rope/wire at some height from the floor to insert her neck in it. Most probably such stool or chair would have been found lying toppled in that room. Entire spot panchnama nowhere mentions any place where Renuka could have hung herself. The studied answers given by P.W. 12-Dr. Umesh therefore sound more convincing. He has stated that force was applied from left side when the deceased was in supine condition. He has deposed so on the basis of his observation about injury no. 1. He has found that there was ligature mark encircling neck oblique in direction in upper one third of neck just above hyoid bone with abrasion on upper and lower border. He has given circumference to be 30 cms and breadth of 1 cm. The said abrasion is found to be anti mortem by him. Sessions Court has at Exh. 197 taken document produced by the witness during cross examination on record. It is mentioned as copy of post mortem examination report. Very same injuries finds mention there against column no. 17.

54. Learned Sessions Court has ignored discovery of wire or cable by Satish on the ground that police officer Shri Ohval stated that he wanted to take search of house of Purushottam and accordingly search was taken. However, perusal of evidence of P.W. 7 Pralhad clearly shows incorrectness of this observation. P.W. 7 Pralhad More, has proved statement initially made u/s 27 by Satish in police station where he agreed to show almirah, dressing table, fan presented by Laxminarayan after marriage and black coloured cable wire of electric motor which he has placed near window near stair case in his house. The parties have advanced some arguments before the trial court about portion admissible u/s 27 of the Indian Evidence Act. Trial Court found that part of statement that Satish was going to discover wire from stair case was only admissible. Pralhad has deposed that Satish told them he has kept that wire near stair case near window and he would show it. It is seen that after reaching house, door was knocked and Purushottam answered the door. According to this witness, Police Station Officer, Ohval then informed Purushottam that he wanted to take search of the house. Purushottam first demanded search of police officials. Purushottam was allowed to take search of panchas and police officials, and then they entered the house. However, recording thereafter shows that Satish led the witnesses and police to his room and showed grey coloured almirah having mirror, dressing table and one Cinni fan. Thereafter he led panchas and Mr. Ohval, and showed a wire which was kept beneath the stair case near window. Said black coloured wire was then

seized by the police authorities, and accordingly panchnama was drawn. This seizure panchnama was then exhibited as Exh. 145. This witness also identified the articles seized. There is nothing in the cross examination of this witness to discard him in so far as the memorandum of discovery i.e. statement of admission at Exh. 144 or then seizure panchnama at Exh. 145 is concerned. Panchnama shows that said cable wire is about 46.1 feet in length and 3/4th inch in diameter. It appears that accordingly thereafter a query was made to P.W. 12 Dr. Umesh who had performed post mortem. He has stated that injury no. 1 can be caused by wire produced before him. Thus the instrument used for strangulating, is also brought on record by the prosecution.

55. Though certain injuries were found on Satish on 13.04.1993 by P.W. 15 Dr. Vinod Kumar in the light of evidence of said Doctor, we find it not possible to associate those injuries with the incident dated 07.04.1993. The finding on this facet recorded by the Trial Court does not call for any interference.

56. It is a settled law that in order to implicate any person on the basis of circumstantial evidence, each circumstance needs to be established with cogent evidence and any circumstance or material incompatible with the presumption of innocence of such accused person cannot be left out. Here, in the light of provisions of Section 106 of the Evidence Act, burden was squarely upon the accused no. 1 Satish and accused no. 4 Sadhana to show the circumstances in which death of Renuka took place. Name of deceased Purushottam does not figure anywhere as accused or as a person present either on 07.04.1993 or 08.04.1993. Rajesh is already discharged. Vilas appears to be not present when the death took place. As per suggestion given to witness by the defence, it appears that Vilas reached his house only when Satish and tenant Ingle were allegedly in the process of taking Renuka to Dr. Wanere. There is no clinching evidence on record to show that Vilas was present in house when Renuka was killed. It is nobody's case that Vilas had gone to the tirthaprasad. In their joint statement u/s 313 Cr.P.C., Satish and Sadhana have attempted to state that something went wrong when they were attending Satyanarayan Pooja and taking tirthaprasad at the residence of Ramkrishna Kherdikar. However, no evidence has been produced by them to bring their attendance at tirthaprasad or these facts on record. They are the last persons in company of Renuka in the joint residence. Their defence that after return they found door of house closed from inside is, also false. Accused attempted to mislead and misdirect the investigation by taking false pleas. They did not prove broken latch or front door and also did not examine either Ramkrishna or tenant Ingle to support their defence. The contention that backdoor of house opening in service-lane was seen open by Satish and Sadhana has not only been "not established" but also "not used" in any way by the Respondents. It is impossible that some third person would enter from backdoor and hang deceased or then bring down the hanging body of Renuka. In the light of this defence, the facts show that the deceased Renuka, accused no. 1 Satish and accused no. 4 Sadhana were present in the house when Renuka came to be killed. Satish instead of taking Renuka for tirthaprasad of

