SUBRAMANIAM

v.

STATE OF TAMIL NADU & ANR.

(Criminal Appeal No. 774 of 2006)

MAY 13, 2009

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Penal Code, 1860:

ss. 302 and 498-A – A married woman found dead in her matrimonial home – FIR against husband for offences punishable u/ss 302, 498-A IPC and s.4 of Dowry Prohibition Act – Acquittal by trial court – Conviction by High Court – HELD: Circumstances brought on record by prosecution are not such which would lead to a definite conclusion that it was only the accused who committed the offence – Failure to prove plea of alibi may not be sufficient to record a finding of guilt – High Court in an appeal against acquittal could not have interfered if two views were possible – Judgment of trial court cannot be said to be unreasonable or perverse – Judgment of High Court set aside – Circumstantial evidence – Appeal against acquittal.

The accused-appellant was prosecuted for commission of offences punishable u/ss 498-A and 302 IPC as also u/s 4 of the Dowry Prohibition Act, 1961. The wife of the accused was found dead in her matrimonial home at 11.00 P.M. on 26.5.1999. On the request of the accused, PW-3 went to the house of his in-laws (PW-1 and PW-2) to inform them, and they reached the place of incident at about 9.00 A.M. in the following morning. On the basis of a written report alleging that the deceased was subjected to cruelty and/or harassment at the hands of her husband and in-laws, as sufficient dowry was not given in her marriage, an FIR was lodged at about 11.00

A A.M. The trial court acquitted the accused of all the charges. On appeal by the State, the High Court maintaining the acquittal of the accused u/s 498-A IPC and s.4 of the Dowry Prohibition Act, convicted and sentenced him u/s 302 IPC.

B In the appeal filed by the accused, it was contended for the appellant that the death of his wife could not have been caused by smothering as was tried to be proved by the prosecution; that the circumstances relied upon by High Court did not form a complete linkin the chain to C arrive at the guilt of the appellant; and that the police having already reached the place of occurrence early in the morning as per evidence of PW-2 and PW-3, no reliance could be placed on the FIR which was lodged by PW-1 at 11.00 A.M. in the police station. The D respondent-State contended that the High Court rightly convicted the accused holding that the deceased having died on unnatural death and both the husband and the wife living together and were last seen together, it was for the accused to explain as to how his wife died, and E that the plea of alibi taken by the accused was not proved.

Allowing the appeal, the Court

HELD: 1. Though the doctor (PW-10) who conducted the autopsy, state in her report that the death was caused F by asphyxia, may be due to smothering, but in her cross examination she admitted that no symptoms of asphyxia were found. Besides, no evidence of violence was found in the shape of external marks surrounding the mouth and nostrils or inside the mucosal surface, or on the G chest. The expert should have been forthright in her view in regard to the cause of death. A different canclusion was required to be arrived at keeping in view the fact that a large number of symptoms, which ordinarily point out to the cause of death of asphyxia by smothering were H

absent. In the circumstances, the Sessions Judge rightly opined that death might not have been caused by asphyxia, [Para 6, 8 and 10] [734-F-G; 738-G; 739-G-H; 740-A-B]

Mohd. Zahid vs. State of T.N. **1999 SCC (Crl.) 1066, relied on.**

State of Himachal Pradesh vs. Jeet Singh **(1999) 4 SCC 370, referred to.**

Modi's Medical Jurisprudence and Toxicology, **23rd Edition, referred to.**

2.1. So far as the circumstance that the deceased and the accused had been living together is concerned, indisputably, the entirety of the situation should be taken into consideration. Ordinarily, when husband and wife are stated to have remained within the four walls of a house and the death of wife by homicide takes place, it will be for the husband to explain the circumstances in which she might have died. However, although the same may be considered to be a strong circumstance but that by alone in absence of any evidence of violence on the deceased cannot be held to be conclusive. It may be difficult to arrive at a conclusion that the husband and none else was responsible therefor. [Para 14] [743-F-H]

Sharad Birdhichand Sarda vs. State of Maharashtra **[(1984) 4 SCC 116;** *Mohd, Zahid vs. State of T.N.* **1999 SCC (Crl.) 1066;** *Vinay D. Nagar vs. State of Rajasthan* **(2008) 5 SCC 597 and** *K.T. Palanisamy vs. State of Tamil Nadu* **[(2008) 3 SCC 100, relied on.**

Trimukh Maroti Kirkan vs. State of Maharashtra **(2006) 10 SCC 681 and** *Ponnusamy vs. State of Tamil Nadu* **(2008) 5 SCC 587, distinguished.**

2.2. In the instant case, there was no mark of

A violence. The appellant has been found to be wholly innocent, So far as the charges u/s 498A IPC or s.4 of the Dowry Prohibition Act are concerned, the evidence of the parents of the deceased (P.W. 1 and P.W. 2) as also the mediators (P.Ws. and 5) have been disbelieved by both B the courts below. That part of the prosecution story suggesting strong motive on the part of the appellant to commit the murder, thus, has been ruled out. [Para 17] [746-E-G]

C *Mohd. Zahid vs. State of T.N.* 1999 SCC (Crl.) 1066, relied on.

