

**Ramdeo and Others Vs. The State of Maharashtra and Others**

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**Court :** Mumbai Aurangabad

**Decided On :** Aug-14-2015

**Judge :** S.S. Shinde & N.W. Sambre

**Appeal No. :** Criminal Appeal Nos. 437, 442 of 2011 & 85 of 2012

**Appellant :** Ramdeo and Others

**Respondent :** The State of Maharashtra and Others

**Judgement :**

N.W. Sambre, J.

1. Since all these appeals arise out of the judgment and order dated 27th July, 2011, rendered by Additional Sessions Judge, Shrirampur, in Sessions Case No.36 of 2008, they are heard together and are being decided by this common judgment.

2. So far as Criminal Appeal No.437 of 2011 is concerned, the same is preferred by appellant/original accused no.1 Ramdeo, who is convicted vide section 235 (1) of the Code of Criminal Procedure, for an offence punishable under section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.25,000/-, in default to suffer simple imprisonment for six months.

3. Criminal Appeal No.85 of 2012 is preferred by the State of Maharashtra, questioning the acquittal of accused no.1 Ramdeo for an offence punishable under

sections 498-A read with sec. 34 and 120-B of the Indian Penal Code; acquittal of accused nos.2 and 4 Saraswati and Indira, respectively, for an offence punishable under sections 302, 498-A read with sec. 34 of the Indian Penal Code and also the acquittal of accused no.3 Laxmikant.

4. So far as Criminal Appeal No.442 of 2011 is concerned, the same is preferred by original complainant Prakash Shantilal Varma against the acquittal of the accused.

5. Facts, as are necessary for decision of these appeals, are as under :-

Accused no.1 Ramdeo married to Chandarani, who is resident of Sonai. Before marriage, Chandarani was residing along with her parents, brothers and sister at Aurangabad. The marriage took place on 4<sup>th</sup> December, 1998 at Aurangabad. After the marriage, deceased Chandarani started residing with the accused persons at Sonai. Accused no.2 Saraswatibai is mother-in-law; accused no.3 Laxmikant is brother-in-law of deceased and accused no.4 is sister-in-law of Chandarani and wife of one Rameshwar Warma.

6. On 17th March, 2008, Assistant Police Inspector P.W. 13 Sanjay Hibare, who was present on duty at Sonai police station, received an intimation at about 5.05 p.m. about the accidental death of Chandarani from one Kiran Chandel, her cousin brother-in-law. On the basis of the said intimation, an entry in the register of accidental deaths as A.D. No.8 of 2008 was made. Pursuant to the said intimation, P.W.13 A.P.I. Sanjay Hibare visited the spot of the incident, which was on the second floor of the house of accused Ramdeo and saw that Chandarani was burnt and was dead. P.W.13 Sanjay, accordingly, called three panchas, a female and two male, namely; Dwarka Baburao Kumawat, Sudhakar Nanasaheb Darandale and Anil Trimbak Darandale and upon examining the dead body, drew inquest panchnama (Exh.63), which was commenced at 5.15 pm. and concluded at 6.00 pm.

7. After the inquest panchnama, the dead body was handed over in the custody of Police Constable Pawar for sending the same by ambulance to Newasa Rural Hospital for post mortem examination.

8. Subsequent thereto, on the same day, P.W.13 Sanjay prepared spot panchnama (Exh.113) in the presence of two panchas, namely, Kiransing Chandel and Ranjit Jadhav, resident of Sonai. The spot panchnama was commenced at 6.05 p.m. and concluded at 7.00 p.m. At the spot, he had noticed articles, namely, Five Liter kerosene container of green colour having 1-1/2 Ltrs. Kerosene, the cap of which was lying aside, burnt match box, burnt match sticks and one burnt piece on the spot of the incident, which were seized, sealed and wrapped in a paper by putting appropriate signatures and seals thereon. He then noticed that the bedroom in which Chandarani died had a attached bath-room, having a fiber door, which was not burnt. He had then taken photographs of the spot of the incident through a photographer. The said photographs are at Exh.115. He claimed that he prepared panchnama as per the scene of the incident. He then forwarded copy of inquest panchnama, copy of inquest form to the Rural Hospital, Newasa along with Police Constable Pawar.

9. The post mortem on the dead body of Chandarani was not performed at Newasa and same was sent to Ghati Hospital, Aurangabad along with Police Constable Pawar as there was no arrangement or facility to conduct autopsy at night.

10. Upon demand, custody of the minor son of Chandarani, namely, Ganesh was given to Prakash Warma. P.W.13 Sanjay then claimed that on 18th March, 2008, he proceeded from Sonai to Aurangabad at 8.30 a.m. and reached Aurangabad at 10.00 a.m. He further claimed that the autopsy on the dead body was performed in Government Hospital at Aurangabad (GHATI).

11. Having reached at GHATI Hospital, Aurangabad, the Doctors had pointed out the Investigating Officer that there were injuries on the dead body but those were not reflected in the inquest panchnama and as such, he was asked to prepare the inquest panchnama, for which he refused, as he claimed that he had no authority to draw second inquest.

In view of the above fact, the Doctors have given letter to Magistrate at Exh.18 for carrying out another inquest panchnama and without waiting for the Magistrate to carry out the inquest panchnama, the Doctors have proceeded to perform the post

mortem. It is noted in the post mortem report that there are injuries on forearm, nose and right shoulder, which are not stated in the inquest panchnama so prepared. It is claimed that the Doctor's letter Exh.81, calling Executive Magistrate, was handed over to Police Constable Pawar, however, it was not handed over to Magistrate by Police Constable Pawar. After performing the post mortem, custody of the dead body was given as per Exh.137 to complainant Prakash.

12. After completing the post mortem, the Doctors who had conducted autopsy, had come to Sonai along with the Investigating Officer to inspect the spot of the incident. Another search and seizure panchnama was drawn at Exh.74 on 18th March, 2008, in the presence of Kiran Chandel, who was resident of Sonai and cousin brother-in-law of deceased by I.O. P.W.13 Sanjay.

13. In the said panchnama (Exh.74), drawn on 18th March, 2008, it was noted that the original colour of the wall was pink, so also of the door frame and he noticed two latch holders lying on the floor, which had gone unnoticed while drawing earlier panchnama Exh.113 on 17th March, 2008.

14. Apart from above, it was brought on record that key of main door of the house of the accused was with Kiran Chandel. Upon instructions of the said Investigating Officer, Police Constable Pawar reduced in writing the complaint Exh.136 after the post mortem in the hospital, resulting into registration of C.R. No.236 of 2008, for offence punishable under sections 302, 498-A, read with sec. 34 of the Indian Penal Code. Pursuant to the complaint, accused no.1 Ramdeo was arrested on 18th March, 2008, vide panchnama Exh.206, when it was noticed that there were no injuries on the person of accused Ramdeo.

15. The Investigating Officer then proceeded to investigate the matter and had asked the Revenue Circle Officer to prepare sketch of spot of the incident Exh.67 and proceeded to record statements of Kiran Chandel and Ranjit Jadhav.

16. It is further noted that the articles which were seized from the spot of the incident, were sent for chemical analysis vide letter Exh.212. The in-coming and out-going calls of the phone at the house and the shop of accused no.1 were called from the B.S.N.L. office, which are at Exhs.220 and 221.

17. The investigation in the matter was, then, handed over to the Local Crime Branch on 16th May, 2008, as per the directions of Superintendent of Police, pursuant to the complaint against Investigating Officer P.W.13 Hibare. The Local Crime Branch then recorded supplementary statements of the witnesses, and accused no.3 Laxmikant came to be arrested on 9<sup>th</sup> June, 2008 and accused no.2 Saraswatibai on 5th July, 2008.

18. After completion of investigation, the charge-sheet came to be submitted to the Court of Judicial Magistrate First Class, Newasa, against accused nos.1 to 4, for offences punishable under sections 302, 498-A read with sec. 34 of the Indian Penal Code. Learned Magistrate thereafter committed the case to the Sessions Court, Shrirampur.

19. The charge was framed at Exh.51 against the accused persons. They abjured the guilt and claimed to be tried. The prosecution examined in all thirteen witnesses, in order to prove the guilt of the accused persons.

20. The complainant Prakash alias Deva Shantilal Varma was examined as P.W.9 at Exh.133, Ganesh, the minor son of deceased Chndarani and accused no.1 was examined as P.W.8 at Exh.128. Sunil Soni, brother-in-law of the complainant Prakash was examined as P.W.11 at Exh.179. Complainant's friend Sanjay Saraf was examined as P.W.12 at Exh.196, Suresh Varma as P.W.10 at Exh.176. The panch on the inquest, namely, Dwarkabai was examined as P.W.1 at Exh.62 and witness on the spot panchnama Ranjit was examined as P.W.7 at Exh.112. Omprakash Varma, another witness on the spot panchnama dated 18<sup>th</sup> March, 2008 was examined as P.W.3 at Exh.73.

21. Gorakshanath Suryabhan Shinde, P.W.5, was then a Branch Manager of Nagar Urban Co-operative Bank, Branch at Sonai, at Exh.87. P.W.6 Shamsundar Shankar Khamkar, examined at Exh.105 was also at the relevant time, a Branch Manager of Vyankatesh Patsanstha. P.W.4 Dr. Ramkrishna Govindrao Bhusale, the Medical Officer, is examined at Exh.76. The evidence of Investigating Officer P.W.13 A.P.I. Hibare is at Exh.200.

22. The accused, in their defence have examined D.W.1 Sudhakar Darandale, a Pharmacist who is having medical shop opposite to the shop of accused nos.1 and 4, at Exh.232, Silver Artisan Rajendra Lolge as D.W.2 at Exh.234, who works for the accused persons and D.W.3 Sangita Kadel at Exh.235, who is wife of accused no.3 Laxmikant.

23. Upon analyzing the evidence on record, the Trial Court has convicted accused no.1, vide section 235 (1) of the Code of Criminal Procedure for an offence punishable under section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs.25,000/-, in default to suffer simple imprisonment for six months. The Trial Court, however, acquitted him of the offence punishable under sections 498-A read with sec. 34 and 120-B of the Indian Penal Code. Accused no.2 Saraswati and accused no.4 Indira both were acquitted of the offences punishable under sections 302, 498-A read with sec. 34 of the Indian Penal Code along with accused no.3 Laxmikant. Thus, the present appeals.

