

Gopal Pathak and ors. Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : May-16-2008

Reported in : 2008CriLJ3551

Judge : Dipak Misra and ;R.S. Jha, JJ.

Appellant : Gopal Pathak and ors.

Respondent : State of Madhya Pradesh

Disposition : Appeal allowed

Judgement :

Dipak Misra, J.

1. The accused/appellants (hereinafter referred to as 'the accused persons') have preferred the present appeal under Section 374(2) of the Code of Criminal Procedure (for short 'the Code') being dissatisfied with and aggrieved by the judgment of conviction and order of sentence passed by the learned First Additional Sessions Judge, Shahdol in Sessions Trial No. 47/1985 whereby he has found them guilty under Sections 302/34, 201 and 498-A of the Indian Penal Code (for brevity 'the IPC') and sentenced each of them to undergo rigorous imprisonment for life and to pay a fine of Rs. 200/- each, in default, to suffer simple imprisonment for two months on the first score, rigorous imprisonment for five years each on the second count and rigorous imprisonment for three years and to

pay a fine of Rs. 300/- each, in default, to suffer further simple imprisonment of two months on the third count with the stipulation that all the sentences shall be concurrent.

2. Briefly stated, the prosecution case is that the deceased, Kanchi Pathak, was married to the accused Vidya Varidh Pathak on 25-5-1982. At the time of the marriage, Rs. 60,000/- was given in cash as per the agreed terms. In March, 1983 Atul Pandey, P.W. 5, the brother of the deceased, had gone to bring his sister but her in-laws though assured to send her did not send her to her parental home. During Holi Festival, i.e., in March, 1983, Atul Pandey brought Kanchi Pathak to her parental home. When she went back to her matrimonial home the accused persons asked her to bring gas stove, almirah, motorcycle and jewellery failing which she would be thrown out of the house and her husband would enter into second marriage. They used to threaten her quite frequently and also physically assault her. The deceased informed her father about the same. In June, 1983, while Kanchi was in her parental home the accused-husband wanted to bring her back to his house. At that juncture, the parents of the deceased gave jewellery as agreed. In June, 1984, Atul Pandey had gone to the house of the accused persons to fetch his sister but they did not send her and assaulted him and told him to bring fridge, cooler, godrej almirah, gas stove and jewellery failing which his sister would be kept as a maid servant and eventually she would be killed. The brother of the deceased returned home and informed his parents. As further alleged, Kanchi was abused time and again. She used to intimate her parents through her friends. In March, 1984 Shrikant Pandey, P.W. 6, another brother of the deceased, had gone to her sister's house to bring her along with Harshnaraya, Natthulal Saraf and Kedarnath Tiwari. He was abused by Gopal Pathak, the father-in-law of the deceased. He met his sister who burst out with tears and stated that the accused persons and her sister-in-law were abusing and assaulting her and not giving her food. She had also informed her brother that the accused persons were also giving her some white powder which she was compelled to consume. Thereafter, the accused-husband assaulted Shrikant Pandey and told him that he would not allow Kanchi to remain alive. Shrikant Pandey without getting her sister returned home and narrated the whole episode to his parents. As the prosecution story unfolds, on 19-4-1984, he lodged an F.I.R. at Kolgawan Police Station which was

