

Poonam Rani vs.state

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Court : Delhi

Decided On : Feb-20-2017

Appellant : Poonam Rani

Respondent : State

Advocate for Def. : Ms. Aashaa Tiwari

Advocate for Pet/Ap. : Ms. Anu Narula

Judgement :

\$~ *IN THE HIGH COURT OF DELHI AT NEW DELHI % + Reserved on :

20. h December, 2016 Date of decision :

20. h February, 2017 CRL.A. No.711/2012 POONAM RANI Appellant Through: Ms. Anu Narula, Adv. STATE versus Respondent Through: Ms. Aashaa Tiwari, APP for the State. CORAM: HON'BLE MS. JUSTICE GITA MITTAL HON'BLE MS. JUSTICE ANU MALHOTRA JUDGMENT GITA MITTAL, J.

1. By way of the instant appeal, the appellant assails the judgment dated 9th April, 2012 in Sessions Case No.1

arising out of FIR No.2

under Section 3

IPC registered by the police station Hauz Khas finding her guilty of the commission of offence under Section 302 of the IPC as well as the consequential order on

sentence dated 21st April, 2012 whereby she was sentenced to undergo rigorous CrI.App.711/2012 Page 1 of 89 imprisonment for life and to pay a fine of `10,000/-, in default of payment of fine, sentenced to undergo one years simple imprisonment.

2. It was the case of the prosecution that at 2:23 a.m. on 7th August, 2010 the police control room received a telephonic intimation from the phone No.9868910445 to the effect that thieves had got into house No.39, Shahpur Jat, Asian Game Village near school and have hit my grandmother which information was logged as CRDD No.224 at 0223 hours by L/Ct. Sonika (PW-18) (Ex-PW18/A) at the police headquarters and transferred by PW-18 to the police station Hauz Khas.

3. At the police station, Hauz Khas, the telephonic information from the Police Control Room was received at about 2:30 am by ASI Mohd. Swalay (PW20), posted as the Duty Officer at that time, and recorded by him in the DD register at serial no.58A (Exh.PW20/A). Through Head Constable Rajan (PW21), also posted at P.S. Hauz Khas, DD58 was sent for inquiry to SI Narender Kumar Ojha (PW31).

4. On receipt of DD No.58A, S.I. Narender Kumar Ojha proceeded to the spot accompanied Ct. Sunder where they found one Rajesh taking his injured mother Smt. Shravan Devi to the hospital in a maruti van. SI Ojha followed them to the All India Institute of CrI.App.711/2012 Page 2 of 89 Medical Sciences where the doctor declared the injured as having been brought dead. SI Narender Kumar Ojha (PW31) thereafter returned to the spot and found that Inspector Rajeev Kumar (PW32) had already reached there.

5. Prior to his departure from the police station for the spot, Inspector Rajeev Kumar (PW32) logged DD No.59B at 2.35 a.m. (Mark Exh.PW32/A).

6. The Crime team from the South District, finger print bureau as well as officials from the Forensic Science Laboratory also reached at the spot.

7. It appears that the PCR message was also transmitted to the police by wireless to the police vehicle in the area which had rushed to the spot. We find that at the

police control room, the following information was conveyed by police van No.E81/ER and stands noted at 0255 hours that Shrawan Devi, wife of Bhim Singh, aged 65 years aur Poonam W/o Kuldeep, age 30 years, dono lady ek kamre mai so rahi thi, do UK (unknown) ladke huliya UK aaye or Mausii Mausii kehkar darwaza khulwaya aur Shrawan ke sir me lath mar diya jisse lady injured ho gayi jise gharwale pehle hi UK (unknown) hospital le gaye. Ek aadmi darwaze par Poonam ke sath khada ho gaya aur ek aadmi kamre ke andar gaya. Ye dono kamre se kya saman lekar gaye Crl.App.711/2012 Page 3 of 89 hai yeh confirm nahi hai. E-2 inform for senior officers notice. The source of this information is not revealed.

8. The police control room Form-I further records that the local police reached at the spot at 0233 hours and that by then, the family members had taken Sharvan Devi to the Safdarjung Hospital where the doctors declared her as dead. The family members had brought the dead body back to the house.

9. At 3.50 a.m. of the 7th of August 2010, by Ct. Rajender (PW22), P.S. Hauz Khas received telephonic information from Ct. Kripal Singh posted at AIIMS Hospital to the effect that Sharvan Devi had been admitted by her son in the hospital on account of a head injury and that MLC No.637 had been recorded with regard to this admission. He had requested that the police be sent to the hospital. This information was entered in the roznamcha as DD No.85B (Exh.PW22/A). After it was recorded, DD No.85B was also handed over by the Duty Officer to HC Rajan (PW21) for handing over the same to SI Narender Kumar Ojha which he did.

10. So far as the condition of the deceased at the time that she was examined at the All India Institute of Medical Sciences is concerned, we find that Dr. Madan Kumar (PW15) who was posted as the casualty medical officer has carefully recorded the same in the MLC No.637

(Exh.PW15/A) who declared Smt. Sharvan Devi as Crl.App.711/2012 Page 4 of 89 having been brought dead at the time of examination by her son Rajesh at about 3.33 a.m. The doctor has noted the following injuries on her person : 1. Lacerated wound over Lt side of forehead size 4 cm x cm x bone deep 2. Lacerated wound

over Lt side forehead size 5 cm x cm x bone deep 3. Lacerated wound over Lt temporal region size 6 cm x cm x bone deep 4. Lacerated wound over posterior auricular region size 2 cm x cm 5. Lacerated wound over Lt pinna size 1 cm x cm 6. Dislocation and # of mandible (lower) 7. # of maxilla (upper jaw) 8. # of Lt temporal bone. 11. In the witness box, Dr. Madan Kumar (PW15) was not in a position to state as to by which particular object the injuries would have been caused.

12. After completion of the investigation, a charge sheet was filed against the appellant on 3rd November, 2010. By an order dated 13th December, 2010, the case was committed by the Id. Metropolitan Magistrate for trial to the Court of Sessions. After considering all the material placed by the investigating agency alongwith the charge sheet, by an order dated 13th December, 2010, the learned Additional Crl.App.711/2012 Page 5 of 89 Sessions Judge framed a charge against the appellant for commission of offence under Section 302 of the IPC.

13. The appellant pleaded not guilty and claimed trial. During trial, the prosecution examined 33 witnesses in support of the case. The incriminating circumstances were put to the appellant under Section 313 of the Cr PC which she explained. The appellant also opted to lead defence evidence and examined her father Sh. Ram Kumar as the witness in her support.

14. After considering the entirety of the matter, by the judgment dated 9th April, 2012, the appellant was found guilty for commission of the offence with which she was charged and by the order dated 21st April, 2012, sentenced to undergo rigorous imprisonment for life and to a fine of `10,000/- and in default of payment of fine to one year simple imprisonment for the offence punishable under Section 302 of IPC. This judgment and sentence stand assailed by the present appeal.

15. We have heard Ms. Anu Narula, learned counsel for the appellant and Ms. Aashaa Tiwari, learned APP for the State on this appeal who have carefully taken us through the entire record of the case.

16. We propose to examine the submissions in the following headings:
Crl.App.711/2012 Page 6 of 89 I. II. III. Investigation at the spot (paras 17 to

27) Inspection of the Crime team (paras 28 to

35) Alleged disclosure statement by the appellant dated 8th August, 2010 (Ex.PW1/G) and her arrest (paras 36 to

38) IV. Autopsy (paras 39 to

47) V. Subsequent opinion by the doctors on post-mortem report and seized musal (paras 48 to

52) VI. Forensic examination (paras 53 to

56) VII. Further investigation (para

57) VIII. Additional evidence on behalf of the appellant (paras 58 to

61) IX. First information of the incident to the police (paras 62 to

78) X. Motive for the offence (paras 79 to

111) XI. Prosecution reliance on statement dated 8th of August 2010 (paras 112 to

117) the alleged disclosure XII. Seizure of the iron musal (pestle) (paras 118 to

126) XIII. Whether the seized metallic piece called musal could be the weapon of offence?. (paras 127 to

134) XIV. Whether entry of intruder plausible?. (para

135) CrI.App.711/2012 Page 7 of 89 XV. Occupation in the property No.39, Shahpur Jat, New Delhi (paras 136 to

139) XVI. Entrances to the property (paras 140 to

145) XVII. Possibility of the assailants being a person or persons friendly to or known to deceased (paras 146 to

153) XVIII. Difficulty in identification of the assailants (paras 154 to

155) XIX. Nothing unnatural or suspicious about the appellants clothes getting blood stained or her changing them in the circumstances (paras 156 to

182) XX. Material evidence not examined - biased investigation (paras 183 to

200) An observation (paras 201 to

207) XXI. XXII. Conclusion (para

208) XXIII. Result (paras 209 to

210) We now propose to discuss the above issues in seriatim : I. Investigation at the spot 17. Inspector Rajeev Kumar (PW32) reached the place of the incident located on the left side portion of the 5th floor of the property No.39, Shahpur Jat. It is in evidence that this portion of the building was a flat consisting of three interconnected rooms. There were splashes of blood on the wall and the roof on one side of the first CrI.App.711/2012 Page 8 of 89 room. Two diwans (beds) were having a large quantity of blood, a mattress (gadda), a cover (gudri) and pillow with covers were lying on the floor of the first room with the pool of blood. The last room, which was being used as a pooja room had an iron almirah in an open condition but without the stored articles being disturbed. The middle room had a bloodstained bed sheet on the double bed and another sheet on the dressing table. On the double bed, the police also found a childs underwear with bloodstains as well as a coca cola coloured piece of cloth on the double bed.

18. Inspector Rajeev Kumar (PW32) has stated that he made preliminary enquiries from Smt. Poonam Rani (the present appellant), who was present, who disclosed that two unknown persons with iron rods entered in their house in the intervening night at about 12:30 hrs. They were having a hot conversation with her mother-in-law Smt. Sharvan Devi. When her mother in law threatened to call the family members, one of them hit her on her head with an iron rod. As a result, she fell down on the floor. The other one entered in the pooja room and both of them went away. After recording the above statement of Poonam Rani (Exh.PW32/C), Inspector Rajeev Kumar put his endorsement on the same (Exh.PW32/D) and sent it through Ct. Sunder (who was accompanying him) to the police station for

registration of the case. Crl.App.711/2012 Page 9 of 89 19. At the police station Hauz Khas, based on the above rukka, FIR No.2 Exh.PW20/B was registered at 0515 hours under Section 3 of the IPC. Its registration was logged on the 7th of August 2010 as DD No.62A in the rozanamcha at 0515 hrs.

20. The Duty Officer also handed over a copy of the FIR to Constable Kuldeep Singh (PW-24) who delivered the same to the ilaqa magistrate at his residence at Karkardooma as well as to the senior officers of the police.

21. At the spot, on 7th August, 2010 itself, Inspector Rajeev Kumar (PW32) lifted the exhibits from the spot in the presence of Head Constable Kishore Kumar (PW-30) who had joined investigation and witnessed the seizure memos.

22. From the first room where the deceased Sharvan Devi was stated to have been assaulted, seizures of articles was effected vide memo (Exh.PW1/A). These parcels were sealed with the seal of RK and taken into possession. We extract hereunder the details of the seizures made vide Exh.PW1/A. No.EXHIBITS of PW1/A1 2.

3.

4. Blood stained bedsheet of yellow color seized from 6X4 Diwan. Blood stained Shaneel cover of cococola colour lying on mattron on Diwan. Blood stained blue mattress seized. Blood stained Mattress cover of green, pink and yellow Crl.App.711/2012 Page 10 of 89 colour.

5.

6.

7.

8.

9. One more Blood stained mattress with above mentioned mattress of white colour. Blood stained bedsheet of yellow colour lying on Poonam who was

sleeping on Diwan. Blood stained mattress on Diwan. Blood stained Pillow with 3 covers. 1st cover of yellow colour and Another of white, light yellow colour. Blood stained pillow cover of yellow, white colour lying on mattress, which is lying on floor.

10. Blood stained mattress on floor and glass bangles.

11. Blood stains from wall taken on white paper.

23. Inspector Rajeev Kumar (PW32) then lifted exhibits from the interconnected second room which included the bloodstained bed sheet on the double bed, a child's underwear, a brown colour piece of cloth and a bed sheet on the dressing table which were duly sealed in plastic containers with the seal of RK and seized vide Exh.PW3/A more specifically detailed hereunder : No.EXHIBITS of PW3/A FROM LIVING ROOM2D1 2.

3.

4. Blood stained bedsheet lying on double bed of white, blue colour and with lines on it. Blood stained underwear of child of light yellow and green colour. Piece of cloth of brown colour lying on leg side of bed. Blood stained bedsheet of black, yellow colour with designs on it lying on dressing table. CrI.App.711/2012 Page 11 of 89 24. Thereafter, the police team moved to the lobby which was adjacent to the second room. In the washing machine which was lying near the wash basin on the right side portion of the lobby, the police found dirty clothes including a blue coloured bloodstained chunri; a sky blue coloured ladies suit stained with blood. Two parcels were prepared of the chunri and the ladies suit in transparent plastic containers and sealed with the seal of RK and seized vide Exh.PW1/B. The articles were described specifically in Exh.PW1/B thus : No.EXHIBITS of PW1/B One blue colour chunri having light designs about which Kuldeep told that his mother Smt. Sharvan Devi and wife used to wear it. Upon checking, the chunri was found having blood stains. The same was sealed in a plastic box with the seal of RK.. One yellow colour salwar and a sky blue colour kurta having blue and reddish colour designs. Both the clothes were having bloodstains about which Kuldeep told that both these clothes belonged to his wife Poonam. The clothes

were sealed in a plastic container and sealed with the seal of RK. .