3.1. Another circumstance which had weighed with the High Court was inability on the part of the appellant to prove his defence alibi as stated in his examination u/ D s 313 of the Code of Criminal Procedure, 1973 to the effect that on the fateful night he was out in connection with irrigating his field and reached home at around 5.00 A.M. The finding of the High Court that appellant had to prove title of his land *ex facie* is incorrect. P.W. 1 E categorically stated that appellant had three acres of land P.W. 3 also accepted that land of the appellant is almost by the side of his land. In view of the admission made by the prosecution witnesses, the High Court committed a serious error in arriving at a conclusion that he did not F possess any land whatsoever. Even assuming that the appellant did not have any land and he in fact went to P.W. 3 for the purpose of taking his wife to hospital may not be itself be a ground for holding him guilty. Failure to prove the plea of alibi and/or giving of false evidence itself may not be sufficient to arrive at a verdict of guilt; it G may be an additional circumstance. But, before such additional circumstance is taken into consideration, the prosecution must prove all other circumstances to prove his guilt. [Para 22 and 23] [749-G; 750-B-C, E-H; 751-A]

H 3.2. Admittedly, a plastic bottle was found near the

3.2. Admittedly, a plastic bottle was found near the cot. The possibility that having seen the bottle which admittedly at one point of time contained some poison, appellant's assuming that the deceased had consumed poison, and rushing to the house of the P.W. 3 who might have been in a position to make arrangement for shifting her to hospital cannot be ruled out. In so assuming, he might have committed a mistake but it is also difficult to arrive at a definite conclusion that only because a plastic bottle was found, the appellant must have deliberately kept it so as to raise a false plea. Such a conclusion would amount to surmise and conjecture. [Para 27] [752-E-G] A B C

4. As regards the FIR, according to P.W. 2, police had already arrived when they reached at the place of occurrence on the next day morning. P.W. 11 the Sub-Inspector, in his evidence could not say at what time he arrived at the place of occurrence when a pointed question was put to him. The police must have received some information. Why the other information was suppressed by the prosecution has not been explained. In a situation of this nature particularly if an FIR was lodged after recording the statements of the witnesses, another FIR would not be admissible in evidence and ordinarily an investigation cannot be started without recording the FIR. [Para 24 and 25] [751-B-H; 752-A-B] D E F

Mohar Singh vs. State of Rajasthan & Ors. (1998) 9 SCC 654, relied on.

5. The High Court was considering a judgment of acquittal; it set aside a part of the finding of the Sessions Judge. It could not have interfered with the judgment of acquittal if two views were possible. The judgment of the Sessions Judge cannot be said to be wholly unreasonable or otherwise perverse. Circumstances G H

A **brought on record by the prosecution are not such which would lead to a definite conclusion that appellant and none else had committed the offence. In such a situation, the High Court should have approached the case with some caution. The Judgment of the High Court cannot** B **be sustained and is set aside. [Para 27 and 29] [752-G-H; 753-A, D]**

K. Prakashan vs. P.K. Surenderan **(2008) 1 SCC 258, relied on.**

C **Case Law Reference:**

1999 SCC (Crl.) 1066	**relied on**	**Para 12**
(1999) 4 SCC 370	**referred to**	**Para 13**
D **(2006) 10 SCC 681**	**distinguished**	**Para 15**
(2008) 5 SCC 587	**distinguished**	**Para 16**
(1984) 4 SCC 116	**relied on**	**Para 19**
(2008) 5 SCC 597	**relied on**	**Para 20**
E **(2008) 3 SCC 100**	**relied on**	**Para 21**
(1998) 9 SCC 654	**relied on**	**Para 26**
(2008) 1 SCC 258	**relied on**	**Para 28**

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 774 of 2006.

From the Judgment & Order dated 15.12.2005 of the High Court of Judicature at Madras in Criminal Appeal No. 788 of G 2001 and Criminal Revision Case No. 264 of 2001.

Dhruv Mehta, S. Balaji, V.N. Subramanian, Madhusmita Bora and P.V. Yogeswaran for the Appellants.

V. Karangaraj, S. Thananjayan, N. Shoba, Sri. Ram J. and H Thalapapathy for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J.1. Appellant got married with Baby alias Sokkayyal ("the deceased") in the year 1996 at village Thallakuttaipudur. After the marriage, they were living at Village Ennamangalam. The deceased was found dead in her matrimonial home on 26.5.1999 at about 11:00 p.m. On the request of the appellant, Chinnaraj (P.W. 3) went to the village Thallakuttaipudur, which is said to be situated at a distance of 18 miles from village Ennamangalam, to inform the parents of the deceased. They arrived at about 9:00 a.m. in the next morning.