Rojnamcha Sanha No. 997. In the night of 12-1-1985, the deceased breathed her last in the house of the accused persons. As alleged the accused persons were in the house. About 11 p.m., the husband went to Dr. Garg, P.W. 2, and informed him that Kanchi had been taken ill badly and had fallen from the bed. P.W. 2, Dr. Garg, reached the home of Gopal Pathak and found that Kanchi had stopped breathing. The accused requested the doctor to give Choramin injection but he refused to do so. Dr. Garg advised them to show her to an experienced doctor and on the said advice Dr. Ashok Jain, P.W. 9, was called. But, by that time Kanchi had already died. When Dr. Jain wanted to see the dead body of the deceased the accused, persons told him to give a certificate of normal death so that she could be burnt next morning. He declined to give such certificate. Thereafter, both Dr. Garg and Dr. Jain, went to the Police Station but as they did not find any responsible officer there, they returned to their respective homes. In the said night Gopal Pathak and his son went to Saraswati Patel's house and intimated him that Kanchi had committed suicide. Saraswati Patel advised them to lodge an F.I.R. and inform at the Police Station and also intimate the father of the girl. Thereafter, Gopal Pathak had lodged the report as per Exhibit-P-23 on the basis of which criminal law was set in motion and the investigating agency arrived at the spot, prepared a panchnama of the dead body and got the autopsy done and sent viscera for chemical examination, prepared spot map and seized some clothes and a nutcracker, seized the letter Exhibit-P-28 written at the instance of the accused-husband, examined number of witnesses under Section 161 of the Code and eventually registered a case under Sections 302/34, 498-A and 201, IPC as per Crime No. 11/85, took the accused persons to custody on 16-1-1985, seized two letters written to Atul Pandey, P.W. 4, a note book and on the completion of the investigation placed the charge-sheet before the competent Court who, in turn, committed the matter to the Court of Session.

3. The accused persons abjured their guilt. Their positive plea in the defence was that there was animosity between the parents and in-laws of the deceased and she never wanted to go to her parental home without the consent of her in-laws. She was unhappy with the behaviour of her parents and she had written two letters to her father to that effect. It was her expectation that her parents would come to the house of her in-laws and remove the misunderstanding between the

two families but they did not come. On the contrary, they sent the brother who took the deceased to the house without the consent of her in-laws. She had also developed frustration as no child was born in the wedlock despite marriage having solemnized for a period of two and a half years. Being the victim of circumstances she had committed suicide which is revealable from Exhibit-P-28. The brother of the deceased, Shirish Pande, and brother-in-law, R.B. Sharma, were serving as Sub-Inspectors in the Department of Police and they had converted the case of suicide to a one of murder.

4. The prosecution in order to bring home the charge examined as many as 20 witnesses. P.W. 1, Vibhuti Bhushan Pandey, is the father of the deceased; P.W. 2 is Dr. Jyotirmaya Garg who had examined the deceased at the first instance, Saraswati Patel is P.W. 3 who had acted as a mediator in the marriage before whom the accused persons had stated about the death of the deceased; Atul Pandey, P.W. 4, is the brother of the deceased; P.W. 5 is Girdhari Singh who has testified about the cry of the deceased while passing on the road; Shrikant Pandey, P.W. 6, is another brother of the deceased; P.W. 7 is Kedarnath, who had accompanied Shrikant to the house of the deceased; P.W. 8 is K.B. Laxmi who has turned hostile; Dr. Ashok Jain P.W. 9, who had gone to the house of the deceased being called by her husband; P.W. 10 is Sitaram Agrawal who also has turned hostile; Iqbal Ahmad, P.W. 11, who had taken photographs of the spot; P.W. 12, Dr. T.N. Chaturvedi, who had conducted autopsy of the dead body; P.W. 13, Badri Prasad, is a formal witness; P.W. 14, Rampati, is another formal witness; P.W. 15 is Dharam Prakash Sharma who is a witness to the 'panchnama' of the dead body, P.W. 16 is Bhaiyalal Sharma, who had conducted the investigation, P.W. 17 is R. Rajan, the Inspector who had conducted a part of the investigation, P.W. 18, Shyamlal Singh, is a formal witness, P.W. 19, is Manvishram Dubey who had written the Rojnamcha Sahna No. 997 on 19-4-1984, and P.W. 20 is Dr. A. K. Guru, who had conducted the chemical examination of viscera of the deceased. The prosecution had got thirty nine documents marked as exhibits.

