A TRIMUKH MAROTI KIRKAN

v.

STATE OF MAHARASHTRA

OCTOBER 11, 2006

B [G.P.MATHUR AND R.V. RAVEENDRAN, JJ.]

Penal Code, 1860:

Sections 302, 498-A r/w. Section 34—Dowry death—Crime committed
C *in secrecy inside the house—Burden of proof—Held, Initial burden is on the prosecution—On facts, deceased was often beaten up by her husband on account of non-fulfillment of monetary demand by her father—Injuries found on her dead body and her bangles were missing—Accused did not offer any explanation regarding such injuries—Recovery of broken bangles based on*
D *disclosure statement by accused—As there was no eye witness of the occurrence, case of prosecution rested on circumstantial evidence—Circumstances unerringly point to the guilt of the accused—Accused rightly convicted u/s. 302—Evidence Act, 1872—Section 106.*

Prosecution's case was that deceased was married to appellant nearly
E **7 years before the incident which took place in village Kikki. The deceased was being ill treated by her husband and his parents. She was often beaten up and not provided food. At the time of Panchami, when she had stayed at parental house, she disclosed that on account of non-fulfilment of demand of Rs.25,000 by her father, appellant and her in laws harassed**
F **her. After Panchami, deceased's father took her to her matrimonial house and requested appellant and his parents not to ill treat her and told them that he was not in a position to fulfil their demand due to his weak financial condition.**

On the fateful day, he received information from a person of village
G **Kikki that his daughter had died due to snake bite. On reaching there, they saw the body of deceased placed in sitting posture with her back resting on the wall and a strip of cloth tied to her mouth. Her bangles were missing. Post mortem conducted on the body of deceased disclosed that she had died due to asphyxia as a result of compression of neck. The chemical examination did not reveal any poison. Father of deceased lodged**
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FIR under s.302 IPC. Appellant was arrested and while in custody, he made disclosure statement on the basis of which some recoveries were made. Sessions Judge framed charge u/ss.498-A IPC against parents and also under s.302 IPC against appellant. A

Sessions Judge convicted them under s.498A r/w s.34 IPC. Appellant was however acquitted under s.302 IPC. Both State and appellant filed appeals. High Court set aside the conviction of parents. However, appellant was convicted under s.302 IPC. Hence the present appeal. B

Dismissing the appeal, the Court

HELD: 1. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, is insisted upon by the Courts. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculpate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. [166-D-G, H; 167-A] C D E F

2. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. [167-B] G

State of Punjab v. *Karnail Singh,* [2003] 11 SCC 271, referred to.

Stirland v. *Director of Public Prosecution,* (1944) AC 315, referred to.

3. Where an offence like murder is committed in secrecy inside a H

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 B 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. [167-D-E]

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State of Tamil Nadu v. *Rajendran,* [1999] 8 SCC 679; *State of U.P.* v. *Dr. Ravindra Prakash Mittal,* AIR (1992) SC 2045; *State of Maharashtra* v. *Suresh,* [2000] 1 SCC 471; *Ganesh Lal* v. *State of Rajasthan,* [2002] 1 SCC 731 and *Gulab Chand* v. *State of M.P.,* [1995] 3 SCC 574, relied on.

D *Collector of Customs, Madras & Ors.* v. *D. Bhoormull,* AIR (1974) SC 859; *Balram Prasad Agrawal* v. *State of Bihar & Ors.,* AIR (1997) SC 1830; *State of West Bengal* v. *Mir Mohammad Omar & Ors.,* [2000] 8 SCC 382; *Ram Gulam Chaudhary & Ors.* v. *Sate of Bihar,* [2001] 8 SCC 311; *Nika Ram* v. *State of Himachal Pradesh,* AIR (1972) SC 2077 and *Ganeshlal* v. *State of Maharashtra,* [1992] 3 SCC 106, referred to.

E

4. There is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly F established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused G and inconsistent with his innocence. The appellant in his statement under Section 313 Cr.P.C. did not offer any explanation as to how she received the injuries which were found on her body. Recovery of some articles of the deceased was made at the pointing out of the appellant. The circumstances enumerated above unerringly point to the guilt of the accused and they are inconsistent with his innocence. [166-B-D; 173-B] H

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1341 of 2005. A

From the Judgment and Final Order dated 27.7.2005 of the High Court of Judicature of Bombay, Bench at Aurangabad in Crl. A.No. 220/1997.