The First Information Report (for short, "FIR") was lodged in regard to the aforementioned incident at about 11:00 a.m. in Vellithiruppur police station. The FIR is based on a written report wherein it was alleged that the deceased was subjected to cruelty and/or harassment at the hands of her husband and in-laws as sufficient dowry had not been given in her marriage. It was furthermore alleged that as the demand of dowry could not be met, a blank promissory note was executed by him on affixation of a revenue stamp. On the basis of the said information, FIR was lodged against the accused for commission of offences punishable under Sections 498A and 302 of the Indian Penal Code (for short, "the IPC") as also under Section 4 of the Dowry Prohibition Act.

2. Before the learned Sessions Judge, fourteen witnesses were examined by the prosecution in support of its case. P.W.1 – Muthusamy and P.W. 2 – Easwari are the parents of the deceased; P.W.3 - Chinnaraj had been residing close to the house of the appellant. He knew the appellant as well as the deceased; P.W.4 - Sakthivel and P.W. 5 - Senniappan were examined by the prosecution to prove that when the deceased had been staying with her parents about three months prior to the date of occurrence, a compromise was allegedly entered into in the house of P.W. 1 for the purpose of bringing her back to her matrimonial home. P.W. 6 – Thiru Karunakaran is the

A Village Administrative Officer who witnessed preparation of the Observation Mahazar and the recovery of the material objects M.Os.1 and 2.

P.W. 7 – Charles Mohan is a photographer, who had taken photographs of the scene of occurrence. P.W.8 – Anbazhagan is Head Constable in Vellithiruppur Police Station. P.W.9 – Ganesan is Grade II Constable in Vellithiruppur Police Station. P.W. 10 – Dr. Ranjini who did post-mortem on the dead body; P.W. 11 – Sivakumar is a Sub-Inspector of Police; P.W.12 – Srinivasan conducted inquest on the dead body; P.W. 13 – Manoharan is Superintendent of Police in the Madurai Civil Supply CID Section. P.W. 11 and P.W 13 are the Investigating Officer. P.W.14 – Muthusamy is Deputy Superintendent of Police who later succeeded P.W.13.

D 3. The learned Sessions Judge by a judgment and order dated 14.11.2000 recorded a judgment of acquittal in favour of appellant. The State preferred an appeal thereagainst. By reason of the impugned judgment dated 15.12.2005, the High Court while affirming the view of the trial court with regard to E the order of acquittal of appellant of the charges under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, however, recorded a judgment of conviction and sentence against him under Section 302 of the IPC opining that its findings were unreasonable.

F 4. Mr. Dhruv Mehta, learned counsel appearing on behalf of the appellant for assailing the judgment of the High Court would contend:

i. The cause of death of the deceased cannot be said G to have been caused by smothering.

ii. The circumstantial evidence whereupon reliance has been placed by the High Court cannot be said to have formed a complete link in the chain to arrive at the guilt of the appellant.

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iii. The police having already arrived at the Village Ennamangalam early in the morning had been admitted by P.W. 2 and P.W.3, no reliance can be placed on the FIR which was lodged by P.W.1 at 11:00 a.m. in the police station.

5. Mr. Kanagaraj, learned Senior Counsel appearing on behalf of the respondent, on the other hand, supported the judgment of the High Court urging that the fact that the deceased was a young woman and pregnant of seven months and suffered an unnatural death being not in dispute, the circumstances found favour with the High Court, namely, (1) they had been living together and last seen together, (2) it was for the appellant to give a reasonable explanation as to how she died, and (3) the plea of alibi taken by appellant having not been proved, no interference with the impugned judgment is warranted.

6. Cause of death as stated in the post-mortem report is as under:

"Appearances found at the Post-Mortem:

Moderately nourished, female lies on the back, arms close to sides, lower limbs extended hair black, skin pals, eyes closed, lips swollen, forthy fluid discharge of blood from mouth and nose. Abdomen distended.

EXTERNAL INJURIES - NIL

INTERNAL

1. .....
2. .....

.....

12. Kidneys both 160 gms. Normal

.....

16. Head – Normal

.....

18. Brain – Normal, 1200 gms.

Viscera preserved for Chemical analysis.

OPINION:- The deceased would appear to have died of 28 to 36 hrs. prior to autopsy. Final opinion pending on Chemical Analysis.

Forensic Report: RT. 2756/99 to H. 928/99 DT. 30.06.99

Viscera: 1.Stomach and its contents
2. Intestine and its contents
3. Liver
4. Kidneys
5. Lungs
6. Preservative

The above six articles were examined but poison was not detected in any of them.

Opinion as to cause of death:

(a) Reserved pending report of Viscera

(b) The deceased would appear to have died of 28 to 36 hrs. his prior to autopsy.

FINAL OPINION:-

The death is due to Asphyxia. May be due to smothering."

