
(2017) 05 AHC CK 0132
ALLAHABAD HIGH COURT
Case No: 1376 of 2014

Vijay Bahadur Mall

APPELLANT

Vs

State Of U.P.

RESPONDENT

Date of Decision: May 26, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 161, Section 313 - Examination of witnesses by police - Power to examine the accused
- Indian Penal Code, 1860, Section 302, Section 498A, Section 304B - Punishment for murder - Husband or relative of husband of a woman subjecting her to cruelty - Dowry death
- Evidence Act, 1872, Section 106 - Burden of proving fact especially within knowledge
- Dowry Prohibition Act, 1961, Section 3, Section 4 - Penalty for giving or taking dowry - Penalty for demanding dowry

Hon'ble Judges: Ramesh Sinha, Umesh Chandra Srivastava

Bench: Division Bench

Advocate: Mahendra Singh, C.P. Singh, Santosh Kumar Giri

Judgement

1. The present appeal has been preferred by the appellant against the judgment and order dated 14.3.2014 passed by the Additional District & Sessions Judge, Court No.2, Deoria in S.T. No. 3 of 2012, arising out of Case Crime No.1015 of 2011, Police Station-Kotwali Deoria, District Deoria, whereby the appellant has been convicted and sentenced under Section 302 I.P.C. for life imprisonment and further a fine of Rs.1,00,000/- (One Lac) has been imposed on him and in default of payment of fine, he shall further undergo one year simple imprisonment. It was further ordered by the trial Court that if the fine is deposited by the appellant, Rs.75,000/- shall be paid to the father of the deceased who is complainant of the case.

2. The prosecution case as set up in the FIR which has been lodged by the informant,

namely, Man Singh, who is father of the deceased is that; he had married his daughter on 16.2.2009 to Vijay Bahadur Mall (the appellant), son of Ram Karan Mall, resident of village Parsia Mall, Police Station-Kotwali Deoria, District Deoria and Gauna Ceremony was also performed on 1.5.2011. When his daughter had gone to her in-laws house, after ten days thereafter, her in-laws started demanding a motorcycle and Rs.50,000/- cash in dowry from his daughter and also told that the said dowry was to be paid by her father but he did not give the same at the time of marriage. It was further told by them to her daughter that if the said demand is not fulfilled, she would be ousted from the house.

3. On the information given to the informant by his daughter regarding the said demand, he went to meet his daughter at her in-laws house and tried to reconcile the issue with his son-in-law, namely, Vijay Bahadur Mall, Samdhi-Ram Karan Mall, mother-in-law-Malti Devi, Yogendra and Dinesh Mall and their wives and further with sisters of his son-in-law, namely, Manju Devi and Bindu Devi, but in spite of pacifying them that he had already given dowry in the marriage and at the time of marriage he had given Rs.2 lacs in cash, utensils, golden chain, ring and at the time of gauna ceremony, fridge, cooler, colour T.V., washing machine, bed, sofa set, almirah and golden ring and several other articles were also given but they did not pay any heed to his request. Thereafter, he returned to his house. Thereafter, his daughter, namely, Preeti Singh was harassed and cruelly treated by them.

4. On 2.6.2011, all the accused persons including the husband had mercilessly beaten his daughter and burnt her to death. The informant at about 11 a.m. was informed on his phone by some unknown person of the village about the incident, on which while the informant, his son-in-law Vipin Kumar Singh and his wife were going to District Hospital, Deoria, on the way he received a call on his phone and came to know that the doctor had referred his daughter to Medical College, Gorakhpur and his daughter died on account of burn injuries before reaching she could reach at Medical College, Gorakhpur. The doctor had informed that the deceased has died when he was taken to the Medical College, Gorakhpur.