24. Mr N.S. Ghanekar, learned Counsel appearing on behalf of the appellant/accused has urged that the case in question is based on the circumstantial evidence and as there is no complete chain pointing out finger of guilt towards the accused persons, they are entitled for acquittal. According to the learned Counsel, the prosecution has failed to establish and prove the theory of the demand of dowry and homicidal death of Chandarani. He would further urge that accused nos.1 to 3, at the relevant time, were in the shop and as such, their direct involvement in the commission of the offence could not be established. According to Mr Ghanekar, in the evidence brought on record, particularly in the matter of investigation carried out by P.W.13 Sanjay Hibare, nothing incriminating against to the accused could be noticed, connecting them to the commission of the offence.

25. According to Mr Ghanekar, evidence of child witness P.W.8 Ganesh was rightly held worth to be discarded by the Trial Court. The learned Counsel appearing on behalf of the appellant/accused has relied upon the judgment of the Apex Court in the matter of Dattu Ramrao Sakhare vs. State of Maharashtra,

reported in (1997) 5 SCC 341, so as to canvass that the evidence of child witness, i.e. P.W.8 Ganesh in the present case-deserves rejection as he had witnessed the incident when he was of the age of 3-1/2 years and when he was examined, he was of the age of 6 years. He was unable and incapable to understand the sanctity of oath and repercussion of statement, which he had made before the Court, and consequence thereof. According to the learned Counsel, if the evidence of the said witness is analyzed minutely, the same is not worth consideration under section 118 of the Evidence Act, and as such, has sought to draw support from the following observations in paragraph 4 of the said judgment :-

6. The entire prosecution case rested upon the evidence of Sarubai (P.W.2) a child witness aged about 10 years. It is, therefore, necessary to find out as to whether her evidence is corroborated from other evidence on record. A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record. In the light of this well settled principle we may proceed to consider the evidence of Sarubai (P.W. 2).?

26. So far as oath administered to the child witness is concerned, learned Counsel appearing on behalf of the appellant/accused has relied on the judgment of this Court in the matter of Rameshwar s/o Kalyan Singh vs. The State of Rajasthan, reported in AIR 1952 SC 54 (1).

27. Learned Counsel appearing on behalf of the appellant/accused would further urge that the evidence of P.W.7 Ranjit, who noticed the presence of Ramdeo after said witness came to the spot, was incorrectly appreciated while concluding presence of accused no.1 at the spot, at the time of the incident. According to Mr Ghanekar, the call details of 15<sup>th</sup> March were called for, whereas call details of 17<sup>th</sup> March were not complete. According to him, so as to establish the call details, as also communications Exhs.220 and 221, no employee/officer from the Telephone Department was examined. He would urge that vide Exh.220 the call details of only six numbers are noted, whereas the call details of two numbers are noted vide Exh.221. According to him, the subsequent investigation was carried out by Local Crime Branch, through P.S.I. Deshmukh and the said Investigating Officer was also not examined in the present case. He would urge that the evidence of the complainant Prakash @ Deva is required to be discarded as the same is full of omissions and contradictions. He would also urge that the Investigating Officer P.W.13 Hibare has not inspected the door from outside noticing the damage to the door and the latch and latch holders coming out of the same. According to him, the spot panchnama was also drawn in a negligent manner. The admissions as are given by the child witness Ganesh, are required to be given appropriate weightage. He would further urge that the Expert's evidence i.e. of the Doctor in the present case so as to conclude that death of Chandarani was homicidal, was also required to be discarded as the same is based on the death certificate which was issued after four months and said evidence is not sufficient to emphatically conclude that Chandarani died of homicidal death. He would urge that the injuries which were found on the body of the deceased were old and fresh injuries. He would also question the validity of the post mortem report, as the Doctors were of the opinion that the fresh inquest was required to be drawn and as such, had summoned the Executive Magistrate vide Exh.81 and without waiting for the Magistrate, had performed the post mortem. He would also urge that the injuries as were sustained by deceased Chandarani were because of her movement after setting on fire and same can be concluded from the post mortem report and the medical evidence.

28. While countering the above referred submissions, Mr Gupte, learned Senior Counsel, appointed as Special Public Prosecutor along with Special Public

Prosecutor Mr S.G. Ladda, would urge that the presence of the child witness was very much established and he has corroborated assault, burns and the presence of accused no.1 at the scene of the offence. According to him, the plea of alibi is a positive plea, which was required to be raised at first instance. The said stand was not reflected in the bail application of the accused and rather, the presence of accused no.1 Ramdeo was established in the evidence of P.W.7 Jadhav. He would also urge that the evidence of child witness Ganesh corroborates with the medical evidence. According to him, the panchnama of the scene of offence speaks a volume about the violence prior to deceased Chandarani was set on fire. He would further urge that as the first inquest was noticed to be manufactured, the Doctors had asked for another inquest. According to him, the death of Chandarani is purely homicidal and the theory of the suicide can be ruled out from the point of view of presence of kerosene Can, match stick, burns on the upper part of the body, burns on the soles of the body. According to him, it is a clear case of setting Chandarani on fire. He would urge that in view of section 106 of the Evidence Act, the fact about death was within special knowledge of the accused, to which they owe an explanation about the death. According to him, as there were no efforts to douse the flames, no remorse on the face of accused nos.1 to 3 after the incident, are the incriminating circumstances against the accused persons. According to him, the Barmuda that was noticed in the bathroom attached to the bed-room where the incident has taken place, had smell of kerosene and the injuries on the body of deceased Chandarani were noticed to be ante mortem. According to him, the appeal preferred by the accused, is liable to be dismissed and the conviction of accused no.1 is required to be upheld. He would also urge that the other accused are liable for conviction for the offences with which they were charged and are acquitted.

29. Mr Pawar, learned Counsel appearing on behalf of the original complainant Prakash, has adopted the arguments advanced by the learned Special Public Prosecutor and would thus urge that all the accused persons are liable to be convicted for offences with which they were charged and, therefore, prayed for dismissal of the appeal of the accused and for allowing the appeal filed by the original complainant.

30. At the outset, it is required to be noted that, from the record it appears that deceased Chandarani, out of the incident in question, has received 100% burn injuries and the cause of death as cited appears to be shock due to 100% burns. The post mortem report Exh.77 is dated 18<sup>th</sup> March, 2008.

31. The post mortem examination on the dead body of deceased Chandarani was performed by P.W. 4 Dr. Ramkrishna Bhusale accompanied by Dr. S.V. Kuchewar, Dr. K.B. Muglimath and Dr. V.S. Kalokhe. P.W.4 Dr. Bhusale noticed the following external injuries :-

1) Two contused abrasion over left side of forehead of size 4 x 3 c.m. And 3 x 3 c.m. Colour of injury was dark reddish. On incision, underlying tissue shows blood infiltration. The sign of blood infiltration shows that it was caused during the life. The injury no.1 was fresh at the time of death.

2) Abrasion over bridge of nose vertically placed of size 3 x 2 c.m. The colour of the injury was dark reddish.

3) Evidence of heat rupture over right anterior medial aspect of upper 1/3rd of thigh horizontally placed, exposing thigh muscles, nerves at vessels intact at the base, margins are pale yellowish.

4) Evidence of heat rupture over left antero-medial aspect of upper 1/3 of thigh, obliquely placed, exposing thigh muscles nerves at vessels intact at the base margins are pale yellowish.

32. P.W.4 Dr. Bhusale had noticed that injury nos.(3) and (4) were post mortem injuries and were caused due to extensive burning of the body at the places mentioned in injury nos.3 and 4. Injury nos.3 and 4 show that the said injuries were caused by continuing burning even after death also. P.W.4 Dr. Bhusale had noticed that the dead body was 100% burnt. The injuries were superficial to deep burn injuries. He noticed deep burn over face neck, chest, abdomen and anterior aspect of both thigh, rest of the burns were superficial in nature. There was evidence of blisters over dorsum of both hands and palms. There was evidence of peeling of shin, over both arms, forearms and both foot with evidence of reddish

discoloration over soles. There was evidence of totally burnt hairs over center of head and behind both ears with singeing of peripheral scalp hairs. There was evidence of kerosene smell perceived, which showed that the injuries were anti mortem.

33. On internal examination, P.W.4 Dr. Bhusale noticed that there was no evidence of injury under the scalp but there was evidence of linear un-displaced fracture over right middle cranial fossae over fegmentum plate, obliquely placed 2.5 c.m. of size. There was evidence of linear un-displaced fracture over fegmentum plate, obliquely placed of size 3 c.m. Both the fractures were having irregular margins with blood infiltration and were caused during the life. On examination of the brain, he found that the meninges were intact and congested, brain matter congest and edematous on cut section, there was evidence of petechial haemorrhage over white matter. On internal examination of Thorax, he found no abnormality in walls, ribs, cartilages and pleura. In Larynx, Trachea and Bronchi mucosa was congested, there was evidence of blackish soot particles and blood smeared over Trachea and bronchi. Both lungs were congested and oedematous on cut section dark reddish blood oozes out from the cut surface. He did not find any abnormality in the heart and large vessels. He noticed that oesophagus mucosa was congested and no soot particles were found. Stomach was empty and no abnormal smells perceived, mucosa was congested, as also all other organs. The post mortem report is at Exh.77.

A note of visit to scene of the incident was prepared by the team of Doctors, who visited the spot on 18th March, 2008 and noted the evidence of burnt clothes, black coloured ornament beads and black soot particles lying over floor with evidence of blood stains and water over the floor. The broken door of the show case, right corner of bed mattress was burnt, burn marks at the base of dressing table, all four walls of the bed room with roof showing blackening due to soot. It was also noticed that the door of entrance in the room shows black soot particles and broken kadi (latch) with finger prints over door near latch and other places. The blackening due to soot particles present over roof and walls.

34. The viscera was sent to the Forensic Science Laboratory, wherein no poison was noticed. Pursuant to Exh.79, partly burnt hair, partly burnt pinkish and yellowish green coloured pieces of cloth and partly burnt tissue like material adhered to it piece of cloth, was sent for analysis and in the result, the residues of kerosene were not detected on partly burnt hair and partly burnt pieces of cloth, however, kerosene residues were detected on partly burnt pinkish and yellowish green coloured pieces of cloth. The Doctors opined final cause of death on 17th July, 2008 and certified as under :-

Shock due to 100% burn with fracture bilateral middle cranial fossae.?

Below that, is the endorsement indicating the manner of death as evidence of violence “ homicidal death?.

35. In the background of above, this Court is required to analyze, whether the death of Chandarani was homicidal or suicidal. The inquest was proved by considering the evidence of P.W. 1 Dwarka Kumavat, who though one of the witnesses to the inquest at Exh.63, who has not deposed about noticing any injuries on the face of deceased.