The post-mortem report was proved by Dr. Ranjini (P.W. 10). In her evidence apart from proving the post-mortem report, she stated:

"While a pillow like M.O. 2 were to be pressed on the face of a sleeping person there will be opportunity for the swelling lips and difficult in breathing which would result in

the emproyo being affect. Further the Lungs will also get affected and blood might ooze out through the mouth and nose." A

However, she in her cross examination admitted that if death was caused by asphyxia the eyes would be open and tongue would get protruded and it was likely that the right side of the heart would be full of blood and the left side of the heart would be empty. It was furthermore accepted that at the time of death on account of asphyxia, tardien sport should be found in the eyes and further hypacksia should be found, i.e., the oxygen in the blood pertaining to the atoms would be very much less. The face and head would also be found distended. It was furthermore stated that: B C

"Further there should be mucous in the mouth and throat. Further generally at the time of asphyxia there should be alveonian in the lungs and also idima polute should be found. Further there should be camerine with kolappan with intersenian espeomia. But the aforesaid were not found in the dead body of the deceased in the absence of the aforesaid symptoms there was no opportunity for the deceased to die." D E

7. Both the learned counsel had strongly relied upon Modi's Medical Jurisprudence and Toxicology, 23rd Edition (for short, "Modi") to support their respective cases as to whether in view of absence of some symptoms as accepted by the autopsy surgeon, death could be caused by asphyxia. We may for the aforementioned purpose notice some passages from Modi. F

8. The learned author defines application of the term 'suffocation' to that form of death that results from the exclusion of air from the lungs, by means other than that of the compression of the neck. One of the types of 'suffocation' is smothering or closure of the mouth and the nostrils. With regard to smothering or closure of the mouth and nostrils, it was stated: G H

A "Infants are often accidentally smothered by being overlaid by their mothers when they are drunk. This is more common among the lower classes of women in England. In India, such cases are rare, as infants are generally not allowed to sleep in the same bed with their mothers, but B are placed in separate cradles. However, they are sometimes smothered by inexperienced mothers who press them too closely to the breast when suckling. A common method of killing infants, children and weak adults is to close the mouth and the nostrils by means of the hand, C bedclothes, soft pillows or mud.

Cases have been recorded of adults being accidentally smothered by plaster of paris at the time of taking a cast or mould, or by falling face downwards into vomited matter, flour, cement, ashes, sand or mud, D especially when drunk or during an epileptic fit.

Plastic bag suffocation has been reported from various countries. Deaths have occurred in course of autoerotic misadventures by use of plastic bag placed over E the head. Some addicts use plastic bags in a similar manner to sniff or inhale narcotic vapours or anaesthetics. Chemical analysis is essential in all the cases of plastic bag asphyxia occurring in teenagers; for otherwise the proper diagnosis of poisoning by inhalation of narcotic F vapours may be missed. A thorough search of the scene for the solvents (acetone, benzene, toluene, napththa, carbon tetrachloride) should also be made and the relatives questioned."

It was furthermore stated that choking or obstruction of the G air-passages from within is mostly accidental. With regard to the post-mortem appearance, it is stated:

"Post-mortem appearances are external and internal

H (i) *External Appearance*

The external appearance may be due to the cause producing suffocation, or to asphyxia.

(a) *Appearance due to the Cause Producing Suffocation:* In homicidal smothering, affected by the forcible application of the hand over the mouth and the nostrils, bruises and abrasions are often found on the lips and on the angles of the mouth, and alongside the nostrils. The inner mucosal surface of the lips may be found lacerated from pressure on the teeth. The nose may be flattened, and its septum may be fractured from pressure of the hand, but these signs are, in Modi's experience, very rare. There may be bruises and abrasions on the cheeks and the molar regions, or on the lower jaw, if there has been a struggle. Rarely, fracture or dislocation of the cervical vertebrae may occur if the neck has been forcibly wrenched in an attempt at smothering with the hand. No local signs of violence will be found, if a soft cloth or pillow has been used to block the mouth and nostrils.

In compression of the chest, external signs of injury may not be present, but the ribs are usually fractured on both the sides. In homicidal compression of the chest brought about by the hands or knees of a murderer or by some other hard material, bruises and abrasions, symmetrical on both sides, are usually found on the skin together with extravasation of the blood in the subcutaneous tissues. Rarely, along with the ribs the sternum is also fractured. It should, however, be remembered that the traumatic asphyxia produces variable findings. In a fair person, purple suffusion of skin above the point of compression is apparent in severe fixation of the chest by mechanical compression. There may not be any external or internal signs where the pressure is slight or evenly distributed.

(b) *Appearance due to asphyxia:* The face may be pale or suffused. The eyes are open, the eyeballs are

A prominent, and the conjunctivae are congested and sometimes there are petechial hemorrhages. The lips are livid, and the tongue sometimes protruded. Bloddy froth comes out of the mouth and the nostrils. The skin shows punctiform ecchymoses with lividity of the limbs. Rupture B of the tympanum may occur from a violent effort at respiration.