5. After post mortem, the last rites of the deceased was performed and he lodged the present FIR against the accused persons with a prayer to register a case against them. Thus, on the written report lodged by the informant, the present FIR was registered as Ex. Ka.-9 being as Case Crime No.1015 of 2011, under Sections 498A, 304B I.P.C. and Section 3/4 D.P. Act, Police Station-Kotwali Deoria, District Deoria on 4.6.2011 at 16.50 hrs.

6. The inquest of the dead body of the deceased was conducted on 3.6.2011, i.e., Ex.Ka.-1, letter sent to the C.M.O. Ex.Ka.-8, letter to R.I. Ex.Ka.-16, photolash Ex. Ka.-7.

7. The post mortem of the deceased was conducted on 3.6.2011 at 4 p.m., i.e., Ex. Ka.-3,

8. The Investigating Officer made spot inspection of the place of occurrence and prepared the site plan, i.e., Ex. Ka.10 and interrogated the witnesses and recorded statement under Section 161 Cr.P.C and after completing the investigation submitted charge sheet against the accused persons for the aforesaid offence as Ex. Ka.-16.

9. The case was committed to the Court of Sessions by the learned Magistrate.

10. The trial Court prepared the charges against the accused persons, namely, Vijay Bahadur Mall, Ram Karan Mall, Malti Devi, Dinesh Mall and Sarita Mall on 17.4.2012 under Sections 498A, 304B I.P.C. and Section 4 D.P. Act and alternative charge under Section 302 I.P.C was also framed against the accused person. The accused denied the charges and claimed their trial.

11. The prosecution in support of its case has examined PW1-informant Man Singh, PW2-Jai Singh, PW3-Vipin Kumar Singh, PW4-Dr. Sanjay Kumar, PW5-Satish Kumar (retired Naib Tehsildar), PW-6 Head Constable Munni Lal, PW7-Raj Kumar Mishra, Circle Officer & PW8- Constable Moharrir.

12. The statements of the accused were recorded under Section 313 Cr.P.C. and in their defence they produced Ram Vriksh as DW1, Girja Shanker Singh as PW2, documentary evidence produced from the side of the defence list 68G-2, outdoor patient ticket dated 26.5.2011, ultrasound report and plate dated 11.5.2011.

13. PW1-informant Man Singh has proved his written report Ex. Ka-2 and deposed before the trial Court that he had two daughters and a son. The deceased Preeti is his youngest daughter. The informant has three brothers including him. His two younger brothers are Ram Singh and Jai Singh and all of them are living as a joint family. He further deposed that he has married his youngest daughter Preeti to the accused Vijay Bahadur Mall, son of Ram Karan on 16.2.2009 according to Hindu Customs and gauna ceremony was also performed on 1.5.2011 and after gauna ceremony her daughter had gone to her in-laws house in village Parasia Mall. He further repeated the version given by him in the FIR. He stated that on 2.6.2011 early in the morning, her daughter was done to death by the accused persons and he received the said information from a unknown person on the same day at 10 a.m. Thereafter, he along with his wife and elder son-in-law Vipin Kumar Singh reached at Gorakhpur Medical College and when he inquired from the doctor he was informed that his daughter has died and her dead body has been sent to the mortuary where he reached and saw his daughter whose whole body was burnt. On the next day, the inquest of the deceased was conducted in presence of the learned Magistrate. On the inquest report, he along with Jai Singh, Vipin Kumar Singh, Bikau Singh, Ram Karan Singh had put their signatures. The inquest was conducted in their presence which was prepared by the learned Magistrate and at the time of inquest, all the panchs stated that the deceased was done to death by burning for want of dowry. This witness has proved the panchnama paper nos.9Ka/1 & 9Ka/2 and identified his signature

which has been exhibited as Ex. Ka.-1.

14. After panchayatnama, the post mortem of the deceased was conducted and thereafter dead body was given in his custody and after performing the last rites of the deceased he had got the written report typed and put his signature on the same and submitted the same to at police station Kotwali Deoria, District Deoria, on the basis of which the case was registered and he was handed over a copy of the FIR.

