

Dasappa Vs. The State of Karnataka

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Court : Karnataka

Decided On : Jul-20-2018

Judge : B.a.Patil and Mohammad Nawaz

Appeal No. : CRL.A 413/2014

Appellant : Dasappa

Respondent : The State of Karnataka

Judgement :

1 R CrI.A. No.413/2014 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE20H DAY OF JULY 2018 PRESENT: THE HONBLE MR.JUSTICE B.A. PATIL AND THE HONBLE MR.JUSTICE MOHAMMAD NAWAZ CRIMINAL APPEAL No.413/2014 ... APPELLANT BETWEEN: DASAPPA S/O LATE PYDAL AGED ABOUT51YEARS OCC: COOLIE R/AT GENDEGOWDANA COLONY H D KOTE MYSORE - 571 114 (BY SRI K.DINESH KUMAR, ADVOCATE) AND: THE STATE OF KARNATAKA BY THE H D KOTE POLICE STATION REPRESENTED BY STATE PUBLIC PROSECUTOR HIGH COURT BUILDING BANGALORE - 560 001 (BY SRI CHETHAN DESAI, HCGP) ... RESPONDENT * * * THIS CRL.A IS FILED U/S3742) OF THE CODE OF CRIMINAL PROCEDURE PRAYING TO ALLOW THE APPEAL BY SETTING ASIDE THE

JUDGMENT

AND

ORDER

OF CONVICTION AND SENTENCE RECORDED BY THE LEARNED IV ADDITIONAL SESSIONS JUDGE, AT MYSORE IN S.C. 2 CrI.A. No.413/2014 NO.23/2011, DATED 09.05.2013, THEREBY CONVICTING THE APPELLANT FOR THE OFFENCE PUNISHABLE UNDER SECTION 498a, 302 AND 201 OF IPC AND SENTENCING HIM TO UNDERGO RIGOROUS IMPRISONMENT FOR LIFE WITH FINES. THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

, THIS DAY MOHAMMAD NAWAZ J., PRONOUNCED THE FOLLOWING: DATE OF RESERVED THE

JUDGMENT

:

23. 06.2018 DATE OF PRONOUNCEMENT OF THE

JUDGMENT

:

20. 07.2018

JUDGMENT

The accused/appellant has preferred this appeal, against the Judgment and Order of conviction and sentence dated 09.05.2013, passed in Sessions Case No.23/2011, on the file of the Court of IV Addl. Sessions Judge at Mysuru, wherein the learned Sessions Judge convicted and sentenced the accused for the charged offences punishable under Sections 498-A, 302 and 201 of IPC.

2. The case of the prosecution in brief is that; Deceased Vasanthamma is the wife of the accused. They were married for the past 20 years and living in a rented house belonging to one P.Bhoja, situated in 3 CrI.A. No.413/2014 Gendegowdara Colony in H.D.Kote Taluk for the past 10 years by running a tea-shop and also by