Sudhanshu Choudhari and Naresh Kumar for the Appellant. B

V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

G.P. MATHUR, J. 1. Trimukh Maroti Kirkan has filed this appeal against the judgment and order dated 27.7.2005 of Aurangabad Bench of Bombay High Court by which the appeal filed by State of Maharashtra was allowed and the order dated 21.4.1997 passed by the learned Additional Sessions Judge, Nanded was set aside and the appellant was convicted under Section 302 IPC and was sentenced to imprisonment for life and a fine of Rs.2,000/- and in default to undergo six months RI. By the same judgment and order, the appeal filed by the appellant challenging his conviction under Section 498-A IPC and the sentence of two years RI and a fine of Rs.1,000/- and in default to undergo RI for three months was dismissed. C D

2. The case of the prosecution, in brief, is that the deceased Revata @ Tai daughter of Dattarao resident of village Umatwadi was married to the appellant Trimukh Maroti Kirkan (for short 'Trimukh') nearly seven years before the incident which took place on 4.11.1996 in village Kikki. Maroti Kamaji Kirkan (for short 'Maroti') is the father and Nilawatibai Maroti Kirkan (for short 'Nilawati') is the mother of the appellant Trimukh and they are residents of village Kikki. The appellant who is the husband and Maroti and Nilawati used to ill-treat the deceased Revata and used to harass her on account of non-payment of Rs.25,000/- by her parents for the purpose of purchasing a tempo for the appellant. Whenever, the deceased Revata came to her parental home, she used to disclose to her family members the ill-treatment and harassment meted out to her. She came to her parental home at the time of Panchami festival in the year 1996 and stayed there for about 15 days. During this period also she disclosed that on account of non-fulfilment of demand of Rs.25,000/- by her father, the appellant and her in-laws (Maroti and Nilawati) used to harass her. She was often beaten and was not provided food. After the Panchami festival, the father of Revata took her to the appellant's house in village Kikki and requested the appellant and her in-laws E F G H

A not to ill-treat her. He, however, told them that he is not in a position to fulfil their demand of Rs.25,000/- on account of his weak financial condition. A few months thereafter, Dattarao received information from a person of village Kikki that Revata had died due to snake bite. Information was also given by the Police Patil of the village to P.S. Nanded (Rural) that Revata had died due to snake bite and on the basis of this information, a case as A.D. No. 42 of B 1996 was registered in accordance with Section 174 Cr.P.C. at the police station. Devichand, ASI and some police personnel went to the village, held inquest over the dead body and after preparing the spot panchnama sent the same for post-mortem examination. The appellant Trimukh himself showed the place of incident where the victim had been allegedly bitten by snake and C had died. The post-mortem examination conducted on the body of Revata disclosed that she had died due to asphyxia as a result of compression of neck. Dattarao, father of the deceased then lodged an FIR of the incident at 4.30 p.m. on 5.11.1990 at the police station and a case was then registered under Section 302 IPC. During the course of investigation, the police recorded statements of some witnesses. The appellant was arrested and while in custody D he made a disclosure statement on the basis of which some recoveries were made. After completion of investigation, chargesheet was submitted against three persons, viz., the appellant Trimukh and his parents, viz., Maroti and Nilawati.

E 3. The learned Sessions Judge, Nanded framed charges under Section 498-A IPC against all the three accused and also under Section 302 IPC against appellant Trimukh. The accused pleaded not guilty and claimed to be tried. In order to establish its case the prosecution examined 14 witnesses and filed some documentary evidence. The accused in their statement denied the prosecution case and stated that Revata had died on account of snake bite. F The learned Sessions Judge convicted all the three accused under Section 498-A read with Section 34 IPC and sentenced them to two years RI and a fine of Rs.1,000/- and in default to undergo RI for three months. The appellant was, however, acquitted of the charge under Section 302 IPC. All the three accused preferred Criminal Appeal No. 158 of 1997 before the High Court G challenging their conviction and sentence under Section 498-A IPC read with Section 34 IPC while the State of Maharahstra preferred Criminal Appeal No. 220 of 1997 challenging the acquittal of Trimukh under Section 302 IPC. The High Court allowed the appeal preferred by Maroti and Nilawati accused and their conviction under Section 498-A IPC was set aside and the appeal preferred by the appellant was dismissed. The appeal preferred by the State H of Maharashtra was allowed and the appellant was convicted under Section

302 IPC and was sentenced to imprisonment for life and a fine of Rs. 2,000- and in default to further undergo six months RI. Both the sentences were ordered to run concurrently.