15. This witness has further proved the written report paper no.51 Ka which has been exhibited as Ex. Ka.-2. His statement was recorded by the Circle Officer and he has handed over the marriage card to the Investigating Officer which is paper No.16Ga-1 and 16G-3, which has been exhibited as Ex. Ka.-1.

16. In his cross-examination, this witness has stated that at the time of marriage, there was no dispute regarding dowry between the two families. At the time of marriage he had given enough items according to his capacity which were accepted by the accused. The family of the accused had seen his daughter and approved her and thereafter married her. He further stated that after 10 days of the gauna ceremony, his daughter had informed him on telephone, on which he had gone to meet his daughter at village Parsia Mall at her in-laws house. He further stated that he did not note down the mobile number of the unknown person who had informed him about the incident. He did not inform the name of the accused persons to the learned Magistrate at the time of panchayatnama. He further stated in his cross-examination that after gauna ceremony his daughter Preeti had slipped from a stair case and she was medically treated by the family members of the accused Vijay Bahadur Mall who got her treated. He further stated that he did not see any person setting ablaze the deceased but she died in a accident. He stated that if the deceased died in an accident then her whole body would not have been burnt and some part of the body would have been burnt.

17. In the cross-examination, this witness stated that he can tell the the mobile number which was "8853673982 ". This witness further stated in his cross-examination that he had no knowledge about the fact that right from the marriage till recording his evidence that his son-in-law Vijay Bahadur Mall was an illiterate or literate. He stated that he could marry his daughter to an illiterate person, hence, he has married has daughter.

18. PW2-Jai Singh is the uncle of the deceased. He has also deposed the same version as has been given by PW1-Man Singh, informant of the case and supported the prosecution case. He stated that on the day of incident, .e., 3.6.2011 he had gone to gone with PW1 to Medical College, Gorakhpur but he did not see his niece Preeti and when he reached there, then he saw that the learned Magistrate was preparing the inquest report and after reading the inquest report he also signed the same and has also proved the panchayatnama.

19. In his cross-examination, he stated that the Magistrate who conducted the inquest had not asked anything and he had read out the inquest report to him and he put his signature on the same. He stated that he had received an information on 3.6.2011 in the morning from his brother that the deceased Preeti has been admitted in Medical College, Gorakhpur in a burnt condition by Ram Karan, Vijay Bahadur and Dinesh Mall for medical treatment. When he asked to the doctor at Medical College, Gorakhpur about the deceased then he was informed that after five minutes the deceased had died when she was brought to the said hospital. He has stated that the deceased did not slip from a stair case after gauna ceremony nor her in-laws have got her medically treated or admitted her in the hospital. Last rites of the deceased was not performed by her in-laws and after he has admitted in his cross-examination that he had returned from the Medical College, Gorakhpur and he did not know who stayed at back and how many people from his side had gone to the Medical College, Gorakhpur

20. PW3-Vipin Kumar is the brother-in-law (Bahnoi) of the deceased Preeti. He deposed that the deceased Preeti was his sister-in-law as her sister Gunda Singh was married to him. He also reiterated the prosecution case as has been stated by PW1-Man Singh. He stated that his father-in-laws Man Singh had informed him that in-laws of the deceased Preeti used to harass and cruelly treated her for want of dowry and further they threatened her for being set ablaze and after some days of the incident, i.e., on 2.6.2011 earlier in the morning the deceased was burnt to death by all the accused persons. He was informed about the incident by his father-in-law Man Singh and thereafter he along with his father-in-law, mother-in-law had gone to Deoria. He also admitted the fact that when he reached at Medical College, Gorakhpur, the deceased had died on the next day i.e., on 3.6.2011. In the presence of Magistrate, police has conducted the inquest of the deceased, on which he had also signed and has proved the inquest as Ex. Ka.-1. The dead body of the deceased was sent for post mortem.

