In Re: Naina Mohamed

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Appellant : In Re: Naina Mohamed

Judgement :

Ramaswami, J.

1. I entirely agree with the observations of my learned brother enunciating pellucidly, if I may respectfully say so, the scope of Section 106 of the Indian Evidence Act and its due place in criminal trials. On account of the importance of the topic, I would like to add the following:

2. This section should be applied with care and caution in criminal cases. But it cannot be said that it has no application to criminal cases : B.N. Chatterji v. Dinesh Chandra Guba : AIR1948 Cal58 . See Woodroffe and Ameer Ali's Law of Evidence in India, Tenth Edition, by Malik, C.J. (1958), Volume II, page 1260 - Applicability to Criminal Cases.

3. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act. This section is on the other hand to be taken along with the provisions of that general rule : Lachman Singh v. The King A.I.R. 1949 Cal. 235, Shambunath v. State of Ajmer : 1956

CriLJ794 , Shewaram Jethanand v. Emperor A.I.R. 1939 Sind 209 : (1939) Crl.L.J. 287. In the language of Professor Glanville Williams, this persuasive burden of proof (as opposed to the evidential burden envisaged in Section 106) namely, the burden of proving all issues remains with the State : Professor Glanville Williams, The Proof of Guilt, (Hamlyn Lectures, seventh series) page 128 and following).

4. Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has disharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specially within the knowledge of the accused and it does not throw die burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused. In re Kanakasabai Pillai : AIR1940 Mad1 ; Hada v. The State : AIR1951 Ori53 , Emperor v. Muzaffar Hussain A.I.R. 1951 Ori. 53, Ram Bharosey v. Emperor : AIR1936 All833 , Sahendra Singh v. Emperor : AIR1948 Pat222 , State of Bihar v. Amir Hussan A.I.R. 1951 Pat. 638, and see also the cases cited therein.

5. Section 106 obviously refers to cases where the guilt of the accused is established-on the evidence produced by the Prosecution unless the accused is able to prove some other facts especially within his knowledge which would render the evidence of the prosecution nugatory. If in such a situation the accused gives an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may net prove the truth of the explanation : R. v. Schama 84 L.J.K.B. 396. But if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. In the language of Professor Glanville Williams:

All that the shifting of the evidential burden does at the final stage of the case is to allow the Jury (Court) to take into account the silence of the accused or the absence of satisfactory explanation appearing from his evidence - Page 129.

6. To recapitulate the foregoing : What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shifts is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is therefore for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, whan a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the proseution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (See Professor Glanville Williams : Proof of Guilt, Chapter 7, page 127 and following) and the interesting discussion - para. 527, Negative Averments and para. 528 - Require Affirmiative Counter Evidence at page 438 and following of Kenny's Outlines of Criminal Law, 17th Edition (1958).

7. But Section 106 has no application to cases where the fact in question having regard to its nature is such as to be capable of being known not only by the accused but also by others if they happened to be present when it took place. From the illustrations appended to the section, it is clear that an intention not apparent from the character and circumstances of the act must be established as especially within the knowledge of the person whose act is in question and the fact that a person found travelling without a ticket was possessed of a ticket at a stage prior in point of time to his being found without one, must be especially within the knowledge of the traveller himself; See Section 106 of the Indian Evidence Act, Illustrations (a) and (b).

8. The scope of Section 106 is well illustrated by the following decisions (See the catena of decisions tabulated in Y.H. Rao's Criminal Trial (1959), Wadhwa & Co. page 43 and following; and collection of cases in Note 19 to Section 106, Indian Evidence Act of the A.I.R. Commentaries on the Indian Evidence Act, Corpus Juris of India, Volume 5.

9. In a case of rioting, if the defence is that a particular person was present among the rioters with an innocent intention, then the burden of proving that innocent intention lies upon him : Emperor v. Sheo Deyal A.I.R. 1933 All. 835.