4. Since the present appeal has been filed under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 and the High Court has reversed the order of acquittal and has convicted the appellant under Section 302 IPC, it will be appropriate to briefly consider the evidence on record. PW1. Dattarao is the father and PW.2 Rukmabai is the mother of the deceased Revata and they are residents of village Umatwadi. Both of them have deposed that the marriage of the deceased with the appellant took place nearly 7 years back in which they had given Rs.20,000/- in cash besides clothes and utensils. Whenever deceased came to her parental home, she used to complain that she was being harassed and ill-treated on account of demand of money. They have further deposed that last time the deceased came to their house on the occasion of Panchami festival when she told them that the appellant wanted to purchase a tempo and, therefore, her in-laws and also the appellant were asking her to get Rs.25,000/- from her parents. The deceased also informed that occasionally she was not provided food and was beaten on account of non-fulfillment of the demand of Rs.25,000/-. They have further deposed that the deceased stayed with them for about 15 days and thereafter PW.1 Dattarao escorted her to her matrimonial home and informed her in-laws that he was not in a position to give Rs.25,000/- and further requested them not to ill-treat her. A few days before the Diwali festival a person came from village Kikki and informed that Revata had died on account of snake bite. Thereafter, PW.1, PW.2 and their sons and two daughters-in-law went to village Kikki which is about 25 kilometers from their village Umatwadi. On reaching there they saw that the body of Revata had been placed in a sitting posture with her back resting on the wall and a strip of cloth had been tied along her mouth. PW.1 has further deposed that subsequently he lodged an FIR on 5.11.1996 at the police station. Though a suggestion was given to both the witnesses that the marriage of the deceased had taken place about 10 years back, but both of them specifically denied and stated that the marriage had taken place 5-6 years back. PW.1 has further deposed that he removed the cloth which was tied along the mouth of the deceased and noticed marks of injury around the neck and cheek and there were no bangles on her hands. PW.3 Balasaheb, who is cousin of PW.1 and is resident of village Umatwadi, has deposed that whenever Revata came to her parental home, she always came to his house as well. She used to narrate about the ill-treatment meted out to her by the appellant and her in-laws as

A they were demanding an amount of Rs.25,000/- for purchasing a tempo for the appellant. He has further deposed that in the evening of 4.11.1996 two persons from village Kikki came to his village and informed PW.1 and others that Revata had died on account of snake bite. The witness has further deposed that next day in the morning he went to village Kikki along with several other persons of his village and saw the body of the deceased. There were B injury marks around the neck, cheek, hand and other parts of the body. PW.4 Chander is another cousin of PW.1 and is resident of the same village Umatwadi. His statement is almost similar to that of PW.3 Balasaheb. PW.5 Girjabai is a resident of village Kikki and her house is very close to the house of the accused in the same village. She has deposed that the deceased Revata C used to visit her and she had often told her that on account of non-fulfilment of demand of money by her parents, she was being ill-treated by her in-laws and husband (appellant). She has further deposed that she used to console the deceased and tell her that the ill-treatment being meted out to her would gradually stop. She has further stated that at about 3-3.15 p.m. on the date of the incident she was informed that Maroti's daughter-in-law had died due D to snake bite. She immediately rushed to the house of Maroti and saw the body of the deceased. There were marks of injury on the neck and cheek and there were no bangles on her hands. This witness is no doubt distantly related to the deceased as her husband's mother is sister of PW.2 but nothing material has come out in her cross-examination which may discredit her testimony E regarding the demand of Rs.25,000/- by the appellant and his parents and also the ill-treatment being meted out to the deceased. It was suggested to her in her cross-examination that the deceased was suffering from T.B. and asthma and also that she used to have occasional chest pain but it was emphatically denied by her.