Satyanarayan pooja proceeds with his brother's wife and as per their defence, they were expecting Renuka to join them at the residence of Ramkrishna. They have not brought on record any reason why Renuka could not accompany her husband Satish or why they could not wait for Renuka and all three could not have left together. Their subsequent conduct of not lodging police report is also a material circumstance. If it was really a case of hanging or suicide, accused no. 1 Satish or accused no. 4 Sadhana ought to have lodged police report. It was obligation of all family members to notify death of Renuka to police without waiting for her parents to arrive. No such step was taken by any accused from evening of 7.4.1993 for about 8 to 9 hours by them. Facts also show that accused no. 1 Satish did not take Renuka to Government Hospital though he availed ambulance of P.W. 9 Dr. Wanere for that purpose, and he brought her home against advise (alleged) of Dr. Wanere. Even after death of Renuka, while she was being brought home [as alleged by accused no. 1], no report was filed. Efforts were made to see that there could not be any post mortem and evidence of investigating officer P.W. 16 and P.W. 18 sufficiently brings these efforts on record. No steps were taken by them to properly communicate death of Renuka to her parents. Accused no. 2 Vilas was also present at home with knowledge that death of Renuka was unnatural. He also did not find it necessary to report the matter to police. It appears that Advocate brother Rajesh also arrived there and he also did not take necessary steps to lodge police report. This conduct of not lodging police report, not taking Renuka to any Doctor where medical assistance (assuming that she was alive) could have been provided to her, sufficiently show guilty mind. There was absolutely no reason for P.W. 16 and 8 to falsely allege that bribe was offered to avoid post mortem. This shows that there was conscious effort to avoid any police investigation. Later conduct of husband of deceased namely Satish and other in-laws in not claiming the dead body after post mortem, not performing funeral or not even immersing ashes on 3rd day, all show their guilty mind only. The body of Renuka was received by her father and brother after post mortem and they performed funeral and immersed ashes. The discovery u/s 27 by Satish vide Exh. 114 and 145 assumes importance in this background. Trial Court could not have exonerated the accused by concluding that Renuka was not strangled but she died of hanging and her death was suicidal. It overlooked the fact that the deceased could not have destroyed the evidence indicating the "hanging" and slept on floor of the room. The expert opinion of P.W. 12 Doctor Umesh who conducted post mortem explaining the manner of killing assumes importance in this background. Perhaps, because of Purushottam's position and influence, accused persons were prepared to take risk and to arrange or may have arranged a death certificate from some friendly doctor to perform last rites on Renuka. We can not forget that death of Renuka becomes known to her parents at Aurangabad because of some message from police control room itself. All this is also sufficient to draw an adverse inference against accused persons.

57. All these circumstances when viewed in the light of provisions of Section 106

of Indian Evidence Act establish a chain which without any doubt indicates only accused no. 1 and 4 as persons who killed Renuka. Fact of motive not being established is not decisive and relevant when these circumstances are established on record. There is no reason also for Renuka to commit suicide.

58. However, there is no cogent evidence to show presence of Vilas in house at the time of commission of crime. But, then along with accused nos. 1 and 4 he can be convicted and sentenced u/s 201 of Indian Penal Code. In view of this discussion, we find respondent nos. 1 and 3 i.e. original accused nos. 1 and 4 guilty u/s 302 of Indian Penal Code for committing murder of Renuka on 07.04.1993. They are accordingly sentenced with imprisonment for life and fine of Rs. 2000/- each. In default of payment of fine, they shall suffer R.I. for further period of 3 months.

59. Respondent Nos. 1, 3 as also respondent no. 2 Vilas are sentenced with imprisonment for a term of 5 years for offence punishable u/s 201 read with Section 34 of Indian Penal Code. In addition, they are also liable to pay fine of Rs. 2000/- each and in default to suffer R.I. for a period of three months.

60. It is made clear that if they have undergone any imprisonment, they shall be entitled to set off for said period. Their bail bonds are forfeited and they are directed to surrender to the Court of Additional Sessions Judge, Buldhana for undergoing the punishment. Seized property shall be disposed of as directed by the learned Additional Sessions Judge, Buldhana after appeal period is over.

61. Criminal Appeal is, allowed in aforesaid terms.