doing coolie work. Their son viz., Aneesh-P.W.1 and daughter viz., Asha- P.W.4 were residing in Mysuru. Another son viz., Aruna- P.W.15 and daughter viz., Anugna-P.W.5 were living along with their parents. Since 7 to 8 years, the accused was in the habit of ill-treating his wife-Vasanthamma, suspecting her fidelity. He was physically and mentally ill-treating her telling that she is having illicit relationship with others, who were visiting the tea-shop. On 31.07.2010, their younger son Aruna [P.W.15]. called his brother Aneesh [P.W.1]. and informed that his mother was not in the house. P.W.1 contacted his relatives over phone to know the whereabouts of his mother but, he could not locate her. He came to Gendegowdara Colony on 04.08.2010 at about 2.00 p.m. and since his mother was not in the house, he enquired with his father i.e., the accused. The accused informed him that his mother has gone to her native place by bus. P.W.1 suspected some foul play as he smelt foul odour emanating inside the house and when he searched the house, he noticed a portion of the feet 4 CrI.A. No.413/2014 protruding out from a heap of mud, by the side of oven, which was meant for baking bread. He went to H.D.Kote Police Station and lodged the complaint before the PSI- P.W.19 and a case was registered in Crime No.362/2010 of the said Police Station under Sections 302 and 201 of IPC. Thereafter, the FIR was transmitted to the jurisdictional Court. Requisition was submitted to the Sub-Divisional Magistrate, Hunsur to exhume the dead body and hold inquest. CPI- P.W.17 took-over further investigation and on the same night, the accused was arrested and the voluntary statement of the accused was recorded as per Ex.P17. On the next day i.e., on 05.08.2010, spot-mahazar as per Ex.P2 was conducted and the dead body was exhumed. In this regard, a mahazar as per Ex.P3 was drawn in the presence of the panch-witnesses. Inquest mahazar was conducted as per Ex.P4. The dead body was subjected to post-mortem examination by P.W.14. Thereafter, the clothes etc., of the deceased were seized under a mahazar- Ex.P5. Later, the ligature material i.e., rope-M.O.5 which 5 CrI.A. No.413/2014 was around the neck of the deceased was also seized. After completion of the investigation, P.W.17 filed the charge-sheet against the accused. After committal of the case to the Sessions Court, the learned Sessions Judge framed charges against the accused for the offences punishable under Sections 498-A, 302 and 201 of IPC., to which, the accused pleaded not guilty and

claimed to be tried. To establish the guilt of the accused, the prosecution in all examined P.Ws.1 to 19 and got marked Exs.P1 to 28 and M.Os.1 to 5. The accused denied all the incriminating evidence appeared against him when he was examined under Section 313 of Cr.P.C. and claimed that he was not in the village at the time of incident. However, he did not choose to lead any evidence on his behalf. The learned Sessions Judge after appreciating the oral and documentary evidence adduced by the prosecution, convicted and sentenced the accused for the charged offences holding that the prosecution has 6 CrI.A. No.413/2014 successfully proved the guilt of the accused for the offences under Sections 498-A, 302 and 201 of IPC beyond all reasonable doubt.

3. We have heard the learned counsel Sri. K. Dinesh Kumar, appearing for the accused/appellant and Sri. Chetan Desai, learned HCGP appearing for the respondent/State.

4. Learned counsel for the accused contended that the learned Sessions Judge has wrongly convicted the accused without there being any direct and corroborative piece of evidence to prove the guilt of the accused. He contended that the evidence of the prosecution witnesses viz., P.Ws.1, 4, 6, 9 and 15 are not sufficient to hold the accused guilty since, there are material contradictions and their evidence is based on assumption and presumption. He further submitted that there is inordinate delay in lodging the complaint and there is no explanation offered. He further contended that it is highly improbable that the accused committed the murder since he used to go for coolie work for about 15 to 20 days at a stretch and 7 CrI.A. No.413/2014 someone might have killed the deceased during the said period. He submits that the learned Sessions Judge has not drawn proper probability and inference and reached at a wrong conclusion and therefore, prayed for reversing the Judgment and Order of conviction and sentence passed against the accused. Per contra, learned Government Pleader vehemently argued, supporting the Judgment and Order of conviction and sentence passed by the trial Court.

5. Having heard both sides, the points that arise for our consideration are as under:

1. Whether the prosecution has been able to prove the charges leveled against the accused beyond all reasonable doubt?.

2) Whether the Judgment and Order of conviction and sentence passed by the trial Court suffers from illegality and whether the same deserves to be set aside?.

3) Whether the accused/respondent is liable to be acquitted?. 8 CrI.A. No.413/2014

4) What order?.