F 5. PW.8 Madhavrao is the real brother of accused Maroti and the appellant is his nephew. In his examination-in-chief he stated that he did not know how Revata had died and he had not witnessed any incident. The witness was declared as hostile and in his cross-examination by State counsel he admitted that the appellant Trimukh used to ply a tempo. PW.6 Maroti son of Ramrao Telange and PW.7 Venkat, both residents of village Kikki, have G deposed that while in the custody of the police the appellant said that he would show the spot where the incident had taken place. Thereafter he had taken the police party and the witnesses to the field of his father Maroti and on his pointing out a pair of ladies chappal, broken pieces of bangles and a sickle lying there were recovered and the appellant had further said that the H ladies chappal belonged to his wife. The aforesaid articles were taken into

possession by the Police Inspector and a panchnama was prepared which was signed by them. PW.7 has further deposed that on the pointing out of the appellant his shoe was recovered which was taken in possession by the police and panchnama was drawn on which he has put his signature. PW.9 Digamber who was a witness of inquest turned hostile, but in his cross-examination he stated that he went to the house of accused Maroti at about 9.00 a.m. and had seen the body of the deceased with a piece of cloth tied around her mouth. He further admitted that when the police was recording the panchnama, he had said that there was no mark of snake bite on the body of the deceased and that he had put his signature on the inquest panchnama. PW.11 Vilas and PW.12 Nilawati whose agricultural land is situate near the agricultural land of Maroti accused turned hostile. PW.13 Digamber son of Madhavrao who is also a resident of village Kikki, also turned hostile. However, he admitted that he had heard that Revata had died due to snake bite and further that a tempo is owned by Maroti which is plied by the appellant Trimukh.

6. PW.14 Devichand, Assistant Sub Inspector of Police, P.S. Nanded (Rural) has deposed that on the basis of the information given by the Police Patil, an Accidental Death Case was registered at 12.30 p.m. on 5.11.1996 at the police station and he was entrusted with the inquiry of the same. He came to the village Kikki, held inquest on the body of the deceased and sent the same for post-mortem examination. He had prepared the panchnama which was signed by the witnesses. After the report of the post-mortem examination had been received and the FIR had been lodged by PW.1 Dattarao at 4.30 p.m. on 5.1.1996, a case was registered under Section 302 IPC. He had arrested the appellant and while he was in custody some recoveries were made regarding which a panchnama was prepared and was signed by the witnesses. He has further deposed that he asked the appellant Trimukh as to how the incident took place and then he had shown the scene of offence in a field and on his pointing out he had recovered a pair of ladies chappal, pieces of bangles and a sickle from the spot. In his cross-examination PW.14 has stated that when he had reached the hose of accused Maroti in village Kikki after registration of an Accidental Death Case, he had found the body of the deceased inside a room in a sitting posture with her back taking support from the wall.

7. PW.10 Dr. Hanumant Vasantrao Godbole conducted post-mortem examination on the body of the deceased Revata between 2.00 p.m. to 2.30 p.m. on 5.11.1996 and found the following ante mortem injuries on her person :-

1. Swelling of left cheek seen (contusion). Abrasion of about 1.5 c.m. diameter seen over left cheek, lower aspect near angle of mandible, reddish.

2. Abrasion of 1.5 x 1 c.m. over right zygomatic region of face reddish.

3. Five abrasions over left shoulder over superior and middle aspect, size ranging from 0.5 x 1.5 x .5-1 c.m. reddish.

4. Contusion over chin, inferior aspect, 4 x 3 c.m. reddish-bluish.

5. Abrasion over right shoulder, medial most aspect, 2 x 1 c.m. reddish.

6. Contusion over cheek (left) lateral to chin, 2 x 2 c.m., reddish bluish.

7. Abrasion over left side of neck, upper most aspect, 3 c.m. medial and just above in relation with injury No. 1 in this column, reddish, 1 x 0.5 c.m.

8. Abrasion over right shoulder, 1.5 c.m. posterior to injury No. 5, 3 x 2 c.m. reddish.

9. Irregular large abrasion over neck, anteriorly involving upper and lower aspect, and extending to right side, reddish graze-type, on lower aspect involving sternoclavicular joints, upper aspect anteriorly (in the middle) from above thyrid cartilage. Dimension 7 c.m. near thyrid cartilage, about 4.5 c.m. below thyrid cartilage, maximum width over lower most aspect of neck, near sternoclavicular joints. At few places abrasion, dark brown colour, intermingled with reddish areas. (Suggestive of multiple irregular abrasion intermingling with each other).