36. P.W.2 Ashok Kolhe, who was examined at Exh.66 in support of drawing the spot map, has deposed about the call given to him by the Investigating Officer for preparing the map of the occurrence. The said witness has deposed that he has prepared the map at Exh.67 of the room in question where the incident has occurred. He further deposed that the room of which the map was drawn, was located on the third floor and there was a window in the floor, so also on roof and was having only one door for entry in the room. He noted that the area of the room is 15' x 20' and speaks of having zaroka on the floor fitted with steel iron net .

37. The prosecution then has proceeded to examine P.W.3 Omprakash Varma at Exh.73, who claimed to be a witness to the second spot panchnama drawn on 18th March, 2008. He has proved the spot panchnama at Exh.74. In cross-examination, this witness has stated that certain articles, such as burnt pieces of cloth, wall clock, pink coloured latch holder and yellow coloured latch holder were noticed. He speaks of soot particles in the room, so also the toilet.

38. P.W.4 Dr. Ramkrishna Bhusale, who is examined at Exh.76, has deposed in support of the post mortem report and cause of death. He has stated that the injuries mentioned in the post mortem report were caused to deceased Chandarani and in view of the evidence of blisters over dorsum of both hands and palms and evidence of peeling of skin, over both arms, forearms and both foot with evidence of reddish discoloration over soles and 100% burnt hairs over centre of head, concluded that the injuries were ante mortem. He also noticed linear undisplaced fracture over right middle cranial fossae over pterion plate, obliquely placed 2.5 c.m. of size, however, has not noticed any injury under the scalp. Upon conducting internal examination of thorax, he noted no abnormality, however, noticed blackish soot particles and blood smeared over Trachea and bronchi. According to him, the probable cause of death of Chandarani was shock due to 100% burns with fracture bilateral middle cranial fossae. After the post mortem, the said witness visited the spot of the incident and noticed soot particles on the walls of the bed room, so also on the roof. He also noticed broken latch. According to him, the visit to the spot was in the background of noticing blunt trauma and fracture over the head and so as to find out the cause of the same. He also deposed that the manner of death is apparent from evidence of violence and homicidal death and has proved death certificate at Exh.80. He then deposed that the fractures which were caused were unlikely due to fall in the present case, however, opined that the two fractures as are noticed, can be caused due to extensive burn injuries on the scalp. He further stated that at the fracture he has noticed reddish infiltration, which according to him, might have been caused by trauma. He then added that the fractures are resulted due to physical trauma. In cross-examination, he has admitted that the general injuries to the head can be caused due to fall, however, not in the present case. He then admitted that the cause of death of Chandarani is of extensive burn injuries. He also admitted the proposition that the skull bones can be fractured due to extensive hit to the skull. He also admitted that if the head is exposed to severe hit, it may cause fracture causing false suspicion of violence, which is called as heat hematoma. He also deposed that there is a possibility that skull may get fractured prior to the death or after the death. Then importantly, in his cross-examination, at paragraphs 23, 24, 25, 26 and 27, he has deposed as under :-

23. I agree with the proposition that the skull bone may show heat fractures which may occur either due to (1) drying and desiccation (cracking and outward curving of the outer table) or may be due to (2) bursting involving whole thickness of skull or sutural fractures (separation) due to increased intra-cranial pressure, from production of gas due to the effect of heat.

24. I agree with the proposition that causes of death in case of burn injuries may have additional circumstance of mechanical injuries as a result of all. I agree with the proposition that if fractures are caused due to heat then there will be external signs of scalp haematoma. In this case the two fractures are not coup fractures. That means there is no direct evidence of coup injury. These injuries are possible if a head came in contact with some object. In general proposition if the head's frontal portion comes in contact with any object linear fractures as observed in this case may be caused. An erect person may collapse and fall to the ground due to convulsion, fainting, giddiness, inhalation of smoke and poisonous gasses. When such person falls on an object injury may cause on his persons at the site of impact. If the person's nose comes in contact with an object then the injury will be on his nose. I agree with the proposition that linear fractures observed on the bilateral site may be caused because of indirect injury on the chin or forehead or even because of fall on feet or buttock. The reason behind this injury is transmission of waves and vibrations.

25. In this case I had not sent sample of blood for estimation of carboxyhaemoglobin level. I agree with the proposition that inhalation of carbon monoxide or gas caused severe, muscular incoordination, weakness and confusion due to which the victim is unable to escape and dies of asphyxia the body will burn after death. There were signs of inhalation of gasses and soot particles was seen inside the mouth and internal cavity. If a person is on fire due to pains he may run here and there. A person when runs here and there and comes in a contact with an external object by force he may sustain external injury. Depending upon the force internal injury may be caused. I agree with the proposition that if a person fall on ground by force may produce abrasions, contusions or laceration of protruding part of face, forehead, nose, chin, cheeks. I did not find any injuries to the ear, pinna or around it or to its underlying tissues. I

agree with the proposition that in general, an injury sustained by a fall is at the level of the brim of the hat while an injury due to blows is above this level. I agree with the proposition that linear fractures follow the path of least resistance and are deflected from the thicker and more resistant bony portions of the skull.

26. A petechial haemorrhage over the white matter of the brain may be caused by asphyxia. In case of burn due to suffocation or inhalation of gasses person dies because of asphyxia. In such case brain and its meninges are found congested. In case of asphyxia there are signs of oozing of blood from mouth and nose but not from ear. The oozing of blood from ear is due to the fracture of middle cranial fossa.

27. I agree with the proposition that if the heat applied is very great skin contracts and heat ruptures occur before or after death. I agree with the proposition that the outer tables of the exposed cranial may show a network of fine criss crossing heat fractures. Witness add that if there is extensive heat. If there is extensive heat then fracture may cross sutured lines. I agree that in fractures due to heat are usually seen on either side of the skull above the temples. Because of heat middle cranial fossa gets fracture as they are thin and fragile as compared to other bones of skull.

39. P.W.4 Dr. Bhusale then deposed that after the inspection of the spot, Investigating Officer has inquired with him as to whether the death was homicidal or suicidal and he was unable to tell the same at that moment. He deposed about taking of photographs of scene of the incident. He also deposed that there were signs that Chandarani had moved here and there in the room. He also deposed that internal latch of the room was in broken condition. He then deposed that injuries no.1 and 2 stated in column no.17 of the post mortem report are simple injuries, which are ante mortem.

40. So far as evidence of Gorakshanath, who is examined as P.W.5 at Exh.70, who, at the relevant time, was working as a Branch Manager in Nagar Urban Co-operative Bank Ltd. is concerned, in addition to him, another witness Shamsundar Khamkar, working as a Branch Manager with Venkatesh Urban Non-Agricultural Credit Co-operative Society Ltd., Sonai, who was examined as P.W.6 at Exh.105,

deposed about the financial condition, the loan transaction of accused no.1.

41. P.W.7 Ranjit, who was examined at Exh.112, has deposed as a neighbouring witness being residing opposite to the house of accused no.1. According to him, on the date of the incident, i.e. 17th March, 2008, there was a death of mother of one Ramnath Jagtap and the funeral procession which proceeded from the same lane of his house was witnessed by him from the terrace of his house after he returned home at 4.00 p.m. from Newasa. At that time, he saw accused no.2 and the wife of accused no.3 standing in the gallery of their house and after the procession passed, he reached inside his house from the terrace and was resting. At this point he did not notice presence of accused nos.1 and 3, i.e. Ramdeo and Laxmikant in the house.

42. P.W. 7 Ranjit then deposed that his wife Jyoti noticed smoke coming out from the house of the accused and also noticed shouting. She narrated him about it hence, he went to the house of the accused, where he saw accused no.2 Saraswati, Sangita, wife of accused no.3 Laxmikant and Ganesh, minor son of accused no.1 were crying in the kitchen on the ground floor. Adjoining the kitchen, from stair-case he rushed upwards and noticed accused no.1 Ramdeo coming towards ground floor and was crying. Then he went to the third floor and noticed that the body of Chandarani was in flames. He also noticed that she was dead by that time and came back and informed Ramdeo to report the matter to the police. In turn, Ramdeo called Kiran Chandel. Apart from above, one Balu Chopda also came to the spot.

43. In cross-examination, he stated about the location of his house and Ramdeo's house and other adjoining houses. Then he stated that the shop of accused Ramdeo is at two minutes walking distance of two minutes from the house, which is at main market place. Then he stated about good financial condition of Ramdeo and having good status in the society at Sonai. He also deposed that in past he never heard or witnessed any quarrel or dispute or any cry from the house of Ramdeo. He further deposed that when he came out of his own house, he noticed crowd in front of the house of Ramdeo. According to him, at that time the people in the crowd were under impression that the house of Ramdeo was on fire. He came

to know that Ramdeo had just arrived and had went inside his house thereafter he reached the spot. He further deposed that his mother informed him that she had noticed Ramdeo's arrival at the house. According to him, in view of fire, initially his mother asked him not go to the house of Ramdeo. He deposed that when he saw Ramdeo coming down from the third floor; he was crying and was attempting to shout and express something but was unable to do so.

44. P.W.8 Ganesh Ramdeo Kadel, who was of the age of 6, was examined at Exh.128, happened to be son of deceased Chandarani and accused no.1 Ramdeo. The said witness deposed that his mother was beaten by the accused persons by hands and he was pushed out of the room by accused no.3, his uncle, who closed the door of the bed room and latched it from inside. He further deposed that he saw that his mother was lying on the floor. He further deposed that he had narrated the same to the police after the incident and then to his maternal uncle. In cross-examination, he deposed that whenever he used to be ill, his father used to take him to Dr. Salunke. Then he deposed that again he was taken to Dr. Salunke by his father, i.e. accused no.1. He then deposed that he along with his aunt Sangita, grandmother accused no.2 and Siddhi, daughter of accused no.3 were watching the funeral procession of mother of Jagtap. He then deposed that his grandmother went inside to fetch medicine for Siddhi. He noticed shout of his grandmother and as such, they went to the bed-room and saw flames from the hole which was in the roof of the bed-room of second floor and the bed room of his mother was on third floor. He then stated that all of them rushed on the third floor and noticed that the door was closed from inside by her mother. He further deposed that his mother was given call by accused no.1“grandmother and his aunt Sangita to open the door and then his grandmother and aunt forced open the door by breaking it and then he noticed that his mother was in flames inside the room. He then stated that his grandmother made a phone call to his father.

