In the High Court at Calcutta
Criminal Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Sahidullah Munshi.

And

The Hon'ble Justice Subhasis Dasgupta.

CRA No. 247 of 2006

Mazidul Miah @ Mia & Ors.
Vs.
State of West Bengal

For the Appellants :Mr. Arindam Jana, Adv.
Mrs. Sreyoshi Bhoumick, Adv.
Mr. Hironmoy Paik, Adv.

For the State :Mr. Arun Kumar Maity, Ld. A.P.P.
Ms. Sreeparna Das, Adv.
Mr. N.P. Agarwala, Adv.

Heard on : 03.01.2020, 27.01.2020, 5.02.2020, 02.03.2020

Judgment on : 25.06.2020

Subhasis Dasgupta, J:-

This appeal found its emergence after it was preferred by accused persons/appellants against the judgment and order of conviction, and sentence, passed by learned Additional Sessions Judge, Cooch Behar, in Sessions Case No. 74/2 giving rise to Sessions Trial No. 4(12)04, convicting the accused persons/appellants under Section 498A/302/34 I.P.C., and sentencing them thereunder to suffer rigorous imprisonment

for three (3) years with fine of Rs. 5,000/-(Rupees Five Thousand) each, with default stipulation to undergo rigorous imprisonment for six (6) months each under Section 498A I.P.C., and to suffer imprisonment for life with fine of Rs.5,000/- (Rupees Five Thousand) each, and in default to pay fine further rigorous imprisonment for six (6) months each under Section 302/34 I.P.C.

We feel inclined to mention the factual scenario of this case precisely as established and highlighted by the prosecution, discernable from the witnesses examined during trial, that the deceased being the second daughter of the de-facto complainant/father was put to suffer death in her in-law's house by hanging about seven (7) months after her marriage.

Admittedly, victim was given marriage with accused/appellant no. 1 Mazidul Miah on 16.10.1997, according to mohammedan rites and customs satisfying the demand of accused persons, like by paying cash of Rs.11,000/- (Rupees Eleven Thousand), silver ornaments of three descriptions along with one Hero cycle and other valuables.

After visit to her in-law's house, deceased victim was put to suffer cruelty, oppression and ill-treatment by her in-law's members, including her accused husband for her black complexion. She was not loved by family members of in-law's house, and frequently abused her with a

threat that accused husband would be given marriage shortly after repealing her marriage and driving her out of the matrimonial home.

The in-law's members while causing ill-treatment upon victim made her understand just three days after her marriage for staying in a cow shed, expressing their dissatisfaction on the ground of her black complexion. Accused husband beat her physically with cycle chain while causing physical torture upon the deceased victim. She was attempted to be killed. Deceased victim reported everything to her parents about the torture and cruelty, she received in her in-law's house, when she visited her paternal house on several occasions.

The de-facto complainant/father sent his daughter/victim to her in-law's house on 11.06.1998, after persuading her to withstand such torture inflicted upon her, for her future benefit upon realization of weak financial condition of her father. The mother of deceased victim, when visited her in-law's house on 20th June, 1998, the victim daughter informed her narrating the plight of her physical assault committed upon her by her in-law's members. The father/complainant learnt everything after his wife had returned to house. The eldest son-in-law of the de-facto complainant/father on 24th June, 1998, visited to the house of de-facto complainant and informed de-facto complainant that victim daughter had been put to suffer death by hanging with use of rope. Having received such information, de-facto complainant/father rushed to the in-

law's house of his deceased daughter, when victim daughter's body had already been sent to P.S. for holding *post-mortem* examination.

The police inquest was held. Two pieces of light green coloured tape recorder chord, one of which measuring about 2.5 ft. long, and another being 8 ft. long, were seized during investigation, alleging the same to have been used in the instant murder, as weapon of assault. The dead body of deceased was subjected to autopsy after due consultation of inquest report and F.S.L. report of *viscera* of deceased. The Autopsy Surgeon opined that the death of the deceased was due to asphyxia as effect of strangulation by ligature, which was *ante-mortem* and homicidal in nature.

Police undertook investigation receiving a complaint on 26.06.1998 from the father of deceased, and on completion of investigation submitted charge against the accused persons. The Trial was conducted framing charge against the accused persons/appellants under Section 498A/302/34 I.P.C., and collecting evidence of as many as eleven (11) witnesses.

