

(2013) 10 CAL CK 0047

Calcutta High Court

Case No: C.R.A No. 241 of 2009

Mittan Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Oct. 8, 2013**Citation:** (2014) 2 CHN 122**Hon'ble Judges:** Tapen Sen, J; Mrinal Kanti Sinha, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Mrinal Kanti Sinha, J.

This appeal has been directed against the Judgment and Order dated 3rd January, 2009 and 5th January, 2009, passed by Sri Siddhartha Roy Chowdhury, learned Additional Sessions Judge, Fast Track 6th Court, Malda, in Sessions Case No. 101/08, S.T. No. 61/08, whereby the learned Trial Court has acquitted accused Belo Bewa and Jita Mondal @ Gita Mondal, hut convicted the appellant/accused Mittan Mondal for the offence u/s 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life for the offence u/s 302 of the Indian Penal Code and to pay fine of Rs. 20,000/-. It appears that the prosecution case, in short is that on 1.8.1997 a written complaint was lodged before Officer-in-Charge, Manikchak Police Station by one Aglu Chandra Das alleging that his second daughter, Baby Das, was married to Mittan Mondal of Umeshghoshtola 1 year 5 months ago and after marriage they were living peacefully for about 6 months, but thereafter the said Baby Pas used to tell her maternal aunt Aloti Mondal that her husband had extramarital relation with his elder brother Sudhir Mandal's wife Jita Mandal, to which she protested, and on such protest she was subjected to both physical and mental torture by Mittan Mondal, Jita Mondal and Belo Bewa, and on 31.7.1997 at about 10 hours in the morning Rabi Mondal, brother-in-Law of the complaint/informant, informed him that his daughter Baby was lying in her bedroom and foul smell was emitting from her body, and Shankar Mondal informed him about the incident. Thereafter the

complainant/informant with his family members went to the matrimonial home of his daughter and found that the dead body of said Baby was lying on the floor and none other was there and he also found puffed up decomposed body of his daughter whom he believed to have been murdered.

2. On the basis of the said written complaint Manikchak Police Station Case No. 48/97 dated 1.8.1997 was registered and Police investigated into the case and submitted charge-sheet against the accused persons. Thereafter the case was committed to the Court of learned Sessions Judge by the learned Additional Chief Judicial Magistrate concerned and the learned Sessions Judge transferred the case to the learned Trial Court for trial.

3. Thereafter learned Trial Court framed charge under sections 302/34 of the Indian Penal Code against three accused persons on 20.06.2008. The charge was read over and explained to the accused persons, who pleaded not guilty and claimed to be tried.

4. In support of its case the prosecution examined as many as 16 witnesses and submitted some documents, which have been marked Exhibits.

5. Thereafter the accused was examined u/s 313 of the Criminal Procedure Code, and as the defence declined to adduce any evidence in its support, so after hearing arguments of the parties the learned Trial Court delivered the Judgment on 03.01.2009 and 05.01.2009 convicting and sentencing the appellant/accused while acquitting other accused persons by the above noted order.

6. Being aggrieved by and dissatisfied with the aforesaid Judgment and order dated 03.01.2009 and 05.01.2009 passed by the said learned Trial Court the present appellant/accused has preferred the present appeal before this Court.

7. It is to be considered in this appeal as to whether the learned Trial Court was legal, correct and justified in passing the said Judgment and order convicting and sentencing the appellant/accused Mittan Mondal only by the above noted order while acquitting other accused persons or not.

8. Mr. Mukherjee, learned counsel appearing for the present appellant/accused has assailed the aforesaid Judgment and order on the following grounds and has submitted that:--

i) The learned Trial Judge erred in law in holding the appellant guilty of the charge u/s 302 of the Indian Penal Code as the prosecution has failed to establish any motive behind the incident of the alleged murder of Baby Mondal.

ii) There is no eye-witness to the alleged incident of murder and the entire prosecution case is based on circumstantial evidence which is not sufficient to hold the appellant guilty for the alleged offence and for mere non-explanation of the reasons for the death of the deceased the appellant cannot be held guilty for the

offence u/s 302 of the Indian penal Code.