45. P.W.9 Complainant Prakash @ Deva Shantilal Varma was examined at Exh.133. He has deposed that he has one elder brother by name Deepak and two sisters by name Sunita Sunilkumar Soni and Chandarani. According to him, the marriage of Chandarani took place on 4th December, 1998 with accused no.1 Ramdeo at Aurangabad. He has further stated that Ramdeo used to demand

medical expenses from him as he was advised for medical treatment for conceiving the issue and since his sister Chandarani was unable to conceive the child, she was administered treatment from Dr Jilha at Aurangabad. He has also stated that accused Ramdeo was addicted to liquor. It is further deposed by him that in-laws of Chandarani in general and husband Ramdeo in particular used to demand money from him through Chandarani for business and leading luxurious life. In his evidence, it is brought by him on record that in 2007 there was a demand of Rs.5,00,000/- by accused no.1 and in September, 2007, he has paid Rs.50,000/-. According to him, on 15<sup>th</sup> March, 2008, at about 8.00 p.m. he received a call from Chandarani for Rs.4,50,000/- to fulfil demand of her in-laws and then she complained about ill-treatment and threat to her life at their hands.

46. He further deposed that on 17<sup>th</sup> March 2008 he received a call at 5.00 p.m. from accused No.1 that Chandarani was burnt, to which he responded by asking him to take her to the hospital. Pursuant to the said call, he along with his father, younger brother, friend Sanjay Saraf and elder brother-in-law proceeded to Sonai in two vehicles. While travelling, he was informed that Chandarani was dead and her body was shifted to Rural Hospital, Newasa. According to him, having reached at Newasa he noticed ambulance in which the body of Chandarani was kept. According to him, Police Constable Pawar of Sonai police station was accompanying the ambulance and when body was removed from ambulance, he saw the status of the body as tongue protruded out of mouth and noticed marks of beating on her face. According to him, P.W.13 A.P.I. Hibare from Sonai police station came to Newasa at 7.30. According to him, A.P.I. Hibare resisted his request for registering complaint, as Hibare asked to wait till completion of the post mortem. As there was no facility to perform post mortem in the late night hours, the body was required to be kept at Newasa till next day and as such, upon complainant's instructions the body was shifted to Government Hospital, Aurangabad for conducting post mortem. Police Constable Pawar proceeded to Aurangabad along with ambulance carrying dead body of Chandarani.

47. Thereafter P.W.9 complainant Prakash @ Deva told A.P.I. Hibare that he is visiting police station, Sonai to take custody of Ganesh, son of Chandarani, to which Hibare responded by calling the police instructing to hand over custody of

Ganesh to Prakash @ Deva, upon execution of a receipt.

48. According to P.W.9 complainant Prakash @ Deva, he reached police station, Sonai at 9.15 p.m. and Police Constable Davkhar was present. He accordingly took Ganesh into his custody and executed receipt for that purpose, which is at Exh.135. He then went to Ghati Hospital, Aurangabad along with Ganesh, where he saw Police Constable Pawar, who informed him that the post mortem will be performed on the next day and as such, the body of Chandarani was shifted to mortuary. He further stated that he instructed Pawar to take his report in writing, to which Pawar responded by making a call to A.P.I. Hibare and as such, nothing was done at that night.

49. According to him, on the next day, i.e. 18th March, Doctors reached between 8 and 9.00 and A.P.I. Hibare along with Pawar between 12 and 12.30 along with Sudam Darandale. He deposed that Hibare discussed with the Doctors. He then stated that he insisted Hibare to record his complaint and Hibare then instructed Pawar to reduce in writing first information report. According to him, at that time Hibare and Constable Darandale have suggested him not to file first information report. According to him, he has proceeded to file first information report, which took 45 minutes for recording, which bears his signature. He was instructed by Hibare to come to Sonai police station to sign on the first information register as he is proceeding to police station. Suresh Varma, his close relative came to Sonai along with him from Ghati Hospital and they signed on the blank pages of first information register. He was convinced by Suresh Varma and the Constable Davkhar to sign on the blank paper as the time consumed in reducing the first information report will be saved by him as the complainant will be required to attend the funeral of Chandarani. According to him, Constable Davkhar has reported to Suresh Varma that Ganesh has informed Hibare that his grand-mother, his father and uncle had given burns to his mother. After signing the first information report register, he proceeded to Ghati Hospital, Aurangabad and reached there at 8 to 8.15 and received the body of Chandarani from Police Constable Pawar and then on the same night they performed last rituals of deceased Chandarani. He admitted the contents of the complaint at Exh.136 and also the receipt of the dead body at Exh.137. He then deposed that there is an

omission about non-mentioning of the fact of receipt of call from Chandarani on 15<sup>th</sup> March, 2008 in the late night hours, in the first information report. He then deposed that Hibare had threatened him to spoil the case, as according to him, he noticed collusion between Sonai police station staff and the accused persons. He also stated that A.P.I. Hibare told him that on 17<sup>th</sup> March, 2008, the statement of Ganesh was already recorded. He stated that he moved an application seeking transfer of the investigation either to C.I.D. or C.B.I. and also met Superintendent of Police and preferred a representation to the higher authorities like Chief Minister, Home Minister, etc. According to him, he received threats from the relatives of the accused.

50. In cross-examination, P.W.9 complainant Prakash @ Deva has stated that accused no.4, real sister of accused nos.1 and 3 and daughter of accused no.2 is married to one Rameshwar, who was an artisan and was having shop in front of their shop at Aurangabad. According to him, accused no.4 had a son and a daughter. According to him, Rameshwar then shifted to Gangapur for business purpose. He deposed that he was on visiting terms to the house of Ramdeo at Sonai once or twice in a month, so also his brother and father. He deposed that accused no.1 Ramdeo was owning a car. He then deposed that his father, before marriage of Chandarani with accused no.1, had seen the house and shop of the accused. He deposed about demand of Rs.5 Lacs and payment of Rs.50,000/-. He speaks of satisfying the demand of Rs.50,000/- from the firm of his father.

51. According to P.W.9 Prakash, in view of differences, i.e. illegal demand and non-fulfillment thereof, Chandarani was sent back to her parental house and upon request of Rameshwar Varma, she was again sent back to the house of the accused for cohabitation. He deposed that he never thought that life of Chandarani was in danger on account of non-fulfillment of the demand. He deposed that while registering the complaint, the incident of 15<sup>th</sup> March, 2008 about phone call from Chandarani, demanding the money was not mentioned in the first information report/complaint He admitted about taking Ganesh in his custody on 17<sup>th</sup> March, 2008, at about 9.00 p.m. in Sonai police station.

52. It is required to be noted that the omission about the non-mentioning of incident of 15th March, 2008 about a call from Chandarani, and of non-mentioning, i.e father personally meeting maternal uncle of accused no.1; mentioning by the father to Ramesh Varma about harassment to Chandarani, were brought on record. The omission was also brought on record that after meeting father with Ramesh Varma, the complainant had a dialogue with said Ramesh Varma for fifteen days and Ramesh Varma then informed him that the accused will not harass Chandarani and there will be no demand from him.

53. P.W.10 Suresh Varma is examined at Exh.176. He happens to be the close relative of Chandarani from her parental side and his evidence was sought to be relied upon for the purpose of establishing that the signature of complainant P.W.9 Deva @ Prakash was taken on blank papers in first information report register. He also sought to depose that Constable Davkhar narrated them that Ganesh has told A.P.I. Hibare that the accused persons have burnt his mother.

54. P.W. 11 Sunil Soni, co-brother of accused no.1 and husband of Sugna, is examined at Exh.179. He has stated in his examination-in-chief about the harassment meted out to Chandarani by the accused persons and about demand of dowry and bad habits of accused no.1.

55. P.W.12 Sanjay Saraf, examined at Exh.196, is a friend of complainant Prakash. He has deposed in support of the illegal demands, the demand of hand loan by complainant Prakash, so as to satisfy the demand of the accused persons.

56. In the light of the above referred evidence brought on record, the learned Trial Court initially decided the aspect of criminal conspiracy, so as to ascertain commission of an offence punishable under section 120-B of the Indian Penal Code and upon analysis of the evidence, gave finding that the prosecution has failed to establish that accused nos. 1 to 3 had hatched conspiracy to commit murder of Chandarani for alleged non-fulfillment of demand for an amount of Rs.4,50,000/- from the complainant.

57. While deciding the point as regards death of Chandarani being homicidal, the Trial Court appreciated the evidence of P.W.1 Dwarka; a witness to the inquest,

P.W.4 Dr. Bhusale, the Medical Officer who has conducted post mortem at Exh.77. The foremost issue in the present case that is required to be addressed is, whether it could be inferred beyond reasonable doubt that the death of Chandarani was a homicidal death.

58. In our opinion, the evidence of two witnesses, namely, P.W.4 Dr. Ramkrishna Bhusale and P.W.8 Ganesh is of foremost importance. So far as the evidence of P.W.4 Dr. Bhusale is concerned, it is required to be noted here that the said witness was working as a Professor and Head of Forensic Department at Government Medical College, Aurangabad and has admitted to have conducted post mortem on the dead body of Chandarani on 18th March, 2008, which corpse was brought by A.P.I. Hibare from Sonai police station. Along with the corpse, he noticed inquest panchnama and upon examination and verification of the corpse with the inquest panchnama, he noticed discrepancies and having noticed injuries over the face which were not part of the inquest panchnama, he had requested Executive Magistrate for re-inquest and informed the Investigating Officer about the same. According to him, without waiting for the Executive Magistrate to perform second inquest, he proceeded to conduct post mortem on the dead body when he was accompanied by Dr. S.V. Kuchewar, Dr. K.B. Muglimath and Dr. V.S. Kalokhe, who were attached to his Department. He noticed red colour bindia over forehead, yellow metal nathni in left ala of nose, yellow metal ornament in both ears, yellow metal right in left ring finger, yellow metal ring in right little finger and iron ring in right middle finger of hand, red coloured plastic bangles in both wrist, white metal ring in second toe of both foot. All these ornaments were stained with blackish carbon particles. He then handed over ornaments and clothes to the Investigating Officer. He noticed burn features “ both eyes closed, mouth was open, tongue protruding out and in between the teeth, blackish in colour. He noticed evidence of blood oozing from both nostrils and blood clots in both ear canals. According to him, there was evidence of trauma on the head, hence there was blood oozing from both the nostrils and blood clots in both ear canals. He noticed that external genitals were burnt and there was no evidence of purging. He noticed external and internal injuries on the body of Chandarani which are reproduced herein above. P.W.4 Dr. Bhusale proved post mortem report Exh.77, C.A. Report regarding viscera Exh.78 and C.A. report Exh.79. He deposed that

upon receipt of C.A. Report, he issued final cause of death certificate on 17th July, 2008, almost about five months after the incident, which was shock due to 100% burns with fracture of bilateral middle cranial fossae. According to him, he noticed evidence of violence and homicidal death. He proved the final cause of death certificate dated 17th July, 2008 at Exh.80. He has deposed that in the present case, the fractures to the body of Chandarani were unlikely to be caused due to fall and while responding has stated that fractures can also be caused due to extensive burn injuries on the scalp. He also stated that there was evidence of reddish infiltration, which might have been caused by trauma. He deposed that the fractures in the present case were caused because of physical trauma.