The internal examination revealed the following injuries :-

(1) Contusion under scalp left temporal area, 4 x 4 c.m. reddish, swollen, (2) mid occipital areas 7 x 5 c.m., reddish swollen. On dissection of neck, about whole of the anterior and lateral aspect of neck (structures i.e. subcutaneous tissue muscles) showed infiltration of blood (ecchymosed). Ecchymoses also seen at sternoclavicular joint, upper part of sternum. No evidence of fracture of hyoid bone/thyrid cartilage or ribs. Lymps nodes in neck region-congested. Thyroid cartilage and trachea showed reddish patches of haemmorrhage

externally and on opening.

The witness has opined that the death was caused due to asphyxia as a result of compression of neck. He deposed that the general and specific chemical testing did not reveal any poison and had there been a snake bite then poison would have appeared in the blood. He further deposed that the injuries present on the neck of the deceased could be caused if the throat is pressed with a shoe with force and the victim is pulled at the opposite direction by holding her hands.

8. The accused did not examine any witness in their defence. Maroti accused admitted in reply to question No. 14 that the dead body was kept resting in sitting position and a strip of cloth was tied to the mouth.

9. From the evidence adduced by the prosecution the following circumstances are clearly established.

I. The marriage of Revata with the appellant Trimukh had taken place about 5-6 years back.

II. The appellant Trimukh used to ply a tempo.

III. There was a demand of Rs.25,000/- by the appellant and his parents from the parents of the deceased. The deceased was being ill-treated and was occasionally not given food on account of the fact that the demand of money had not been met.

IV. The deceased had told her parents about the fact that she was being ill-treated and occasionally she was not given food, whenever she visited her parental home and last time on the occasion of Panchami festival. She had also told about the said fact to her neighbour PW.5 Girjabai of village Kikki.

V. After the death of Revata the appellant and his parents informed some persons in the village as also the family members of the deceased that she had died on account of snake bite.

VI. When PW.1, PW.2, PW.3 and PW.4 reached the house of the accused in village Kikki, they found the body of the deceased in a sitting posture with her back taking support from the wall. PW.14 Devichand, Assistant Sub-Inspector of Police also found the body in the same position.

VII. The post-mortem examination revealed that Revata had died due

A to asphyxia as a result of strangulation and not on account of snake bite.

VIII. Certain recoveries like chappal of the deceased, broken pieces of bangles were made at the pointing out of the appellant. A shoe was also recovered at his pointing out.

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10. In the case in hand there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency C unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

D 11. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult E for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are F not in a position to give direct evidence which may inculpate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

12. If an offence takes place inside the privacy of a house and in such G circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial H merely to see that no innocent man is punished. A Judge also presides to see

that a guilty man does not escape. Both are public duties. (See *Stirland* v. *Director of Public Prosecution,* (1944) AC 315 - quoted with approval by Arijit Pasayat, J. in *State of Punjab* v. *Karnail Singh,* [2003] 11 SCC 271. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

> (b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. 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.

13. A somewhat similar question was examined by this Court in connection with Sections 167 and 178-A of the Sea Customs Act in *Collector of Customs, Madras & Ors.* v. *D. Bhoormull* AIR (1974) SC 859 and it will be apt to reproduce paras 30 to 32 of the reports which are as under :

> 30. It cannot be disputed that in proceedings for imposing penalties under Clause (8) of Section 167 to which Section 178-A does not apply, the burden of proving that the goods are smuggled goods, is on the Department. This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, of universal application. One of them

A is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it—"all exactness is a fake". El Dorado of absolute proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require B the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.

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31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered—to use the words of Lord Mansfield in *Blatch* v. *Archer* (1774) 1 Cowp. 63 at p.65 "according to the proof which it was in the power of one side to prove, and in the power of D the other to have contradicted". *Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.*

32. Smuggling is clandestine conveying of goods to avoid legal duties. E Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. *On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast* F *on the person concerned; and if he falls to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty.* As pointed out by *Best* in '*Law of Evidence*', (12th Edn. Article 320, page 291), G the "presumption of innocence is, no doubt, *presumptio juris*; but every day's practice shows that it may be successfully encountered by the presumption of guilt arising from the recent (unexplained) possession of stolen property", though the latter is only a presumption of fact. Thus the burden on the prosecution or the Department may be considerably lightened even by such presumption of fact arising in H

their favour. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. *It will only alleviate that burden to discharge which very slight evidence may suffice.*

(Emphasis supplied)

The aforesaid principle has been approved and followed in *Balram Prasad Agrawal* v. *State of Bihar & Ors.* AIR (1997) SC 1830 where a married woman had committed suicide on account of ill-treatment meted out to her by her husband and in-laws on account of demand of dowry and being issueless.