PW-1 is the de-facto complainant being the father of deceased, while PW-2 is the eldest son-in-law of the de-facto complainant. PW-3 and PW-4 are the neighbours of PW-1, and they are also relatives of PW-1. PW-5 and PW-6 are neighbours of accused/appellants, out of which PW-5 was declared Hostile to prosecution. PW-7 is Autopsy Surgeon

furnishing his *post-mortem* report Exhibit-1, and his final opinion to the cause of death is Exhibit-3, given after perusal of F.S.L. report of the *viscera* of deceased (Exhibit-2). PW-8 is the first Investigating Officer, while PW-11 is the last Investigating Officer submitting charge sheet in this case. PW-9 is a seizure witness in respect of whom two (2) pieces of tape recorder chord (Exhibit-7), one piece of which was found lying by the side of the dead body of deceased, and another was found tied with the bamboo of thatched roof ceiling house in the in-law's of accused persons. PW-10 is the Recording Officer in respect of complaint received from the de-facto complainant (Exhibit-5).

The Trial Court appears to have based his conviction relying upon the testimony of prosecution witnesses, other than PW-5 (declared hostile), taking support of Autopsy Surgeon's report, and the Investigating Officer as well.

Defence set up during trial is denial of offence, false implication together with a plea, though not successfully established, that since victim had love affairs with someone, and against her wish she was given marriage with accused husband, the victim herself committed suicide by hanging for her past love having been frustrated.

The order of conviction and sentence was challenged in this appeal making submission, which may be mentioned as hereunder:

1. That the learned Trial Judge had improperly exercised his authority in holding the accused persons/appellants guilty laying much emphasis upon the Autopsy Surgeon's report in a case where there was no supportive, clinching materials in evidence to make out a clear case of strangulation, as opposed to suicidal death, and further in the absence of weapon of assault being two (2) pieces of tape recorder's chord, being produced before the Trial Court, there cannot be any conviction in a murder trial;

2. That the learned Trial Judge most illegally disregarded the version of PW-5, a neiboughering people of accused persons having had his opportunity to be present in the house of accused persons after being attracted by the cries of accused mother-in-law of deceased victim, and PW-5 having himself found the deceased victim to be in hanging condition, he proceeded to cut the knot and caused dead body to be brought down to the earth, and thus making no reliance upon the testimony of PW-5, the probability of occasioning suicidal death was stifled to death;

3. That the learned Trial Judge committed a breach in believing the testimony of PW-1, 2, 3, and 4, who were partisan by themselves, to make out a case of cruelty, in a case where admittedly the marriage of victim was a negotiated one, expressing mutual satisfaction by each of the parties to

the marriage, and thus the allegation of having caused cruelty to victim for her black complexion would not be a believable version;

4. That the evidence adduced having contained serious discrepancies/contradictions, there developed substantial doubt over the death of the deceased, and the benefit of such doubt should be necessarily favoured to accused/appellant;

5. That the post conduct of the mother-in-law revealed in the testimony of witnesses would not necessarily leave materials for homicidal death, contrary to suicidal death of deceased;

6. That the dead body of victim having recovered from a cow shed, though situated within the compound of the house of accused persons, the parents-in-law could not be necessarily implicated in this case framing charges against them;

7. That there was delay of two (2) days in lodging the F.I.R. at the police station, which left sufficient room for concoction and embellishment in the version of prosecution case.

Respondent/State contested the appeal supporting the order of conviction. According to Respondent, the cross-examination of Autopsy Surgeon revealing a case of homicidal death of deceased victim remaining unshaken to doubt, learned Trial Judge had rightly believed the report of Autopsy Surgeon, describing the prosecution case to be coming within the meaning of homicidal death, but not a suicidal death.

The plea of suicidal death not being established in trial even during cross-examination, the same should not be allowed to be reopened. The allegation of causing homicidal death thus, according to State/Respondent was rightly attracted against the accused/appellants taking resort to Section 106/113(A) of Evidence Act. The order of conviction and sentence, according to State, would remain undisturbed.

At the very threshold of this case, this may be mentioned that the instant case is not based on dowry demand. The death of deceased, as set up by prosecution during trial was the dissatisfaction of accused persons expressed with regard to black complexion of deceased victim in a case where marriage was admittedly negotiable one.