59. In cross-examination, P.W.4 Dr. Bhusale has admitted that generally head injuries are caused due to fall, but according to him, in the present case it is not so. He deposed that in an indirect violence skull may get fracture because of fall on feet and buttocks, which are called counter-coup fractures, wherein the site of fracture is different from the site of impact. According to him, if a person falls on frontal bone, he may sustain fracture on parietal, occipital or temporal bone. According to him, in counter-coup, fractures may be on exactly opposite side. He has further deposed that linear fracture may be caused due to fall and usually site of impact is indicated by haematoma on the scalp. In the present case, there was no injury on the scalp. He further deposed that in respect of coup fractures noted in the internal examination, there were no external injuries on the fracture sites. He admits that present is a case of extensive burn injuries and further admits the proposition that the skull bones are fractured due to extensive heat to the skull. He also admits that if the head is exposed to severe heat it may cause fracture causing false suspicion of violence and this is called as heat haematoma. According to him, in such cases, skull may get fractured prior to the death or after the death also. He also agrees with the proposition that the skull bone may show heat fractures which may occur either due to (1) drying and desiccation (cracking and outward curving of the outer table) or (2) bursting involving whole thickness of skull or sutural fractures (separation) due to increased intra-cranial pressure, from production of gas due to the effect of heat. He also admits that the cause of death in cases of burn injuries may have additional circumstance of mechanical injuries as a result of fall. He also admits that if fracture is caused due to heat, then there

will be external signs of scalp haematoma and then admits that in this case those are not coup fractures. He also admits that the injuries to the body of Chandarani are possible to be caused also if her head had come in contact with some object. According to him, if frontal portion of the head comes in contact with any object, the linear fractures, as observed in this case, may be caused.

He admits that an erect person may collapse and fall to the ground due to convulsion, fainting, giddiness, inhalation of smoke and poisonous gasses. According to him, because of fall of such person on an object, injury may cause on his person at the site of impact and in case if his nose comes in contact with an object, then there will be injury on his nose. He also admits that linear fractures observed on bilateral site may be caused because of indirect injury on the chin or forehead or even because of fall on feet or buttock, the reason for such injuries will be transmission of waves and vibrations. He admits that in the present case, he has not sent sample of blood for estimation of carboxyhaemoglobin level. He admits that there were signs of inhalation of gasses and soot particles were seen inside the mouth and internal cavity, and also admits that in such a case, the person runs for his life and if comes in contact with an external object by force, he may sustain external injury and depending upon the force of external injury, the internal injury may cause. In case of asphyxia, he admits that there are signs of oozing of blood from mouth and nose but not from ear and the sign of oozing of blood from ear is due to the fracture of middle cranial fossa. He also admits that in case of extensive heat, the fracture may cross sutured lines and fractures due to heat are usually seen on either side of the skull above the temples. He also admits that because of heat, middle cranial fossa gets fracture as they are thin and fragile as compared to other bones of skull.

60. As per the principles of Forensic Medicine, it is difficult to kill active conscious person by burning and such victim is first either made semiconscious, or unconscious, either by assault or by intoxication and then burnt after pouring fuel on the body or, mouth of the victim is gagged or his/her hands and feet are tied and then he/she is burnt. However, in the present case, if the Expert's evidence is tested with reference to the aforesaid principles, it can be noted that except the injury of fracture, there is no other mechanical injury noticed on the body of the

deceased, including that of sign of intoxication, tying of hands and feet. Though in the present case, it is noticed that the soles of deceased Chandarani were burnt, which is generally not noticed in case of a suicidal burning, yet it is required to be noted here, particularly from the evidence of P.W.4 Dr. Bhusale, that the fractures which are referred to as one of the causes for death, could also be caused because of either extensive heat or because of movement of the deceased after setting herself on fire in the room.

61. The distinction between ante mortem and post mortem injuries is evaluated. Though P.W.4 Dr. Bhusale has stated that prior to commencing the post mortem, upon verification, he noticed that the injuries on the face were not part of the inquest, he, therefore, summoned the Executive Magistrate, however, without waiting or inquiring about the arrival of the Magistrate, he hastened to carry out the post mortem, i.e. within no time of issuance of intimation about it to I.O. P.W.13. Same takes us to the conclusion that summoning the Magistrate was just an empty formality. Apart there-from, it is required to be noted here that importance is also attached to the existence of product of combustion which is in the form of soot particles in the ear passage or upper gastro intestinal track or COHb in the blood value. Admittedly, the Doctor has not sent the blood sample for drawing COHb value in the blood.

It is also required to be noted that in the event of fracture having been found, the same also suggests that the injuries to the bone were sustained during the life and the burning by itself will cause fat embolism.

The cause of bony fracture in burning is a common phenomena noticed in Forensic Medicine, which is generally noticed in bones, arms, legs, skull, etc.

In the present case, the injuries to the thighs noticed due to burns as certified by P.W.4 Dr. Bhusale, cannot be ignored.

62. Though learned Special Public Prosecutor has relied upon the principles of Forensic Medicine, so as to substantiate his case, particularly from the extract of book authored by Dr. Apurba Nandy, Mr Ghanekar has a different version and has made a submission that unless the said material was confronted with at the time of

examination of the witness, the same cannot be relied upon or taken into consideration. To that effect, in our opinion, he has rightly placed reliance upon the judgment of Piara Singh and ors. vs. State of Punjab, reported in AIR 1977 SC 2274. Paragraph 7 of the said judgment is worth referring to, which reads thus :-

It is true that the High Court has relied on a number of books on medical jurisprudence to support the evidence of Dr. Jatinder Singh. We feel that it was not necessary for the High Court to do so unless the books were put to the expert. Recitals in the books do not provide a sufficient guide to determine the truth or falsity of the testimony of an expert. Having regard to the facts and circumstances indicated above we are clearly of the opinion that the evidence of Dr. Jatinder Singh corroborated as it is by the evidence of the eyewitnesses, the evidence of the recovery of the bullet, the evidence of the ballistic expert and the evidence given by P.W. Balbir Singh regarding the extra judicial confession made before him must be accepted. The trial Court was therefore not justified in throwing out the prosecution case merely on the basis of the evidence of Dr. Paramjit Singh.?

63. From the above evidence, in our opinion, it cannot be firmly concluded that the fracture to the linear bone, as is narrated in the post mortem report and the connected injuries thereto on the nose and canal of the ears, has prompted to draw an inference of external violence on Chandarani before her death. The medical evidence on record rather prompts this Court to conclude that it is really impossible to draw an inference that death in the present case was caused because of an external violence and physical pressure, in absence of any cogent, convincing and clinching evidence to that effect. Rather an inference could be drawn is that the prosecution has failed to bring on record the conclusive evidence, so as to promote that in the present case death of Chandarani was homicidal.

64. The solitary witness, who was examined so as to substantiate the claim that the accused persons have killed Chandarani by burning her, is child witness P.W.8 Ganesh, at Exh.128, who is minor son of accused no.1 Ramdeo and Chandarani. Though in his examination-in-chief the said witness has stated that the accused persons had beaten his mother Chandarani and then poured petrol on her and set

her on fire, he has also deposed that accused nos.1 to 3 had beaten his mother by hands in his presence in the bed room on the third floor and his uncle - accused no.3 pushed him out and then closed the door. He deposed that petrol was poured on his mother when she was lying on the floor and she was set on fire. In cross-examination, it was elicited that when his grand-mother accused no.2 went inside the house when they were standing in gallery along with grand-mother, Sangita “ wife of accused no.2 and Siddhi “ daughter of accused no.4, he heard shout of his grand-mother and as such, he along with his aunt Sangita and Siddhi came to the bed room of Sangita and saw smoke from the exhaust which was on the roof and then they rushed on the third floor bed room. He deposed that his grandmother - accused no.2 and his aunt forced open the door of the bed room which was locked from inside and then he saw his mother was in flames. He then narrated that he was brought down by his grand-mother and his aunt, who was crying along with Siddhi. He noticed a gathering of the people on the spot. From the appreciation of the evidence of this witness, it is required to be noted that the case as is sought to be put-forth, that the accused persons have set deceased Chandarani on fire, was not at all established, rather this witness has admitted that he was throughout along with accused no.2 “ his grand-mother, his aunt Sangita and cousin Siddhi.

65. The other aspect of the matter which is required to be appreciated is about establishing the presence of accused persons, particularly accused nos.1 and 3 at the house when the incident of burning of Chandarani took place. The presence of accused no.2 is not at all in dispute. So far as the presence of accused nos.1 and 3 is concerned, it is required to be noted that they have come out with a plea of alibi and so as to substantiate the same, they have examined witnesses in support of their defence. The learned Trial Court, while recording finding on presence of accused no.1 on the spot of the incident, at the time of the incident, has relied upon the testimony of P.W.7 Ranjit Jadhav, a person residing in neighbourhood and a witness to the second spot panchnama Exh.113. If we analyze the evidence of the said witness, he has in examination-in-chief, stated that after returning from Newasa, at 4.00 p.m., he came to know that mother of Ramnath Jagtap had expired. He witnessed the funeral procession of mother of Ramnath Jagtap from the terrace of his house and saw Saraswati “ accused no.2 and Sangita “ wife of accused no.3 Laxmikant were present in the gallery when he was witnessing the

procession. After the procession passed from the said place, he came down in his room and was resting, when he was informed by his wife Jyoti that she noticed smoke from the house of accused coupled with shoutings. He rushed towards the house of the accused and noticed that accused no.2 Saraswati, wife of accused no.3 Laxmikant and P.W.8 Ganesh were crying in the kitchen. Then he used the staircase and started going upwards when he noticed Ramdeo coming down from the stair-case. He inquired with Ramdeo as to what had happened and he noticed that Ramdeo was crying and was unable to speak and he just pointed out the finger towards upper floor. Then, he reached on the third floor to the room of Ramdeo and noticed body of Chandarani and she was not alive at that point of time. Then, he informed Ramdeo about calling of police, so also to Balu Chopada, who came there. In cross-examination, he has stated that in past he had never heard any disturbing conversation in between the family members, including that of Chandarani from the house of the accused persons. He then stated that the shop of accused no.1 Ramdeo is at a walking distance of just two minutes from his house and the financial condition of Ramdeo is good and enjoys status in Sonai. He neither noticed any differences nor harassment to deceased Chandarani prior to the said incident.