1.

2.

25. Additionally, Inspector Rajeev Kumar (PW32) called upon the appellant to change the pink coloured suit having white, yellow and blue design which she was wearing at that time and hand over the same to him. This suit was also put in a plastic container and sealed with the seal of RK and seized vide Exh.PW1/C. Crl.App.711/2012 Page 12 of 89 26. Inspector Rajeev Kumar (PW32) has submitted that thereafter the third room, which was interconnected with the other rooms, was inspected and an iron musal (pestle/grinder) of a hamamdasta (mortar) which was bloodstained was found lying on a slab on the southern side of the room. This musal was also kept in a separate plastic container and sealed with the seal of RK and seized vide seizure memo Exh.PW1/D.

27. H.C. Lallu Ram (PW-26) was working as the MHC(M) on the 7th of August 2010 received the sealed parcels on 7th and 8th August, 2010 from Insp. Rajiv Kumar and on 17th August, 2010 from S.I. Narender Kumar Ojha along with sample seal which he deposited in the malkhana against entries at Sl.Nos.1917, 1918 and 1932 in register No.19 in this regard (Ex.PW26/A). II. Inspection of the Crime team 28. In the morning of 7th August, 2010 between 3:00 am to 5:00 am itself on being informed of the incident by the police control room, an inspection of the spot was also conducted by SI Jitender Kumar (PW25) who was posted with the Mobile Crime Team of the South District, New Delhi. The crime team which inspected the spot consisted of S.I.Jitender Kumar (PW25), a photographer Ct. Dinesh (PW-29) and the Finger Print proficient. Crl.App.711/2012 Page 13 of 89 29. The report of the Mobile Crime Team dated 7th August, 2005 (Exh.PW25/A) suggested to the investigating officer to make efforts to arrest the culprit and for recovery of the weapon; examine the close relatives of the deceased and lift exhibits from the scene of the crime which should be sent to the Forensic Science Laboratory.

30. The prosecution has examined the photographer Ct. Dinesh (PW29) who stated that he had visited the scene of the crime along with Crime Team, South District at around 3:00 am on 7th August, 2010 and had taken 34 photographs of the room where the blood was lying. This witness proved photographs Exh.PW29/A-1 to Exh.PW29/A-34 and their negatives as Exh.PW29/B-1 to Exh.PW29/B-34.

31. The spot was also inspected by a team from the Forensic Science Laboratory as well as the Finger Print Bureau who had also been called by Inspector Atul Kumar, the then SHO of the police station to do so. Upon receipt of the message at about 9:00 am on the 7th of August 2010, the Director of the Forensic Science Laboratory Rohini, Delhi deputed Dr. Rajender Kumar, Assistant Director, Biology (PW9) and Sh. Parshuram Singh (PW16), Sr. Scientific Officer (Physics) to visit the spot.

32. In his report dated 30th August, 2010 (Exh.PW9/A), Dr. Rajender Kumar (PW9) reported detection of blood on the walls (front Crl.App.711/2012 Page 14 of 89 and right side), on the bed (front and left side) and bedding on the floor of the drawing room. Bloodstained clothes were found on the bed of the central room while in the last room, one metallic musal was found on the slab.

33. Sh. Parshuram, the Sr. Scientific Officer (PW16) submitted a report dated 18th October, 2010 (Exh.PW16/10) similarly reporting blood like material on the floor as well as the bed of the room and stains appearing to be bloodstains on the walls of the room. Sh. Parshuram Singh (PW16) also reported that there was no breakage or damage of the doors of the room which would have been indicative of forcible entry and no sign of ransacking of the almirah kept in the inner most room were observed.

34. The exhibits in sealed parcels were handed over by H.C. Lallu Ram (PW-26) to Ct. Mukesh Kumar (PW-23) and taken under cover of a letter dated 27th October, 2010 by him vide RC(PW26/B) and deposited with the Forensic Science Laboratory, Rohini, Delhi- 110085 against acknowledgement (Ex.PW26/C).

35. Inspector Rajeev Kumar (PW32) also prepared an unscaled site plan (Exh.PW32/A) of the place of occurrence based on his inspection. Enquiries were made from occupants of the property No.39 Shahpur Jat, New Delhi including other relatives, tenants Wasim, Gokul etc. CrI.App.711/2012 Page 15 of 89 III. Alleged disclosure statement by the appellant dated 8th August, 2010 (Ex.PW1/G) and her arrest 36. The investigation was continued by Insp. Rajeev Kumar (PW-

32) on 8th August, 2010 when he was accompanied by H.C. Kishore Kumar (PW-30) and lady Ct. Mukesh. It is claimed by Inspector Rajeev Kumar that during interrogation on 8th August, 2010, Smt. Poonam Rani, the appellant herein broke down and confessed to having committed the crime on account of the dominant nature of her mother-in-law Smt. Sharvan Devi over her laziness towards household activities and her education and her hot talks on the same issue. It was alleged that upon seeing an advertisement of the Sharda University on television, Smt. Sharda Devi suggested her to go through the B.Ed. examination which she ignored whereupon the mother-in-law taunted the appellant with the words isse achha hota mein apne ladke ka byah lagihui ladki te kar deti. As a result, the appellant lost her senses, went inside the third room, picked up an iron musal and struck the head of the deceased Sharvan Devi. After the first blow, Smt. Sharvan Devi threatened Poonam Rani that she would call the other family members whereupon, the appellant became scared that if her mother-in-law tells the family members, they will render her destitute, and so she hammered the musal 10-12 times on the forehead area of her mother-in-law. After that she is claimed to have sat near the body of her mother-in-law for one more hour and CrI.App.711/2012 Page 16 of 89 then created the story of strange persons entering the house and called her father - Sh. Ram Kumar who made the PCR call from his mobile.

37. In view of this statement, Inspector Rajeev Kumar (PW32) arrested the appellant vide memo Exh.PW3/E at 3 p.m. in the presence of her husband Kuldeep Pawar Singh (PW-1), HC Kishore Kumar (PW-30), L/Ct. Mukesh (PW-19) and SI Narender Kumar Ojha (PW- 31). Her personal search was conducted through L/Ct. Mukesh vide memo Exh.PW1/F.

38. The Investigating Officer Rajeev Kumar (PW32) claims that thereafter the appellant gave a detailed disclosure statement (Ex.PW1/G) further stating that the glass bangle, plastic bangles, kalwa and kara, allegedly worn by the appellant at the time of the offence had been kept in a plastic bag and hung outside the room in a balcony. The Investigating Officer has alleged that the appellant further disclosed that she had washed her bloodstained hands in a plastic tub which was lying in a bathroom. Pursuant to the disclosure statement, the bangles, kalwa and kara of Poonam Rani were allegedly recovered and kept in the plastic container, duly sealed with the seal of RK and taken into possession vide Exh.PW1/H. Thereafter, on the pointing out of the appellant, according to Inspector Rajeev Kumar (PW32), hand wash water seen lying in the tub in the bathroom, was collected in a plastic container, sealed with the seal of RK and seized vide memo Exh.PW1/J.

The seizures and the memos were witnessed by H.C. Kishore Kumar. Crl.App.711/2012 Page 17 of 89 IV. Autopsy 39. It is in evidence that as directed by Inspector Atul Kumar, S.I.Narender Kumar Ojha (PW31) took the steps to get the autopsy performed on the body of the deceased. He prepared the death report dated 7th August, 2010 (Exh.PW31/B) wherein he has mentioned suspected homicide as the apparent cause of death. SI Narender Kumar (PW31) had made the request on 7th August, 2010 itself to the autopsy surgeon, AIIMS for conducting a post mortem on the dead body of Smt. Sharvan (ExhPW31/C).

40. So far as the short summary of the case was concerned, the witness has referred to the receipt of the call (DD58) therein and to the fact that when he had reached the spot, he had found the deceased with injuries on her head in the maruti van. There is reference to the registration of FIR No.2 under Section 302 of the IPC.

41. The post mortem was conducted on 7th August, 2010 by a board of doctors in the Department of Forensic Medicine, AIIMS which consisted of Dr. Adarsh Kumar, Associate Professor; Dr. Ashish Jain, Sr. Resident and Dr. Shashank Pooniya, Jr. Resident on the dead body of Smt. Sharwan Devi. Its report No.8 was recorded in the handwriting of Dr. Ashish Jain (PW-7) which was proved

during trial by Dr. Adarsh Kumar (PW6) as Exh.PW6/A and was handed over to SI Narender Kumar Ojha (PW31). In the post-mortem report, the CrI.App.711/2012 Page 18 of 89 doctors opined the time since death on the report as having been About half a day. The board of doctors had conducted a spot visit as well.

42. The prosecution had also examined Dr. Shashank, Jr. Resident (PW8) who was member of the board which had conducted the post mortem.

43. As per the post-mortem report (Exh.PW6/A), the following ante-mortem injuries were found on the dead body : 1. Lacerated wound of size 4 cmx0.5 cmx bone deep was present on left side of forehead 3 cm above to the left eyebrow. It was obliquely placed with upper end of wound closer to the midline, margins of the wound were irregular and associated haematoma were present over base and margins of the wound.

2. Lacerated wound of size 5 cm x 0.5 cm x bone deep was present on left side of forehead 4 cm above to the left eyebrow. It was obliquely placed with upper end of wound closer to the midline, margins of the wound were irregular and associated haematoma were present over base and margins of the wound.

3. Lacerated wound stellated shape was present over left temporal region 5 cm above the tip of left mastoid. Horizontal limb of the wound was measuring 10 x 0.5 cm x bone deep and inferior (lower vertical) limb measuring 0.5 x 0.2 cm x bone deep margins of the wound were irregular and associated haematoma were present over base and margins of the wound. CrI.App.711/2012 Page 19 of 89 4. Lacerated wound of size 4 x 0.5 cm x bone deep was present over left temporal region. It was placed obliquely and situated 8 cm above the tip of left mastoid margins of the wound were irregular and associated with haematoma.

5. Lacerated wound of size 3 x 0.5 cm x bone deep, vertically placed was present over left temporal region. Lower end of the wound was placed 6.5 cm above the tip of left mastoid, margins of the wound were irregular and associated haematoma were present over base and margins of the wound.

6. Lacerated wound of size 2 x 0.2 cm x cartilage deep was present horizontally over left ear pinna associated with bluish colour contusion involving whole of the left ear pinna and post auricular region. Blood clots were adherent over base and margins of the wound.

7. Lacerated wound of size 1 x 0.2 cm x bone deep was present over left post auricular region. It was placed horizontally and blood clots were adherent over base and margins of the wound.

8. Lacerated wound of size 1 x 0.2 cm x bone deep was present over left post auricular region. It was placed horizontally and situated 1 cm below injury no.7. Blood clots were adherent over base and margins of the wound.

9. Lacerated wound of size 2 x 0.2 cm x skin deep was present 1.5 cm lateral to left eye. It was placed obliquely with upper end of the wound closer to midline. Margins were irregular and blood clots were adherent over base and margins of the wound.

10. Lacerated wound of size 1.5 x 0.2 cm x bone deep was present over right occipital region. Margins were irregular and blood clots were adherent over base and margins of the wound. 11(12). Lacerated wound of size 0.5 x 0.2 cm x bone deep was present over right temporal region. Margins were irregular and blood clots were adherent over base and margins of the wound. 12(13). Multiple contusions, reddish blue in colour were present diffusely in an area of 33 x 22 cm over the back. 13(14) Contusion reddish blue in colour of size 2 x 2 cm was present over right shoulder region. 14(15) A linear scratch abrasion of size 2 cm was present over back of the right forearm situated 6 cm above right wrist joint, red in colour. 44. Dr. Adarsh Kumar (PW6) testified that the board of doctors also conducted an internal examination on the dead body and in Ex.PW6/A, it was further noted as follows : Presence of diffused haematoma involving bilateral fronto-temporo-occipita region of scalp. Depressed communitied fracture of left frontal and temporal bones of skull. Multiple fissured fractures were radiating from area of communitied, extending over left side of middle cranial fossa, anterior cranial fossa and posterior cranial fossa extending upto right side of anterior cranial fossa. Fractures were associated with haematoma. Diffuse

subdural and subarachnoid haemorrhage involving both cerebral hemispheres and base of brain. Communitied fracture of left maxilla and Crl.App.711/2012 Page 21 of 89 fracture dislocation of left mandibular joint with associated haematoma. 45. The doctors opined on the cause of death on the post mortem report Exh.PW6/A, as cranio-cerebral ante-mortem injury caused by blunt force impact which was sufficient to cause death in the ordinary course of nature.

46. The doctors who conducted the post-mortem of the deceased, preserved her clothes, a sample of the hair of the deceased as well as the blood sample of the deceased in a gauze in packet sealed with the seal of Department of Forensic Medicine, AIIMS and two sample seals of the Department of Forensic Medicine, AIIMS. These preserved samples as well as the sample seals were handed over to the police.