21. He has stated in his examination-in-chief that he had gone to his house and on 4.6.2011 his father-in-law had made a call to him on which he again came to his in-laws place and thereafter he along with his father-in-law Man Singh, Chachiya Sasur jai Singh and one Kedar Singh went to Deoria where written report was typed and gave the same to police station Kotwali, District Deoria at 4 p.m. On the said day, it was Thana Diwas on which FIR was registered. The police interrogated him about the incident.

22. He in his cross-examination has stated that he is M.A.pass. He was married on 23.4.2000 and his Gauna Ceremony was performed on 10.12.2003. On the marriage his father-in-law had given Rs. 1 lac, one golden chain and a ring. He stated that he did not visit to village Parsia Mall for settling the marriage of the deceased. On the marriage of the deceased Preeti he met her in-laws and after marriage also he did not meet the in-laws of the deceased Preeti. The marriage of the deceased Preeti was performed in happy moment and at the time of the marriage there was no talk about dowry between the parties. The gauna ceremony was also performed in cordial manner. Further, at the

time of marriage and gauna ceremony there was no talk about dowry.

23. In his cross-examination, he stated that he was having no knowledge about the qualification of his Sardhu (Vijay Bahadur Mall). He denied the suggestion that he was deposing against the accused at the instance of his father-in-law.

24. PW4-Dr. Sanjay Kumar has deposed that on 3.6.2011 he was posed as Medical Officer, C.H.C. Chauri Chaura, District Gorakhpur and on the said date, he was on post mortem duty and conducted the post mortem of the deceased Preeti who was aged about 20 years, wife of Vijay Bahadur Mall, resident of Parsia Babu, Police Station Kotwali, District Deoria. He stated that he received the dead body in a sealed condition by Constable 1398 Babban Prasad, H.C. Shashi, Police Station-Kulharia, District Deoria and when the dead body was sent to him it was found intact at 4 p.m. He had conducted the post mortem of the deceased. On the body of the deceased smell of kerosene was present. He found following ante mortem injuries on the person of the deceased:

"1. Ante-mortem injury is an extensive. Superficial to deep burn wound involving head and face to dorsal surface of both feet involving front of whole body. Line of redness present.

2. Superficial burn wound involving back of neck to whole of back of body up to fee. Line of redness present."

25. In the opinion of the doctor, cause of death of the deceased was due to neurogenic shock as a result of ante-mortem burn.

26. He has proved the post mortem of the deceased as Ex. Ka.-3. He stated that the deceased was admitted in Nehru Medical College, Gorakhpur Emergency Ward on 2.6.2011 at 3 p.m. and information about the same was given to the Station Officer of Police Station Gulharia by the Emergency Medical Officer Dr. A.K.Srivastava, which is on record as paper no. 10 Ka/1, which was also signed by him and has proved the same as Ex. Ka.-4.

PW5-Satish Kumar Srivastava, the then Naib Tehsildar has been examined as a formal witness. This witness has deposed before the trial Court that on 3.6.2011 he was working as Naib Tehsildar, at Jungle Kauri Kshetra which comes under the District Gorakhpur. On the said day, i.e., 3.6.2011 at 9.50 a.m., an information was sent to mortuary by Sub Inspector on which he reached there and conducted the

inquest of the deceased Smt. Preeti Singh and the persons present there was appointed as Panch and inquest was prepared by S.I. Amar Nath Yadav who dictated the same. After reading the panchayatnama and hearing the same the witness of inquest signed the same. He proved the inquest report as Ex. Ka.-1 which was in his hand writing and in the opinion of panchs the deceased died on account of burn. He was also satisfied with the opinion of the panchs. He further stated that after inquest, the dead body of the deceased was sent for post mortem and paper no.11 Ka/1, 13Ka/1, 14Ka/1, which are on record, were written by S.I.Amar Nath Yadav on which he has also signed and proved the same as Ex. Ka.-5 to Ex.-Ka-8.