Investigation was initially started recording a case against accused/appellants under Section 498A/306 I.P.C., but upon receipt of final report of Autopsy Surgeon, a new horizon was developed attracting the provision of Section 302 read with Section 498A against accused persons. The Autopsy Surgeon kept his final opinion pending even noticing presence of a continuous ligature mark on the neck of deceased, without perusing the F.S.L. report of *viscera* of deceased, where nothing could be detected as regards poison in the *viscera* of the deceased. The definite opinion of Autopsy Surgeon was that the death of deceased was asphyxia, being consequent upon strangulation evidenced by ligature, which was *ante-mortem* and homicidal in nature. Prosecution thus, is

found to rest upon strangulation, a homicidal death respecting Autopsy Surgeon's report.

Five (5) accused persons were put up for trial, including the present appellants. Out of three (3) appellants herein appellant no. 1 is the husband, appellant no. 2 is the father-in-law, while appellant no. 3 is the mother-in-law of deceased. Out of five (5) persons put up for trial, two (2) accused persons were favoured with acquittal for want of evidence by the Trial Court. During the pendency of this appeal, we had the occasion to receive a report from correctional authority informing that appellant no. 2/Hasaruddin Miah @ Mia @ Hachheruddin Mia had expired on 24.02.2013 in hospital.

The prosecution case simpliciter is that deceased victim was put to suffer death by hanging in her matrimonial home, the reason being the dissatisfaction of the accused persons for the black complexion of deceased victim. The entire effort of accused/appellant was to render the prosecution case improbable and unbelievable on the principal ground of non-production of offending weapon in the instant murder a case where the prosecution firmly relied upon the Autopsy Surgeon's report, revealing a case of homicidal death by reason of strangulation suffered by deceased.

We would now address the points raised in this appeal by the discussion made hereunder, bearing in mind that the deceased victim, a

twenty (20) year old woman, suffered her unnatural death in her matrimonial home about seven (7) months after her marriage. Such discussion would help us coming to a rational decision after ascertaining whether it was a homicidal death or a suicidal one.

Admittedly, the marriage of deceased victim was a negotiable one. After marriage victim had been to her in-law's house. She lived together with her husband to maintain her conjugal life staying in a separate room of her in-law's house. Though, the de-facto complainant being the father/PW-1 of deceased victim stated in his evidence that he satisfied the demands of accused persons by paying a cash of Rs. 11,000/- (Rupees Eleven Thousand), one bicycle, ornaments of three descriptions at the time of marriage of his deceased daughter, but the entire edifice of prosecution case of homicidal death being not founded upon the story of dissatisfaction of post marital demand leading to the death of deceased for the cruelty she received in her in-law's house, it would be an irrelevant exercise for our present purpose to deeply go into such issue.

A look to the evidence is necessary to ascertain perpetration of cruelty upon victim in her marital home by appellants for their dissatisfaction over the black complexion of victim.

The evidence adduced by PW-1 is specific to reveal that four days after marriage, victim visited her paternal house, when she expressed her dissatisfaction expressing the cruelty she received by her in-law's

members over her black complexion. The deceased thus, made her father/PW-1 posted with a fact that the torture assumed such dimension, when in-law's members directed her to live in a cow shed.

The cause of inflicting torture was the black complexion of deceased victim, which lead the in-law's members of victim including her accused husband to cause physical cruelty upon her. It was also given to understand that victim received threat from in-law's members for her husband's second marriage after driving her out from matrimonial home. So long victim remained alive and visited her paternal house, she expressed her extent of torture and cruelty inflicted upon her by her in-law's members, and all the times the de-facto complainant persuaded his daugther to return to her in-law's house for her future prospect, keeping in view the poor condition of de-facto complainant/father. The mother of victim, since deceased, when visited the in-law's house about four days prior to the incident of death, the in-law's members wounded the deceased victim even in presence of her mother, and the victim individually informed everything to her mother aobut the extent of cruelty she recieved, and reason of such torture. The mother of the victim after returning to her house stated such things to de-facto complainant/ father. Ultimately, the deceased victim was put to suffer death by hanging on 24.06.1998, in her in-law's house.