47. So far as the identification of the dead body is concerned, the same was effected by her son Rajesh vide Exh.PW31/A and Sh. Choudhary Bhim Singh, husband of the deceased vide Exh.PW5/A. The dead body was handed over to her husband Sh. Chaudhary Bhim Singh vide Exh.PW5/B. V. Subsequent opinion by the doctors on post-mortem report and seized musal 48. It appears that on 25th February, 2011, Inspector Rajeev Kumar (PW32) moved an application before the board of doctors seeking a subsequent opinion on the post-mortem report (Ex.PW6/A) and the Crl.App.711/2012 Page 22 of 89 article recovered by the police as to whether the recovered musal (pestle/grinding stone) could be the weapon of offence. The investigating officer had put the following queries to the doctors for rendering a subsequent opinion on the post mortem report No.8 (Ex.PW6/A) conducted on deceased Shravan Devi: 1. the place of occurrence?. Was there any sign of forcible entry seen at 2. It is possible that the first blow given to the deceased while she was sleeping on the Southern side of the bed in the living room?.

3. Is it possible that the pattern of blood found on the Western wall of the living room are caused by heavy weapon like moosal of hamamdasta?.

4. As per the antemortem injuries on the PM report it may be opined whether the injuries are caused by blows of the moosal of hamamdasta?. 49. The board of

doctors examined the seized musal and perused the copy of the post mortem report as well as the inquest papers and noted the absence of photographs of the scene of crime pointing as follows : Answer to query no.1 - the opinion may be 1. taken from concerned forensic science team who visited scene of crime (not a medical opinion) in consultation with the concerned IO.

2. Answer to query No.4-the injuries mentioned in the PM Report from no.1 to 12 could be produced by the multiple blows with the examined weapon. Injury No.Crl.App.711/2012 Page 23 of 89 13 is likely to be produced on sudden fall over abroad surface. Injury No.13 may be produced by blunt force impact by object or surface and injury no.14 is suggestive of sign of struggle.

3. Answer to query No.2 - after perusal of the page n. 14 of the submitted document containing rough sketch of scene of crime we are of the opinion that the possibility of first blow given to deceased while she was sleeping on the bed in the living room on southern side exists.

4. Answer to query No.3 - although the IO has not submitted the photographs yet after perusal of the sketch of crime scene and as well as based on our visit to crime scene the possibility of blood pattern found on the western wall produced by repeated blows by blunt heavy weapon like moosal cannot be ruled out. This report was also proved on record as Exh.PW6/B by Dr. Adarsh Jain (PW6) as well as Dr. Shashank (PW-8).

50. It is noteworthy that the board of doctors had also drawn up a rough sketch of the musal Exh.PW6/C noting that the musal had a length of 33 cms; was 4.5 cms wide at the top and weighed 2.7 kgms.

51. It may be noted that the recovered musal was produced in a plastic jar duly sealed in the court and shown to the witness. Dr. Adarsh Jain (PW6) had identified the same as being the very musal Exh.P22 on which the opinion Exh.PW6/B noted above had been taken. Crl.App.711/2012 Page 24 of 89 52. The recovery of this musal was put to the appellant as question no.63 with regard to which the appellant said that she had no knowledge about it. VI. Forensic examination 53. The Forensic Science Laboratory conducted an examination on the seized articles

which were also subjected to an analysis in the Biology Division of the Forensic Science Laboratory. By the report dated 21st February, 2011 (Exh.PW32/G), the Forensic Science Laboratory reported detection of blood on some of the exhibits. For expediency and to enable understanding of the discussion in this judgment, we extract the description of the articles contained in these 30 parcels as found in Exh.PW32/G : PARCEL 1 EXHIBIT 1 PARCEL 2 EXHIBIT 2 PARCEL 2A EXHIBIT 2A : : : : : One sealed plastic container sealed with the seal of RK containing exhibit 1. One bedsheet having brown stains described as blood stained bedsheet. One sealed plastic container sealed with the seal of RK containing exhibit 2. One cloth having brown stains described as blood stained piece of shaneel cover. One sealed plastic container sealed with the seal of RK containing exhibit 2A. One cloth described as Earth control sample of the piece of shaneel colour cover. PARCEL : One sealed plastic container sealed with the seal of RK

Crl.App.711/2012 Page 25 of 89 3 EXHIBIT 3 PARCEL 3A EXHIBIT 3A PARCEL 4 EXHIBIT 4 PARCEL 4A EXHIBIT 4A PARCEL 5 EXHIBIT 5 PARCEL 5A EXHIBIT 5A PARCEL 6 EXHIBIT 6 PARCEL

: : : : : : : : : : containing exhibit 3. Foul smelling pieces of mattress described as blood stained pieces of mattresses. One sealed plastic container sealed with the seal of RK containing exhibit 3A. Pieces of mattress described as Earth control sample of blood stained mattress. One sealed plastic container sealed with the seal of RK containing exhibit 4. One gadda described as Blood stained pieces of mattresses. One sealed plastic container sealed with the seal of RK containing exhibit 4A. Pieces of gadda described as Earth control sample of blood stained mattress. One sealed plastic container sealed with the seal of RK containing exhibit 5. One gudra having brown stains described as Blood stained gudra. One sealed plastic container sealed with the seal of RK containing exhibit 5A. Piece of gudra (control) described as Earth control sample of blood stained gudra. One sealed plastic container sealed with seal of RK containing exhibit 6. One bedsheet having darker stains described as Blood stained bedsheet. One sealed plastic container sealed with the seal of RK containing exhibit 7. Crl.App.711/2012 Page 26 of 89 EXHIBIT 7 PARCEL 7A EXHIBIT 7A PARCEL 8 EXHIBIT 8 PARCEL 8A EXHIBIT 8A PARCEL 9 EXHIBIT 9 PARCEL 10 EXHIBIT 10 PARCEL 11 EXHIBIT 11a EXHIBIT 11b PARCEL 1

One cloth piece having brown stains described as Piece of blood stained mattress. One sealed plastic container sealed with the seal of RK containing exhibit 7A. One cloth piece described as Earth control sample of blood stained mattress. One sealed plastic container sealed with the seal of RK containing exhibit 8. One pillow cover having brown stains described as Blood stained pillow cover. One sealed cloth parcel sealed with the seal of RK containing exhibit 8A. One pillow with cover having brown stains described as Blood stained pillow with cover. One sealed cloth parcel sealed with the seal of RK containing exhibit 9. One pillow with cover having brown stains described as Pillow with cover. One sealed plastic container sealed with the seal of RK containing exhibit 10. Pieces of bangles described as Picas of broken bangles. One sealed plastic container sealed with the seal of RK containing exhibits 11a and 11b. Scraping of wall described as scrubbed blood stains. Scraping of wall described as Earth control. : : : : : : : : : : One sealed plastic container sealed with the seal of RK containing exhibit 12. Crl.App.711/2012 Page 27 of 89 EXHIBIT 12 PARCEL 13 EXHIBIT 13 PARCEL 14 EXHIBIT 14 PARCEL 15 EXHIBIT 15 PARCEL 16 EXHIBIT 16 PARCEL 17 EXHIBIT 17 PARCEL 18 EXHIBIT 18a EXHIBIT 18b : One bedsheet having brown stains described as Blood stained bedsheet. : : : : : : : : : : One sealed plastic container sealed with the seal of RK containing exhibit 13. One underwear having very small brown stains at few places described as Blood stained underwear. One sealed plastic container sealed with the seal of RK containing exhibit 14. One cloth piece. One sealed plastic container sealed with the seal of RK containing exhibit 15. One bedsheet having brown stains. One sealed plastic container sealed with the seal of RK containing exhibit 16. One metallic piece described as Moosal. Hair could not be detected on exhibit 16 i.e metallic piece. One sealed plastic container sealed with the seal of RK containing exhibit 17. One chunni having brown stains. One sealed plastic container sealed with the seal of RK containing exhibits 18a and 18b described as Blood stained pillow cover. One ladys shirt having brown satins. One salwar having brown stains. Crl.App.711/2012 Page 28 of 89 PARCEL 19 EXHIBIT 19a EXHIBIT 19b PARCEL 20 EXHIBIT 20a EXHIBIT 20b EXHIBIT 20c EXHIBIT 20d PARCEL 21 EXHIBIT 21 PARCEL 22 EXHIBIT 22a EXHIBIT 22b : : : : : : : : : : One sealed plastic container sealed with the seal of RK containing exhibits 19a and 19b. One ladys shirt. One salwar having brown stains.

One sealed plastic container sealed with the seal of RK containing exhibit 20a, 20b, 20c and 20d. One metallic bangle. One plastic bangle. One glass bangle. One kalava. One sealed plastic container sealed with the seal of RK containing exhibits 21. Dirty liquid described as hand washed water. One sealed plastic container sealed with the seal of MSL DEPARTMENT OF FORENSIC MEDICINE AIIMS NEW DELHI containing exhibits 22a and 22b. One lady's shirt having brown stains. One salwar having brown stains. PARCEL : One sealed cloth parcel sealed with the seal of MSL DEPARTMENT OF FORENSIC MEDICINE AIIMS NEW DELHI containing exhibit 23 kept in a plastic container. Bunch of hairs described as Hairs. Since no hair could be detected on exhibit 16 i.e Metallic piece, hence no microscopical examination for hair comparison. One sealed envelope sealed with the seal of MSL DEPARTMENT OF FORENSIC MEDICINE AIIMS NEW DELHI containing exhibit 24. Brown gauze cloth piece described as Blood in Gauze. 23 EXHIBIT 23 PARCEL 24 EXHIBIT 2

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54. In Exh.PW32/G, the Laboratory reported detection of blood on Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, 8, 8A, 9, 10, 11a, 12, 13, 15, 16, 17, 18a, 18b, 19b, 22a, 22b, 23 and 24.

55. It is noteworthy that during the autopsy at AIIMS, a blood sample of the deceased was preserved in a brown gauze cloth piece which was also sealed with the seal of MS and handed over to the police which was subjected to a serological examination and the report was submitted by the Biology Division (Exh.PW32/H).

56. So far as the blood grouping of the deceased is concerned, as per Ex.PW32/H, the same was identified to be of A group on the bloodstained gauze cloth piece. The same blood group was identified on the several articles including the clothing which the deceased (Exhs.22(a) and 22(b)), the clothes of the appellant (Exhs.18(a) and Crl.App.711/2012 Page 30 of 89 18(b)) as well as Ex.Nos.1, 2, 2A, 3, 3A, 4, 4A, 5, 5A, 6, 7, 7A, 8, 8A, 9, 10, 11a, 11b, 12, 13, 15, 16, 17, 18a, 18b, 19b, 22a, 22b, 23 and 24. VII. Further investigation 57. The Investigating Officer had also collected the PCR form (Exh.PW18/A); on 8th August, 2010 received the seal of RK from HC Kishore vide Exh.PW32/B;

collected the crime team report (Exh.PW25/A); the finger print bureau report and the FSL report (Exh.PW9/A); the report of the Physics Division (Ex.PW16/A). VIII. Additional evidence on behalf of the appellant 58. It may be noted that while hearing in the appeal was underway, we were informed by Ms. Anu Narula, learned counsel for the appellant that the appellants husband Sh. Kuldeep Panwar Singh had filed a petition being HMA No.182/2011 under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking dissolution of their marriage by a decree of divorce on account of cruelty. It was further submitted that the primary ground on which the divorce was being sought, was the appellants conviction by the judgment which has been challenged in the present appeal.

59. The appellant filed Crl.M.A.No.18396/2016 praying for taking additional evidence by way of certified copies of certain proceedings in HMA No.182/2011 on record. Pursuant to our orders, the record Crl.App.711/2012 Page 31 of 89 of HMA No.182/2011 was called for and placed before us on 29th November, 2016. We had heard learned counsel for the parties on this application for taking additional evidence on record on behalf of the appellant. It was pointed out that the appellants husband Kuldeep Panwar Singh, who had testified as PW1 in the criminal trial, had filed the petition under Section 13(1)(ia) of the Hindu Marriage Act on or about 10th February, 2011 (originally registered as HMA No.2 was presently pending as HMA182011); in which proceedings Kuldeep Panwar Singh had tendered his affidavit by way of evidence dated 26th September, 2012 and had been subjected to a detailed cross examination on several dates including 12th March, 2013; 8th November, 2013; 15th November, 2014; 20th July 2016; 4th August, 2016; 11th August, 2016 and 16th August, 2016. The certified copies of the petition as well as the evidence of Kuldeep Panwar Singh (PW1) were placed before us. It was contended that in his evidence in the divorce petition, PW1 had made important disclosures which would impact the adjudication in the criminal case.

60. On a consideration of the prayer made in the application, noting our jurisdiction as an appellate court to take additional evidence by virtue of Section 391 of the Cr PC, by our order dated 29th November, 2016, the prayer of the appellant to lead additional evidence was allowed. We had consequently called for the record of the

divorce Crl.App.711/2012 Page 32 of 89 proceedings and summons were also issued to Kuldeep Panwar Singh (PW1) to appear for his further examination.