(ii) *Internal Appearance*

Rags, mud or any other foreign matter may be found in the C mouth, throat, larynx or trachea, when suffocation has been caused by the impaction of a foreign substance in the air-passages. It may also be found in the pharynx or the oesophagus. The mucous membrane of the trachea is usually bright red, covered with bloody froth and D congested. The lungs are congested and emphysematous. They may be lacerated or contused even without any fracture of the rib, if death has been caused by pressure on the chest. Punctiform subpleural ecchymoses (Tardieu spots) are usually present at the root, base, and the lower E margins of the lungs, but they are not characteristic of death by suffocation, as they may also be present in asphyxia death from other causes. They are also found on the thymus, pericardium, and along the roots of the coronary vessels. The lungs may be found quite normal, if F death has occurred rapidly. The right side of the heart is often full of dark fluid blood, and the left empty. The blood does not readily coagulate; hence, wound caused after death may bleed. The brain is generally congesting, and so are the abdominal organs, especially the liver, spleen G and kidneys"

In his opinion, to come to a definite conclusion it is very essential to look for evidences of violence in the shape of external marks surrounding the mouth and nostrils or on inside the mucosal surface, or on the chest. According to the learned H author, circumstantial evidence should always be taken into

consideration to establish the proof of death from suffocation. In regard to the medico-legal question as to whether the suffocation was suicidal, homicidal or accidental, the learned author stated:

> "Homicidal suffocation by pressure on the chest is sometimes resorted to in India, but in the case of adults, it is often combined with smothering or throttling, and it is usually an act of more than one person.....
>
> A form of homicidal suffocation practiced in Northern India is known as 'Bansdola', although it is not so common now as it used to be formerly. In this form, the victim's chest is squeezed so forcibly between two strong wooden planks or bamboos, one being placed across the upper part of the chest and the other across the back of the shoulders, that the respiratory act is interfered with, the muscles are lacerated and the ribs are fractured. If the force applied is very severe, the lungs may be crushed and lacerated.
>
> Burying alive used to be resorted to in India as a form of punishment and lepers used to be sometimes buried alive.
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> In the case of infants dying under suspicious circumstances and afterwards exhumed, a question may arise as to whether they had been buried alive. The presence of fine dust in the oesophagus and stomach is a convincing proof of the infant having been buried alive. In a burial after death, fine dust may be found in the upper air-passages, but not in the oesophagus or the stomach.
>
> Accidental suffocation is frequent and is produced as described above and by being buried under the sand or the earth while digging deep pits; here the respiratory tract is packed with sand or earth."

9. We wish the expert would have been forthright in her view in regard to the cause of death. A different conclusion was

A required to be arrived at keeping in view the fact that a large number of symptoms were absent which ordinarily point out to the cause of death of asphyxia by smothering. Most of the symptoms noticed by Modi should have remained present.

B 10. There was frothy fluid discharge of blood from mouth and nose. However, no frothy fluid blood was found on the pillow. It may not be imperative but that could have been a lead to a fairly definite opinion. It is in the aforementioned situation, the learned Sessions Judge opined that death might not have been caused by asphyxia, stating:

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"In the present case there is reasonable doubt in regard to the cause of death of the deceased and it is not safe to rely upon the evidence of P.W. 8 solely for the purpose of coming to the conclusion that the deceased's death is
D proved by the prosecution to be homicidal. While viewing on that basis, P.W. 10 the Medical Officer in her evidence had mentioned as detailed below:

Generally during the time of asphyxia the eyes will be open and the tongue will be protruding outside. Further
E the right side of the heart might be full of blood and the left side being empty. Further at the time of asphyxia, the kidneys also should be found distended and likewise the brain. Generally on account of asphyxia and death is being caused Tardien sport should be in the eyes. Further at the
F time of asphyxia there should be hybakia should be found. (Hybakia means the oxygen particles will be lesser in number in the blood). Further the face and head will be found distended Synochiam with numerus petichal should be found. Further there should be mucous in the mouth and
G throat. Further Generally during the time of asphyxia, there should be alviovis and idimafluid in the lungs. Further there should be camaris with collappus with intersavin enpiceomia. But the aforesaid signs were not found in the dead body and therefore there was no opportunity for the
H deceased to die on account of asphyxia.