66. According to P.W.7 Ranjit Jadhav, when he went to the house of accused persons, already there was crowd of people and women in front of the house of Ramdeo, who were under impression that the house of Ramdeo was on fire. By the time he went to the house of accused Ramdeo, he came to know that Ramdeo had just arrived and went in the house. He also narrated that his mother had told him that Ramdeo had just come and went in the house and then he went to the house of Ramdeo. The presence of accused no.2 Saraswati, Ganesh, Sangeeta w/o accused no.3 and Siddhi on the ground floor and who were crying rather suggests that the incident of death of Chandarani had taken place prior in point of time than that of arrival of accused no.1. The above narration, in clear terms, leads to the only conclusion that accused no.1 Ramdeo had reached to the spot of the incident, i.e. his house, after the incident of burning of his wife Chandarani was over. It is also brought on record that Ramdeo, having received a call from his mother when he was in the shop, immediately came to his house by informing the neighbor shop owner. It is required to be noted here that the presence of accused

Ramdeo or for that matter, of accused Laxmikant from any of the iota of evidence that is brought on record, particularly at the time of the incident, was not at all established. The fact that the presence of Ramdeo at the spot of the incident, at the relevant time, was not established is also fortified from his arrest which was on the next day, i.e. on 18th March, 2008 vide Exh.206 and no injuries were noticed on his person.

67. Rather, from the evidence of P.W.4 Dr. Bhusale, who has carried out a visit on 18th March, 2008, i.e. on the next day of the incident after conducting post mortem, has prompted P.W.13 A.P.I. Hibare to draw second spot panchnama, when he noticed that the latch holders of the bedroom were fallen aside and the door was in broken condition, which fact was not noticed by him when he had drawn spot panchnama on 17<sup>th</sup> March, 2008, the date of incident. P.W.13 Hibare has also not investigated the said issue as to whether same was inserted subsequently. In view of above, the fact that the door of the room of Chandarani was broke open by accused no.2 and Sangita - the wife of accused no.3 is required to be accepted, particularly in the light of the evidence of P.W.8 Ganesh, as the evidence to that effect appears to be worth believing.

68. The presence of the other articles, such as, match-box, the burnt match-stick, presence of soot particles on the floor, all the walls and roof of the bed room and also in the bath-room, a Can containing kerosene, the lid of the container lying apart, though concludes that the incident of burning has occurred in the bath-room and bed-room, yet the theory of movement of Chandarani after setting herself on fire, cannot be disbelieved, particularly which prompts this Court to believe of causing injuries on her body because of fall on hard object.

69. One more aspect of which this Court must take note of is Exh.113, the first spot panchnama drawn by the Investigating Officer on 17th March, 2008, which he commenced at 1805 hours and concluded at 1900 hours. Admittedly, there were no lights, as entire wiring of the said room was burnt. At that time, in Exh.113, it is specifically mentioned that the latch which is located on the middle of the door from inside the room, was not noticed.

70. In the second spot panchnama which was prepared on 18th March, 2008, the latch holders were noticed lying near the bed and as such, the same are mentioned in the said panchnama. The damage to the door has also been noticed, which is in tune with the testimony of accused no.2, D.W.1 Sangeeta about forcing open the door of the bed-room.

71. The said panchnama, dated 18th March, 2008, was drawn between 4.30 p.m. and 5.30 p.m., which is proved at Exh.74. The witness to this second panchnama, i.e. P.W.3 Omprakash Varma has stated that the inner latch of the main door was broken. The omission was elicited about non-mentioning of the location of latch holder, which was lying towards bath-room. The omission was also noticed as regards the non-mentioning of the door which opens on the southern side of the gallery of the bedroom on the third floor, where the incident had taken place.

72. There is one more aspect of which this Court must take note of is that the complainant P.W.9 Prakash claimed to have stated to the Police Constable Pawar, who has reduced his complaint in writing, upon instructions of P.W.13 A.P.I. Hibare, about non-mentioning of injuries in the inquest panchnama which were noticed on the face of Chandarani, however, the said omission could be noticed in the first information report and the fact remains that the prosecution has not examined Police Constable Pawar, who has recorded the complaint of P.W.9 Prakash. It is also required to be noted that P.W.9 Prakash has made allegations against P.W.13 A.P.I. Hibare of not accepting his complaint either on 17<sup>th</sup> March or on 18th March, 2008 at the earliest, however, the said stand of P.W.9 appears to be in contradiction to Exh.270, a receipt executed by him accepting the dead body of his sister wherein he has stated that he shall give his complaint later on. He has rather stated that he had no complaint against Police Constable Pawar and, in fact, his complaint was reduced into writing by Pawar as per his narration without interruption. It is required to be noted that P.W.13 Investigating Officer had issued a communication on 3rd April, 2008 raising certain queries about age of the injuries, the cause of fracture, the cause of death, the time of death, to which P.W.4 Dr. Bhusale had responded by communication dated 7th April, 2008, informing that whether the death is homicide or suicide will be informed after perusing the spot panchnama, photographs and C.A. report. It is required to be

noted that it was communicated by P.W.4 Dr. Bhusale in the month of July, 2008, i.e. almost after four months that the death was homicidal, though the same is endorsed by a team of Doctors, the delay in giving the said communication is also not explained by P.W.4 Dr. Bhusale and also as to whether the cause of death certified was after perusal of the documents.

73. P.W.13 Investigating Officer Hibare has, in clear terms, admitted that he had not mentioned in the panchnama that he had inspected the door of the room from outside. He has also admitted that if the door was forced open by pushing it from outside the room, the case in question will not fall within the definition of murder?. He has also admitted that he had not taken into account the other issues as regards the forceful opening of the door after breaking it, as he had noticed that the holder of the door from inside was absent.

74. Exhs.220 and 221 are the normal call billing records from Newasa Exchange of 17th March, 2008, which reflects in all eight call details. So as to establish the case that no call was made by accused no.2 to accused no.1 in the shop, the prosecution has not examined any official in support of the said evidence. As such, the said evidence at Exhs.220 and 221, on the aspect of the prosecution story, is also required to be discarded.

75. The other incriminating aspect which in the opinion of the prosecution should have been taken into account is that no efforts on the part of the accused persons in dousing the flames when the accused had reached at the spot. It is required to be noted that it is accused no.2 Saraswati, who for the first time, had noticed thick smoke coming out from the exhaust on the floor of bed room of Chandarani on the third floor, in the bed room of accused no.3, which was on the second floor and that was first occasion for her to notice the fire in question. As per the story narrated by Ganesh, so also the defence, they immediately ran to the third floor and forced open the door and then noticed Chandarani in heavy flames.

76. The scenario as was noticed on the third floor has prompted accused No.2 to bring down both the kids to the ground floor and perhaps, by that time, the body of Chandarani was completely burnt. It is also noticed from the evidence of P.W.7 Jadhav that when he reached and witnessed the corpse, he noticed that

Chandarani was dead and the body was in flames. He also had not taken any steps to pour water on the body and through his evidence it could be inferred that he thought that death of Chandarani was by electrical shock/short-circuit. The other incriminating aspect, which was sought to be relied on, was the presence of Barmuda, which had kerosene smell. The said article was neither seized nor sent for chemical analysis. The prosecution has not established that the Barmuda was that of the accused and one Barmuda lying in the bath-room was used as a wearing cloth by accused no.1 Ramdeo or it is a waste cloth used for cleaning the room. All above referred circumstances which were relied upon as being incriminating, so as to establish the guilt of the accused, in our opinion, are required to be rejected as the same do not establish the guilt of the accused beyond reasonable doubt.

77. In view of overall analysis of the evidence that is brought on record and particularly in the light of the fact that there was no eye-witness to the incident and the conviction is sought to be based solely on the circumstantial evidence, it is required to be noted that it is well settled law that in cases resting on circumstantial evidence, the prosecution is required to prove not only each and every circumstance, but is also required to prove that the circumstances which form a chain should exclude every hypothesis of the innocence of the accused and should unerringly point to the guilt of the accused. In other words, the prosecution must prove that it is the accused and the accused alone who has committed the offence.

78. The evidence, as is discussed herein above, has failed to establish the presence of accused nos.1 and 3 on the spot, at the relevant time, as from the evidence of the prosecution, so also the evidence of the defence, it could easily be inferred that the accused persons were not present on the spot. The prosecution cannot take shelter of non-proving of defence, as the burden is on the prosecution to prove that the accused were present at the scene of the offence. The inference drawn and reliance placed by the Trial Court on the evidence of P.W.7 Ranjeet Jadhav, so as to establish the presence of accused no.1 on the spot is also without considering the cross-examination.

79. So far as accused no.2 Saraswati is concerned, P.W.7 Ranjeet Jadhav has witnessed her presence at the time of funeral procession of mother of Jagtap from his terrace as he had noticed accused no.2 along with P.W.8 Ganesh standing in the gallery and witnessing the procession. It is not the case of the prosecution that accused no.2 alone along with Sangita has caused death of Chandarani by burning her. Apart from above, even the medical evidence as is brought on record through P.W.4 Dr. Bhusare, rather elucidations brought on record in his cross-examination do not lead this Court to the sole conclusion that deceased Chandarani was subjected to physical violence before her death and accused persons were instrumental for the same. In view of above, in our opinion, the chain of circumstances as sought to be established by the prosecution, is required to be disbelieved as incomplete. Same cannot be relied upon for the purpose of maintaining the conviction of accused no.1 and awarding conviction to accused nos.2, 3 and 4, in the facts and circumstances of this case.