61. Certified copies of the divorce petition under Section 13(1)(ia) of the Hindu Marriage Act and other pleadings were permitted to be filed on court record. The further statement of Sh. Kuldeep Panwar Singh (PW1) was recorded on the 14th of December 2016, who compared the above certified copies with the record of the original record of HMA No.182/2011 and proved the divorce petition as Exh.CW1/B; his evidence by affidavit as Exh.CW1/A; his statement dated 26th September, 2012 as Exh.CW1/C; his statement and cross examination on 9th October, 2012; 15th January, 2013; 12th March, 2013; 8th November, 2013; 15th November, 2014; 21st September, 2015; 20th July, 2016; 4th August, 2016; 11th August, 2016; 16th August, 2016 and 1st September, 2016 as Exh.CW1/D. IX. First information of the incident to the police 62. In the rukka Exh.PW32/C, Poonam Rani has stated that she tried to call out to her relatives and when they did not respond, she made repeated phone calls to her sister-in-law (jethani).

63. The appellant has disclosed that she had tried to rouse the other relatives for help and had repeatedly unsuccessfully telephoned her jethani who lived in the same premises, trying to awaken her to help. Crl.App.711/2012 Page 33 of 89 As these efforts failed, she had telephoned her father Sh. Ram Kumar who was residing at 58, Adhchini, New Delhi for assistance. Though, the police has verified this fact, however, it opted not to summon Shri Ram Kumar as a prosecution witness. In this background, the appellant examined Sh. Ram Kumar as the sole witness in her defence.

64. It is in the evidence of Kuldeep Panwar Singh (PW1) that the Vodafone mobile phone connection No.9711822167, though registered in his name, was used by his wife - the appellant herein.

65. The prosecution examined Sh. Israr Babu (PW-17), the alternate nodal officer of M/s Vodafone Essar Services Ltd. who brought the original prepaid mobile application form for the phone No.9711822167 which stood allotted to Kuldeep Panwar Singh (PW- 1), son of Bhim Singh, resident of 39A, Shahpur Jat, Delhi and proved its photocopy on judicial record as Exh.PW17/A. PW17 also proved

the call detail records of this phone number for the period from 6th August to 7th August, 2010 as Exh.PW17/B and the requisite certificate under Section 65B of the Indian Evidence Act as Exh.PW17/C.

66. The questions with regard to this evidence were put to the appellant under Section 313 of the Cr PC to which she gave the following responses :
Crl.App.711/2012 Page 34 of 89 Q.3. It is in evidence against you and has come in the testimony of PW1 Kuldeep that you used to have the mobile phone of your husband PW-1 Kuldeep and that the mobile was of Vodafone Service Provider and you were using this phone. What have you to say?. xxx xxxx Ans. It is correct.
xxx Q.9 It is in evidence against you and has come in the testimony of PW-2 Smt. Santosh that at about 1.30 a.m. on the same night you knocked the door of the room of Smt. Santosh and uttered Santosh, Maa to mar diya, jo ab mujhe marengi What have you to say?. Ans. First of all, I tried to contact my sister in law through mobile phone thrice for disclosing the above said fact but since no response had come, I myself anyhow, went to the room of my elder sister in law in the midnight and uttered the words like this Maa ko mar diya, jo ab mujhe marengi. At that time I was very much perturbed. (Emphasis by us)
67. The statement of the appellant regarding unsuccessfully phoning her jethani also stands corroborated by the testimony of Inspector Rajeev Kumar (PW32) who has stated that as per the police record, in the night of 7th August, 2010, the accused had made three calls to her sister-in-law (jethani).

68. We find that it is also in the un-rebutted testimony of Sh. Ram Kumar (DW1) that he was using phone No.9868910445 at the relevant time and in the early hours of the night intervening 6th/7th Crl.App.711/2012 Page 35 of 89 August, 2010 at 2/2.30 a.m., he received a call from his daughter-the appellant before us, that two persons had fled after causing injury to her mother-in-law. His daughter requested him to call the police as well as the ambulance. It was Sh. Ram Kumar who called the police control room at No.100 using his phone. We have extracted above CRDD No.224 wherein this call was logged by Ct. Sonika (PW18) which confirms this testimony.

69. The prosecution has led evidence of Sh. Sunil Kumar (PW27) who was working as a nodal officer cum Assistant General Manager, MTNL who produced the customer application from (Exh.PW27/A) and documents relating to the phone No.9868910445 confirming that this phone No.stood allotted to Sh. Ram Kumar. The call detail records for the period 6th August, 2010 and 7th August, 2010 in respect of the phone were collected by Insp. Rajeev Kumar (PW-32) and proved on record (Exh.PW27/B). As per these CDR, Shri Ram Kumar had called the PCR twice from this phone, corroborating his oral testimony as well.

70. This evidence was put to the appellant as question No.74, 75 and 76 while recording her statement under Section 313 of the Cr PC when she had stated thus : Q.74. It is in evidence against you and has come in the testimony of PW32 that your mobile phone Crl.App.711/2012 Page 36 of 89 It is correct that the cell phone used by me is connection was issued on the ID of your husband Kuldeep. What have you to say?. Ans. on the ID of my husband. Q.75. It is in evidence against you that as per the CDRs of your father Ram Kumar Exh.Pw27/B collected during investigation, he called up PCR twice from his mobile phone No.9868910445. What have you to say?. It is correct. Ans. It is in evidence against you that as per your Q.76. call details Exh.PW17/B, there are phone calls on the mobile phone of your father i.e. 9868910445. What have you to say?. Ans. It is correct. (Emphasis supplied) 71. The call detail records (Ex.PW17/B) corroborates the statement of the appellant as given to the police as well as her explanation under Section 313 of the Cr PC. Two independent witnesses from the phone companies have verified this documentary evidence. It stands established from the evidence of the investigating officer as PW32 and the evidence of Shri Ram Kumar (DW1) as well.

72. It has to be borne in mind that the deceased was sleeping with the appellant in that flat to assist her in caring for a minor son of 7 years and a baby girl of 1 years while her husband Kuldeep Panwar Singh (PW-1) was away. Given the violence, the appellant had witnessed, the injuries to her mother-in-law, and not knowing the whereabouts of the assailants, the appellant could not be expected to Crl.App.711/2012 Page 37 of 89 simply abandon the two children and the injured mother-in-law in search of help. Her actions in first trying to raise help from her relatives using the phone was a reasonable and responsible act.

73. It is further in the evidence of Shri Ram Kumar (DW-1) that as he was getting ready to go to Shahpur Jat, he received a call from the police seeking information with regard to the Shahpur Jat address. The defence witness did not know the address details. Consequently after disconnecting the police call, DW1 immediately called his daughter seeking her correct address. His daughter (the appellant) gave the telephone to her father-in-law - Sh. Bhim Singh (PW5) from whom DW1 obtained the address and informed Sh. Bhim Singh that he would send the police and ambulance to their house.

74. Sh. Ram Kumar, (DW1) thereafter came out of his house and walked till he found a PCR stationed on the road. He requested the PCR van to take him to Village Shahpur Jat where they saw people gathered. Two police personnel were also there and his daughters mother-in-law Smt. Sharvan Devi was lying in one side of a private van.

75. S.I. Ram Kumar disclosed that amongst the other ladies present there, his daughter (the present appellant) was standing with her daughter in her lap. His daughters wearing clothes were bloodstained and consequently he asked the appellant to change her blood stained clothes after giving her daughter to somebody else, also telling her that he would accompany Smt. Sharvan Devi to the hospital.

76. Amongst the persons who had gone to the hospital was one Rajesh Kumar. Shri Ram Kumar (DW-1) testified that he had brought the stretcher and helped Rajesh Kumar and the other persons to put Sharvan Devi on the stretcher. In this process, the clothes of Rajesh Kumar as well as his own (Ram Kumars) had also got bloodstained. They had returned to Shahpur Jat from the hospital only at about a.m.

77. The witness has testified about the receipt of the dead body, its cremation and his return to his own residence later that night.

78. DW1 then testifies about the arrest of the appellant thereafter and about being told by a person referred to as Masterji that had he not informed the police control room, the matter would have been sorted out and that they would have told that

the deceased had died due to a fall. The witness has told that the Additional SHO told him that were it not for the fact that DW-1 had called the police control room, otherwise he, Ram Kumar, would have also been implicated in the case. Crl.App.711/2012 Page 39 of 89 X. Motive for the offence 79. It is well settled that in a case of circumstantial evidence, as the present case, motive is an important circumstance to be established by the prosecution, though it may by itself not be determinative of guilt of an accused person. So what is the prosecution case of motive for the crime in the present case?.

80. The prosecution has examined three sons of Shri Bhim Singh and Smt. Sharwan Devi - Sh. Kuldeep Panwar Singh (PW-1) ; Sh. Rajesh Kumar (PW-11) and Sh. Mahavir (PW-13) as witnesses. The prosecution also examined two of their daughters-in-law, namely, Smt. Santosh (PW-2) and Smt. Bala (PW-14) . The appellants father- in-law Sh. Bhim Singh (PW5) was also examined as a witness.

81. Our attention has been drawn to the testimony of these relatives of Kuldeep Panwar Singh (PW-1) who have tried to suggest acrimony in the relations between the appellant and her deceased mother-in-law. In this regard, Smt. Santosh, wife of Sh. Mahabir Singh appearing as PW2 claims that on 6th August, 2010, at about 10:

pm, they heard some hot conversation between her mother-in-law and Poonam Rani at which they had gone to them, got them to understand and thereafter, returned to their room. In her cross examination, this witness further volunteered that Poonam Rani used to quarrel with her mother-in-law off and on. She also however, confirms that there was no complaint of any quarrel against Poonam Rani in any police Crl.App.711/2012 Page 40 of 89 station. Her husband Sh. Mahabir Singh appearing as PW13 refers to some altercation between his mother and the appellant on domestic issues, without anything more.

82. Rajesh Kumar (PW11) has stated that the relations between his mother Smt. Sharvan Devi and the appellant were not cordial; that there used to be altercations between them on issues like taking proper care of children and that the appellant should concentrate on her studies so that she may not have any problem in future as and when need arises. PW11 also suggests that there used to be altercations

on the issue of keeping the house and kitchen clean and tidy etc.

83. On the other hand, Shri Som Prakash (PW3) (related by marriage to the family of the deceased as his sister was married to another son of the deceased, Sh. Dharamvir Singh) has stated that he had not heard any complaint regarding the mis-behaviour of the appellant with the deceased Smt. Shravan Devi. The evidence of PW-3 on this aspect would be more reliable.

84. It is in the evidence of these witnesses that the five sons of Sh. Bhim Singh and Sharvan Devi, deceased were all residing as nuclear households in separate portions of the House No.39, Shahpur Jat. Bhim Singh and his wife Sharvan Devi stood relegated to the barsati of the building which, as per the evidence of Smt. Santosh (PW2), consisted of only a single room on the 6th floor without a kitchen. CrI.App.711/2012 Page 41 of 89 85. It has come in the testimony of all the sons and daughters-in-law (PWs-2, 3, 11 &

13) that though the parents Sh. Bhim Singh and Late Smt. Sharvan Devi were so residing on the barsati floor, however, they were having meals only with the family of Kuldeep Panwar Singh (PW-1) and Poonam Rani, the appellant herein. It is also in their evidence that whenever Kuldeep Panwar Singh went out of station, Smt. Sharvan Devi would sleep in the flat of Kuldeep Panwar Singh.

86. There are thus two sets of witnesses of the prosecution. One set affirms that the behaviour of the appellant with her mother-in-law was very good ; that their relations were cordial and also that the nature of her mother-in-law Smt. Sharvan Devi, the deceased was very good. These include the appellants husband Kuldeep Panwar Singh (PW1), and a relative through marriage, Shri Som Prakash (PW3).

87. The other set of witnesses who have tried to suggest that there was discord in the appellants relations with her mother-in-law includes Smt. Santosh (PW2) i.e. the wife of Sh. Mahabir Singh (the appellants jeth) (PW13); Mahabir (PW13) refers to off and on quarrels and to some altercation over domestic issues that night. Rajesh Kumar (PW11) another son of Bhim Singh stated that relations between his mother and the appellant were not cordial and that there were altercations on

trivial issues. These prosecution witnesses have attempted to establish that, for the reason that the appellants mother- Crl.App.711/2012 Page 42 of 89 in-law forced her to study while she did not want to, there was acrimony in their relations. The question then arises as to why, if the relations were good, would the two sons and daughter-in-laws of the appellant testify against her?.

88. Ms. Anu Narula, learned amicus curiae for the appellant has contended that Poonam Rani (the appellant before us) and her mother- in-law the deceased Shravan Devi shared a very healthy relationship. It is submitted that in fact, Smt. Sharvan Devi had provided the encouragement for the appellant to further educate herself after her marriage and strongly supported her in this effort. Learned counsel has submitted that love and affection was bestowed on the appellant by her deceased mother-in-law and vice versa as well as their healthy relationship is manifested from the fact that the parents-in-law of the appellant, though residing separately in the barsati, however, shared their meals only with the appellant and her family and not with any of their other sons and daughters-in-law who were living in the same building.