Such unnatural death information, according to PW-1, was not given to PW-1/father, and when de-facto complainant/father reached to the in-law's house of victim pursuant to the information supplied by his eldest son-in-law, the dead body of deceased victim had already been sent to police station for *post-mortem*. The contention of PW-1, as stated in his evidence, was that the accused persons deliberately got the dead body of victim buried without furnishing infromation of his daughter's death. PW-1/father thus, claimed in his testimony that his deceased victim daughter had been put to suffer her death by accused persons after causing her to suffer cruelty, expressing their utter dissatisfaction over her black complexion even after the marriage was a negotiated one.

PW-2 being the eldest son-in-law of PW-1 corroborated the testimony of PW-1, as regards the cruelty perpetrated upon the victim, and the cause of cruelty inflicted upon the victim. PW-2 supporting the prosecution story gave out that he had the occasion to know about torture and cruelty inflicted upon victim whenever she visited his house. PW-2 after receiving death information of deceased victim had been to the in-law's house of deceased victim, which was about 1-1.5 Km. away (approx.) from his house, and on reaching there he found the dead body lying over there. PW-2 having learnt from accused persons that information of death had not been sent to the father of deceased, he returned to his house and sent information to his father-in-law/PW-1 by sending his younger brother. Both PW-1/father and son-in-law/PW-2

together visited the in-law's house of victim, when the dead body of victim had already been sent to police station for *post-mortem* examination.

PW-3 and PW-4 are the relatives and neighbouring people of PW-1. Both PW-3 and PW-4 supported prosecution case offering corroboration to the testimony of PW-1 that the accused persons put the victim to cruelty in several ways, expressing their dissatisfaction for her black complexion. They knew about the torture either from deceased victim, whenever she visited her father's house, or from victim's father. They consistently stated that whenever victim visited her paternal house, all the times the father/PW-1 persuaded her to go back to her in-law's house, keeping in view the poor condition of her father obviously for future benefit. These two witnesses (PW-3 and pw-4) had know occasion to to see commission of cruelty in their own eyes by visiting to the in-law's house of deceased victim.

Though argument was raised that prosecution case could not be believed on the ground that even after knowing the commission of cruelty upon the victim, and cause of cruelty, the parents of victim never reported the same to police station or to panchyaat body, and the neighbouring people living around in-law's house of deceased victim, but this cannot be invariable rule that parent would immediately lodge a complaint immediately after knowing commission of cruelty upon their

daughter, ignoring possibilty of reconciliation mutually. It is ordinary conduct that parents would prefer to persuade their daughter ignoring the torture, and the cruelty for the future benefit of their daughter.

This is a case where PW-1/father of victim owns 15-16 *kathas* of agricultural land for his livelihood. Naturally, the father was left with best option to persuade his daughter for rejoining her in-law's house, foregoing the torture, ill-treatment, cruelty for future prospect, and this was rightly done by father/PW-1 by persuading his daughter, so that she could be made to return to her in-law's house for leading a peaceful conjugal life with husband.

The cause of cruelty was challenged by the learned advocate for the appellant contending that since it was a negotiated marriage, there was no scope for the in-law's members to express their dissatisfaction for the black complexion of victim.

Though marriage was held after negotiation between the parties, but when there is consistent evidence of PW-1 to PW-4 that victim was put to suffer cruelty by in-law's members, for their dissatisfaction expressed over the black complexion of deceased, and further for giving a threat to deceased victim proposing a second marriage of her accused husband after driving her out from in-law's house, the prosecution case should not to be looked with doubt simply upon noticing denial of the accused persons in their cross-examination.

Causing cruelty to deceased victim for her black complexion even after her marriage by the in-law's members would definitly attract Section 498A/34 I.P.C. agianst the in-law's members, including accused husband.

The next question begging answer from us is whether the victim suffered homicidal or suicidal death is a question of fact being dependent upon circumstances, to be decided from evidence established in this case.

Learned advocate for the appellant referring cross-examination of PW-2 submitted that since the marriage of victim was given against her wish, ignoring her love affair with someone, the deceased victim voluntarily committed suicide in her in-law's house, and therefore, allegation of homicidal death by accused in-law's members for her black complexion after causing cruelty to her was far from belief.

True it is tha there was a suggestion to that effect in cross-examination to PW-2, but the witness denied the same. There was no other convincing evidence transpired in the cross-examination of witnesses to reveal the previous love affairs of deceased victim with someone else, and the mental disposition of victim, supportive of commissioning suicide, as contended.