14. The question of burden of proof where some facts are within the personal knowledge of the accused was examined in *State of West Bengal* v. *Mir Mohammad Omar & Ors.*, [2000] 8 SCC 382. In this case the assailants forcibly dragged the deceased Mahesh from the house where he was taking shelter on account of the fear of the accused and took him away at about 2.30 in the night. Next day in the morning his mangled body was found lying in the hospital. The trial Court convicted the accused under Section 364 read with Section 34 IPC and sentenced them to 10 years RI. The accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for murder charge. The accused had not given any explanation as to what happened to Mahesh after he was abducted by them. The learned Sessions Judge after referring to the law on circumstantial evidence had observed that there was a missing link in the chain of evidence after the deceased was last seen together with the accused persons and the discovery of the dead body in the hospital and had concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond any reasonable doubt. This Court took note of the provisions of Section 106 of the Evidence Act and laid down the following principle in paras 31 to 34 of the reports :

"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

A 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. In this case, when the prosecution succeeded in
B establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of
C one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the
D court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard
E to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him
F until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the court what else happened to
G Mahesh at least until he was in their custody."

Applying the aforesaid principle, this Court while maintaining the conviction under Section 364 read with Section 34 IPC reversed the order of acquittal under Section 302 read with Section 34 IPC and convicted the accused under the said provision and sentenced them to imprisonment for
H life.

15. In *Ram Gulam Chaudhary & Ors.* v. *State of Bihar,* [2001] 8 SCC 311, the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they have murdered the boy. It was further observed that 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 accused by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference.

16. 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 Tamil Nadu* v. *Rajendran,* [1999] 8 SCC 679 para 6; *State of U.P.* v. *Dr. Ravindra Prakash Mittal,* AIR (1992) SC 2045 para 40; *State of Maharashtra* v. *Suresh,* [2000] 1 SCC 471 para 27; *Ganesh Lal* v. *State of Rajasthan,* [2002] 1 SCC 731 (para 15) and *Gulab Chand* v. *State of M.P.,* [1995] 3 SCC 574 (para 4)].

17. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram* v. *State of Himachal Pradesh,* AIR (1972) SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal* v. *State of Maharashtra,* [1992] 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the

A death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P.* v. *Dr. Ravindra Prakash Mittal,* AIR (1992) SC 2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of Tamil Nadu* v. *Rajendran,* [1999] 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.

18. In the earlier part of the judgment we have given a resume of the evidence which is available on record. The appellant was plying a tempo in order to earn his livelihood. It is fully established that the deceased Revata was being ill-treated and harassed on account of non-fulfilment of demand of Rs.25,000/- which the appellant wanted for purchasing a tempo. The deceased Revata was often beaten and was sometimes not given food. After Revata had been murdered, information was sent to her parents that she had died on account of snake bite, which was reiterated when they reached the house of the appellant in village Kikki. In fact, everyone in the village had been told that Revata had died on account of snake bite and the Police Patil, believing the said information to be true, had lodged an Accidental Death Report at the police station. The medical evidence, however, showed that she had died on account of asphyxia due to strangulation. The body of the deceased was

purposely placed in a sitting posture with her back taking support of the wall so that no one may suspect that she had actually been killed as a result of strangulation and may believe the version of snake bite given by the appellant and his parents. The appellant in his statement under Section 313 Cr.P.C. did not offer any explanation as to how she received the injuries which were found on her body. Recovery of some articles of the deceased was made at the pointing out of the appellant. The circumstances enumerated above unerringly point to the guilt of the accused and they are inconsistent with his innocence.

19. The High Court was, therefore, perfectly right in allowing the appeal filed by the State and in convicting the appellant under Section 302 IPC and sentencing him thereunder. We, therefore, do not find any merit in the appeal, which is hereby dismissed.

D.G. Appeal dismissed.