89. The submission is that as a result, the other sons and daughters- in-law of Sh. Bhim Singh (PW5) and deceased Smt. Sharvan Devi were envious of the healthy relationship which the appellant had with her in-laws as well as of her academic success. It is submitted that, Crl.App.711/2012 Page 43 of 89 just as in any other family, because of this envy, these relatives have tried to create a faade of a strained relationship of the appellant with the deceased. We find suggestions to this effect have been given to the prosecution witnesses.

90. It is also in the evidence of the investigating officer Inspector Rajeev Kumar (PW32) that at the time of her marriage, the appellant was not a graduate. He denied the suggestion that the information that she had passed the written examination and physical test in the employment of Delhi Police and was not allowed to do the job by her in-laws at the time of solemnization of marriage was disclosed to him. Inspector Rajeev Kumar denied the suggestion that the fact that the appellants mother-in-law had inspired her to take further studies was disclosed to him. Inspector Rajeev Kumar (PW32) denied the suggestion that the mother-in-

law (Sharvan Devi) of the accused was not of a dominating nature.

91. Additional evidence was led on behalf of the appellant by way of the statement of her husband examined before this court on 14th December, 2016. It was brought in evidence that in the proceedings HMA No.182/2011, Sh. Kuldeep Panwar Singh had stated that he was only a matriculate and that at the time of their marriage, the appellant had taken admission in the first year of college. After their marriage, the appellant continued her studies. When they were blessed with the first child (a son, Shubham, on 26th April, 2003), at that time the Crl.App.711/2012 Page 44 of 89 appellant was a student of the second year of her course. Even after the birth of their son, the appellant continued with her studies while the child was taken care of by Smt. Shrawan Devi, her deceased mother-in-law, who used to live with them.

92. It is in the evidence of Shri Kuldeep Panwar Singh that the appellant completed her graduation in the year 2005. However, this was not the end of her academic career. In his evidence on 15th November, 2014 in the family court, Shri Kuldeep Panwar Singh (PW-1) has stated that after years of graduation, she did her teachers training course as well. He has categorically stated that the appellant had the absolute liberty whether to study or not to study.

93. It is thus in evidence that the appellants husband Sh. Kuldeep Panwar Singh was only a matriculate and his other brothers were also similarly qualified. While the elder brothers Sh. Dharambir; Rajvir Panwar and Rajesh Panwar had all passed the tenth class, Mahavir Panwar had cleared only the ninth class. It is in evidence that the eldest bhabhi (sister-in-law) Smt. Santosh Panwar (PW2) was only 10th pass and another bhabhi, Smt. Darshana was 12th pass. PW1 could not state about the qualifications of his bhabhis including Smt. Bala (PW14).

94. The control of finance for his familys requirements was with Kuldeep Panwar Singh though, his mother, the deceased Smt. Crl.App.711/2012 Page 45 of 89 Shrawan Devi, used to supervise whether the finances were being managed and the household being run in a proper manner.

95. In his cross examination, Sh. Kuldeep Panwar Singh (PW1) before the Sessions Court has stated that there had been no quarrels between his mother and the appellant. He also confirmed that no complaint had ever been lodged in any police station against his wife regarding any quarrel prior to the incident.

96. In Ex.CW1/D also, Kuldeep Panwar Singh has clearly admitted that the present appellant has attained the highest qualification in his family which she could do with his and his mothers (Smt. Shrawan Devi) co-operation.

97. We find that in his cross examination on 4th August, 2016 in HMA1822011, Sh. Kuldeep Panwar Singh has even admitted that the appellant had taken an examination for employment with the Delhi Police before marriage.

98. As per Ex.CW1/D, before the Family Court, Kuldeep Panwar Singh had stated that the present appellant, along with her studies, performed domestic chores and his mother also contributed to the same. The appellants husband has specifically stated that he had asked his mother Smt. Shrawan Devi to stay with the appellant and their children for their safety while he had gone to take kanwad from Haridwar with the consensus of both of them and that safety issues Crl.App.711/2012 Page 46 of 89 were always there with small children. If there was acrimony, where is the question of the appellant agreeing to the close company of her mother-in-law?.

99. The evidence led thus manifests that the appellant had a good relationship with her mother-in-law who fully encouraged the appellant in her academic pursuits and in fact positively supported her efforts, looking after her children and also helping her in the household chores.

100. So far as Smt. Sharvan Devis temperament was concerned, Sh. Som Prakash (PW3) whose sister was married to the elder brother of Kuldeep Panwar Singh (i.e. the appellants jethani), has stated that the nature of the mother-in-law of his sister (Smt. Sharvan Devi, the deceased) was very good.

101. In reply to question Nos.21 and 22, under Section 313 of the Cr.P.C., the appellant has unequivocally denied that there were altercations between her mother-in-law on the issue of keeping the house and kitchen clean and tidy. She

has categorically declared that the relations with her mother-in-law were cordial.

102. Therefore, though some relatives of the deceased who have appeared as witnesses have suggested altercations between the deceased Shravan Devi and the appellant, her daughter in law, however, even if these allegations could be believed, they are non- Crl.App.711/2012 Page 47 of 89 specific allegations of general nature relateable to the normal wear and tear and minor issues in every household. There is nothing in the evidence which is not common place in every household.

103. On the contrary, it is clearly established that out of five sons living in the same building, the deceased and her husband Sh. Bhim Singh opted to eat only with the appellant and family. Smt. Shravan Devi was sufficiently concerned for the appellant and her family, so as to sleep with them and help in caring for the children if the man of the house, Kuldeep Singh Panwar, was away. She was so doing on the unfortunate night with the consent of the appellant.

104. In fact, while admitting that he and the appellant had a good marital and physical relationship, Shri Kuldeep Panwar Singh (PW-1) (in Ex.CW1/D) has specifically corroborated the appellants claim that her mother-in-law was her guide, philosopher and source of inspiration.

105. The person best placed to testify about the relations of his wife (the present appellant) and his deceased mother Smt. Shravan Devi was Shri Kuldeep Singh Panwar (PW-1). He establishes a close positive relationship between them.

106. Shri Bhim Singh (PW5), the other person ideally placed so far as the relations of his deceased wife Smt. Shravan Devi with the appellant is concerned, has also made no grievance at all that the Crl.App.711/2012 Page 48 of 89 appellant shared a bad relationship with his wife Smt. Sharvan Devi. On the contrary, he has stated that as Poonam Rani was having small kids, so his wife Sharvan Devi used to sleep with her, which is not a possibility if they shared an acrimonious relationship.

107. The prosecution has therefore, not been able to establish that the appellant had an acrimonious relationship with the deceased.

108. The prosecution also explored theft as a motive for the crime. It is in evidence that a sum of `1,80,000/- was kept in the house of Kuldeep Panwar Singh. Sh. Bhim Singh (PW5) has testified to this effect. He has further confirmed that this amount which was kept in the house was lying intact and nothing was stolen from the house on that night.

109. Kuldeep Panwar Singh (PW1) has explained in his cross examination in HMA1822011 that the amount of `1,80,000/- belonged to a friend Praveen Panwar, an engineer friend who was employed in Noida.

110. In this regard, while being questioned under Section 313 Cr PC, the appellant had explained as follows: Q.19. It is in evidence against you and has come in the testimony of PW-5 Bhim Singh that he checked the house and found that Rs.1,80,000/- kept in the house were intact and nothing was stolen or removed from the house. What you have to say?. CrI.App.711/2012 Page 49 of 89 Ans. It is correct. The money was kept in the room in our possession and the amount was kept by my husband Kuldeep was Rs.1,80,000/- and the same was found intact. Q.20. It is in evidence against you and has come in the testimony of PW-11 Rajesh Kumar that his brother Kuldeep had gone to carry Kawad and therefore, you alongwith your mother in law, who were staying together in the flat at 5th Floor. What have you to say?. Ans. It is correct. 111. In view of the above discussion, clearly the prosecution is unable to establish any motive for the crime. XI. Prosecution reliance on the alleged disclosure statement dated 8th of August 2010 112. The most important piece of evidence relied upon by the prosecution to support the culpability of the appellant is the inevitable disclosure statement claimed by the police as having been given on the 8th of August 2010 by the appellant. We have noted the same above to lend credibility to it. In the present case, conscious of the prohibition against the admissibility of such statement to the police under Sections 24 to 27 of the Indian Evidence Act, 1872, the investigating officer Inspector Rajeev Kumar (PW32) has claimed that pursuant to the disclosure statement, the accused person led the police to the recovery of her own

kalava, churi and kara which she was wearing at the time of commission of the offence thereafter! The Crl.App.711/2012 Page 50 of 89 investigating officer has also claimed that pursuant thereto, the appellant led the police to the recovery of some water in a tub as evidence of the appellant having washed her bloodstained hands and this water consequently being a sample of the bloodstained handwash.

113. We find that these seized exhibits have been subjected to a forensic examination by the laboratory. As per the report dated 21st February, 2011 (Exh.PW32/G), no blood was found on Exhibits 20(a), (b), (c) and (d) being the metallic bangle, plastic bangle, glass bangle and kalava got recovered by the appellant pursuant to the disclosure statement (Ex.PW32/G). Furthermore, so far as the dirty liquid described as handwash water (Exh.21) is concerned, again the Biology Division of the Forensic Science Laboratory vide Ex.PW32/G has reported that blood could not be detected therein. Nothing turns on these alleged seizures which, so far as commission of the offence is concerned, are inconsequential.

114. We may also note that the site plan of the premises occupied by the family of Kuldeep Panwar Singh and Poonam Rani shows that there is a single bath room. No tub is shown in the rough site plan Exh.PW32/A which was prepared by Inspector Rajeev Kumar (PW32).

115. Even if such tub existed in the bath room, it has to be remembered that the bath room would have been used by the Crl.App.711/2012 Page 51 of 89 members of the household on 8th August, 2010 and consequently, there is remote possibility of the water allegedly used for hand washing in the very early hours of 7th August, 2010 would be still available for collection as a sample later in the day of the 8th of August, 2010 during investigation. Clearly, the prosecution case of recovery of hand wash water at the instance of the appellant was incorrect.

116. The prosecution is therefore, unable to connect any of the claimed recoveries made pursuant to the alleged disclosure to the commission of the offence rendering the alleged disclosure inadmissible in evidence.

117. We find that suggestions have been made to Smt. Bala (PW14), wife of Rajbir and sister-in-law of the appellant to the effect that the appellant was tortured

for two days so that she confesses guilt. The same suggestion was made to Sh. Mahabir (PW13) that the entire family tortured the appellant for two days after the incident to make a confession that she was responsible for the murder. XII. Seizure of the iron musal (pestle) 118. It is to be noted that according to Inspector Rajeev Kumar (PW32), he had seized the musal on 7th August, 2010 from a slab in the third room with regard to which seizure a specific memo Exh.PW1/D was drawn up which was duly witnessed by Kuldeep Crl.App.711/2012 Page 52 of 89 Panwar Singh (PW1) and Som Prakash (PW-3). The seizure memo was also witnessed by HC Kishore Kumar (PW-30) and Ram Prakash. It is in evidence that the musal was then kept in a plastic container which was duly sealed with the seal of RK which parcel and the sample seal were handed over to HC Kishore.

119. The prosecution examined Ct. Dinesh (PW-29) as part of the Crime team who claims that he took thirty-four photographs of the room on the 7th of August 2010 and proved the photographs on record as the photographs taken on 7th August, 2010 as Ex.PW29/A-1 to Ex.PW29/A-34 and their negatives as Ex.PW29/B-1 to Ex.PW29/B- 34.

120. However, according to Inspector Rajeev Kumar (PW32), the negatives of the photographs taken on 7th August, 2010 had got exposed to moisture and that those negatives could not be developed. As per PW-32, therefore, on the 29th of October 2010, he had again visited the house of the deceased and himself clicked the scene of the crime in the presence of Sh. Kuldeep Panwar (PW1). These photographs were produced by him as Exh.PW32/E-1 to E-17 before the court while their negatives were proved as Exh.PW32/F-1 to F-17.

121. A very distressing fact is brought out by Ms. Anu Narula, Id. counsel for the appellant. While, under cross examination, the photographs were shown to Inspector Rajeev Kumar (PW32). During Crl.App.711/2012 Page 53 of 89 his testimony, the investigating officer identified a bloodstained musal lying at the tand (slab). He also testified that behind the musal, some wooden jars were lying at that time. He unequivocally denied the suggestion that in the photograph, the musal was not lying on the tand. He denied the further suggestion that the musal was lying on the floor and that it was he who put the musal on the tand.

122. Ct. Dinesh (PW29) claimed that on the 7th of August 2010, he had taken photographs of the premises in question from different angles at the directions of the investigating officer. Ct. Dinesh (PW29) has also pointed out the musal in the photographs (Exh.PW29/A-14 and A-31). Ct. Dinesh (PW29) has categorically testified that the iron musal shown in photograph Exh. PW29A-14 & A-31, was kept on the extreme last portion of the floor. He further stated that he could not remember as to exactly where the iron musal was lying on the last portion of the floor. This witness has testified about the presence of the appellant along with her two kids and another lady at that time. So how did the musal reach the tand?.

123. This testimony of PW29 shows that even if a musal had been recovered and seized on the 7th of August, 2010, it stands established from the evidence that the investigating agency has tampered with the same and it has been shifted from the floor to the tand. This testimony completely shatters the credibility of the prosecution case CrI.App.711/2012 Page 54 of 89 with regard to the recovery of any musal as the weapon of offence on 7th August, 2010.