6. Since the above points are inter-linked with each other, the same are taken up for consideration together and answered as under:

7. It is the case of the prosecution that the accused and the deceased were living together in a rented house, situated at Gendegowdara Colony in H.D.Kote Taluk. They were eking out their livelihood by running a small tea-shop and a bakery. Their son-P.W.1-Aneesh and daughter-P.W.4-Asha were staying at Mysuru and they were pursuing their studies there. The other children viz., P.W.5-Anugna and P.W.15-Aruna were staying along with their parents. Since 7 to 8 years, the accused was ill- treating the deceased by suspecting her fidelity and in this regard, whenever P.W.1 was visiting the house, he was trying to advise his father. It is the further case of the prosecution that the accused by suspecting the character of his wife, used to pick-up quarrel with her and used to threaten her saying that he will kill her. On 31.07.2010, at about 10.00 p.m., the accused strangulated his wife 9 CrI.A. No.413/2014 Vasanthamma [deceased]. with the plastic rope and killed her and thereafter to destroy the evidence, he buried the dead body in the heap of mud near the oven, inside the house.

8. That the first informant in the present case is P.W.1, who is none other than the son of the accused and the deceased. In the complaint lodged by P.W.1, he has stated that since 7 to 8 years, the accused was ill-treating his mother Vasanthamma [deceased]. by suspecting her fidelity. The accused was suspecting her character by linking her to the customers, who were visiting the tea- shop, which was run by them and he used to pick-up quarrel and beating the deceased.

In the first information itself, P.W.1 has stated that the accused was threatening the deceased by saying that she will be killed and nobody will ask him. On 04.08.2010 at about 2.00 p.m., he came to the house in Gendegowdara Colony and when he enquired with his father, he gave an evasive answer by saying that his mother has gone to her native place in a bus. When he went inside the house, there was some foul 10 CrI.A. No.413/2014 smell emanating from the house and he suspected some foul play. While searching inside the house, he saw a portion of feet in a heap of mud, which was near the oven, he went to the Police Station and lodged the complaint.

9. Among the witnesses examined by the prosecution, P.Ws.7, 8 and 10 to 13 have turned hostile and they have not supported the case of the prosecution.

10. P.W.1 in his evidence has corroborated the version in the First Information Report. His complaint has been marked as per Ex.P1. He is also a panch-witness to the spot mahazar-Ex.P2 and mahazar-Ex.P3, which were drawn while exhuming the dead body. He has denied the suggestion that he lodged a false complaint against his father as his father was not happy with him since he had not completed the education and that there was no cordial relationship between his father and himself. From the evidence of P.W.1, it can be clearly gathered that since the marriage, the accused and the deceased were staying together and at the time of the incident, the accused and the deceased were living in a rented house, situated at 11 CrI.A. No.413/2014 Gendegowdara Colony. Further, the accused was ill- treating the deceased by suspecting her character and used to physically and mentally torture her.

11. P.W.2 is a panch-witness to the spot-mahazar marked as per Ex.P2. On a careful perusal of his evidence goes to show that the accused and the deceased along with their two children were living in the house situated at Gendegowdara Colony. On 05.08.2010, at about 10.30 a.m., a mahazar was conducted as per Ex.P2. He has also deposed that a portion of the feet of the dead body was noticed inside the house, near the oven.

12. P.W.3 is a panch-witness to Ex.P3 under which, the dead body was exhumed and also to the inquest mahazar-Ex.P4. M.Os.1 to 3 i.e., clothes of the deceased

and M.O.4-leg chain were seized under Ex.P4. The evidence of P.W.3 also clearly goes to show that the dead body was found buried inside the house near the oven.

13. P.W.4 is the daughter of the accused and the deceased. She has deposed in her evidence that her 12 CrI.A. No.413/2014 mother was staying along with the accused in Gendegowdara Colony. Three months prior to the incident, she had come to Mysuru and was pursuing her studies there, staying along with her brother viz., P.W.1. She has also deposed that the accused used to suspect the fidelity of her mother and frequently used to quarrel with her. She has also stated that her brother Aruna [P.W.15]. and sister Anugna [P.W.5]. were staying along with her parents.