10. On a charge under Section 409, Indian Penal Code, it is not necessary for the prosecution to prove in what manner money alleged to have been misappropriated has actually been disposed of by the accused. If it is shown that the money entrusted to the accused was not accounted for, nor returned by him in accordance with his duty, if unspent, it lies upon the accused to prove his defence : Emperor v. Kadir Baksh A.I.R. 1947 Lah. 244.

11. Where the prosecution has discharged by reliable evidence that the accused has fired his pistol in the direction of the Police party who came to arrest him and the character and circumstances of the act suggested that his intention obviously was homicidal though the shots just whizzed over the heads of the policemen and did not cause hurt to any one, it was for the accused under Section 106 to prove that his intention was only to frighten the police party by firing into the air in order that he might be able to escape arrest. Where in the circumstances the accused neither stated nor let in evidence towards that end but on the other hand denied having fired, it is not for the Court to draw the inference that his intention might not have been homicidal : Emperor v. Munshi A.I.R. 1936 Oudh 294.

12. The prosecution offered no evidence as to how the fight started or what was the motive which induced the accused to act as he did. But once the only possible inference to be drawn from the facts proved by the prosecution is that the accused voluntarily and deliberately inflicted a fatal wound on the deceased, there is no duty cast on the prosecution to prove the motive. In the circumstances of the case the motive is known only to the accused and he has not chosen, to tell the same or rather he has offered an explanation which is false. In the circumstances it is-not

for the Court to speculate as to a possible motive of which there is no indication on record. The mere fact that the motive is not known (and the accused who alone knows it is not prepared to come out with it) is no reason for assuming that the accused must have acted in the exercise of some right of private defence : Daulat Ram v. Emperor A.I.R. 1947 Lah. 244.

13. In cases of forcible abduction, there can seldom be direct evidence as to the actual intention of the abductor and that intention must be inferred from the circumstances of each case under Section 114, Evidence Act. Human nature being what it is, whenever one finds a young man abducting a girl of marriageable age, the first natural presumption must be that he had abducted her with the intention of having sexual intercourse. If he has any intention other than that which is suggested by the natural circumstances of the case, the burden lies on him under Section 106 of the Evidence Act to prove that intention : Mohammad Sadiq v. Emperor A.I.R. 1938 Lah. 747.

14. The law regarding burden of proof in regard to facts peculiarly within the knowledge of the accused is the same in the United States of America and in regard to which Wharton has the following to say:

'A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence which if believed by the jury would convince them of the defendant's guilt beyond a reasonable doubt, the defendant is in a position where he should go forward with countervailing evidence if he has such evidence. When facts are peculiarly within the knowledge of the defendant, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the jury must still find that he is guilty beyond a reasonable doubt before they can convict. However, the defendant's failure to present evidence in his behalf may be regarded by the jury as confirming the conclusion indicated by the

evidence presented by the prosecution or as confirming presumptions which might have been rebutted. Although not legally required to produce evidence on his own behalf, the defendant may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution.' Wharton's Criminal Evidence 12th Edition (1955), Vol. I, Ch. 2, P. 37 and foll. Lelond v. The State 343 U.S. 790 : 96 L.Ed. 1302, Raffel v. U.S. 271 U.S. 294 : 70 L. Ed. 1054.

15. To sum up, the accused is always entitled to hold his tongue; but if he is in a position to explain the only alternative theory to his guilt, the absence of such an explanation must be taken into account, as my learned brother has done in the instant case.

Anantanarayanan, J.

16. The accused in this case, Naina Mohamed, has been convicted of the murder of a 15 day female infant born to his elder sister Meera Bivi (P.W. 1), and sentenced to undergo the lesser penalty of imprisonment for life by the learned Sessions Judge of Tirunelveli.