124. When questioned, the investigating officer was unable to state as to whether the evidence had not been tampered with. The testimonies of Inspector Rajeev Kumar (PW32) and Ct. Dinesh (PW29) establish beyond any doubt that the evidence was tampered.

125. It is also in the prosecution evidence that the recovered musal was an item, which is commonly available. Mahender Singh (PW12) has specifically stated that such type of musal was easily available in the open market though he denied the suggestion that it had been planted on the appellant.

126. All these circumstances point at the concerted effort to plant evidence and create circumstances to establish a false case against the appellant. XIII. Whether the seized metallic piece called musal could be the weapon of offence?.

127. We find that the evidence led before the trial court also does not support the prosecution case regarding the seized musal being the weapon of offence. We find that it is in evidence that during its inspection of the site of the crime, the Crime Team had conducted its examination from the perspective of lifting chance

finger prints. Sh. Ram Prakash (PW4) who was brother-in-law of the deceased has Crl.App.711/2012 Page 55 of 89 categorically stated that the Crime Team had lifted finger prints from the spot.

128. SI Jitender Kumar (PW25), who was posted with the mobile crime team and prepared the report Exh.PW25/A, has also testified that the investigating officer called the Crime Team, the Finger Print Bureau and the FSL team and that he had visited the spot with the crime team which included the photographer and the finger print proficient.

129. HC Kishore Kumar (PW30) also confirms that the crime team, finger print expert and FSL officials had arrived at the spot. The prosecution has also not led any evidence of detection of any finger prints on the seized metallic piece i.e. the musal, so as to connect it to the appellant.

130. We also find that for identification, the Forensic Science Laboratory had assigned Exhibit 16 to the metallic piece described as a musal. The post-mortem report (Ex.PW6/A) has reported multiple head injuries on the deceased and extensive cranial bleeding. It is reported on the Forensic Science Laboratory report (Exh.PW32/G) that no hair could be detected on Exhibit 16 i.e. the metallic piece.

With the repeated infliction of head injuries and the extensive bleeding, hair of the deceased would have been found on the musal. Crl.App.711/2012 Page 56 of 89

131. Ex.PW32/G also reports that the stains on the musal were not bloodstains. It is thus clearly established that this musal or metallic piece was not the weapon of offence.

132. Furthermore, the prosecution has not placed any evidence regarding the weight of the musal, ordinarily a heavy object, or whether the same could have been at all wielded by a person of the size of the appellant as a weapon to inflict the multiple injuries.

133. This finding throws up a very important issue so far as involvement of the appellant in the commission of the offence is concerned. It is the prosecution case that no person left the property in question on the night of 6th/7th August, 2010. In this regard, the prosecution has examined Mohd. Wasim (PW28). If the appellant

was the perpetrator of the offence, then the actual weapon of offence should have been recovered from somewhere in the premises. However, nothing else has been recovered.

134. This fact supports the statement (Ex.PW1/A) given by the appellant to the police that the two assailants took away the weapon of offence with them. XIV. Whether entry of intruder plausible?.

135. As per Inspector Rajeev Kumar (PW32), the investigations on 7th August, 2010 showed no forcible entry into the flat where the CrI.App.711/2012 Page 57 of 89 incident had taken place. The bolts of the net door and wooden door were found intact and no damage was noticed on them. According to Inspector Rajeev Kumar, the witnesses suspected some foul play. However, keeping in view the distress of the witnesses who were in a traumatic situation on 7th August, 2010, further interrogation was deferred. XV. Occupation in the property No.39, Shahpur Jat, New Delhi 136. It is essential to also understand the layout of the property No.39, Shahpur Jat, New Delhi and its occupancy. It is in the evidence that the property No.39, Shahpur Jat, New Delhi was inhabited by the deceased and her husband as well as their five sons and their families. In addition, there were 10 to 20 tenants on the ground floor and first floor. While two of the sons, namely, Rajbir and Dharambir occupied the third floor; two other sons Kuldeep Panwar Singh and Mahavir were residing on the fourth floor, while the fifth son as well as a nephew of the deceased, namely, Mahender Singh (PW-12) and his family occupied the second floor.

137. The testimony of the witnesses also manifests commercial utilization of part of the property. As per Mohd. Wasim (PW-28), he was running his kabadi business on the ground floor.

138. In this regard, in Ex.CW1/D, Kuldeep Panwar Singh has made the following statement : CrI.App.711/2012 Page 58 of 89 It is correct that the third floor of the house was rented out. It is also correct second and first was also rented out. It is also correct the ground floor was rented out for commercial purpose of Boutique. It is correct that the back side of boutique was rented out junk dealer/Kabadi namely Mustafa. to (Emphasis by us) 139. It is in the testimony of Smt. Santosh (PW2), a

daughter-in-law of the deceased, that on the 6th floor, there was only a one room barsati in which Sh. Bhim Singh used to reside with his deceased wife Smt. Sharvan Devi. The parents had no separate kitchen and that, out of all their sons, they were having their meals with the appellant and her family only. XVI. Entrances to the property 140. The prosecution has also examined Mohd. Wasim (PW28), an alleged tenant, who was running a kabadi shop on the ground floor of the property being H.No.39, Shahpur Jat who stated that on the night of 6/7th August, 2010, he was sleeping near the staircase and had woken at around 1.30 a.m. when he saw the landlord coming down with deceased Smt. Sharvan Devi. This witness has stated that the staircase near which he used to sleep was the only entrance and that he had not seen or heard any person entering the house before 1 a.m. or 1.30 a.m. The witness claimed that he was awake till 1 or 1.30 a.m. as he was watching the television. In his cross examination, the witness clarified that he was not aware as to who were the persons Crl.App.711/2012 Page 59 of 89 who had entered the building H.No.39, Shahpur Jat from 5-6 p.m. to 1/1.30 a.m. on the date of the incident i.e. prior to 1:00 am. He also could not tell as to how many persons came out of the building on the day of the incident between this period.

141. Unfortunately, the investigating officer has prepared a site plan only of the flat where the deceased was murdered. There is no evidence at all of the entrances to the house or even to the floor on which the flat where the appellant and family were residing.

142. The evidence of Mohd. Wasim (PW28) to the effect that there was only one entry was not correct. In fact, Kuldeep Panwar Singh (PW1) had stated in his evidence on 11th August, 2016 in HMA1822011 (Ex.CW1/C) as follows : It is correct that there are two entrances of my house one on the front side and another on the back side. Again said the two entrances are on all the floors and not the house. On ground floor; there is only one entrance of the house. From first to sixth floor there are two entrances. It is wrong to say that there was no gate at the entrance of the ground floor adjoining the staircase. (Emphasis by us) 143. PW-1 even denied that Mohd. Wasim (PW-28) was a tenant when the following question was put to him : Q. Whether the name of the tenant who was Kabadi was Md.

Waseem?. Crl.App.711/2012 Page 60 of 89 Ans. The name of our tenant who was Kabadi is Mustafa Volunteered Md Waseem may also be living with him. I do not know whether there was any tenant by the name Md. Waseem or not. Mustafa was tenant of ground floor back portion in two rooms. 144. The evidence of Md. Wasim (PW-28) was put to the appellant under Section 313 of the Cr.P.C. as Question No.39: It is in evidence against you and has come in the Q.39. testimony of PW-28 Mohd. Wasim that he used to run a kabari shop at H.No.39, Sahapur Jat. What have you to say?. Ans. It is correct that Mohd.Wasim used to run kabari shop at H.No.39, Sahapurjat. 145. There is no evidence that the assailants could not have entered the property before 1:00 am or did not so enter the premises to make the fatal attack. The investigating officer also made no effort to investigate the possibility of any other occupant of the building, other than the appellant, as involved in the commission of the offence. XVII. Possibility of the assailants being a person or persons friendly to or known to deceased 146. The first revelation of the events of that fateful night is found in the appellants statement recorded in the early hours of the 7th of August 2010 by Inspector Rajeev Kumar (PW-32) which forms the Crl.App.711/2012 Page 61 of 89 rukka (Exh.PW32/C). This statement was the basis on which FIR No.2

(Exh.PW20/B) is premised. The appellant had disclosed that when her sleep broke at about 1.30 a.m., she found that two persons were standing near her mother-in-law and addressing her as mausi (maternal aunt) when they were speaking to her because of which she presumed that they were known to her mother-in-law.

147. Prosecution witness after witness has disclosed that when the appellant had woken them after the incident, she had disclosed the brutal attack on Smt. Sharvan Devi in these very terms. There is no variation in these disclosures as testified by the prosecution witness.

148. The appellants father-in-law Sh. Bhim Singh (PW-5) refers to these persons talking to the deceased for about 15-20 minutes. The same statement is to be found in the evidence of Sh. Mahavir Singh (PW-13) who disclosed that as per the appellant, the two persons who had entered the house were calling his mother mausi and that they were carrying iron rods in their hands.

149. We find that it is in evidence that Sh. Mahender Singh (PW-12) was a nephew of deceased Smt. Sharvan Devi who was residing in the same property. It is in his testimony that Smt. Shrawan Devi was his mausi. He so refers to her as my mausi repeatedly in his testimony. Mahender Singh (PW12) has also disclosed that there was Crl.App.711/2012 Page 62 of 89 no distance between the flat which he was occupying and that occupied by Kuldeep Panwar Singh (PW-1) and the appellant.

150. Even Kuldeep Panwar Singh (PW-1) in his evidence in the divorce case on 11th August, 2016 had stated that Mahender Singh (PW-12) used to address his mother, the deceased Shrawan Devi as mausi. His evidence in this regard is as follows : It is wrong to suggest that my Mausis son Mahender also used to reside on my floor on the same house. It is correct that Mahender used to address my mother as Mausi. I cannot say whether anything happening on the 5th floor can be heard by the occupants on the 4th floor volunteered as I was not present. It will be correct to claim that anything happening on the 5th floor can otherwise be heard on the 4th floor. (Emphasis by us) 151. The record contained evidence that there was a shivir (camp) of the kawariyas and that a large number of people who had assembled were passing through this camp which was barely 15 yards from the house. It has been so testified by Inspector Rajeev Kumar (PW32), the investigating officer. It is common knowledge that these shivirs are teeming with kawariyas headed to and fro Haridwar all hours of the day. No enquiries were made by the police from this shivir with regard to the happenings of that fateful night. Much light may have Crl.App.711/2012 Page 63 of 89 been thrown on persons who entered and exited from the premises that night.

152. Unfortunately, the investigating officer has proceeded in a completely biased manner. Having decided that the appellant, a daughter-in-law, was culpable, none of the other occupants of the property including the nephew (who called the deceased mausi) or sons and family have been investigated.

153. The investigating officer has not moved a step to investigate and verify the correctness and truth of the rukka (Ex.PW32/C) which was the first disclosure of the unfortunate events of that fateful night. XVIII. Difficulty in identification of the

assailants 154. The appellant has disclosed in the rukka Exh.PW32/C that mild light was reaching from the pooja room to the room where the incident took place in which light she had viewed the scene. The pooja room was the third room, and furthest away from the situs of the crime.

155. Insp. Rajeev Kumar (PW-32) has confirmed that it would not be possible to see anything when all the doors, windows and other openings of the flat which was the place of the incident are closed and the lights switched off in the night time. The witness also confirmed that the appellant had informed the police that at the time of the CrI.App.711/2012 Page 64 of 89 incident, the lights of the flat were switched off and only mild light was coming from the puja room. There is no evidence to the contrary. XIX. Nothing unnatural or suspicious about the appellants clothes the getting blood stained or her changing circumstances them in 156. It is the prosecution case that on the 7th of August 2010, from the washing machine, Inspector Rajeev Kumar (PW-32) recovered a bloodstained ladies suit (salwar and kameez). It belonged to the appellant and used to be worn by her. Additionally, a bloodstained chunri (scarf) was recovered from the washing machine which, according to Kuldeep Panwar Singh, both his mother Smt. Sharvan Devi and his wife Poonam Rani (the appellant herein) used to wear. We find that the presence of these blood stained clothes in the washing machine has been propounded by the prosecution as the most critical evidence to support the appellants conviction. It has been so treated by the Id. trial judge. In fact, these clothes form the sole basis of the appellants conviction. Let us examine the import of the presence of blood stains on the clothes of the appellant as well as the impact of their presence in the washing machine. CrI.App.711/2012 Page 65 of 89 (a) Condition of the deceased when the appellant raised alarm 157. It is in evidence that on the fateful night, the appellants husband was away to Haridwar with his brothers and nephews and her deceased mother-in-law was assisting her in taking care of her 7 year old son and an infant daughter of one year and few months.