11. The learned judge noticed that P.W.10 was specific in her statement that paleness in the brain could not have been noticed as it had liquefied by that time. It was also found that P.W. 10 had deviated from her earlier opinion and stated that it was not correct to say that no opinion of cerebral anoxia could be given or arrived at in the case of liquefaction of the brain. No saliva, blood and tissue cells were found in the pillow; no scratches, distinct nail marks, or laceration of the soft parts of the victim's face was noticed. It was not brought to notice that pillow was a soft one or not. No bruising or laceration was found in the lips, gums and tongue. The conduct of the accused that he had all along been present and the opinion of the Doctor did not satisfy the tests laid down in the authoritative book of Modi, it was held:

> "Further the evidence of Medical Officer P.W. 10 having mentioned that the reason for the death of the wife of the accused was on account of asphyxia but the same is discrepant with the Medical Book. Further in the report Ex. P.6 no such symptom had been mentioned. Hence just because the accused and his wife happened to be at the same place and on that ground it cannot be said that the accused had committed the aforesaid criminal offence as mentioned on behalf of the prosecution."

12. The High Court, on the other hand, while noticing only a part of the said tests proceeded on the premise that those symptoms spoken to by her in her evidence were not noted by her in the post-mortem report. Apart from the fact that the quotation from Modi does not take into consideration all the symptoms noted therein, a wrong test was applied that all the features in a given case would not be available where the body is burnt after killing, which is not the case herein. Despite noticing that some of the usual symptoms that would be available in the case of death due to asphyxia by smothering were necessary still a purported formal opinion was arrived at that the prosecution had definitely established the cause of

death. A similar question came up for consideration in *Mohd. Zahid vs. State of T.N.* [1999 SCC (Crl.) 1066], wherein the Doctor differed with a well known tests of medical jurisprudence. The suggestion of the defence with reference thereto cannot be lightly brushed aside particularly when post-mortem was conducted after a few days. P.W. 10 did not refer to any other authoritative text to support her opinion. This Court in the fact of that case opined:

> "...A cautious reading of this part of PW-8's evidence shows that in one part PW-8 admits that the one and only method by which a medical examiner can conclude that the cause of death was due to cerebral anoxia is by noticing the pale appearance of the brain. She also specifically admits that there will not be any other change in the brain in the case of cerebral anoxia and since the brain had become liquefied, it cannot be stated if the brain had become pale or not. She is also specific in her statement that there was no other sign by which she could say that was cerebral anoxia. Stopping for a while at this stage and examining PW-8's evidence, one finds that at the time of the post mortem examination, Jabeena's brain had liquefied and there was no way by which PW-8 could have noticed the paleness in the brain. However, in the latter part of her evidence, she deviates from her earlier opinion and states that it is not correct to say that no opinion of cerebral anoxia could be given or arrived at in the case of liquefaction of the brain. These two statements are diametrically opposed to each other and we find it rather difficult to accept this part of her evidence which is so self-contradictory. In our view, the opinion of PW-8 that the cause of death as recorded by her is due to the cumulative effect of asphyxia and cerebral anoxia, is rather difficult to accept.
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> 24. We are aware of the fact that sufficient weightage should be given to the evidence of the doctor who has

conducted the post mortem, as compared to the statements found in the text books, but giving weightage does not ipso facto mean that each and every statement made by a medical witness should be accepted on its face value even when it is self-contradictory. This is one such case where we find that there is a reasonable doubt in regard to the cause of death of Jabeena and we find it not safe to rely upon the evidence of PW-8, solely, for the purpose of coming to the conclusion that Jabeena's death is proved by the prosecution to be homicidal."

13. In *State of Himachal Pradesh vs. Jeet Singh* [(1999) 4 SCC 370], this Court held:

"19. It appears to us that the High Court has totally overlooked the features of the victim which are consistent with the consequence of her having been subjected to smothering. The injuries found on both the legs of the dead body are proof positive that it was a homicidal smothering. We can place reliance on the opinions of both sets of doctors that even without seeing the chemical examiner's report, they could say that death of the deceased might be due to smothering, and after seeing the chemical examiner's report, a doctor could say that poison would also have worked fatally in the victim."

14. So far as the circumstance that they had been living together is concerned, indisputably, the entirety of the situation should be taken into consideration. Ordinarily when the husband and wife remained within the four walls of a house and a death by homicide takes place it will be for the husband to explain the circumstances in which she might have died. However, we cannot lose sight of the fact that although the same may be considered to be a strong circumstance but that by alone in absence of any evidence of violence on the deceased cannot be held to be conclusive. It may be difficult to arrive at a conclusion that the husband and husband alone was responsible therefor.