During examination under Section 313 Cr.P.C., accused persons failed to offer any satisfactory explanation in support of their stand based

on suicidal death, compared to homicidal death. Accordingly, such suggestion of love affair of deceased victim, and commission of suicide for giving marriage against her wish, thus, would be without any relevance.

The place of occurrence, according to rough sketch prepared is at the north of in-law's house of victim. According to PW-1/father, there are five rooms in the in-law's house of his deceased daughter, and his daughter at the relevant point of time used to occupy south facing room with his son-in-law.

Autopsy Surgeon while holding *post-mortem* examination, consulted the police inquest, wherein the place of occurrence was described to be situated at the north sided room of in-law's house of deceased victim, and thus, matching with rough sketch map prepared by Investigating Officer, and the evidence of PW-1. Though police inquest was not proved in evidence, but the same may be incidentally looked upon applying judicial notice over the same for identification of P.O. perspicuously in the instant case for a challenge over the P.O. disputing it to be a cow shed. We are accordingly not impressed with the submission of appellant challenging the P.O. so as to exculpate the in-law's members from charges framed.

PW-5, a neighbour of accused person before being declared hostile to the prosecution stated in his evidence that while he was going for bath in the nearby river, he rushed to the house of the accused persons being

attracted by the shout raised by the mother-in-law, and on reaching there her found the body of victim in hanging condition. Seeing such hanging body of the victim, PW-5 claimed to have cut down the knot of the dead body, and caused the body to be brought down. According to PW-5, the mother-in-law was then found weeping. PW-11, being the last Investigating Officer contradicted with such evidence of PW-5 by stating to the effect that during investigation PW-5 never made any statement, stating that he found the body in hanging condition and also found the same on floor, thereby rendering the testimony of PW-5 to be suspicious one. When there is clear contradition as regards that part of the statement of a hostile witness (PW-5) before being declared hostile with that of the statement of Investigating Offcer, the inference would be that it is nothing but an embellishment, exaggeration or improvement of a version of a witness, developed during trial, and relying upon which no conclusion can be reached.

PW-6 is an another neighbour of accused persons, who visited the hosue of accused persons on the relevant date being attracted by the alarm raised by mother-in-law of deceased victim. This witness found the mother-in-law of victim crying, taking out the dead body of the victim. PW-6 could not tell as to how the dead body was brought down, and who brought down the same on earth, but he could only find marks of half strangulation on the neck of deceased. He, however, supported stating that the victim had suffered death about seven moths after her marriage.

The mark of strangulation, as noticed by PW-6 was unveiled by Autopsy Surgeon/PW-7, who found one straight horizontal line linear in the middle of neck, three (3) inch in length, resembling ligature mark of telephone chord.

Initially, the *post-mortem* doctor could not give a definite any opinion of death by his report (vide Exhibit-1), but he subsequently after perusal of F.S.L. report (Exhibit-2) passed his opinion stating that the death was due to axphyxia, as effect of strangulation by ligature mark, which was *ante-mortem* and homicidal in nature. Autopsy Surgeon also stated categorically in his evidence that if any person is pressed by telephone chord on his throat, then there could be ligature mark, as he found in the instant case, which might have caused the death of deceased victim.

Thus, noticing such continuous ligature mark Autopsy Surgeon opined in absence of poison in the *viscera* of deceased that it was a case of homicidal death, and *ante-mortem* in nature.

Though, death of deceased was contended grossly to be suicidal one by the appellant, contrary to the case of homicidal death, as revealed from Autopsy Surgeon's report, but surprisingly such death of the deceased victim could not be challenged in the cross-examination of witnesses, specially to *post-mortem* doctor proposing that such death of deceased would not have held with use of telephone chord seized. It

would be insignificant if the seized chord is known for the use of tape recorder or telephone. Relevant fact is that death was caused with use of such chord, as produced before P.M. doctor before holding his *post-mortem* examination.

Alternatively, it may be put in this way that homicidal death stated to be caused with use of telephone chord could not be challenged even by putting suggestion to the effect such homicidal death of deceased would not have been possible with use of such telephone chord. Having noticed continuous ligature mark, Autopsy Surgeon completely eliminated the possibility of causing any suicidal death of deceased. And thus, the homicidal death of deceased with use of telephone chord remained un-challenged, and unshaken during the ordeal of cross-examination of Autopsy Surgeon.