158. We find that in answer to question No.12 under Section 313 of the Cr.P.C., the appellant has clearly stated that when the appellant went to Smt. Shravan Devi - her mother-in-law after her being injured, she was still breathing and that she had

put a pillow under her head. We extract question No.12 put to the appellant and her response thereto hereunder : Q.12. It is in evidence against you and has come in the testimony of PW-2 Smt. Santosh that when she alongwith her husband went inside the room, she saw her mother in law on the ground with her face towards ground and blood was lying there in huge quantity. What you have to say?. Ans. It is incorrect. When I had left the room, the face of my mother in law was towards the roof and the pillow was put by me under the head of my mother in law and I tried to stop the blood in order to save her life since my mother in law was live at that time (sanns chal rahi thi). (Emphasis by us) Crl.App.711/2012 Page 66 of 89 159. In this regard, the testimony of Rajesh Kumar (PW11), one of the sons of the deceased is material. PW-11 has stated that he used to ply children from school in his Maruti van. He has stated that on the fateful night, at about 1.30 a.m., his brother Mahender and his nephew Banti, rang the bell of his flat and asked him to come downstairs stating that somebody has hit his mother (kisine ma ko maar diya hai) and that she is to be taken to the hospital. Rajesh Kumar (PW-

11) has testified that he came downstairs and took his mother to the hospital in his Maruti van. With regard to this mothers state, he has specifically stated that his mother was in an injured condition and she was bleeding. He has further stated that his brothers Mahender, Mahavir Singh (PW-13) sisters-in-law (bhabhis) Smt. Santosh (PW-

2) and Smt. Bala (PW-14) accompanied his mother and him to the hospital. The fact that Smt. Shravan Devi was bleeding establishes that she was still alive when the appellant had raised alarm and called all the relatives.

160. The fact that Smt. Shravan Devi, deceased was taken to the hospital because she was only injured and had not expired is also supported by the testimony of Mahavir Singh (PW13 when he says that the hospital (Trauma Centre, AIIMS) to which his mother was taken had declared her as brought dead. She was taken away from that hospital on the pretext of taking her to some other doctor because the doctors at that hospital were saying for a post-mortem. Crl.App.711/2012 Page 67 of 89 When the Maruti van returned home, the PCR van was already present.

161. It is clear from the above evidence that her sons and relatives would have put Smt. Shravan Devi into the Maruti van and rushed her to the hospital only for treatment, certainly not if she had already expired. It stands proved by the prosecution that Shravan Devi was not dead when she was put into the Maruti Van and that she expired thereafter.

162. The above statement of the appellant as answer to question No.12 is corroborated by the testimony of Inspector Rajeev Kumar (PW32) who stated that he had not taken the photographs of the deceased because he was not sure whether the deceased was alive or not at that time when she was being taken to the hospital by her family members. It is, therefore, amply clear that even at the time when the police reached the spot, the deceased may have been alive. There is no evidence at all of the time at which Smt. Shravan Devi expired.

163. It is truly unfortunate that the trial court has completely ignored this vital evidence which shows that at the time when the appellant raised the alarm and called the family members seeking assistance, the deceased was still alive. This circumstance points towards conduct of a person interested in saving the life of the injured person rather than Crl.App.711/2012 Page 68 of 89 extinguishing it. By raising the alarm, thus the appellant contributed in efforts to save her mother-in-laws life after the attack. (b) How did appellants clothes get blood stained 164. Given the prosecution case, it becomes necessary to examine as to how the appellants clothes got blood stained?. We may usefully first examine what was the appellants explanation of the prosecution case. We extract hereunder the appellants response under Section 313 of the Cr.P.C. to the evidence put to her : Q.5 It is in evidence against you and has come in the testimony of PW-2 Smt. Santosh that her brother in law i.e. your husband was away to Haridwar for the purpose of taking kawad at the time when heated conversation ensued between you and your mother in law. What have you to say?. Ans. It is correct that my husband had gone for taking kawad to Haridwar but no heated conversation took place between myself and my mother in law on 07.08.2010. xxx xxx xxx Q.7. It is in evidence against you and has come in the testimony of PW-2 Smt. Santosh that on that day you and your mother in law were sleeping in the same room on that night. What have you to say?. Ans. It is incorrect. I was sleeping in the separate

room from my mother-in-law in the very same house on the same floor. xxx xxx
xxx Q.13 It is in evidence against you and has come in the testimony of PW-2 Smt. Santosh that on being CrI.App.711/2012 Page 69 of 89 asked by her, you told her that you alongwith your kids were asleep in the room with AC on and that at about 1.30 am she heard some noise and saw two persons came in the room and that they were calling Sharwan Devi as Mausai and they asked Sharwan Devi to give them whatever she was having and one of them went inside and other remained standing there and Sharwan Devi told them to call the family member and by that time the person standing near Sharwan Devi gave iron rod blow on the head of Sharwan Devi 2-3 times and went away and took the iron rod with them and there after you woke Smt. Santosh. What you have to say?. Ans. It is incorrect. I had told to PW-2 that after hearing the cry of my mother in law, I came out of my room and saw two persons going out from the room of my mother in law. Light of the room of mother in law was off. I found my mother in law lying on the ground and I immediately rushed towards her. I have saw blood oozing out from her head. I was afraid after seeing the blood. Anyhow, I came out from the room and tried to contact my sister in law through phone and thereafter went to her room. Q.14. It is in evidence against you and has come in the testimony of PW-2 Smt. Santosh that police seized your pink colour suit. What you have to say?. Ans. It is correct that the police had taken my pink colour suit which was worn by me at that time. Earlier when I tried to lift the mother in law, blood was stuck to my blue colour upper wear and yellow colour salwar. xxx Q.16. It is in evidence against you and has come in the testimony of PW-5 Bhim Singh that you were having small kids and therefore, deceased Sharwan xxxx xxx CrI.App.711/2012 Page 70 of 89 Devi used to sleep with you in absence of your husband. What you have to say?. Ans. It is correct that my mother in law used to sleep with me in the absence of my husband. She used to live with us. Even in the presence of my husband she used to live with us. xxx (Emphasis supplied) xxxx xxx 165. It is noteworthy that this statement is corroborated by the evidence of the prosecution witness Smt. Bala (PW-14).

166. Clearly, the evidence led by the prosecution establishes that the deceased was also handling the infant daughter at the time of the incident and even thereafter. This would also be the only explanation for the police finding a child's underwear (Ex.13) on which blood was detected by the Forensic Science

Laboratory in the second room. The blood grouping of the deceased was detected thereon by the laboratory as per the report (Ex.PW32/H). The trial court has completely overlooked this important piece of evidence led by the prosecution. This evidence corroborates the explanation given by the appellant.

167. As per the seizure memo (Ex.PW1/A), the police has recovered a blood stained pillow and cover lying on the floor as well as a mattress on the floor. In the description of the articles, which were subjected to the forensic examination, vide Ex.PW32/G, the laboratory marked this pillow and cover as Ex.8A and Ex.9. As per CrI.App.711/2012 Page 71 of 89 the reports of the FSL (Ex.PW32/G and Ex.PW32/H), blood of the A group of the deceased was detected on Ex.8A and Ex.9.

168. It was not the case of the prosecution that the deceased was sleeping on the floor. The presence of this blood stained pillow on the ground would show that effort had been made by somebody to make the deceased comfortable after she had received the injuries. The appellant was the person who first reached the injured after the attack. This is an important piece of evidence which corroborates the explanation given by the appellant as to the turn of events and as to how the blue suit which she was wearing at that time had got blood stained.

169. We find that the evidence with regard to the bloodstained clothes recovered from the washing machine was put to the appellant as question no.10, 14, 31, 54 and 55 and she has rendered the following explanation under Section 313 of the Cr.P.C. : Q.10. It is in evidence against you and has come in the testimony of PW-2 Smt. Santosh that you were wearing pink colour suit at that time. What have you to say?. Ans. It is incorrect. I was wearing blue colour upper wear and yellow salwar. xxx CrI.App.711/2012 Page 72 of 89 Q.14. It is in evidence against you and has come in the testimony of PW-2 Smt. Santosh that police seized your pink colour suit. What have you to say?. Ans. It is correct that the police had taken my pink colour suit which was worn by me at that time. Earlier when I tried to lift the mother in law, blood was stick to my blue colour upper wear and yellow colour salwar. xxx Q.31. It is in evidence against you and has come in the testimony of PW-13 Mahavir Singh that after the door was opened by Smt. Santosh, you uttered

Maa ko maar diya, mujhe bhi maar denge that you were wearing pink colour salwar suit, however, you were not nervous (ghabrai hui nai thi). What have you to say?. Ans. It is correct but I was not wearing the pink colour suit. It is further incorrect that I was not nervous at that time. xxx Q.54. It is in evidence against you that during the lifting of the exhibits, Insp. Rajeev Kumar found the bloodstained chunri lying in the washing machine with clothes and this chunri was identified by your husband Kuldeep that you and your mother in law used to wear it. What have you to say?. Ans. It is correct that I had put the chunri in washing machine. I had put also other clothes worn by me and were bloodstained during the course of lifting of my mother in law when I had CrI.App.711/2012 Page 73 of 89 seen her in a pool of blood. I had told the abovesaid fact to the IO. Q.55. It is in evidence against you that during the process of lifting the exhibits from the spot, Insp. Rajeev Kumar found a ladys suit stained with blood lying in washing machine and the ladys suit was identified by your husband as belonging to you and also that you used to wear it. What have you to say?. Ans. It is correct. (Emphasis by us) 170. During investigation, it has been reported by Inspector Rajeev Kumar (PW32) that there was a lot of blood in the middle room. A bed sheet on the double bed was bloodstained. PW32 also recovered a childs underwear having bloodstains which was lying on the double bed (Exh.P19).

171. It is the case of the prosecution that the appellant had a seven year old son and a one and half year old infant daughter. She was the only caregiver for them as her husband was away. We have noted above the testimony of the appellants father Sh. Ram Kumar as DW1 that he had told the appellant to hand over the child to some one else and change her blood stained clothes. This testimony remains unshaken and unrebutted by the prosecution. The prosecution has not cross examined Sh. Ram Kumar (DW1) on this count at all.

172. The testimony of Shri Ram Kumar (DW-1) that on seeing the bloodstains on his daughters clothing and keeping in view the fact CrI.App.711/2012 Page 74 of 89 that she was holding the child, he had told her to change her clothes after giving the child to somebody else, is certainly a natural circumstance.

173. Constable Sunder (PW33) has stated that when S.I. Narender Kumar Ojha and he returned from the hospital, no police man was present at the spot and that only the appellant Poonam Rani was present there along with her child.

174. None of the prosecution witnesses, relatives of the appellant, have said a word about there being anything suspicious in the change of blood stained clothes by the appellant, who was holding a one and a half year old daughter all the time.

175. The appellant has been found guilty on the solitary piece of evidence that the clothes (salwar and kameez) that she was wearing at the time of the incident were bloodstained.

176. It is established that the appellant was carrying a one and half year old infant daughter who was present with her while the investigation was going. Ct. Dinesh (PW-29) confirms this when he took photographs.

177. A blood stained child's underwear was seized by the police vide Ex.PW3/A. The fact that blood of the deceased was identified on this clothing (underwear) of the child as well (as per the Forensic Science Reports - Ex.PW32/G and Ex.PW32/H), certainly mitigates CrI.App.711/2012 Page 75 of 89 against the culpability on the sole basis that the appellants clothes were bloodstained.

178. In his testimony, Inspector Rajeev Kumar (PW32) disclosed that the appellant had lifted her mother-in-law in order to save her life but states that she had not disclosed the fact that blood had struck to her clothes when she was doing so! From the nature of injuries of the deceased as verified in the post mortem report and the amount of blood in the room and on the clothes of the deceased, it does not need too much of an imagination that anybody assisting or handling a person so injured and bleeding would definitely get bloodstained. There is therefore, nothing abnormal if the clothes which the appellant was wearing at the time she assisted her mother-in-law after the attack got bloodstained.