iii) The learned Trial Judge erred in law in shifting the onus of proof upon the appellant, though prosecution failed to prove its onus of proving its case beyond all reasonable doubts.

iv) The alleged incident of torture and cruelty upon said Baby by the present appellant/accused has not been established by evidence of the prosecution.

v) The chain of circumstances of the prosecution case is not complete and there has been break in the link and mere absconding is not sufficient for drawing adverse presumption against the appellant/accused for his conviction.

vi) The neighbours did not complain about any untoward incident happening in the house of the appellant and Sankar Mandal who allegedly gave information of death of Baby Mandal, has not been examined as witness.

vii) The evidence of the doctor concerned is speculative and the doctor with all certainty did not say that death of the deceased was due to the effect of manual strangulation and that was homicidal in nature.

viii) The entire prosecution case is based on surmise and conjecture, and due weight to the evidence given by the doctor concerned was not given and the impugned order is otherwise bad in law which is liable to be set aside.

9. On the other hand Mr. Singh, learned counsel for the prosecution has contended that the prosecution case has been proved by sufficient reliable evidence beyond all reasonable doubts, and though the prosecution case is based on circumstantial evidence, yet the chain of the prayed circumstances is complete and sufficient enough to prove the guilt of the present appellant/accused beyond all reasonable doubt, which require mention:--

i) The deceased being the wife of the present appellant/accused used to live in the house of her husband with the mother of the present appellant/accused.

ii) The dead body of the deceased Baby was lying on the floor of the bedroom of the house of present appellant/accused in decomposed condition. When the informant himself found the dead body going there, then non-examination of said Sankar Mandal was not much material and motive is not sine qua non in proving the prosecution case, but in fact in this case there is an allegation that the appellant had an extra-marital relation with his brother's wife Jita alias Gita Mondal, to which the deceased protested, for which she was tortured and murdered.

iii) None of the accused persons was found present in the said house which was closed under lock and key, and was opened after the neighbours gathered there obtaining foul smell therefrom.

iv) The present appellant/accused being husband was absconding immediately after the dead body was found in his house, and neither the appellant/accused nor his family members informed about the death of the deceased Baby either to Police or to her parents or to their neighbours and such conduct of the appellant/accused subsequent to the death of his wife was not normal or natural.

v) The appellant/accused absconded for about twenty five months and did not co-operate with police during investigation nor he appeared at any stage of investigation and charge-sheet was submitted showing him as absconder.

vi) As per the opinion of the concerned autopsy surgeon, who held postmortem examination over the dead body of Baby Mondal, cause of death of Baby Mandal was due to asphyxia which may be confirmed by circumstantial evidence, but the said Autopsy Surgeon has also stated about manual strangulation or manual pressure and homicidal death of the deceased, and he has not been cross-examined in details except one line.

vii) No plausible and reliable explanation as to when and how death of his wife happened, has been given by the present appellant/accused, though his wife died in his house only about one year five months after her marriage while she was living with her husband.

viii) Her decomposed dead body was found lying in the bedroom of his house in an abandoned condition in a closed house.

10. It appears that in support of its case the prosecution examined 16 PWs, out of whom PW-1 was the Pradhan of Dakshin Chandipur Gram Panchayat, who put his signature on the inquest report at the behest of police and though he did not know Baby Mondal yet he told police that wife of Mittan died.

11. PW-2 is the elder brother of the deceased Baby, who has deposed that his sister Baby was married to Mittan and she died 18 months after her marriage and on 31.07.1097 Sankar, Rabi Mondal came to their house and informed them that his sister was killed by her husband Mittan, her mother-in-law Belo Bewa and her "Ja" Gita Mondal and they kept the dead body in their house, and then he along with his father went to the matrimonial house of his sister at Umeshghoshtola, Bhutni within P.S. Manikchak, and then the house of the accused was under lock and key, and reaching there he found that the neighbours gathered near the house and the door was opened, and he also found that his sister was lying on the floor of the house while she bled from her nose and mouth, her tongue was out of her mouth and he got foul smell and the body of his sister was puffed up. He did not find the family members of his deceased sister including her husband and the he along with his father came to Manikchak P.S. and his father, who is dead now, lodged a written complaint and the complaint was scribed by Ainul Hoque under the dictation of his father and his father put his LTI thereon and police came and held inquest and he put his signature as witness on the inquest report. As per his evidence the accused

was present in Court on the date of his deposition.