PW-9 is a police constable, and a seizure witness in respect of two pieces of tape recorder chord (vide Exhibit-7). Admittedly, the seized two pieces of chords, seized as Exhibit-7, could not be produced during trial of this case so as to get the same identified, at least by the seizure witness, and by the Autopsy Surgeon.

Learned advocate for the appellant putting much emphasis on the ground of non-production of offending weapon in the instant murder trial contended that it would be most unreasonable to hold that in-law's

members had used those seized chords as an offending weapon to cause death of deceasd in her matrimonial home.

Reliance was accordingly placed by learned advocate for the appellant on such issue, on a decision reported in ***2010 (6) SCC 525*** delivered in the case of ***Niranjan Panja Vs. State of West Bengal***, that non-production of offending weapon in murder trial would lead to a major discrepancy in the prosecution evidence, and in the absence of any explanation being offered by the prosecution regarding non-production of offending weapon during trial, the evidence adduced by the prosecution should have been discarded after providing benefit of doubt in favour of accused persons for non-production of such offending weapon.

The only question thus, required to be answered by us is whether such non-production of weapon in a murder trial will lead to the rejection of the testimony of Autopsy Surgeon or not.

In the decision referred above by appellant, the conviction in a murder case was upheld by the High Court relying upon the circumstantial evidence upon due consideration of the theory of "last seen together", and further discovery of weapon, as used in the commission of murder being a 'katari' in the referred case. Investigation recovered a 'katari' being offending weapon in application of provision of Section 27 of the Evidence Act. The Apex Court held in such referred case that the proof of discoveries itself was doubtful, and further the

'katari' was never produced before the court during trial, which was said to have been lost and never seen the light of day before the court. The discovery of weapon being doubtful together with non-production of offending weapon in court in absence of any explanation for non-production of the same lead to the rejection of testimony of Autopsy Surgeon. Resultantly, accused was favoured with acquittal.

In the instant case, deceased victim being the second daughter of the de-facto complainant was put to suffer her death by hanging in her in-law's house. The south facing room situated to the north of in-law's house was ordinarily shared by deceased and her accused husband, after they got married. In this case, no explanation was offered by prosecuting agency for the non-production of such pieces of chord, said to be seized in this case, as per PW-9 (a seizure witness).

We should not be forgetful to take note of evidence adduced in the testimony of PW-7 (Autopsy Surgeon) that the seized chord was shown to Autopsy Surgeon by the escorting police producing the dead body for holding *post-mortem* examination. Such part of the evidence of Autopsy Surgeon remained undisturbed even in cross-examination of Autopsy Surgeon.

The established fact is that there was an unnatural death of deceased held within seven months of her marriage. Such unnatural death was admittedly held in the in-law's house of deceased victim. There

was sufficient evidence to show that the victim received oppression, ill-treatment, torture, cruelty in her in-law's house by her in-law's members for her black complexion. Victim was further threatened to be driven out from her matrimonial home for giving second marriage of her husband.

The in-law's house of the deceased being situated at a distance of 6-7 miles away from the paternal house of the deceased victim, it was quite impossible for the de-facto complainant family members to physically present at the time of commission of cruelty upon the victim in her in-law's house. The neighbouring people of the accused persons, though examined like PW-5 and PW-6, remained silent on such issue.

Prosecution is thus in an extream difficult situation to adduce foundational evidence in respect of facts, which are known exclusively to the knowledge of the in-law's members, as to how the deceased victim suffered her death in her in-law's house.

It would be profitable here to take recourse to Section 106 of Evidence Act at this juncture for its appropriate application, as the injured victim suffered death in her dwelling home, where the victim and her husband ordinarily resided. Section 106 of Evidence Act provides *inter alia* that when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him. Learned advocate for the appellant in his honest effort persuaded us to impress that since deceased victim suffered her death by hanging in consequence of her

frustrated previous love affair with someone, Section 106 of the Evidence Act would not have any application over the present facts and circumstances of this case.

We are not prepared to accept such contention of the appellant, when victim was put to suffer her death by hanging in a room situated to the north of in-law's house of deceased victim, ordinarily and commonly shared by deceased herself and her accused husband together after they got themselves married. That being the present situation, the accused husband having failed to offer any explanation for the injuries caused to his wife, the failure would lead to the conclusion that the death of the deceased had occurred in the custody of accused husband.