5. The defence examined as many as seven witnesses to substantiate its plea. D.W. 1, Lallulal Gupta, is a witness to the Panchnama and signatory to Exhibits-P-20 and P-21, D.W. 2, Baijnath Sharma, who had stated to have advised how to

deal with the letters written by the deceased; Laxman Prasad, D.W. 3, who has deposed about the relationship between Dr. Garg and the deceased, P.W. 4, Rajeev Lochan Trivedi, is a reporter of the newspaper 'Bolti Diwar' at whose instance the letters written by the deceased were published as per Exhibits-D8(a) and D8(b) and had produced photocopies of the letters; Krishna Kumar Shukla is D.W. 5 who had produced the attendance register pertaining to 3-11-1984 to substantiate that the presence of Shrikant Pandey in the institution cannot be discerned as ink had been sprinkled on the said part; Ashok Kumar Gautam is D.W. 6 who has deposed that Shrikant Pandey had not availed the leave and had signed the register at the time when the ink was not thrown on it; and Ganesh Prasad Tiwari is D.W. 7 who has deposed that ink was thrown on the particular page of the attendance register.

6. The learned trial Judge on appreciation of oral testimony and documentary evidence brought on record came to hold that the prosecution has been able to establish the charges levelled against the accused persons beyond reasonable doubt and accordingly recorded the conviction and imposed the sentence as has been indicated hereinbefore.

7. At this juncture, it is thought apposite to advert to the foundation on the basis of which the learned trial Judge has recorded the finding with regard to proof of charge under Section 498-A of the IPC. The grounds can be enumerated as under:

(i) The marriage was solemnized on 24-5-1982 and cruel treatment was meted out to the deceased because of non-fulfilment of dowry demands which have been testified by the evidence of Atul Pandey, P.W. 4, and Shrikant Pandey, P.W. 6.

(ii) The brothers of the deceased, viz. P.W. 4 and P.W. 6 were given ill-treatment and misbehaved in the house of the accused persons.

(iii) The deposition of Saraswati Patel and Kedar Nath have lent corroboration to the evidence of the brother of the deceased.

(iv) The factum of guilt also find support from the testimony of the father of the deceased.

(v) P.W. 6, Shrikant Pandey, had lodged an F.I.R. at Police Station, Kolgawan on 19-4-1984 regarding ill-treatment and demand of dowry on the part of the accused persons and also the ill-treatment meted out to his sister.

8. The learned trial Judge while dealing with the charge under Section 302 had found the death to be homicidal in nature and not suicidal on the basis of the report submitted by P.W. 20. That apart, the Court below has taken into consideration the evidence of P.W. 2, Dr. Garg, and P.W. 9. Dr. Ashok Jain, who had initially opined that the death of the deceased was unnatural. The factum of death having taken place in the house of the accused persons, postmortem report which revealed that the death was not caused by hanging, the plea of the defence that she had committed suicide was not worth giving credence to, the FIR Exhibit-P-23 is silent that she had consumed poison on her own, had weighed the learned trial Judge to treat the death to be homicidal in nature. After holding the death to be homicidal in nature the learned trial Judge referred to circumstances to come to the conclusion that the accused persons were responsible for the murder of the deceased. To arrive at the said conclusion the learned trial Judge has taken the following circumstances into consideration:

(a) The death had taken place in the house of the accused persons.

(b) The accused-Gopal Pathak and Vidyaviridh had disclosed contradictory version about the manner of death to P.W. 2 Dr. Garg and P.W. 9 Dr. Jain.

(c) The deceased was a post-graduate and her conscience could not have allowed her to commit suicide.

(d) The mother-in-law of the deceased was very much present and she did not save the deceased at the time of the instance.

(e) There was hesitation in informing the parents of the deceased and delay in lodging the report at the Police Station by the accused persons with regard to the death of the deceased.

(f) The document contained in Exhibits-D8(a) and (b) were not sanguine and have been prepared in an ingenious manner to save the accused persons from the crime in question which makes the defence plea totally incredible.

(g) No container or packet containing poison has been recovered from the place of occurrence, i.e., the house of the accused persons.

9. With regard to the proving of charge under Section 201, IPC the Court below has taken note of the fact that the accused persons after committing the murder of the deceased had caused injuries on her neck to show that she had committed suicide; they had fabricated the documents to make out a case that she had a different kind of relationship with her parents; and that they had also behaved in a different manner after the death of the deceased and their such conduct is unusual.