15. Mr. Kanagaraj has placed strong reliance upon the decision of this Court in *Trimukh Maroti Kirkan vs. State of Maharashtra* [(2006) 10 SCC 681] wherein it was held:

> "18. The question of burden of proof where some facts are within the personal knowledge of the accused was examined in *State of West Bengal v. Mir Mohammad Omar and Ors.* [(2000) 8 SCC 382]. In this case the assailants forcibly dragged the deceased, Mahesh from the house where he was taking shelter on account of the fear of the accused and took him away at about 2.30 in the night. Next day in the morning his mangled body was found lying in the hospital. The trial Court convicted the accused under Section 364 read with Section 34 IPC and sentenced them to 10 years' RI. The accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for murder charge. The accused had not given any explanation as to what happened to Mahesh after he was abducted by them. The learned Sessions Judge after referring to the law on circumstantial evidence had observed that there was a missing link in the chain of evidence after the deceased was last seen together with the accused persons and the discovery of the dead body in the hospital and had concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond any reasonable doubt. This Court took note of the provisions of Section 106 of the Evidence Act and laid down the following principle in paras 31 to 34 of the reports:
>
> > 31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the

rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the court to draw the presumption that the accused have murdered him. Such inference can

A be disrupted if the accused would tell the court what else happened to Mahesh at least until he was in their custody.' "

16. Yet again in *Ponnusamy vs. State of Tamil Nadu* B [(2008) 5 SCC 587], this Court held:

"21. We have to consider the factual background of the present case in the light of the relationship between the parties. If his wife was found missing, ordinarily, the husband would search for he. If she has died in an C unnatural situation when she was in his company, he is expected to offer an explanation therefor. Lack of such explanation on the part of the appellant itself would be a circumstantial evidence against him.

D 27. We must also take into consideration the fact that the dead-body was decomposed with maggots all over it. Other marks of strangulation which could have been found were not to be found in this case. The dead body was found after a few days. We are, therefore, of the opinion that medical evidence does not negate the prosecution case." E

17. In both the aforementioned cases, the death occurred due to violence. In this case, there was no mark of violence. Appellant has been found to be wholly innocent. So far as the charges under Section 498A or Section 4 of the Dowry F Prohibition Act is concerned, the evidence of the parents of the deceased being P.W. 1 and P.W. 2 as also the mediators P.Ws.4 and 5 have been disbelieved by both the courts below. That part of the prosecution story suggesting strong motive on the part of the appellant to commit the murder, thus, has been G ruled out.

18. However, we may notice that in *Mohd. Zahid* (supra), this Court opined:

"Of course, the prosecution has established that the H

appellant was the only person in the company of Jabeena and her child at the relevant time on the fateful day. But this again stops the prosecution case in the realm of suspicion, which by itself cannot be substituted for hard evidence. Aware as we are of the fact, a budding life came to an unfortunate premature end, our jurisprudence will not permit us to base a conviction on the basis of the evidence placed by the prosecution in this case and the benefit of a reasonable doubt must be given to the appellant."

19. In *Sharad Birdhichand Sarda vs. State of Maharashtra* [(1984) 4 SCC 116], this Court has laid down the parameters for arriving at a opinion in regard to proof of a prosecution case on the basis of the circumstantial evidence, stating:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved as was held by this Court in *Shivaji Sahebrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793] where the following observations were made: (SCC para 19, p.807: SCC (Cri) p.1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with

A the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and
B tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not
C to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

D 154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

It was furthermore held:

E "163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the
F accused is undoubtedly entitled to the benefit of doubt. In *Kali Ram v. State of Himachal Pradesh* [(1973) 2 SCC 808], this Court made the following observations:

Another golden thread which runs through the web of the administration of justice in criminal cases is that if
G two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is
H sought to be established by circumstantial evidence."

20. Yet again in *Vinay D. Nagar vs. State of Rajasthan* [(2008) 5 SCC 597], this Court held:

> "9. The principle of law is well established that where the evidence is of a circumstantial nature, circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and the facts, so established, should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and they should be such as to exclude hypothesis than the one proposed to be proved. In other words, there must be chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

21. This Court in *K.T. Palanisamy vs. State of Tamil Nadu* [(2008) 3 SCC 100], held:

> "18. All the prosecution witnesses are related to the deceased. It is difficult for us to believe that all the witnesses saw the deceased accompanying the accused persons one after the other at different places. Therefore, chances of their deposing falsely cannot be ruled out. Be that as it may, when the offence is said to have been committed and the circumstantial evidence is made the basis for establishing the charge against the appellant, indisputably all the links must be completed to form the basis for his conviction."

22. Another circumstance which had weighed with the High Court was inability on the part of the appellant to prove his defence as stated in his examination under Section 313 of the Code of Criminal Procedure, which reads as under:

> "At the time of the marriage I did not ask for any Sreedhanam. Further, as per our custom in our caste I had

A offered the Kodi and Mangal Sutra, to my wife. Further, at the time of the marriage my father in law and mother in law had no means to offer the Sreedhanam and therefore I did not ask for the same are anticipated for the same. Myself and my wife had been living very happily. My wife gave
B birth to a child at Appakudal, Sakthi Sugar Hospital and the expenses pertaining to the delivery had been borne by me. After the delivery my wife and the child had been taken to our house. Again my wife conceived. Myself, and my wife along with my parents were living happily. On 26.05.99
C night after watering the field and when I came to the house around 5.00 a.m. my wife was found dead and immediately I conveyed the information to all. My mother-in-law and father-in-law demanded that the properties should be settled on my child but I refused by stating that I will protect
D my child. Hence, as and after thought they had foisted the false case against me.