17. The proof of guilt in this case depends entirely upon circumstantial evidence. That being so, the aspect of the case relating to motive also assumes some significance. The evidence shows that Meera Bivi (P.W. 1) first married one Shaul Hamid about 6 years back, after developing an illicit intimacy with this man. The woman was divorced, and she subsequently married her present husband Sayed Mohamed, in this case too after an initial illicit intimacy. When P.W. 1 left Kalladaikurichi in order to live in Sahupuram, where herself, her younger sister Bathumma (P.W. 2) and younger brother (P.W. 3) were all employed at the Dharangadhara Heavy Chemical Works, she was about 40 days advanced in pregnancy. At Sahupuram P.Ws. 1, 2 and 3 and their mother were residing in a particular shed in the northern row of sheds for labourers (Plan Exhibit P-10). The accused, who was employed as a mill hand at Veeravanallur, appears to have entertained grave suspicions that the child that P.W. 1 was carrying in her womb was conceived out of lawful wedlock. That child was born about 15 days prior to

this murder, and it was a female infant. Very shortly before this murder, the accused came there and asked P.W. 1 and the entire family to go over to Pottalpudur for worship at the Pallivasal (Mosque), and further required that P.W. 1 should swear at the Mosque that she had conceived her child only by her husband. P.W. 1 told the accused that she could proceed to Pottalpudur only about 40 days later, and she swears that the accused then 'went away angrily'. A art from this, we have the testimony of one Shamsudeen (P.W. 6), the proprietor of a small tea shop at Thalvanvilai, north of Sahupuram. He knows the accused, and he states that the accused sometimes spoke to him about his family affairs. The accused told P.W. 6 that he was not satisfied with the conduct of his sister, Meera Bivi (P.W. 1), that he felt ashamed on account of her moral character, and also that P.W. 1 had given birth to a child. As we shall see later, there is no hint or suspicion in this case of enmity between the accused and P.W. 1, or between him and his brother and sisters. It is noteworthy that, in the First Report of Information furnished by Meera Bivi (P.W. 1) after the discovery of the murdered infant (Exhibit P-1), she definitely states that she has suspicions only against the younger brother employed in Veeranallur Mills, namely, the accused. That is the testimony relating to motive.

18. The further facts are that, the evening before the murder, the accused came to Sahupuram and stayed at the hut along with P.W. 1, Bathumma (P.W. 2), Ibrahim (P.W. 3) and their mother. P.Ws. 1 and 2 and the accused slept inside the shed, the female infant lying in a saree cradle at the feet of P.W. 1. The mother and Ibrahim (P.W. 3) slept outside the shed, near the doorway. P.W. 1 woke up at about 11 P.M. to nurse her infant, but found that the baby was missing from the cradle. The accused also was missing from the shed. She then raised an alarm, and all the inmates of the little hut immediately went in search of the child, but without avail. These facts are spoken to by P.W. 1 herself, Bathumma (P.W. 2) and Ibrahim (P.W.3). If they are to be believed, since it is impossible that an infant 15 days old could have walked away on its own accord, the conclusion is irresistible that either the accused, who was simultaneously missing, must have taken. away the child, or that some other intruder should have done so.

19. Early next morning, P.W. 1, P.W. 2 and P.W. 3 continued their search for the missing child, which had been unavailing during the night. They came across the body of this child, lying upon a tree branch with a cut injury on the neck, in an odai forest about three furlongs west of Sahupuram. Agreen-bordered dhoti which the accused had worn the previous night (M.O. 1) also lay at a short distance from that tree, to the west, having blood-stains upon it. These people then went to the Police Station at Arumuganeri where P.W. 1 made her first report (Exhibit P-1), upon which investigation followed. The Circle Inspector (P.W. 11) states that he visited the spot of offence that afternoon, and recovered the dead body of the child from where it lay on the branch of a odai tree at a height of about 2 1/2 ft., and also recovered blood-stained earth from underneath that tree, and the blood-stained green-bordered dhoti (M.O. 1) which lay on the branch of another tree about half a furlong away.