10. We have heard Mr. S.C. Datt, learned senior counsel along with Mr. Siddharth Datt for the appellant and Mr. P.N. Dubey, learned Deputy Advocate General and Mr. Yogesh Dhande, learned Dy. Government Advocate for the State.

11. First we shall advert to the offence relating to Section 498-A of the Indian Penal Code. Before we refer to the material brought on record, it is thought appropriate to understand and appreciate the basic ingredients which are to be proved by the prosecution to substantiate the said offence.

12. In *Wazid Chand v. State of Haryana* : 1989 CriLJ809 , while dealing with Clause (b) of the Explanation to Section 498A the Apex Court opined that the said provision stipulates that the harassment of women is caused with a view to coercing her or any person relating to her to meet any unlawful demand or is on account of the failure by her or any person related to her to meet such demand would amount to cruelty for the purposes of Section 498-A.

13. In *Jatindra Kumar v. State (Delhi Administration)* 1992 Cri LJ 1482, it has been stated that Section 498-A of the IPC contemplates, inter alia, that any conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or health whether mental, physical of

the woman or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of to meet such demand.

14. In *Kamesh Panjiyar v. State of Bihar* : 2005 CriLJ1418 , their Lordships have held as under:

12. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498-A, IPC. Cruelty has been defined in the Explanation for the purpose of Section 498-A. Substantive Section 498-A, IPC and presumptive Section 113-A of the Evidence Act have been inserted in the respective statutes by the Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304-B and 498-A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of 'cruelty'. In Section 304-B there is no such explanation about the meaning of 'cruelty'. But having regard to the common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498-A under which 'cruelty' by itself amounts to an offence. Under Section 304-B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. If the case is established, there can be a conviction under both the sections. (See *Akula Ravinder v. State of A.P.* : AIR 1991 SC1142). Period of operation of Section 113-A of the Evidence Act is seven years, presumption arises when a woman commits suicide within a period of seven years from the date of marriage.

15. In this context, we may fruitfully refer to the decision rendered in *State of Maharashtra v. Ashok Narayan Dandalwar* AIR 2000 SC 3568 : 2000 Cri LJ 4993 wherein it has been held as under:

3. ...In that view of the matter, when in so many letters (Exts. 11 to 17) the deceased has not reflected any cruelty alleged to have been meted out to her by

the husband it is difficult to maintain a conviction on the oral testimony of the younger brother of the deceased and, in our view, the High Court was fully justified in recording an order of acquittal.

16. Regard being had to the aforesaid enunciation of law the evidence has to be tested. It is worth noting here that the learned trial Judge has recorded a finding that there was demand of dowry and there was also cruel treatment to the deceased in other ways. P.W. 1, the father of the deceased, in his evidence has stated that his son, Atul Pandey had gone to fetch his daughter but she was not allowed to come back to her parental home. He has also stated that Atul Pandey informed him that the accused persons have demanded gas-stove, motorcycle and almirah and threatened that they would not allow her to go to her parental home unless the conditions were fulfilled. He has also deposed that in the year 1984, his elder son, Shriyash Pandey, wished to see the deceased and hence, he sent Atul Pandey to fetch her and Atul Pandey came back and told that the husband of the deceased abused and proceeded to assault him. It has also come out in his evidence that at that juncture it was told that Kanchi Pathak would go to her parental house only on the consent of her husband. He sent his second son, Shrikant Pandey to fetch Kanchi Pathak at Burhan. On his return he told that the accused persons had abused him and proceeded to assault. At the advice of the father, Shrikant Pandey had lodged the FIR. With regard to the letters contained in Exs. P-2 and P-3 he had deposed in his examination-in-chief that he had received them by post and the said letters were not written in the handwriting of his daughter. As per Ex. P-4, he had allowed the dead body to be returned to the husband of Kanchi. In the cross-examination, he has testified that he had not attended the funeral of his daughter. He was not able to say whether his son attended the funeral or not. He had admitted that he had written Ex. P-4 when the question of custody of the dead body cropped up. It is perceptible from his evidence that his daughter was a post-graduate. He had not checked the family background of the accused persons but one Saraswati Patel, a reputed businessman had mediated for the marriage. He has also admitted that he had not verified whether Vidya Varidh, the husband of the deceased, had got a job or not. He has also admitted that his daughter had not received his letters. It is also in his evidence that after the marriage his wife had received one or two letters from