27. PW6-Head Constable Munni Lal has proved the FIR and G.D. He stated that that on 4.6.2011 at 16.50 hrs. he was posted at Police Station Kotwali, District Deoria as Head Constable and the informant of the case, namely, Man Singh, son of Lal Vachan on 4.6.2011 had given a written report, on which the C.O. Sadar has directed the S.H.O. Kotwali to register a case at the police station and on the basis of which a Chick No.243 of 2011 was prepared and a case was registered as Case Crime No.1015 of 2011, under Sections 498A, 304B I.P.C. and 3/4 D.P. Act, against the nine accused persons. He has proved the paper No.4Ka/1 which is in his hand writing and signature and proved the same as Ex. Ka.-9.

28. PW7-Raj Kumar Mishra, Circle Officer, City Deoria is the Investigating Officer of the case. He stated that he has started the investigation of the FIR on 4.6.2011 and recorded the statement of the informant and other witnesses and on at the instance of of the informant he prepared the site plan, which is paper no.17 Ka-1, which has been signed by him and proved as Ex. Ka.10. He stated that he arrested the accused Ram Karan Mall on 18.6.2011 and recorded his statement. On 20.6.2011 he arrested the accused Dinesh Mall and recorded his statement. On 23.6.2011 he arrested the accused Vijay Bahadur Mall and Malti Devi and also recorded their statements and on 25.6.2011 he recorded the second 161 Cr.P.C. statement of the informant Man Singh who handed over the marriage card to him. He recorded the statement of Satish Srivastava, Tehsildar also and after concluding the investigation, he submitted charge sheet against the accused- Vijay Bahadur Mall, Ram Karan Mall, Malti Devi, Dinesh Mall, Sarita Mall for the offence under Sections 498A, 304B I.P.C. and 3/4 D.P. Act which is paper No.3Ka/1 which is under his hand writing and signature and proved the same as Ex.Ka.-11.

29. In his cross-examination, this witness has denied that the deceased died in an accidental fire. None of the villagers where the deceased was married, had stated that the deceased was burnt to death on account of demand of dowry and it was only the father of the deceased and witness of the panchayatnama and inquest who has stated that the

deceased was done to death for want of dowry.

30. He has further stated in his cross-examination that the informant had stated to him that he received an information from some person on his mobile phone about the incident but he had not enquired from him about the mobile number of the said person who informed him on the mobile.

31. He further stated that so far as accused Yogendra is concerned, his participation in the incident was not found, hence, final report was submitted in his favour.

32. The accused in their statements recorded under Section 313 Cr.P.C. have admitted that fact that on 16.2.2009 the marriage of accused Vijay Bahadur Mall was solemnized with the deceased Preeti but they have denied that the deceased was tortured for demand of dowry. They have denied the prosecution case and stated that the witnesses have falsely deposed against them. They have further denied the cause of death of the deceased as has been opined by the Doctor Sanjay Kumar in the post mortem report of the deceased. They stated that the charge sheet has wrongly been submitted against them and false case has been registered against them for extracting money from them.

33. The accused further have stated that the deceased died on accidental fire while cooking food in the house and none of the accused were present in the house at the time of incident. The deceased was taken to the District Hospital, Deoria from where she was referred to Medical College, Gorakhpur. Information about the deceased being burnt was sent to the informant Man Singh and on receiving the said information, the informant along with his family members and wife had come to Gorakhpur where the deceased was being treated by them. After the post mortem of the deceased, the dead body of the deceased was given in their custody and they have performed her last rites. After the marriage none of the family members of the deceased have ever come to meet at her in-laws house.

34. From the side of the defence, DW1-1 Ram Vriksha and DW2- Girja Shanker were the resident of the village of the in-laws of the deceased and they have stated that the deceased died on account of accidental fire while cooking food in the house and they further have denied that the deceased was done to death for want of dowry.