20. The autopsy on this child was held by Dr. Achai (P.W. 4), the woman medical officer of the Local Fund Dispensary at Kayalpatnam, from 8 A.M. the next day (12th December, 1958). There was an incised wound 5' long, bone deep, across the upper part of the neck in front. The trachea, larynx and the major blood vessels-were all severed. Death was due to shock and haemorrhage from this necessarily fatal injury, and death must have been instantaneous. The injury was due to some sharp weapon like a knife, perhaps even a pen-knife. This medical evidence makes-it clear beyond doubt that the child did not die of any accidental or natural cause, but that it was deliberately murdered. Whoever inflicted this homicidal violence-on the infant, was clearly guilty of murder.

21. Apart from all this, we have the very important testimony of Ramasubramaniam (P.W. 5), an electrician employed in the Nellai Trading Company. He states that on this very night he was returning at about 10-30 P.M. to his house, through a pathway which runs west of Sahupuram. When he was about two furlongs west of Sahupuram, he saw a man proceeding in advance, who later sat down. He went near that man, and flashed his electric torch, when the witness discovered that the man was the accused, whom he previously knew. The accused was carrying something on his left shoulder, which gave the impression of a little height. The witness (P.W. 5) asked the accused what it was, and the

accused said that it was his sister's child which was sick, and that he was carrying the infant to the doctor at Attur. The witness proceeded on his way to Arumuganeri.

22. The accused was absconding immediately after the offence, and he was arrested' on the 24th December at Arumuganeri Railway Station.

23. The examination of the accused is of great significance in the present case, since the proof of guilt rests only upon circumstantial evidence. The several pieces of testimony which have to be regarded as links in the chain of this evidence, have to be considered in their cumulative effect. As the rule is expounded in the decision of the Supreme Court in Deonandan v. State of Bihar : 1955 CriLJ1647 , a decision to which we shall have occasion to refer later also, the completed chain of the several links of circumstantial evidence must then be scrutinised, in order to see whether the only conclusion possible upon this is that the accused is guilty, or whether there is 'any reasonable ground for a conclusion consistent with the innocence of the accused.' It is in this context that any explanation furnished by the accused in a case of this kind, even though he is not bound to offer an explanation, and even if he is unable to prove or probabilise any part of it, must be very carefully regarded by the trial Court, in order to see whether some hypothesis compatible with the innocence of the accused might at all fit the: established facts.

24. In the present case, the accused has merely persisted in a total denial of every part of the evidence for prosecution. When his attention was drawn to that part of the evidence of P.Ws. 1, 2 and 3 which relates to his insistence that P.W. 1 should (sic) at the Mosque at Pottalpudur that she had conceived the child only by her husband, he admitted that he desired that all the members of the family should worship at that Mosque before he left for Bombay, but denied the other allegations. When his attention was drawn to the evidence of Shamsudeen (P.W. 6), he did not say that he was unacquainted with this man, or that there was no conversation between them about the chastity or character of Meera Bivi (P.W. 1), but claimed that it was the witness (P.W. 6) who told him about the conduct of P.W. 1. He denied that he went to the hut of P.Ws. 1, 2 and 3 the evening preceding the murder, or that he took his bed there that night. He said nothing

about the conduct of P.Ws. 1,, 2 and 3 or why they should depose in the manner that they did, about the accused and the infant being missed simultaneously later that night, or the search for the infant the next morning and the discovery of the body. His attention was drawn to the evidence of Ramasubramaniam (P.W. 5) which is a very significant link in the chain of circumstantial evidence, and he stated as follows:

I am not well-acquainted with him. I have seen him in the house of P.W. 1. I did not go-with anything on my left shoulder as stated. His evidence that he met me and that I spoke to him is false.

25. Another feature in this case which shows that, even subsequently, the accused and his brother and sisters have not been on inimical terms, is a form (Exhibit P-11) authorising the withdrawal of Rs. 25 from a Post Office Savings Bank Deposit in the name of the accused, which was signed by the accused during committal proceedings, and which permitted P.W. 1 to withdraw Rs. 25 on behalf of the accused. According to P.W. 1, the amount was withdrawn as required for the expenses of the marriage of her younger sister (P.W. 2), while, according to the accused, it was withdrawn on the representation of P.W. 1 that it was necessary for defending the accused. At any rate, the suggestions in the cross-examination of P.W. 1 that she desired to live a free life after deserting her husband and killing her infant, do not derive support from anything said by the accused himself. As regards the blood-stained dhoti (M.O. 1), upon which human blood-stains were found on chemical analysis, the accused again was content with a bare denial that the dhoti belonged to him. Even this was in the committal Court and, during the trial, the accused merely gave the answer 'I do not know'.