Kanchi. It is admitted by him that whatever his son had disclosed he did not mention it in the letter written by him to Gopal Pathak, the father-in-law of the deceased. He has stated that he had handed over only two letters Ex. P-2 and Ex. P-3 to the investigating agency. Though Atul Pandey, his son, had intimated that there is demand of one suit-case this fact does not find mention in Ex. P-1. As far as the letters are concerned it is the admitted position that they were not written by the deceased. One is written by K. Laxmibai P.W. 8, who has been declared hostile. The other letter was written by an anonymous person. Thus, there is no letter written by the deceased. It does not stand to reason why the deceased, who was herself a postgraduate degree holder, had not written a single letter about the cruel treatment meted out to her and the demand of dowry.

17. The testimonies of other witnesses who have been placed reliance upon by the learned trial Judge for offence punishable under Section 498-A of the IPC are the brothers of the deceased. Atul Pandey, who has been examined as P.W. 4, has deposed that when he went to fetch his sister, the accused persons abused him and he reported the matter to his father. The in-laws of her sister asked him to bring the articles of dowry-fridge, scooter and gas-stove. It is admitted by him that he had gone twice to fetch his sister. He had stated that the matter relating to dowry rested with his father. On the last visit he was sitting in the house of his sister's in-laws. At that time. Vidya Varidh was not at home. After Vidyavaridh came he had struck on his back. Vidyavaridh and his father asked him to produce the articles of dowry failing which his sister would be treated as a maid. This witness initially denied the seizure of Exs. P-2 and P-3 but later on examination-in-chief he admitted the same. He has admitted that when he went to the house of the deceased in March, 1983 there was no demand of dowry. He has also stated that he was not aware what dowry was given to his sister as it was within the knowledge of his father. He has also stated that he has not remembered what has been stated in 'A to A' part of Ex. D-3 which deals with the dowry to be given at the time of marriage. He has clearly stated that he has not lodged any report at the police station of the incident of March, 1983. It is in his testimony that after the marriage, Kanchi wrote letters frequently to her parents. It is admitted that Ex. D-4 was written in his mother's handwriting. He has expressed his inability to state how he has got the letters contained in Exs. P-2 and P-3.

18. Shrikant Pandey, another brother of the deceased who had gone to Burhan, the matrimonial house of her sister Kanchi, to fetch her. Before going to her sister's house he had gone to the house of Saraswati Patel and requested him to accompany him. The said Saraswati Patel did not go with him and suggested him to go with Kedarnath Tiwari, Natthulal Saraf and Harsh Narayan. Being so suggested, he went with them to the house of the accused where he found his sister was crying and embraced him. She told him how she was being harassed by the accused persons. Kanchi told him about the fact that the accused persons were mixing white powder in her food and on not eating the said powder they kept her hungry for two days. She told that the in-laws were repeatedly asking for bringing more dowry. Though he requested the father-in-law of her sister to send her with him, he declined. He has also stated that when he was sitting Vidyavaridh Pathak came and struck him from the behind. He has also stated that he had lodged a report at the police station on 19-4-1984 as per Rojnamcha Sanha No. 997. In the cross-examination, he has admitted that no letter of her sister Kanchi was received on 25-3-1984. He has also admitted that he had written letter, Ex. D-5 to Gopal Pathak. He had initially stated that the letter was written to Vidyavaridh then he has stated that it was written to Gopal Pathak. He has stated that he had taken the gentlemen of the locality to the house of the deceased. He has named Kedarnath Tiwari, Natthulal Saraf and Harsh Narayan as the persons who had accompanied him. He has denied the letter dated 19-4-1984 written by Kanchi. He has also deposed that he has not lodged the report at Burhan because he was scared of the incident and did not feel safe. He has stated that he did not report to the S.P., Shahdol, because his conscience suggested him to reach Satna. He met with accident by truck and got badly injured and hence, he did not report the matter at the police immediately.