14. P.W.5 is another minor daughter of the deceased and the accused. She was aged about 8 years at the time of recording her evidence. Learned Sessions Judge opined that she was not in a position to understand the questions of the Court and hence not continued the recording of her evidence and therefore, she was not subjected to cross-examination. Hence, her evidence is not useful for the prosecution.

15. P.W.6 is the sister of the deceased. She has deposed that the accused used to suspect the fidelity of the deceased and in that regard, he was ill-treating her sister. 13 CrI.A. No.413/2014 In the cross-examination, she has denied the suggestion that the accused was going for coolie work in different places and at that time, he was not coming to the house for about 15 days.

16. P.W.9 is the mother of the deceased. She has also deposed that the deceased and the accused were living together in a rented house and for their livelihood they were running a small bakery. The accused was suspecting the fidelity of the deceased and used to ill-treat her. In this regard, whenever she was visiting the house, she was trying to pacify them, however, the accused did not change his conduct. She has also denied the suggestion in the cross-examination that the accused used to stay away from the house for 15 days when he was going for coolie work.

17. P.W.14 is the doctor, who conducted the post- mortem examination over the dead body. According to P.W.14, there was ligature material seen in situ surrounding the neck which was a nylon rope measuring 178 cm. x 50 cm. x 2 cm. with a knot on right side. On 14 CrI.A. No.413/2014 removal of the said material found on the neck, ligature mark was seen over neck, measuring 24 cm. x 2 cm. with 7 cm. from right mastoid process, 6 cm. from left mastoid process, 3 cm. from chin, etc. The cause of death was due to compression of neck by ligature strangulation.

18. P.W.15 is the son of the accused and the deceased. He has deposed that his brother P.W.1 was working in Mysuru and along with him, his sister-P.W.4 was staying. He along with his younger sister-P.W.5 were staying with their parents in Gendegowdara Colony. Her parents were running a small tea-shop and a bakery. He has deposed that his father used to suspect the fidelity of his mother and was ill-treating her. On 31.07.2010, he had gone to Mysuru and when he returned back, his mother was not found in the house and when he enquired with his father, he replied that his mother has gone to her native place. He enquired his sister, but she did not know anything. At that time, his sister was studying in second standard. On the next day, he searched for his mother, but his mother was not in the house. He informed the 15 CrI.A. No.413/2014 same to others and thereafter, when they searched near the oven inside the house, they found a portion of the feet of the dead body which was buried in the mud near the oven. The Police and the Tahsildar came to the spot and exhumed the dead body. The dead body was that of his mother. There was a plastic rope tied around the neck of the dead body.

19. P.W.16 is another brother of the deceased. He has also deposed with regard to the accused ill-treating the deceased by suspecting her fidelity, which was being informed to him by the deceased. In spite of advising the accused, the accused continued to ill-treat the deceased.

20. P.W.17 is the CPI., who conducted the investigation and filed the charge-sheet. P.W.18 is the Tahsildar, in whose presence, the body was exhumed and mahazar as per Ex.P3 was prepared. P.W.19 is the PSI., who registered the case etc.

21. From the oral and documentary evidence placed on record by the prosecution, it is quite clear that 16 CrI.A. No.413/2014 the prosecution is relying on the following circumstances to establish the guilt of the accused: (1) Homicidal death; (2) Motive; (3) The accused and the deceased were living together and the last seen theory; (4) Recovery of the dead body from inside the house; (5) Conduct of the accused; and (6) False explanation given by the accused about the whereabouts of the deceased.

22. It is well-established principle that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on 17 CrI.A. No.413/2014 any hypothesis other than the guilt of the accused. The said circumstances should be not only consistent with the guilt of the accused but also inconsistent with his innocence. Keeping the above principle in mind, we appreciate the evidence placed on record.