The denial of prosecution case by accused husband coupled with absence of explanation, in our considered view, appears to be inconsistent with the innocence of accused, but consistent with hypothesis of guilt of accused husband. More so, since deceased was put to suffer her death in her matrimonial home in the manner as disclosed by Autopsy Surgeon, in the absence of any cogent evidence in the cross-examination of witnesses that there was a fair possibility of an outsider committing the offence, the plea of denial with false implication is inconsequential. It was for the husband alone to explain the grounds for the unnatural death of his wife.

Shelter may be taken profitably on a decision reported in ***2014 (12) SCC (211)*** rendered in the case of ***State of Rajasthan Vs. Thakur Singh***, wherein the law regarding the special knowledge available under Section 106 of Evidence Act was reinforced. Paragraph-22 of such judgment pertinently may be mentioned as hereunder.

> ***"22. The law, therefore, is quite well setlled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts."***

The deceased victim thus having suffered unnatural death in a room of her in-law's house, ordinarily shared together with her husband, the husband would necessarily under his obligation to give an explanation for the cause of her death either furnishing statement under Section 313 Cr.P.C. or by adducing evidence independently after entering into defence under Section 233 Cr.P.C.

True it is that there was no explanation for the non-production of offending weapon in court, and there was no explanation offered to that effect by the prosecuting agency, but at any rate the offending weapon cannot be said to have been lost for want of explanation being offered. Non-production of offending weapon in the absence of any explanation may be an error or latches on the part of prosecuting agency, but such

error or omission would not itself discard the testimony of Autopsy Surgeon. When the homicidal death of the deceased held in her matrimonial home caused with use of chord, as already seized and produced before the Autopsy Surgeon at the time of *post-mortem* examination, remained unchallenged in the cross-examination of witnesses, particularly, the Autopsy Surgeon, mere non production of offending weapon in the court, and mere non-showing of the same to Autopsy Surgeon at the time of his deposition in court would be inconsequential , and in no manner it would weaken the prosecution case.

It would be relevant here to take recourse to a decision reported in ***2017 (13) SCC 81*** delivered in the case of ***Sudha Renukaiah & Ors. Vs. State of Andhra Pradesh***, wherein non-production of weapon to the P.M. doctor at the time of his deposition in court was held inconsequential, keeping in view the concurrent finding of death, reached by the Trial Court and subsequently affirmed by High Court as regards homicidal death of the deceased upon making reliance on the testimony of Autopsy Surgeon with other eye-witnesses.

The decision thus referred by the appellant in the case of ***Niranjan Panja (supra),*** will thus have no application over the factual scenario of this case. More so, the facts covered in the referred case, as cited by the appellant are distinguishable on facts.

When deceased was put to suffer her death by hanging, the cause of which being exclusively explainable by the accused husband himself, non-production of the offending weapon would not matter much, so as to cause damage to the testimony of prosecution witnesses, particularly to Autopsy Surgeon. Though non-production of offending weapon was grossly challenged in appeal, but during trial accused persons never preferred to exercise their option under Section 233 Cr.P.C. requiring Trial Court for production of same by prosecution in support of their defence, and as such the same can not be lightly viewed.

As regards the witnesses examined by the prosecution particularly PW-1, 2, 3 and 4, who were contended to be partisan by themselves should not be relied upon for their interest over this case. Partisan witnesesses themselves would not be a strong ground for rejection of their testimony. What is necessary in the given context of this case is close scrutiny of the evidence adduced by PW-1, 2, 3 and 4, and acceptance of the same after caution. Upon applying the same principle, it appears that testimony of such witnesses, referred above, are intrinsically reliable being inherently probable, and their testimony would not be liable for rejection by reason of their inter se relation.

The facts and circumstances would thus unerringly point to the guilt of accused husband/appellant for causing homicidal death to deceased/wife by strangulation for his non-satisfaction over the black

complexion of his wife, which led to give birth his motive to cause death of his wife.

The occurrence was held admittedly on 24.06.1998, and the F.I.R. was lodged on 26.06.1998, by the de-facto complainant/father. According to appellant, the delay caused in lodging the F.I.R. rendered the prosecution case to be improbable, and doubtful also. It is settled proposition of law that delay in lodging the F.I.R. if remaining un-explained, would leave materials for concoction, and embellishment in the version of prosecution story during the intervening period of delay.