19. In this regard scanning of evidence of Kedarnath Tiwari is necessitous. He is an advocate. He has deposed that Harsh Narayan had come with Vibhutibhushan's son to his house. He did not know his name but could identify him by face. Harsh Narayan requested him to accompany Shrikant Pandey to the house of Kanchi's in-laws. They met Natthulal at the market place and requested him to go along with them to Burhan Road. On the way they also met the brother of Gopal Pathak and requested him to come with them but he told that he did not

have good terms with his brother and declined to go. He has deposed that when they all went to the house, Gopal Pathak was angry and uttered many things which he had forgotten. Shrikant Pandey had gone inside to see his sister. At that juncture the tenant of the accused came there and all of them requested Gopal Pathak to send Kanchi with her brother. At that time Vidyavaridh was not present. As deposed, all his request went in vain. At that point of time the husband of the deceased arrived and he advised Shrikant to stay at his sister's place so that Gopal Pathak would calm down. After an hour about 11 O'clock Shrikant again came to them and told that Vidyavaridh Pathak took off his shoes and rushed to inflict him blows and possibly he would endanger his life. Shrikant also told him that he was not able to talk his sister as her in-laws were around. After 4-5 days he came to know that Shrikant's sister was murdered. In the cross-examination this witness has stated that he did not remember what he had stated at the police station. It is admitted that Harsh Narayan is a lecturer in a nearby college and was the acting Principal. He has also stated that he has no knowledge if there was any arrangement of dowry at the time of marriage. He had no idea about the role of Saraswati Patel at the time of marriage. He had not asked either Gopal Pathak or his father the reasons for not sending his daughter-in-law.

20. The question that emerges for consideration is whether from this material brought on record it would be appropriate to come to the conclusion that the deceased was treated with cruelty as envisaged in Explanation to Section 498-A of the India Penal Code. The deceased was highly qualified. She had not written a single letter. One of the letters that has been produced by the prosecution has been written by K.B. Laxmi who has turned hostile. It does not stand to reason why the deceased did not write the letter and someone else had written for her. Similarly the second letter was written by an anonymous person. Additionally the letters were recovered from the brother of the deceased which had been initially denied, but later on he admitted the production but was not able to specify the source. The father of the deceased had communicated with the father-in-law of the deceased about visit of his son. He has not mentioned any aspect with regard to cruelty or demand of dowry. Shrikant Pandey had taken three persons with him, out of them only one has been examined, namely, Kedarnath Tiwari. Kedarnath Tiwari had not spoken about demand of dowry or any ill-treatment meted out to the

deceased. In fact, he had heard it from Shrikant Pandey after he had come back. Reading the entire evidence of these witnesses and taking note of incurable discrepancies it is difficult to concur with the finding of the learned trial Judge that the cruelty has been proven by the prosecution in an indubitable manner beyond reasonable doubt. The testimony of the father and brother of the deceased and independent witness are absolutely sketchy and patchy. As it appears, an endeavour has been made to introduce the facet of ill-treatment and demand of dowry.

21. In view of the aforesaid we do not find that the prosecution has been able to prove the case under Section 498-A of the Indian Penal Code.

22. Presently, we shall proceed to deal with the charge relating to murder. The learned trial Judge has taken note of the circumstances to come to the conclusion that the accused persons had committed the murder of the deceased. The circumstances which have weighed with him we have narrated hereinbefore. Before we dwell upon the facet whether on the basis of the said circumstances, a definite conclusion for commission of murder can be recorded or not, we are inclined to note few citations relating to circumstantial evidence and appreciation of the same in cases of unnatural death of the present nature.