23. It is not disputed that the dead body was found buried inside the house, where the accused and the deceased were living together. Under Ex.P3, the dead body was exhumed in the presence of the panch-witnesses. There was a ligature material viz., M.O.5-nylon rope around the neck of the deceased. Inquest was conducted as per Ex.P4 in the presence of the panch-witnesses. From the evidence of P.W.14, who conducted the post-mortem examination, it is clear that the ligature material was seen surrounding the neck, which was a nylon rope, measuring 178 cm. x 50 cm. x 2 cm. with knot on the right side. On removal of the said material, ligature mark was seen over the neck, measuring 24 cm. x 2 cm. with 7 cm. from the right mastoid process, 6 cm. from the left mastoid process, 3 cm. from chin. Body was bloated, face distorted, tongue 18 CrI.A. No.413/2014 was protruded out of oral cavity. Hairs were easily peeled by plucking. Post-mortem peeling off of the skin was present. There was signs of advance stage of decomposition present. The cause of death was due to compression of neck by

ligature strangulation. The post- mortem report has been marked as Ex.P15. From the aforesaid evidence, it can be safely concluded that the prosecution has been able to prove the homicidal death of Vasanthamma. Even otherwise, there is no dispute with regard to the homicidal death and the identity of the dead body.

24. It is the case of the prosecution that since 7 to 8 years prior to the death of Vasanthamma, the accused was suspecting her fidelity, doubting her character and ill- treating her by linking her with the customers, who were visiting the tea-shop. In this connection, he was torturing her physically and mentally.

25. P.W.1-Aneesh, the complainant, who is none other than the son of the deceased and the accused has clearly deposed that his father was ill-treating his mother, 19 CrI.A. No.413/2014 suspecting her character and he used to beat her by suspecting that she was having illicit connection with the persons, who were visiting the tea-shop. It is also evident that the accused was threatening his wife with dire consequences. His evidence is further corroborated by the evidence of P.Ws.4, 6, 9 and 15. Learned counsel for the accused tried to contend that there is no independent corroboration to the version of the aforesaid witnesses. He contended that since the accused was not happy with his children for having not completed their education and staying away, there was no cordial relationship between them and therefore, the aforesaid witnesses have tried to implicate the accused in a false case. On a careful perusal of the evidence on record, there is nothing to show that there was un-cordial relationship between the accused and his children. P.Ws.1, 4 and 15 being the children of the accused have deposed naturally with regard to the relationship between the accused and their mother. The evidence of the said witnesses are consistent and corroborated to each other with regard to the accused suspecting the fidelity of his wife and ill-treating her in this 20 CrI.A. No.413/2014 regard. As discussed above, P.Ws.1, 4, 6, 9 and 15 have consistently deposed that the accused was suspecting the character of his wife and he was physically and mentally torturing her. In spite of their advise not to ill-treat the deceased, the accused continued to ill-treat her. In the cross-examination of these witnesses by the learned defence counsel, nothing worthwhile has been elicited to disbelieve the said evidence. There is no reason for the kith and kin of the accused to depose falsely against him. Hence, it can be

safely concluded that the accused had a strong motive to eliminate his wife-Vasanthamma.

26. It is the consistent evidence that the accused and the deceased were living in a rented house, situated in Gendegowdara Colony. P.W.1-Aneesh was working in Mysuru and P.W.4-Asha was pursuing her studies in Mysuru since 3 months prior to the incident and she was staying along with her brother P.W.1.