35. On the basis of evidence recorded by the trial Court, the appellant has been convicted under Section 302 I.P.C. for life imprisonment by the impugned judgment and order of the trial Court, against which he preferred the instant appeal.

36. Heard Sri Santosh Kumar Giri, learned counsel for the appellants, Sri Ashish Pandey, learned AGA for the State and perused the material available on record.

37. It has been argued by learned counsel for the appellant that the deceased was

married to the appellant on 16.2.2009 and her gauna ceremony was performed on 1.5.2011. The FIR was lodged against the appellant and his other family members, i.e., father, mother, brother, sister and against one brother Yogendra final report was submitted and against rest of the accused charge sheet was submitted who were put to trial.

38. He further pointed out that initially the case was registered under Section 498A, 304B I.P.C. and 3/4 D.P. Act, but the trial Court acquitted that appellant along with his other family members for the aforesaid offences as it did not find a case of dowry death against them and further acquitted the other family members who are in-laws of the deceased excepting the appellant under Section 302 I.P.C. also as prosecution has failed to prove its case beyond reasonable doubt against them and appellant has been convicted for the offence under Section 302 I.P.C.

39. He next argued that the deceased, who was wife of the appellant, died on account of accidental fire which took place while she was cooking food in the house. He states that at the time of incident, no one was present in the house except the deceased and on receiving the information about the incident, the appellant rushed to his house along with other family members and immediately took the deceased to the District Hospital, Deoria but as her condition was deteriorating, she was referred to Medical College Gorakhpur where the husband and in-laws of the deceased took her where she died.

40. He next submitted that the information regarding death of the deceased was also given to the father of the deceased on his mobile phone who arrived at Medical College, Gorakhpur along with brother-in-law of the deceased (PW3).

41. After the deceased died, her inquest was conducted by Sri Satish Kumar Srivastava (PW5), Naib Tehsildar along with police personnel, which was prepared by S.I. Amar Nath Yadav. The father of the deceased (PW1), uncle of the deceased (PW2) and brother-in-law (Bahnoi) of the deceased (PW3) were present at the time of inquest of the deceased and they also signed the same as panchs of the inquest.

42. He next pointed out that after the panchayatnama and post mortem of the deceased, the dead body of the deceased was given in the custody of her in-laws who had performed the last rites of the deceased and the said fact has also been admitted by PW1, father of the deceased, in his cross-examination. Hence, the conviction of the appellant by the trial Court under Section 302 I.P.C. is against the evidence on record and is liable to be set aside by this Court and the appellant be acquitted.

43. Per contra, learned AGA on the other hand has vehemently opposed the arguments advanced by learned counsel for the appellant and has submitted that the deceased died in her matrimonial home and the explanation which has been given by the appellant that she died on account of accidental fire while cooking food in the house appears to be a

false explanation, as the deceased was completely burnt from the back side and there were some burn present on her front side of the body. Moreover, the incident had taken place in the room of the deceased and not in the kitchen and the trial Court spelling cogent reason for convicting the appellant under Section 302 I.P.C., for which alternative charge was framed against the appellant, has rightly convicted him for the said offence. Hence, the appeal is devoid of merits and be dismissed.

44. We have considered the rival submissions advanced by learned counsel for the parties and perused the lower Court record.

45. It is an admitted fact that the appellant along with co-accused persons were charged for the offence under Sections 498A, 304B I.P.C. and and 3/4 D.P. Act and in alternative, charge under Section 302 IP.C. was framed against all of them, but excepting the appellant the other accused persons who are in-laws of the deceased were acquitted by the trial Court giving benefit of doubt as they were not present at the time of incident in the house as they were on their agricultural field and the appellant who is husband of the deceased though also was stated not to be present at the place of occurrence but he failed to give proper explanation for the death of his wife who died in her matrimonial home, has convicted the appellant with the aid of Section 106 of the Evidence Act on whom burden was to explain the death of his wife who died in his house.