80. With analysis of evidence on record as aforesaid, we now deal with the relevant case laws relied upon by either sides. As far as the prosecution is concerned, so as to establish the guilt of the accused, it has relied on the following case laws :-

The prosecution has relied upon the judgment of the Apex Court in the matter of Trimukh Maroti Kirkan vs. State of Maharashtra, reported in 2007 Cri.L.J. 20 (1), so as to canvass that the degree of evidence as is required to be brought on record to establish the guilt of the accused in the cases like the present one is required to be appreciated in the background of section 106 of the Evidence Act. The learned Public Prosecutor has relied upon the observations made by the Apex Court in paragraphs 11 and 12 of the said judgment, which read thus :-

11. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward

to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 - quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of

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

The prosecution has also relied upon observations in paragraphs 10, 11, 12 and 13 of the judgment of the Apex Court in the matter of Shambhu Nath Mehra vs. The State of Ajmer, reported in AIR 1956 SC 404, so as to submit that the death of deceased Chandarani is a fact which is especially within the knowledge of the accused persons and as such, the accused persons must discharge the said burden in the background of the evidence and the claim that is brought on record. It is required to be noted here that once there are findings recorded as regards the absence of accused no.1 and 3 on the spot of the incident and it is also established from the evidence of P.W.7 Jadhav that accused no.2 Saraswati was in the gallery of the second floor witnessing the funeral procession of mother of Jagtap, the fact about her absence from the room of deceased Chandarani, was properly established. To that effect, the evidence of D.W. Sangeeta is also required to be taken into account, who has deposed about the fact of forcing open the door of the bed room of Chandarani by accused no.2 Saraswati and Sangeeta.

81. That in a case of murder, which the prosecution alleges to have committed by accused in the present matter, with further allegation of complete secrecy and inside the house, the amount of evidence required to be established cannot have the same degree as required in other cases. Learned Special Public Prosecutor would urge that the silence on the part of the inmates of the house has to be taken as a link in chain of circumstances as against the accused. The availability of the evidence of ill-treatment for non-fulfilling the demand of dowry and the medical evidence if read in entirety, can be given cumulative effect of completing the chain of circumstantial evidence as against the accused. It is worth to observe here that, the said judgment of Apex Court will hardly be of any assistance to the appellant, particularly when the medical evidence is not pointing out a conclusive finger

towards the guilt of accused persons that they have committed the murder, as the injuries ante mortem and post mortem, including that of linear fracture could have been caused because of heat and fall. Accused persons through evidence of defence have to some extent established their case, particularly as regards their presence at some other place at the time of the incident, except accused no.2 and presence of accused no.2 in the gallery witnessing the funeral procession. In view of above, the claim that this fact was especially within the knowledge of the accused persons pursuant to section 106 of the Evidence Act and as such, they owe an explanation to that effect, is liable to be and is accordingly rejected as the prosecution has failed to establish its basic case of presence of accused nos.1 and 3 at the scene of the offence.

82. Even in the matter of Shambhu Nath Mehra (cited supra), the learned Special Public Prosecutor had sought to canvass that though the burden of proof is on the prosecution, yet the circumstances in which the accident in question had taken place, it would be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which were especially within the knowledge of the accused, which an accused could prove without difficulty or inconvenience. The said submissions are also required to be considered in the background of the fact as regards the burden to be discharged by the prosecution, so as to establish that the fact was especially within the knowledge of the accused and the inability of the prosecution to prove the said fact. In the present case, the prosecution has come out with a clear case of murder and has not come with a case that the fact was specially within the knowledge of the accused.

83. Appropriate support can be drawn for the above conclusion from the judgment of the Apex Court in the matter of Murlidhar and ors. vs. State of Rajasthan, reported in (2005) 11 SCC 133, wherein the Apex Court, in paragraph 23, has held thus :-

In the result, we are of the view that the prosecution having put forward a case that, what transpired after Ramlal was dragged away by the assailants was within the knowledge of witnesses, utterly failed in proving the said facts. Once this is established, it was not open for the High Court to have fallen back on the rule of

burden of proof under Section 106 of the Evidence Act. In fact, as we notice, it was nowhere the case of the prosecution that Section 106 of the Evidence Act applied to the facts on record. The High Court seems to have brought it out on its own, but without any justification. We are, therefore, of the view that the conviction of Murlidhar, Chhaju Ram and Babu Lal s/o Chhaju Ram under Section 364 IPC is justified and liable to be confirmed, but their conviction under Section 302/34 IPC cannot be sustained and they are liable to be acquitted of the said charges.?

84. As held herein above, the prosecution has not brought on record any material to indicate that the fact about setting on fire deceased Chandarani was especially within the knowledge of the accused alone they being the culprit and as such they owe an explanation as to the death of Chandarani, since that case was never pleaded and canvassed by the prosecution.

85. In view of above, even though the proposition of law that is sought to be canvassed by the learned Special Public Prosecutor cannot be disputed, yet the same will hardly be of any assistance, particularly the submissions in the background of section 106 of the Evidence Act, are liable to be rejected.

Learned Public Prosecutor has relied upon the judgment of this Court in the matter of State of Maharashtra vs. Raju Dadaba Borge, reported in 2000 ALL MR (Cri) 1834, particularly paragraph 10 thereof, to buttress his submission that the evidence of child witness P.W.8 Ganesh examined at Exh.128 is required to be accepted, particularly the part of his evidence which cannot be held to be resulting from tutoring, for the purpose of corroboration, be appreciated.

86. Perusal of the testimony of child witness P.W.8 Ganesh reveals that, in his examination-in-chief he speaks of the murder of his mother by the accused persons, whereas in cross-examination he narrates entirely opposite version, which supports the defence of accused persons. The version narrated in the cross-examination also establishes the truth as regards the contents of the spot panchnama; the stand taken by accused no.2 about her presence on second floor along with wife of accused no.3; the said child witness Ganesh and Siddhi “ the daughter of accused no.4, who later on went on the third floor and forced open the door of the room of deceased Chandarani. So, even if the submission of the

learned Public Prosecutor is to be accepted, based on the above referred judgment, the case of the prosecution cannot be termed to have been established beyond reasonable doubt, so as to unerringly point out the guilt of the accused persons. Apart from above, in view of the complete contradictory version of this witness in cross-examination, it is also difficult to accept the part of evidence.

87. Learned Counsel appearing on behalf of the appellant/accused has relied upon the judgment of the Apex Court, in the matter of Piara Singh and ors. vs. State of Punjab, reported in AIR 1977 SC 2274, so as to canvass that the expert witness P.W.4 Dr. Bhusale, who was examined to prove the circumstances on medical and forensic side so as to establish the guilt of the accused is required to be rejected, particularly when in his cross-examination the said witness has agreed to the fact as regards cause of death could be even by heat and fall. In our opinion, the appropriate support can be drawn from the said judgment, particularly observations in paragraphs 5 and 6, so as to infer that the evidence of the said witness creates doubt in the mind of the Court as regards acceptance thereof so as to conclude the guilt of the accused persons.

88. Learned Counsel appearing on behalf of the appellant/accused has also placed reliance upon the judgment of the Apex Court in the matter of Varkey Joseph vs. State of Kerala, rep. by the Circle Inspector of Police, reported in AIR 1993 SC 1892, so as to canvass that the evidence of the prosecution witnesses is full of leading questions and the Prosecutor cannot put leading questions on material part of evidence which a witness would be compelled to answer against the accused as per expectation of the prosecution. According to him, such approach of the prosecution offends the right of the accused of fair trial and the evidence to that effect is needed to be ignored as it is not a curable irregularity. He has placed reliance on paragraph 11 of the said judgment, which reads thus :-

Leading question to be one which indicates to the witnesses the real or supposed fact which the prosecutor (plaintiff) expects and desires to have confirmed by the answer. Leading question may be used to prepare him to give the answers to the questions about to be put to him for the purpose of identification or to lead him to the main evidence or fact in dispute. The attention of the witness cannot be

directed in Chief examination to the subject of the enquiry/trial. The Court may permit leading question to draw the attention of the witness which cannot otherwise be called to the matter under enquiry, trial or investigation. The discretion of the court must only be controlled towards that end but a question which suggest to the witness, the answer the prosecutor expects must not be allowed unless the witness, with the permission of the Court, is declared hostile and cross-examination is directed thereafter in that behalf. Therefore, as soon as the witness has been conducted (sic) to the material portion of his examination, it is generally the duty of the prosecutor to ask the witness to state the facts or to give his own account of the matter making him to speak as to what he had seen. The prosecutor will not be allowed to frame his questions in such a manner that the witness by answering merely "yes" or "no" will give the evidence which the prosecutor wishes to elicit. The witness must account for what he himself had seen. Sections 145 and 154 of the Evidence Act are intended to provide for cases to contradict the previous statement of the witnesses called by the prosecution. Ss. 143 and 154 provides the right to cross-examination of the witnesses by the adverse party even by leading questions to contradict answers given by the witnesses or to test the veracity or to drag the truth of the statement made by him. Therein the adverse party is entitled to put leading questions but S. 142 does not give such power to the prosecutor to put leading questions on the material part of the evidence which the witnesses intends to speak against the accused and the prosecutor shall not be allowed to frame questions in such a manner which the witness by answering merely yes or no but he shall be directed to give evidence which he witnessed. The question shall not be put to enable the witness to give evidence which the prosecutor wishes to elicit from the witness nor the prosecutor shall put into witness's mouth the words which he hoped that the witness will utter nor in any other way suggest to him the answer which it is desired that the witness would give. The counsel must leave the witness to tell unvarnished tale of his own account. Sample leading questions extracted hereinbefore clearly show the fact that the prosecutor led the witnesses what he intended that they should say the material part of the prosecution case to prove against the appellant which is illegal and obviously unfair to the appellant offending his right to fair trial enshrined under Art.21 of the Constitution. It is not a curable irregularity.?

89. It is required to be noted here that from the evidence of P.W.4 Dr. Bhusale and P.W.9 Prakash @ Deva, it could easily be noticed that the prosecution has, time and again, put leading questions to the witnesses so as to indicate the said witness the real or supposed fact. At most of the places objection to leading questions was also not decided then and there or at the conclusion of trial.

90. Learned Counsel appearing on behalf of the appellant/accused has also placed reliance upon the judgment of this Court in the matter of State Vs. Bhanuprasad Shyamlal Joshi, reported in 1967 Mh.L.J. 394 and the judgment of the Apex Court, in the matter of Tahsildar Singh and anr. vs. State of U.P., reported in AIR 1959 SC 1012, so as to canvass that the statement of a witness recorded under section 162 of the Code of Criminal Procedure, cannot be used for corroboration or for contradicting a defence witness. According to him, the approach of the prosecution in the present matter, particularly in relation to recording of evidence of the witnesses reflects that, time and again, the statement of the witness recorded under section 162 of the Code of Criminal Procedure was used for corroboration of prosecution story. So far as the above referred submissions are concerned, in our opinion, the appreciation of the evidence, particularly in the light of above referred submissions is already done by this Court afresh, having regard to the scope of appellate jurisdiction as is spelt out by the Apex Court in the matter of Laxman Kalu Nikalje vs. The State of Maharashtra, reported in AIR 1968 SC 1390. This Court is aware about its limitations and the mandate of the Apex Court that the judgment of the learned Sessions Court cannot be upset simpliciter, as the Sessions Court had an advantage to observe the demeanour of the witness during the course of recording of evidence.