27. The evidence on record also discloses that P.W.5-Anugna, studying in second standard at the time of the incident and P.W.15-Aruna were staying along with 21 CrI.A. No.413/2014 their parents in Gendegowdara Colony. P.W.15 has deposed in his evidence that on 31.07.2010, he had gone to Mysuru to his brothers house and on the next day, he came to Gendegowdara Colony and at that time, his mother was not in the house and when he enquired with his father i.e., the accused, his father told him that she has gone to her native place. His sister did not know anything about the incident and therefore, he informed the matter to his brother P.W.1 over phone. Thus, the presence of the accused in the house during the relevant time is very well established. From the evidence on record, it can be easily gathered that the accused and the deceased were living together in a rented house in Gendegowdara Colony for about 7 to 8 years, eking out their livelihood by running a tea-shop and a small bakery in the house. They were also doing coolie work. Though the learned counsel for the accused tried to contend that the accused used to go out for coolie work for about 15 to 20 days, however, the same is not established by any acceptable and cogent evidence. Further, the contention of the learned counsel for the accused that the accused was 22 CrI.A. No.413/2014 not in the house on the date of the incident is also unacceptable. Though the accused had tried to plead innocence by taking a vague defence stating he was away when the incident took place but he has not specifically taken the plea of alibi. Even in such a case, the accused is required to establish the said plea by adducing reliable and acceptable evidence, which he has failed to do. Further, as per the evidence of the prosecution witnesses, when the accused was enquired about the whereabouts of the deceased, he gave evasive reply by saying that she has gone to her native place. The fact remains that the dead body was found buried inside the house where the accused and the deceased lived together

along with their minor children during the relevant time. From the evidence of P.Ws.1, 4, 6, 9 and 15, it can be safely come to the conclusion that during the relevant point of time, the deceased and the accused were staying together in a rented house at Gendegowdara Colony, in which house, the deceased was found murdered and buried near the oven covered with mud. As on the date of the incident, 23 CrI.A. No.413/2014 deceased Vasanthamma and her husband i.e., the accused and their 7 year old child were alone in the house.

28. Learned counsel for the accused contended that there is delay in lodging the First Information Report since the incident took place on 31.07.2010 but the complaint came to be lodged on 04.08.2010. He further contended that if the incident had taken place on the night of 31.07.2010, there would have been foul smell emanating, which could have been noticed by others and no one complained till 04.08.2010 about the foul smell. To appreciate the said contention, it is necessary to peruse the evidence of the doctor-P.W.14. P.W.14, in the cross-examination has stated that decomposition process starts after 24 hours of the death of the person and foul smell starts emanating after 72 hours of the death. He has further stated that if the dead body is kept in a room, where there is no proper ventilation, foul smell starts emanating within 24 to 48 hours. In the present case, the incident is said to have occurred on the night of 31.07.2010. It has to be seen that the dead body was not 24 CrI.A. No.413/2014 kept open. On the other hand, it was buried and covered with mud. As per the evidence of the doctor, foul smell starts emanating after 72 hours of the death. In this case, on 04.08.2010, a portion of the feet of the deceased was found protruded from the place where the mud was displaced. Then the foul smell started emanating. Hence, in the instant case, the evidence of the doctor that the foul smell starts emanating after 72 hours of the death is in consonance with the case of the prosecution. Even otherwise, the accused should have been the first person, who should have smelt the foul smell. However, he has remained silent and even failed to inform the missing of his wife from 31.07.2010, to any others. The conduct of the accused in not informing missing of his wife from 31.07.2010 and falsely informing that she has gone to her native place is inconsistent with his innocence and it is another link in the chain of circumstances relied on by the prosecution.

29. The learned High Court Government Pleader while supporting the impugned Judgment contended that 25 CrI.A. No.413/2014 the dead body was pointed out by the accused and it was recovered at his instance on the basis of his voluntary statement recorded by the Investigating Officer. Hence, he submitted that it is another incriminating evidence against the accused. The said argument does not impress us for the simple reason that even prior to the accused showing the dead body, P.Ws.1, 15 and others have noticed a portion of the feet of the dead body and then the FIR came to be lodged. The place where the dead body was found was therefore within the knowledge of these witnesses even before it was pointed out by the accused. Hence, it cannot be held that the dead body was discovered only at the instance of the accused. At the most, it can be said that the accused alone knew that the said dead body was that of Vasanthamma.