23. In *Sharad Birdhichand Sarda v. State of Maharashtra* : 1984 CriLJ1738 while dealing with the circumstantial evidence, the Apex Court has held as under:

The following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established,
2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
3. The circumstances should be of a conclusive nature and tendency.

4. They should exclude every possible hypothesis except the one to be proved, and

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

24. In *C. Chenga Reddy and Ors. v. State of A.P.* : 1996 CriLJ3461 , it has been held as under (Para 20-A):

In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the Courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence.

25. In *Sunny Kapoor v. State (U.T. of Chandigarh)* 2006 AIR SCW 2886 : 2006 CriLJ 2920, it has been held as follows:

19. The appellants have been convicted on the basis of circumstantial evidence. It is now well settled by a catena of decisions of this Court that for proving the guilt of commission of an offence under Section 302, I.P.C., the prosecution must lead evidence to connect all links in the chain so as to clearly point the guilt of the accuse alone and nobody else....

26. In *Padala Veera Reddy v. State of Andhra Pradesh* : AIR 1990 SC79 , their Lordships while dealing with the case of death due to forcible administration of poison opined that the prosecution cannot be said to have established the guilt of the accused decisively since the suspicion cannot take the place of legal proof.

27. In *State of U.P. v. Ashok Shrivastava* : [1992]1SCR37 , the Apex Court has expressed the view as under (Para 9):

While appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.

28. In *Vilas Pandurang Patil v. State of Maharashtra* : 2004 CriLJ2870 , the principles laid down in *Hanumant Govind Nargundkar v. State of M.P.* : 1953 CriLJ129 and *Sharad Birdhichand Sarda v. State of Maharashtra* : 1984 CriLJ1738 were reiterated. Their Lordships opined that there is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence.

29. In this regard it would not be inapposite to notice certain other decisions relating to circumstantial evidence more so when the learned trial Judge had recorded a finding that the death of the deceased had taken place inside the house of the accused persons.

30. In *Shambhu Nath Mehra v. State of Ajmer* : 1956 CriLJ794 the Apex Court has laid down the legal principles on the following terms (para 11):

This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to

establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.

31. In *State of W.B. v. Mir Mohammad Omar and Ors.* : 2000 CriLJ4047 while dealing with the concept pertaining to burden of proof on the prosecution has held as under:

31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.

32. The Apex Court in *Ram Gulam Chaudhary and Ors. v. State of Bihar* : 2001 CriLJ4632 has stated thus: Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The Appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference....

33. In *Trimukh Maroti Kirkan v. State of Maharashtra* : 2007 CriLJ20 while dealing with the circumstantial evidence their Lordships have opined thus (para 12):

15. Where an offence like murder is committed in secrecy inside a house the initial burden to establish the case would undoubtedly be upon the prosecution but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to

give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

34. In the aforesaid case the Apex Court has further expressed the view as under (Para 16 of Cri LJ):

21. In a case based on circumstantial evidence where no eye-witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. (See State of T. N. v. Rajendran 1999 Cri LJ 4552; State of U.P. v. Dr. Ravindra Prakash Mittal 1992 Cri LJ 3693; State of Maharashtra v. Suresh; Ganesh Lal v. State of Rajasthan 2002 Cri LJ 967 and Gulab Chand v. State of M.P. : [1995]3SCR27 .

35. We have referred to the aforesaid decisions to appreciate how the concept of circumstantial evidence has been dealt with by the Apex Court. As is noticeable, the circumstantial evidence in case of death in the ordinary course of things have a different connotation and the prosecution is required to decisively bring home the charges against the accused persons beyond any reasonable doubt. It has also been held that the singular hypothesis and unmistakable conclusion have to be strictly followed in the cases based on such circumstantial evidence. But when death occurs in a secret place and the inmates of the house have the special knowledge, the concept of circumstantial evidence takes a different contour and the burden of proof as envisaged under Section 106 of the Evidence Act comes into play.