179. This conclusion is supported by the fact that no effort was made to wash the suit - a simple matter of merely switching on the washing machine. This would have naturally followed if the appellant had changed blood stained clothing to

conceal her culpability. The evidence on record supports DW-1s testimony and the circumstance that the appellant was looking after two children (including a one and half year old daughter who had to be carried) necessitating change of her blood stained apparels. Crl.App.711/2012 Page 76 of 89 180. In the pronouncement reported at (1994) SCC (Cri) 13

(1994) 5 SCC188 Meharaj Singh (L/NK) v. State of U.P., the failure to offer assistance to her injured husband was considered most unnatural and the most important factors for rejecting the eye-witness account of the wife, doubting her very presence at the spot at the time of the occurrence and the prosecution case. In that case, the deceased and his wife were attacked at about 11.00 am on 3rd of November, 1977. On the question of the eye witness account of the wife of the deceased, the Supreme Court noted thus: 13. It appears that it was a blind murder and none of the eyewitnesses were actually present at the scene. The ante-timing of the FIR was obviously made to introduce eyewitnesses to support the prosecution case. We may demonstrate this by noticing that though PW3Smt Kamlesh the widow of the deceased claimed that she was present with her husband at the time of the occurrence, her conduct was so unnatural that not only she did not try to save her husband by trying to provide a cover but even after her husband fell down and was inflicted repeated injuries with the knife by the appellant Meharaj Singh, she did not even try to go anywhere near her husband and even later on hold his head in her lap and try to provide some comfort to him. This becomes obvious from the absence of any bloodstains on her clothes. She admitted that she had not even received a scratch during the occurrence. In a situation like this, the normal conduct of any wife would be firstly to make an effort to save her husband even by taking the blow on herself and if that is not possible then at least to go so Crl.App.711/2012 Page 77 of 89 close to his person, at least after the assailants had left that there would be no escape from the blood oozing out of the injuries of the deceased to come on to her clothes. Similar criticism is also available against Balbir PW2 Shiv Charan PW4and Satkari PW5 It is not the case of the prosecution that the clothes of any of them had got bloodstained. The very fact that none of these witnesses went to lodge a report and instead left it to the father of the deceased to lodge the FIR would also go to show that the witnesses in all probability were not present at the spot. The absence of any blood

in the field of Kirpal Singh as also the absence of blood trail from the field of Kirpal Singh to the place where the dead body was found, as admitted by PW8 also suggests that the occurrence did not take place the prosecution and that the genesis of the fight has been suppressed from the court. xxxx the manner suggested by in (Emphasis by us) 181. This court disbelieved the testimony of a witness who claimed to have assisted the bleeding injured present in Crl.A.No.52/1993, Parmesh Kumar v. State decided on 6th March, 2009 on account of lack of bloodstains observing thus : 18. Then, as per the testimony of PW10 Anil Kumar, he returned to the place of occurrence with the three- wheeler scooter. There was nobody else at that point of time. With his bare hands he lifted the injured Aditya, who was still unconscious and placed him in the rear seat of the three-wheeler scooter. It is also important to note that the prosecution has not produced the registration number of the three-wheeler scooter. One the scooter driver or even given Crl.App.711/2012 Page 78 of 89 can easily visualize how difficult it is for a single person to lift an unconscious person in his arms. It is even more difficult to visualize as to how a person can lift an injured person, who is bleeding, in his arms and not have any blood stains on his own clothes. But, this is what has happened according to PW10 Anil Kumar. (Emphasis by us) 182. It is the prosecution case that the appellant was the only adult in the flat when her mother-in-law was murdered, a mother-in-law who was assisting the appellant in acquiring further education; supporting her in her education by looking after the children. A daughter-in-law is expected to assist a mother-in-law who has been brutally attacked and is bleeding from her injuries. Her explanation regarding assistance to her injured mother-in-law is corroborated by the evidence of the investigating officer and recovery of the yellow pillow (Ex.PW1/A) on the floor of the first room where Smt. Shravan Devi was attacked. As per Ex.PW32/G and Ex.PW32/H, the blood of the deceased stands identified thereon. In fact, it would be the first reaction of a family member to assist the injured and the evidence of the victims blood on her clothes cannot be considered an incriminating circumstance but has to be considered to be the obvious result of the appellants natural and expected conduct in helping her bleeding mother-in-law. Crl.App.711/2012 Page 79 of 89 XX. Material evidence not examined - biased investigation 183. It has been reported in the opinion of the post mortem doctors in

Exh.PW6/C that injury no.14 suffered by the deceased shows that she had struggled. There is evidence that she had cried out as well during the attack. The crime scene as depicted in the presence of the police witnesses shows extensive bleeding and marks on the wall as well as the roof of the room.

184. It is in evidence that the appellant had a 7 year old son and a 1 year old daughter and that the deceased Shravan Devi was sleeping with the appellant and the two children for the reason that their father Kuldeep Panwar Singh had gone to Haridwar. The witnesses have referred to the presence of the children with the appellant that day. It is extremely remote that the two children who were in the flat would have slept through such a horrific incident. These two children therefore, could possibly have been eye- witnesses to the occurrence.

185. We do not have evidence of the capabilities of this 1 year old daughter. While a one and half child year old child may not be expected to recount the violence which she may have seen, however, the seven year old son may have been old enough to recount the violence which he would have witnessed. Unfortunately, we do not find any evaluation of the competencies of the child by the investigating agency.

186. It is our experience that children of this age often make competent witnesses. Unfortunately, guided by sheer bias, the investigating officer has proceeded in a completely close minded manner against the appellant and no effort was made to ascertain the truth from the children.

187. The prosecution has thus deliberately kept back material evidence from the court which, in our view, was critical, given the fact that the children were present in the very premises where the murder took place.

188. Apart from the appellants own children, Smt. Santosh (PW2) in the adjacent flat, had two adult children, the elder daughter Jyoti aged about 22 years and a younger son Sunil aged about 20 years. No enquiries were made from these young adults, even though they may have provided valuable evidence.

189. Interestingly, in his cross examination, SI Narender Kumar Ojha (PW31) has disclosed that he had seen that the clothes of Rajesh as well as two other persons had bloodstains over their clothes while the clothes of the deceased were also smeared with blood.

190. We find that even Shri Ram Kumar (DW1) has stated that his clothes as well as that of Rajesh were blood stained. CrI.App.711/2012 Page 81 of 89 191. Sh. Mahavir Singh (PW13) has also stated that in the process of touching the dead body of his mother, some bloodstains had come on his clothes. However, the police had not asked him for these clothes.

192. It is in the testimony of Insp. Rajeev Sharma (PW-32) that he did not check whether any blood stains had stuck to any other person. Insp. Sharma has stated that he did not ascertain the fact as to where the appellant had changed clothes or at what time.

193. The appellant had disclosed that the persons who attacked Smt. Shravan Devi were addressing her as mausi, clearly suggesting they were persons who were known to her. Therefore, this would rule out the possibility of a forced entry. The police has not investigated any person(s) who addressed the deceased as mausi.

194. It is noteworthy that at 02.23 a.m., the PCR form records as CRDD No.224 (Exh.PW18/A), the entry of thieves who have hit the informants mother. We find that the request to conduct post mortem made by SI Narender Kumar Ojha (PW31) on 7th August, 2010 Exh.PW31/C reports the same incident and contains a request the autopsy doctors to visit the scene of crime after conducting the PM.

195. Given the hypothesis on which the investigation has proceeded, these were crucial and relevant aspects of the matter and were easily ascertainable. It is evident that having drawn up a theory, the investigation agency, completely shut down any other possibility and CrI.App.711/2012 Page 82 of 89 applied itself only to somehow or the other establishing its theory before the court.

196. The negligence of the Inspector Rajeev Kumar (PW32) is writ large on the record in his cross examination when he testifies that he had not tried to ascertain during the course of investigation whether bloodstains had stuck to any other person who took the deceased to the hospital.

197. No effort was made by Inspector Rajeev Kumar (PW32) to seal the spot or preserve it. He has testified that he had no idea as to how many people visited the spot before his arrival. He could not deny whether 10-15 people had visited the room in question before his arrival or that whether before his arrival, the evidence had been tampered with. Even SI Narender Kumar Ojha (PW31) was unable to state as to how many persons had gathered at the spot.

198. This case thus is a copy book example of the injustice that would result from bias and prejudice. In our view, merely on finding the bloodstained clothes of the appellant in the washing machine, the investigating agency has drawn its conclusions and proceeded in a completely biased manner, ignoring glaring and obvious alternative clues in the matter, so as to build a case against the appellant. It is an admitted position on record that other than the rooms occupied by the appellants family, the police has made no efforts to conduct any CrI.App.711/2012 Page 83 of 89 investigation in any part of the house; nor visited any other floor or flats of the property even and has not investigated at all any of the persons who were present.

199. The appellant had disclosed that the deceased was attacked with rods. No effort was made to trace out any rod by the investigating officer.

200. Despite the positive evidences of a healthy positive relationship between the deceased and the appellant in that the deceased and her husband chose to eat with only the appellant and their son Kuldeep Panwar Singh; despite the strong evidence of the contribution of the deceased mother-in-law to the life and self growth of her daughter-in-law - the present appellant; despite evidence of the concern of the deceased mother-in-law for the appellant and her children, so much so that in the absence of her son Kuldeep Panwar Singh, she was sleeping with the appellant to assist in carrying for the children, the investigating agency chose to investigate only this daughter-in-law and arraign her as an accused, ignoring

her critical information about possible relationship of the actual assailants to the deceased. The investigating officer has not investigated any other occupant of the house to verify their location at the critical time, nor gone into any other portion or washing machines to verify whether there were any other blood stained clothes. Or the circumstances in which they got so stained. Crl.App.711/2012 Page 84 of 89 XXI. An observation 201. Before parting with this case, we are constrained to note an extremely sad and unfortunate feature so far as women prisoners are concerned. In several cases involving women prisoners, we are coming across the fact that, apart from the punishment awarded by law, they are suffering a fate worse than just their incarceration. One in which their pain would be endless and knows no reprieve, one for which there can be no legal intervention or legal remedy. This is the punishment inflicted not only on the woman prisoner but may even extend to her spouse and children by their relatives, friends and society.

202. In the present case, the appellant stands incarcerated, accused and convicted of having murdered her mother-in-law. As a result of the imprisonment, the first thing that resulted, was her complete abandonment by in-laws and husband. Despite the husbands own evidence that he and the appellant shared a healthy emotional and physical relationship on 11th February, 2012, he has even filed a petition seeking dissolution of their marriage dated 8th July, 2007 by a decree of divorce.

203. Left alone to defend the terrible accusations, the husband has separated the appellant even from her children - a son (born on 26th April, 2003) who, at the time of the incident in August, 2010, was Crl.App.711/2012 Page 85 of 89 aged only about 7 years and a daughter (born on 10th February, 2009) then a mere year and a half. Our inquiries from the appellant disclose that none from her family by marriage have ever visited her in the jail. Instead of ensuring a complete investigation, they have joined hands to create a faade of acrimony between the appellant and the deceased to build a case against the appellant.

204. We however, find that in cases where the man of the family has been accused, or even stands convicted, of extremely gruesome and heinous offences, the entire family rallies around him. Be it the wife and children or parents and

siblings, they all not only defend the case vigorously but also do their utmost to secure bail for the alleged offender or suspension of sentence for the male convict. There is no dearth of persons visiting such male prisoners in jail for mulaqat as well. This is an unfortunate but hard reality faced by women prisoners.

205. Thus, society hardly gives a second chance to women prisoners and therefore, the responsibility to be shouldered by the authorities qua these prisoners is enhanced manifold to ensure that they are adequately equipped with the strength to face their emotional and physical isolation with fortitude, their self-confidence and self-esteem built up coupled with impartation of such livelihood skills as would enable them to create financially independent lives for themselves. Crl.App.711/2012 Page 86 of 89 once they leave the prison precincts and are compelled to fend for themselves.

206. It is high time that robust programs involving women, prisoners, especially those not educated and from economically weaker sections must be developed in the jail, that is those stretch, beyond the traditional and stereotyped activities of agarbati - jam - pickle - papad making skills for which consumption is scanty or hair dressing, tailoring, beauty care. While suggestions towards encouraging development of linguistic skills and stenography (which require hardly any financial or infrastructure investment) have been taken up, however, these need to be taken up more vigorously. Given the pressures of today's lifestyles and longevity of life, there is pressing need for geriatric caregivers and para-nursing assistance (again not a capital or infrastructure intensive activity). Even the illiterate prisoners (women and men) can be imparted skills in such areas which could provide crucial economic opportunity. Training for toddler care may enable the prisoner to develop or assist in crches and anganwadis, nursery schools etc. These are financially viable options requiring no infrastructure and deserve to be considered. Of course, experts would have the knowledge and expertise to provide other really meaningful interventions to adequately equip the prisoners with profitable and sustainable options using modern technology and latest information. Crl.App.711/2012 Page 87 of 89 207. Simultaneously, community sensitization programs qua the way society views prisoners must be developed. To err is human and to forgive divine. However, some mistakes are so serious that law

recognizes them as offences for which the law prescribes punishment. But having undergone the punishment, the prisoners deserve a second chance from society - and not the secondary life long sentence of social ostracization. The jail, social scientists, NGOs, legal aid authorities and the governments must educate society on these aspects and ensure that this disproportionate impact of incarceration of women is minimized and even eradicated. It must be ensured that, having undergone (or while undergoing) their sentences, this group of completely marginalized women do not suffer at the hands of society. XXII. Conclusion 208. In view of the above discussion, it has to be held that the prosecution has failed to prove circumstances which cumulatively form a chain so complete that there was no escape from the conclusion that, within all human probability, the crime was committed by the appellant. On the contrary, the established facts are consistent with the innocence of the appellant.

209. We place on record the very able and meticulous assistance rendered to us by Ms. Anu Narula, Id. counsel for the appellant and Ms. Aashaa Tiwari, Id. APP for the State in the present appeal. Crl.App.711/2012 Page 88 of 89 XXIII. Result 210. Ex-consequenti we allow the present appeal and quash the impugned judgment of conviction dated 9th April, 2012 as well as the order on sentence dated 21st April, 2012. The sentence of the appellant has already been suspended vide our order dated 31st January, 2017. The bail bond and surety bond submitted by and on her behalf shall stand discharged accordingly.

211. Let a copy of this judgment be sent by the Registry to the Secretary, Ministry of Skill Development & Entrepreneurship, Government of India; Secretary, Ministry of Social Justice & Empowerment, Government of India; Chief Secretary, Government of NCT of Delhi; Commissioner of Police, New Delhi; Director General (Prisons), Central Jail, Tihar; Member Secretary, Delhi Legal Services Authority to examine our observations in paras 201 to 207 and explore appropriate programs and intervention so that mainstreaming and rehabilitation of women prisoners is not compromised in any manner. GITA MITTAL, J ANU MALHOTRA, J FEBRUARY20 2017 kr/aj Crl.App.711/2012 Page 89 of 89