30. It is a settled principle that; in a case based on circumstantial evidence where no eye-witness account is available, when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be 26 CrI.A. No.413/2014 untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions by the Honble Apex Court. When the death had occurred inside the house and when it is proved that the accused was with the deceased during the relevant time, as in the present case, then, he is under an obligation to give a plausible explanation for the cause of death in his statement under Section 313 Cr.P.C. The mere denial or giving false explanation in such a situation shall be construed to be inconsistent with the innocence of the accused, but consistent with the hypothesis that he is the perpetrator of the crime.

31. In *Ramnaresh & Ors Vs. State of Chhattisgarh*, reported in AIR 2012 SC1357 it is held as follows: The accused has a duty to furnish explanation in his statement under Section 313 Cr.P.C. regarding any incriminating material that have been produced against him. If the accused has been given the freedom to remain silent during the 27 CrI.A. No.413/2014 investigation as well as before the Court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 Cr.P.C. is being recorded. However, in such an event, the Court would be entitled to draw an inference, including such

adverse inference against the accused as may be permissible in accordance with law. 32. In the case of Trimukh Maroti Kirkan Vs. State of Maharashtra, reported in 2006(1) SCC681 the Honble Supreme Court has observed as under: 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. But, also presides to see that a guilty man 28 CrI.A. No.413/2014 does not escape. Both are public duties. 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. 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. 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. 33. Keeping in view the above proposition of law, if we peruse the evidence and records, in this case, the accused has made a futile attempt while he was examined under Section 313 Cr.P.C. by stating that he was not 29 CrI.A. No.413/2014 present in the village on the relevant day, which has been disproved by the evidence lead by the prosecution. The Honble Supreme Court in the case of Neel Kumar alias Anil Kumar Vs. State of Haryana, reported in (2012)3 SCC (Cri) 271 has held that; it is also the duty of the accused while making statement under Section 313 Cr.P.C., to explain the incriminating circumstance proved against him. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him.

34. Section 114 of the Evidence Act empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the court shall

have regard to the common course of natural events, human conduct etc. in relation to the facts of the case. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of 30 CrI.A. No.413/2014 reasoning and reaches a logical conclusion as the most probable position.

35. The view taken in Trimukh Marotis case has been re-iterated in the case of State of Rajasthan Vs. Thakur Singh, reported in (2006)10 SCC681 It is observed therein as under: Section 106 of the Evidence Act is not intended to shift the burden of proof on the accused but to take care of the situation where a fact is known only to the accused and it is well-nigh impossible or extremely difficult for the prosecution to prove the facts. Referring to the decision in Shambhu Nath Mehra Vs. State of Ajmer, reported in 1956 AIR404 the Honble Apex Court has further observed as under: Section 101 lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 of the Evidence Act is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any 31 CrI.A. No.413/2014 rate it is disproportionately difficult, for the prosecution to establish facts which are especially within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word especially stresses that. It means, facts that are pre-eminently or exceptionally within his knowledge. 36. In the present case, the prosecution has succeeded in proving the facts from which a reasonable inference can be drawn regarding existence of facts, which led to the death of Vasanthamma. The accused, by virtue of his special and exclusive knowledge regarding such facts has failed to offer any satisfactory explanation, which might drive support to draw a different inference.

37. Considering the entire evidence and materials on record and having re-appreciated the same, we have no hesitation in holding that the prosecution has successfully proved the charges leveled against the accused beyond all reasonable doubt. All the circumstances relied upon by the prosecution cumulatively proved that the accused and 32 CrI.A. No.413/2014 he alone has committed the murder of his wife- Vasanthamma and in order to cause

disappearance of the evidence, he buried the dead body by the side of oven, situated in his house.

38. We have carefully and cautiously gone through the impugned Judgment and Order. The Trial Court on an overall appreciation of the oral and documentary evidence has rightly convicted and sentenced the accused for the offences charged against him. We find no illegality in the impugned Judgment passed by the learned Session Judge. Accordingly, we proceed to pass the following:

ORDER

The appeal is dismissed as devoid of merits. Sd/- JUDGE Sd/- JUDGE Ksm*

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