36. In the case at hand, the questions that emanate for consideration are whether the prosecution has been able to establish the case on the basis of circumstantial evidence and whether the accused persons have been able to explain the causation of death. It is to be noticed that the learned trial Judge has taken

exception to three facts, namely, (a) the dead body of the deceased was found inside the house of the accused persons, (b) no container or packet containing poison had been found from the belongings of the deceased, and (c) the documents filed by the accused persons show their conduct which go a long way to show that they had really tried to mislead the prosecution and not been able to ascribe cogent reasons as regards the possession and production of the letters written by the deceased.

37. Though the aforesaid reasons, on a first flush, may look quite attractive, yet on a keener scrutiny, the fallacy of these reasons become clearly demonstrable and manifest. We have already held that the allegation of demand of dowry and ill-treatment of the deceased by the accused persons have not been proved. The prosecution case has been built on the edifice of the fact that the deceased was given white powder (some poisonous substance) everyday but nothing has been brought on record to show that it was a case of slow poisoning. That apart, the deceased who is a postgraduate could have communicated to her parents through letters but as is manifest, there is no such communication. Nothing has been brought on record to show that she was kept under total restriction as a consequence of which she was not able to intimate her parents. The brother of the deceased who had lodged the F.I.R. had done so after the expiry of almost two months and on a scrutiny of the said document, it is perceivable that he had not mentioned about any white powder being given to the deceased to be consumed by her. The reason given by the learned trial Judge that the mother-in-law had not taken care to treat the deceased is really not borne out in the evidence. True it is, the death had occurred in the house of the accused persons but that alone cannot be the conclusive factor in a case of this nature to hold the accused persons guilty of murder. Non-recovery of the container or the packet cannot make the accused persons liable. Nothing has been brought on record that the accused persons had purchased the pesticide nor any effort had been made to recover the same from the custody of the accused persons. The possibility that the deceased who was a post-graduate could have bought the same on her own cannot be totally ruled out. There is nothing in the evidence to indicate that the accused persons had any special knowledge with regard to the occurrence or administration of poison. The finding of the nail marks on the neck do not show that the same has been done by

any of the accused persons. It is worth noting here that neither Dr. Garg nor Dr. Jain have stated with regard to the conduct of the accused persons whereas the learned trial Judge has treated their conduct as unnatural which constitutes a part of circumstantial evidence. If every facet of the occurrence is scrutinized in a studied manner, in our considered opinion, the circumstances are not such from which it can be decisively construed that the accused persons with the common intention had caused the death of the deceased. We are inclined to so hold as the prosecution has miserably failed to prove the factum of ill-treatment meted out to the deceased and the demand of dowry. We are conscious that even if those offences are not proved, the offence under Section 302 read with Section 34 can be independently proved. But in the case at hand, when the circumstances are inextricably connected with ill-treatment and demand of dowry, we have referred to the same. We repeat at the cost of repetition that the circumstantial evidence which have been placed reliance upon by the prosecution is not clinching to record a conviction under Section 302/34 of I.P.C.

38. Now, we shall proceed to deal with the offence punishable under Section 201 of the I.P.C. The Apex Court in *State of Karnataka v. Madesh and Ors.* : (2007)7SCC35 after placing reliance on *V.L. Tresa v. State of Kerala* : 2001 CriLJ1171 and *Sou. Vijaya v. State of Maharashtra* : 2003 CriLJ4318 has expressed the opinion that there can be no dispute that Section 201 of I.P.C. would have application even if the main offence is not established. In the case at hand the learned trial Judge has recorded the conviction under Section 201 of the I.P.C. basically on the foundation of the conduct of the accused persons to the effect that they had not intimated the police in the same night and informed on the next day. The same has been taken note of as a piece of circumstantial evidence to record conviction under Section 302/34 of I.P.C. We have not given credence to the said circumstance to be a valid one for the purpose of recording the conviction. In view of the aforesaid, we find the offence under Section 201 of I.P.C. has not been established. In view of the aforesaid the appeal is allowed. The judgment of conviction and order of sentence are set aside. As the appellants are on bail, they be discharged of their bail bonds.