91. Learned Counsel appearing on behalf of the appellant/accused has rightly placed reliance upon the judgment of the Apex Court in the matter of Subramaniam vs. State of Tamil Nadu and anr., reported in 2009 ALL MR (Cri) 2118 (S.C.), particularly paragraph 14, so as to canvass that even though it is for the husband to explain the circumstances in which the wife might have died, yet absence of explanation though a strong circumstance against the husband, can not per se be taken to mean that he alone was responsible there-for. According to him, even if the plea of alibi as was raised was not sufficiently established, that

could be an additional circumstance for inferring the guilt of the accused, but merely because the plea of alibi was not established, the accused cannot be held guilty. According to him, the above referred two additional circumstances (i) the explanation of the accused, which aspect could be noticed from the findings on absence of accused no.1 at the scene of the incident and (ii) absence of accused no.3 along with him and the admitted presence of accused no.2 in the house (not at the spot of the incident) has prompted this Court to consider the mandate of the Apex Court while giving consideration and making evaluation of the circumstantial evidence. Paragraphs 14 and 23 of the said judgment read thus :-

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 there-for.

23. The finding of the High Court that appellant had to 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 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 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 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.?

92. Similarly, the learned Counsel has also relied upon the judgment of the Apex Court in the matter of Bhagirath vs. State of M.P., reported in AIR 1976 SC 975, so as to canvass that the prosecution must stand on its own legs and the weakness of the defence cannot be an advantage to the prosecution nor the Court can invent a new case as against the accused persons.

93. The learned Counsel then submits that the close relatives of deceased Chandarani, being blood relations, are in all probability, likely to exaggerate the narrations as there is a natural tendency to that effect and in view thereof, the evidence of such witnesses, viz. P.W.9 complainant Prakash, real brother of deceased Chandarani, P.W.11 Sunil Soni, co- brother of accused no.1 and the sister's husband of deceased Chandarani, P.W.12 Sanjay Saraf, close friend of P.W.9 complainant, is required to be analyzed with great circumspection and caution. According to him, the circumstantial evidence, on which basis the conviction of accused no.1 Ramdeo was ordered by the Trial Court, does not satisfy the requirements as are enshrined in the judgment of the Apex Court, in the matter of Sharad Birdhichand Sarda vs. State of Maharashtra, reported in 1984 Cri. L.J. 1738 (1). He would also urge that such circumstances which were not put to the accused person, cannot be used against him. So as to draw support to this submission, he has placed reliance upon paragraphs 48, 152, 153 and 156, which read thus :-

48. Before discussing the evidence of the witnesses we might mention a few preliminary remarks against the background of which the oral statements are to be considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously

but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it.

152. 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 Sahabrao Bobade v. State of Maharashtra* (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

"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 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 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 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.

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

156. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (supra) was approved by this Court in Anant Chintaman Lagu v. State of Bombay, (1960) 2 SCR 460: (AIR 1960 SC 500). Lagu's case as also the principles enunciated by this Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases - Tufail's case (1969 (3) SCC 198) (supra), Ramgopal's case (AIR 1972 SC 656) (supra), Chandrakant Nyalchand Seth v. State of Bombay (Criminal Appeal No. 120 of 1957 decided on 19.2.58), Dharmbir Singh v. State of Punjab (Criminal Appeal No. 98 of 1958 decided on 4.11.1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration (1974) 2 SCR 694 (696) : (AIR 1974 SC 691 at p.693). Mohan Lal Pangasa v. State of U.P., AIR 1974 SC 1144 (1146), Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCR 384 (390) : (AIR 1981 SC 765 at p.767) and M.C. Agarwal v. State of Maharashtra, (1963) 2 SCR 405 (419) : (AIR 1963 SC 200 at p.206) a five-Judge Bench decision.?

In our opinion, appropriate support can be drawn from the said judgment , particularly while appreciating the evidence of complainant P.W.9 Prakash, who has initially alleged that his complaint was not accepted by P.W.13 A.P.I. Hibare immediately after the incident on 17th March, 2008 or also on 18th March, 2008 in the morning, whereas if his conduct is tested in the light of the acknowledgement Exh.137 executed by P.W. 9 about receipt of the dead body of Chandarani, he himself has mentioned in the said document, which was admitted by him, that he will lodge the complaint next day. Similar exaggerations could be noticed in the

evidence of his other sister's husband, i.e. P.W.11 Sunil.

94. Apart from above, it is required to be taken note of the fact that the links in the chain of evidence which was brought by the prosecution, were not satisfactorily proved in the light of the foregoing discussion, the same cannot be taken as pointing guilt against the accused with reasonable definiteness. It is further required to be noted here that the story of the prosecution does not appear to be consistent with the hypothesis of the guilt of the accused and is of not conclusive nature and has a changing tendency.

95. So far as the demand of dowry is concerned, it is claimed by P.W.9 complainant Prakash that there was a demand of Rs.5,00,000/- by the accused persons. According to him, in September, 2007, he has paid an amount of Rs.50,000/- and balance Rs.4,50,000/- was promised to be paid at the earliest. In the first information report, an omission was noted about the receipt of the phone call from Chandarani on 15th March, 2008, in the evening at about 8.00 making demand of Rs.4,50,000/- at the behest of the accused persons. It is required to be noted that in the entire evidence of the witnesses which were examined on behalf of the prosecution, the prosecution is completely silent so as to show and demonstrate the nature of ill-treatment allegedly meted out to Chandarani. It is also required to be noted that the parents of deceased Chandarani were not examined so as to establish the demand and harassment to Chandarani. In the evidence of P.W.9 Prakash, it has come on record that in September, 2007, he paid Rs.50,000/- from the account of his father, however, he has failed to produce any entry in the accounts or the copy of the balance sheet depicting such payment. Rather, from the evidence of P.W.5 Gorakshanath and P.W.6 Shamsundar, who are from the banking institutions with whom accused no.1 was having financial transaction, it could be noticed that the financial condition of the accused, particularly accused no.1 was very good and he had obtained loan after pledging the gold. It could also be noticed that the other nationalised Bank has given no objection as regards any dues outstanding against accused no.1. Apart therefrom, it is also required to be noted that vide Exh.269, property bearing No.1295 at Sonai was purchased by the accused persons in the name of accused no.3 Laxmikant on 28th June, 2007.

96. In the background of above, it is difficult to believe that there was demand of dowry from the side of the accused persons.

97. Rather, it has come on record that the co-brother of the accused, namely, P.W. 11 Sunil, who was earlier residing at Ujjain was made to shift at Aurangabad at the behest of the parents and brother of Chandarani. It has come in the evidence, that Chandarani was interested in shifting to Aurangabad and the father of Chandarani had already informed accused no.1 that he should separate himself from family by accepting his share and shift to Aurangabad. The purchase of property on 28th June, 2007, vide Exh.269 was also objected by the father of deceased Chandarani, on the ground that purchase was in the name of accused no.3 Laxmikant, to which accused no.2 Saraswati, mother of accused nos.1, 3 and 4 had stated that the house in which they were residing was in the name of accused no.1 Ramdeo. The transactions in the Bank, particularly from the evidence of the witnesses P.W. 5 and 6 reflects that the financial condition of accused Ramdeo was quite sound and secured. It is also required to be noted that the non-mentioning of the alleged incident of 15th March, 2008 in the complaint Exh.136 is required to be viewed, that the complainant P.W.9 had no grievance and as such, he had admitted about the same in his cross-examination about reducing in writing the contents which he had narrated to Constable Pawar, who had authored the first information report. If the evidence of P.W.11 Sunil and P.W.9 Prakash is read together, the material omissions, particularly as regards the demand of Rs.4,50,000/-; the threat by accused no.1 Ramdeo which was allegedly heard by P.W.11 Sunil on the speaker phone of mobile and non-mentioning of the same by P.W.9 complainant in the complaint gives rise to important material omissions. The case of the prosecution and particularly the one alleged by the relatives of the deceased Chandarani about addiction of accused no.1 Ramdeo to alcohol is concerned, in the background of the financial status, other positive developments i.e. birth of son Ganesh, this Court is required to reject the said contention as from the evidence of P.W.5 Gorakshanath and P.W.6 Shamsundar, it appears that having regard to the honesty and resultant growth in the business by Ramdeo, both financial institutions had advanced him loan. In addition to above, he has purchased the property in the name of his brother. The evidence of P.W.11 Sunil Soni speaks of being party to each and every conversation between Ramdeo and

Chandarani on his mobile phone, which he used to hear by putting speaker phone in on mode. It is also noticed from his evidence that from 2004-07 he had not talked with Chandarani either on phone or personally as he had gone to Ujjain to work with his father. As such, the claim of the said witness that he knew about the developments in the life of Chandarani and the approach of the accused in the matter of demand of dowry is also required to be disbelieved.

98. We are mindful that in cases resting on circumstantial evidence, motive is an important circumstance and the prosecution is required to prove motive, if it proposes to rely on it. Failure to establish motive against the accused would receive into background if there is other strong and reliable evidence. In the present case, we find that the prosecution has utterly failed to establish that there was demand of dowry by accused persons and on that count they were harassing deceased Chandarani. In view thereof, in our considered view, the prosecution has failed to establish the motive for death of Chandarani.

99. Having regard to the totality of evidence and taking into account the legal position as discussed herein before, we have no hesitation to hold that the prosecution has failed to bring home the guilt of the original accused no.1/appellant in Criminal Appeal No.437 of 2011 for offence punishable under section 302 of the Indian Penal Code. His conviction and sentence deserves to be set aside. Consequently, the acquittal of original accused nos.2 to 4 deserves to be maintained.

100. In the result, we pass the following order :

Criminal Appeal No.437 of 2011 by original accused no.1 Ramdeo Pannalal Kadel stands allowed. The judgment and order of conviction, dated 27th July, 2011, rendered by Additional Sessions Judge, Shrirampur, in Sessions Case No.36 of 2008, is set aside and appellant/original accused no.1 stands acquitted of the offence with which he was charged. His bail bonds stand cancelled. Fine, if already paid, be refunded to him. He be set at liberty forthwith, if not required in any other case.

Criminal Appeal Nos.442 of 2011 and 85 of 2012 by original complainant and State respectively, questioning acquittal of original accused nos.1 to 3 for offences punishable under sections 302 498-A read with section 34 and section 120-B of Indian Penal Code and of accused no.4 under sections 302 498-A read with section 34 of the Indian Penal Code stand dismissed.

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