In this case the *post-mortem* was held on 25.06.1998. According to PW-1, appellant's house was at a distance of 6/7 miles from the house of de-facto complainant/father. The eldest son-in-law furnished the death information of victim to de-facto complainant. The house of accused persons was at a distance of less than two (2) miles away from the house of eldest son-in-law (PW-2).

Both PW-1 and PW-2 visited the in-law's house of deceased victim on the relevant date after receiving information of death, and since it was night, they could not go to the police station. The de-facto complainant father after being provided with the information of death, visited the in-law's house of his daughter being accompanied by PW-2, when the dead body of deceased had already been sent to police station for *post-mortem* examination.

Thus, complaint came to be lodged on 26.06.1998, by de-facto complainant father, who by this time managed to cope up his griefs and frustration, and found reasons to seek justice for the injustice done to his daughter. The explanation is thus offered in the evidence. In our view, the same appears to be sufficient and cogent. The delay thus caused, as contended, would be without any significance.

The post conduct of the mother-in-law revealed from the testimony of PW-5 and 6, who found mother-in-law crying taking the dead body of deceased victim, according to appellant, would not necessarily leave materials against her for commission of a homicidal death, though it might be suggestive of suicidal death.

The father-in-law of deceased (Hasaruddin Miah @ Mia @ Hachheruddin Mia) having already suffered death during the pendency of this case, the instant appeal be taken to have dropped against him.

The person committing homicidal death would ordinarily leave the place of occurrence anticipating the consequence. When mother-in-law/accused was found to remain present in her own house, even after the crime was over, and seen crying taking the dead body of her daughter-in-law, such post conduct of accused/mother-in-law is a strong fact requiring due consideration, as focused by the learned advocate for the appellant.

As has already discussed that the unnatural homicidal death of deceased was held in her dwelling room of her in-law's house, ordinarily shared by the deceased and her husband together after they got themselves married, and the cause of such death being pre-eminently and exceptionally within the knowledge of her accused husband, which remained un-explained by accused husband himself, recording an order of conviction under Section 302/34 I.P.C. as against appellant mother-in-law even after taking note of such facts, referred above, would be without any reasons and not justified accordingly.

The commission of cruelty upon the deceased though proved against the mother-in-law under Section 498A read with Section 34 I.P.C., but she should not have been held convicted for causing homicidal death of deceased victim under the behest of Section 302/34 I.P.C. on the simple ground that death of the victim was held in her matrimonial home.

The essence of Section 34 being conscious meeting of minds of persons participating in the criminal action, there is hardly any scope of drawing application of Section 34 against the appellant mother-in-law for causing homicidal death of victim, which was admittedly held in a room occupied by deceased herself and accused husband ordinarily together.

For the discussions made hereinabove, we had no occasion to look the prosecution case with doubt, disbelieving the version of homicidal

death of deceased victim opposed to the suicidal death, as attempted to be set up by appellant. The witnesses examined during trial, except PW-5, are consistent in their respective version, and they are reliabe also. The credibility of such witnesses including the Autopsy Surgeon/PW-7 could not be shaken to doubt in cross-examination, favourable to the purpose of accused appellant.

The conviction reached by the Trial Court under Section 498A/34 I.P.C., as against the accused appellant husband and mother-in-law appellant would remain undisturbed.

The conviction and sentence as against the accused mother-in-law needs sufficient modification. Accordingly, we modify the conviction and sentence of accused mother-in-law under Section 498A/34 I.P.C., and she deserves to be favoured with an order of acquittal for offence under Section 302/34 I.P.C.

We, however, do not want to interfere with the conviction and sentence recorded against the accused husband appellant for sufficiency of the evidence collected against him. We thus dismiss the appeal, as against the appellant husband, maintaining his conviction and sentence under Section 498A/302/34 I.P.C. Both the sentences, as awarded by Trial Court, to run concurrently.

Accused mother-in-law be set free from correctional authority forthwith upon completion of sentence awarded against her under Section 498A/34.

The appeal thus stands disposed of.

Department is directed to send a copy of this judgment along with Lower Court Record to the concerned Trial Court without causing any delay through the concerned District Judge.

Department is further directed to send a copy of this judgment to the concerned correctional home.

Urgent certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

I agree.

(Sahidullah Munshi, J.) **(Subhasis Dasgupta, J.)**