26. We think it is clear that the guilt of the accused was established in this case overwhelmingly, and beyond any element of reasonable doubt, by the cumulative effect of the several links in the chain of circumstantial evidence set forth above, regarded in their entirety. It is clear that the accused had this motive to commit the crime, that he suspected that his sister (P.W. 1) had not conceived the child in lawful wedlock, and that this obsessed him. Probably, as the learned Sessions Judge observes, the accused suffered from a perverted sense of family honour. It

is further clear that the accused disappeared simultaneously with the infant that night and these facts, by themselves, would powerfully support the inference that the accused had carried away the child. It is also clear that Ramasubramaniam (P.W. 5) met the accused that very night, carrying something on his left shoulder which gave the impression of a little height, at or about the locality of offence, and that the accused then told this witness that he was carrying his sister's little child, which was ill, to a doctor at Attur. The infant was clearly murdered by the means of a sharp weapon like a pen-knife and the body was found during the search the next morning, while the blood-stained dhoti of the accused (M.O. 1) was also found on the branch of a tree nearby. The accused has not furnished any explanation whatever for any of these circumstances, barring denials, as we have earlier stressed.

27. Learned Counsel for the accused appearing as amicus curiae before us, has subjected the evidence for prosecution to a minute and searching analysis. But even he has been able to place before us only stray pieces of criticism. For instance, he claims that the mother of P.Ws. 1, 2 and 3 and the accused who was also in the hut, should have been examined as a witness. We are unable to agree, as there is absolutely nothing suggested against P.Ws. 1, 2 and 3, and the law does not requre that the prosecution should examine every witness who might have knowledge of certain surrounding circumstances relating to the offence. It must be noted that these are not direct witnesses to any crime, in which case, perhaps, the argument would have force. Next, it is urged on the strength of certain confused and contradictory statements in the evidence of the young girl Bathumma (P.W. 2), that it appears as if the body of the infant was also brought to the Police Station by P.W. 1 and the others at the inception itself. Since there was no discovery in this case, resulting from a statement made by the accused, and admitted in evidence under Section 27 of the Indian Evidence Act, the criticism itself is of little significance. Actually, we have no doubt at all that Bathumma (P.W. 2) is probably confusing the different visits made by her and her relatives to the Police Station that day, and the evidence of Circle Inspector (P.W. 11) is clear and definite about the recovery of the dead body by him at the spot of offence, later that afternoon. There is a further criticism that the Head Constable who actually recorded the First Report of Information from P.W. 1(Exhibit P-1) ought to have

been examined as a witness in the case. We certainly agree that he could have been examined, for the sake of completeness of evidence upon the aspect of investigation. But we are unable to see that anything material turns upon the omission of the prosecution to do this. The criticism that it has not been established that M.O. 1 was the dhoti worn by the accused that night, has not much weight. The article has been identified as the dhoti of the accused by his nearest relatives, and, as far as identification of such an article of clothing is possible at all, the evidence is certainly worthy of acceptance. We must affirm that no grounds have been shown or suggested why P.Ws. 1, 2 and 3 should be anxious to implicate the accused falsely. As regards Ramasubramaniam (P.W. 5), we find a single stray suggestion in cross-examination to the effect that this witness was in illicit intimacy with Meera Bivi (P.W. 1), which suggestion was immediately repudiated by the witness. It is highly significant that the accused says nothing whatever about this, when examined in Court, and that he does not deny that P.W. 5 and himself were at least superficial acquaintances.