I am innocent."

23. The finding of the High Court that appellant had to
E prove title of his land ex facie is incorrect. P.W. 1 categorically stated that appellant had three acres of land. P.W. 3 also accepted that land of the appellant is almost by the side of his land. In view of the admission made by the prosecution witnesses, the High Court, in our opinion, committed a serious
F error in arriving at a conclusion that he did not possess any land whatsoever. Mr. Kanagaraj, however, would submit that even if he had gone for irrigating his land, the same may not take much time. In any event, having regard to the evidence of P.W. 3, it is wholly unlikely that he was absent from his house. There
G are two aspects of the matter. One is that the reasoning of the High Court that he did not have any land whatsoever and, therefore, he must be presumed to have been in his house only appears to be wholly incorrect. But even assuming that he did not have any land and he in fact went to P.W. 3 for the purpose of taking his wife to hospital may not by itself be a ground for
H

holding him guilty. Failure to prove the plea of alibi and/or giving of false evidence itself may not be sufficient to arrive at a verdict of guilt; it may be an additional circumstance. But before such additional circumstance is taken into consideration, the prosecution must prove all other circumstances to prove his guilt.

24. Another aspect of the matter cannot be lost sight of. According to P.W. 2, police had already arrived when they reached at the place of occurrence on the next day morning. P.W. 2 in his evidence, stated:

> "While, ourselves along with the relatives reached the village of my son-in-law it would be 6.00 or 7.00 a.m. While we went there the police were present, who had enquired the villagers and ourselves. The Tahsildar had made the enquiry but I do not remember the date."

The said statement was corroborated by P.W. 3 in his evidence, stating:

> "I went and conveyed the information to her mother and again returned where the wife of the accused was lying and he could be around 4 or 5 a.m. I am not aware as to who had conveyed the information to the police. Within a short time after I went there the police arrived and the father-in-law and mother-in-law of the accused arrived around 9'o clock. Prior to the arrival of the father-in-law and mother-in-law of the accused the police enquired me, and also the neighbours. After the arrival of father-in-law and mother-in-law of the accused they were enquired by the police."

P.W. 11 – Sivakumar, Sub-Inspector in his evidence could not say at what time he had arrived at the place of occurrence when a pointed question was put to him.

25. The police must have received some information. Why the other information was suppressed by the prosecution has

A not been explained. In a situation of this nature particularly if an FIR was lodged after recording the statements of the witnesses, another FIR would not be admissible in evidence and ordinarily an investigation cannot be started without recording the FIR.

B

26. In *Mohar Singh vs. State of Rajasthan & ors.* [(1998) 9 SCC 654], the same was held to be one of the circumstances against the prosecution, stating:

> "The High Court has also pointed out that no reliance could
C be placed on the FIR which contains the names of the assailants because PW 1 in his cross-examination has admitted that the FIR was taken down after the Inspector visited the site and they were then taken to the police station."

D

27. Admittedly, a plastic bottle was found near the cot. It was seen by P.W. 3. However, his statement that he did not find any smell coming out from the mouth of the deceased is difficult to accept. He is not an expert. It is wholly unlikely that
E he having observed that death had already taken place, he would smell the mouth of the deceased. The possibility that having seen the bottle which admittedly at one point of time contained some poison, appellant's assuming that she had consumed poison and rushing to the house of the P.W. 3 who might have been in a position to make arrangement for shifting
F her to hospital cannot be ruled out. In so assuming, he might have committed a mistake but it is also difficult to arrive at a definite conclusion that only because a plastic bottle was found, appellant must have deliberately kept it so as to raise a false plea. We do not think that any such conclusion can be arrived
G at. If such a conclusion was arrived at, the same would amount to surmise and conjecture. The High Court was considering a judgment of acquittal; it set aside a part of the finding of the learned Sessions Judge. It could not have interfered with the judgment of acquittal if two views were possible. The judgment
H of the learned Sessions Judge, in our opinion, cannot be said

to be wholly unreasonable or otherwise perverse. Circumstances brought on record by the prosecution, in our opinion, are not such which would lead to a definite conclusion that appellant and appellant alone had committed the offence. In the aforementioned situation, the High Court should have approached the case with some caution.

28. In *K. Prakashan vs. P.K. Surenderan* [(2008) 1 SCC 258], this Court held:

"We, therefore, are of the opinion that keeping in view the peculiar fact situation obtaining in the present case it cannot be said that the judgment passed by the learned trial judge was perverse or suffered from any legal infirmity. It was *not a case* where the learned trial judge failed to consider the evidence brought on record and/or misappreciated the same."

29. For the reasons aforementioned, the impugned judgment of the High Court cannot be sustained, which is set aside accordingly. The appeal is allowed. Appellant is in custody. He is directed to be set at liberty forthwith unless wanted in any other case.

R.P. Appeal allowed.