46. The submissions advanced by learned counsel for the parties that the case against the appellant and other accused persons for dowry death was found to be false by the trial Court and the appellant has been convicted for the offence under Section 302 I.P.C. in view of Section 106 of the Evidence Act by the trial Court does not appear to be justified, correct and is not all acceptable.

47. It is an admitted case that the deceased was the wife of the appellant and she was living at the time of the incident with her husband and other in-laws, as it appears from the evidence that the in-laws of the deceased were not present at the time of the incident, but so far as the appellant is concerned, he in his statement under Section 313 Cr.P.C. has come up with a categorical case that his wife died due to accidental fire while cooking food in the house and on the information received he immediately rushed to his house and took her wife to District Hospital, Deoria from where she was referred to Medical College, Gorakhpur for further treatment and after five minutes of reaching there, she had succumbed to her injuries.

48. Moreover, from the site plan prepared by the Investigating Officer of the place of occurrence, it appears that the incident had taken place in the room of the deceased and the Investigating Officer did not find any stove being burst nor the same was recovered from the place of occurrence and the evidence which was led by DW1-Ram Vriksha and DW2-Girja Shanker who also stated that the deceased died on account of accidental fire while cooking food in the house shows that the explanation which has been given by the

appellant for the death of the deceased is false one which does not borne out from the defence evidence on record.

49. Thus, the conduct which has been demonstrated by the learned counsel for the appellant in his argument of the appellant as well as of his family members cannot be a good ground for acquitting the appellant in view of false explanation given by him for the death of his wife.

50. Moreover, the ante mortem injuries of the deceased shows that she received extensive superficial to deep burn wound involving head and face to dorsal surface of both feet involving front of whole body. Further superficial burn wound involving back of neck to whole of back of body up to feet. Line of redness present. In the opinion of the doctor, the cause of death of the deceased was due to neurogenic shock as a result of ante-mortem burn.

51. Thus, in such a circumstances to say that the deceased died on account of accidental fire appears to be absolutely false.

52. The finding recorded by the trial Court for convicting the appellant for the offence under Section 302 I.P.C. with the aid of Section 106 of the Evidence Act is perfectly correct and requires no interference by this Court.

53. In the case of Gajanan Dashrath Kharate vs. State of Maharashtra (2016) 4 SCC 604, Hon"ble Apex Court has held in para 36 as under:-

"As seen from the evidence, appellant-Gajanan and his father- Dashrath and mother-Mankarnabai were living together. On 07.04.2002, mother of the appellant-accused had gone to another village-Dahigaon. Prosecution has proved presence of the appellant at his home on the night of 07.04.2002. Therefore, the appellant is duty bound to explain as to how the death of his father was caused. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 of the Indian Evidence Act, there will be a corresponding burden on the inmates of the house to give 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 the accused to offer. On the date of occurrence, when accused and his father Dashrath were in the house and when the father of the accused was found dead, it was for the accused to offer an explanation as to how his father sustained injuries. When the accused could not offer any explanation as to the homicidal death of his father, it is a strong circumstance against the accused that he is responsible for the

commission of the same."

54. Thus, in view of the foregoing discussions, the defence version that the deceased died on account of accidental fire while cooking food in the house cannot be accepted. The conduct of the appellant in offering a false explanation for the homicidal death of the deceased shows his otherwise conduct.

55. Therefore, we do not find any reason to interfere in the impugned judgment and order passed by the trial Court. The trial Court has rightly convicted and sentenced the accused appellant. The appeal is liable to be dismissed and the same is, accordingly, dismissed.

56. The accused appellant is stated to be in jail, he shall remain in jail to serve out the sentence awarded by the trial Court.

57. The Registrar General is directed to send a certified copy of this order to the District an Sessions Judge concerned for necessary information and follow-up action.