28. In the decision in Deonandan v. State of Bihar : 1955 CriLJ1647 , already referred to, there is a very important passage in which Their Lordship deal with the effect of a failure of the accused to offer any explanation for circumstances appearing in evidence against him, in a prosecution based upon circumstantial evidence. The law is very clear that the accused is not bound to offer any explanation, that there is no burden cast upon him to do so, and that the onus of proof does not shift in respect of the vital matter of guilt, at any stage of a criminal trial. But, as stated by Their Lordships:

It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a ease where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which, if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link

which completes the chain.

This passage applies with great force, in our view, to the facts and circumstances of the present case.

29. We have also considered the scope and applicability of Section 106 of the Indian Evidence Act, with reference to this case. In Seneviratne v. R. 41 C.W.N. 65 : A.I.R. 1936 P.C. 289, the Judicial Committee had occasion to comment upon this aspect, with reference to a charge to the jury in a case of murder from Ceylon, where this principle had special applicability to the facts of that case. This decision, and the subsequent decisions of several High Courts in this country, make it clear that Section 106 of the Indian Evidence Act cannot apply to shift the burden of proof in a criminal case, where the onus lies upon the prosecution throughout to establish the guilt of the accused beyond reasonable doubt. Even where there are facts specially within the knowledge of the accused, which could throw a light upon his guilt or innocence as the case may be, the accused is not bound to allege them or to prove them. But it is not as if the section is automatically inapplicable to criminal trials, for, if that had been the case, the Legislature would certainly have so enacted. We consider the true rule to be that Section 106 does not cast any burden upon an accused in a criminal trial but that, where the accused throws no light at all upon facts which ought to be especially within his knowledge, and which could support any theory or hypothesis compatible with his innocence, the Court can also consider his failure to adduce any explanation, in consonance with the principle of the passage in Deonandan v. State of Bihar : 1955 CriLJ1647 , which we have already set forth. The matter has been put in this form, with reference to Section 106 of the Indian Evidence Act, in Smith v. R. 41 C.W.N. 65 : A.I.R. 1936 P.C. 289 namely, that if the accused is in a position to explain the only alternative theory to his guilt, the absence of explanation could be taken into account In the present case, taking the proved facts together, we are unable even to speculate about any alternative theory which is compatible with the innocence of the accused. Learned Counsel for the accused stresses that the weapon of offence has not been found, or traced to the possession of the accused. But the, medical evidence proves that the weapon could well have been a simple pen-knife. It is difficult to see how there is any

requirement to complete the links of the chain, that prosecution should prove that the accused used such a weapon, or how he later dealt with it. If someone else was responsible for this murder, that is a fact upon which the accused alone could throw any light, for we accept the facts as established that the accused disappeared with the infant that night, and that he was seen carrying the infant, sometime before the murder, at or about the locality of offence, and further that his blood-stained dhoti was later recovered from the scene of offence.

30. We must thus hold that the guilt of the accused was fully established on the evidence, and, indeed, proof of guilt in such cases, where the several links of a chain together establish the guilt of the accused, could be upon a far stronger basis than any direct evidence. We have therefore no hesitation in confirming the conviction for murder.

31. The learned Sessions Judge has thought fit, in this case, to impose the lesser penalty of imprisonment for life, upon grounds which do not commend themselves to us. The learned Judge refers to the perverted sense of family honour which has actuated the accused to commit this crime. That certainly has been the motive in the present case, but we are quite unable to see how it could be regarded as a mitigating circumstance. The offence was brutal and callous, and there is no suggestion of insanity, or mental imbalance amounting to such a state. We hence consider that the penalty of death should have been awarded in this case, though we do not propose to interfere with the sentence, in the absence of any appeal by the State from the sentence actually imposed. But we are constrained to make these observations, particularly in the context of a reference made by the Sessions Judge under Sections 401 and 402, Criminal Procedure Code, to reduce the sentence of imprisonment for life to imprisonment for a lesser term of seven years. We would therefore confirm the conviction and sentence of imprisonment for life and dismiss this appeal.