12. PW-3 being a resident of Umeshghoshtola, has deposed that she learnt that the deceased died unnatural death (phansi Lege), and she did not see the dead body, but smelt foul smell from the dead body, but during cross-examination she also deposed that she found the dead body on the road and she proved her signature on the inquest report.

13. PW-4 is a retired constable of Police, who took the dead body of Baby Mondal for post-mortem examination on 1.8.1997 and he identified the dead body before the doctor.

14. PW-5 knew the accused persons Mittan and his mother and sister-in-law, and he found dead body while police was taking it out from the house of Mittan, which is situated in their village.

15. PW-6 knows the accused Mittan, his mother and sister-in-law, and he saw the wife of Mittan, who has died 10/11 years ago, and he put his signature while police was conducting post-mortem by the side of the road and the he found that dead body was wrapped up.

16. PW-7 knows the accused persons and Mittan Mondal's wife Baby and as per his evidence Mittan Mondal's wife Baby Mondal died 8/10 years ago, but he cannot say how she died, and he has been declared hostile by the prosecution.

17. PW-8 signed on the seizure list of wearing apparel, P.M. blood and hair of deceased brought by Sadhan Kumar Sen on 2.8.1997.

18. PW-9 wrote out the written complaint under the instruction of Aglu Chandra Das and read over the same to him and Aglu put his LTI through his pen.

19. P.W-10 is a Home guard, who put his signature on the seizure list on 2.8.1997 when the wearing apparel of deceased along with P.M. blood was seized by the I.O.

20. P.W-11 is S.I of police, who received the written information from one Aglu Chandra Das on 1.8.1997, which disclosed a homicidal death, and registered Manikchak P.S. case No. 48 dated 1.8.1997 under sections 498A/302/34 of the Indian Penal Code against three accused persons treating the written complaint as F.I.R, but he did not have any direct knowledge about the alleged incident.

21. PW-12 is also a seizure list witness, who signed on the seizure list by which photograph was seized.

22. PW-13 is also a seizure list witness by which photograph and invitation letter were seized.

23. PW-14 is Rabi Modal, who is a resident of Mathurapur, which is about 6/7 kms away from Umeshghoshtala as per his evidence, and he knew Baby Mondal, his niece, who has died 11 years 2 months ago in her matrimonial home, but he does

not know the cause of her death, and he went to the house of Baby Mondal at Umeshghostola and found Mittan Mondal, his mother and his sister-in-law were coming out of the house after putting a pad lock and when he asked about Baby Mondal, Mittan told him that Baby went to her father's house and he came back to his house and three days thereafter he along with Shankar Mondal came to the house of Baby's father at Goloktola within P.S. Kaliachak, and thereafter he along with parents of Baby and her brother came to Umeshghostola to the house of Mittan and found that the dead body of Baby was lying in the room of Mittan and the dead body was puffed up and was emitting foul smell, and he also found that blood came out from her nose, mouth and ear, but they did not find either Mittan or any other inhabitants of the said house, and police came thereafter, and Mittan, his mother and his sister-in-law were present in the Court on the date of his deposition.

24. PW-15 is the Medical officer concerned, as per whose evidence he was attached to Malda Police Hospital on 01.08.1997 and on that date he held post-mortem examination over the dead body of Baby Mondal in connection with Manikchak Police Station case No. 48/97 dated 1.8.97 and the dead body was brought and identified by constable Sadhan Kumar Sen, which dead body was highly decomposed, blotted and distorted and probable time of death was 62 to 58 hours back from the time of autopsy held at 1.30 p.m. on 1.8.97, and in his opinion cause of death might be due to asphyxia which may be confirmed by circumstantial evidence and the PW 15 has also stated about manual strangulation or pressure as cause of death, which was homicidal.

25. PW-16 is the Investigating Officer of the case, who has deposed as S.I of police that he was entrusted with the investigation of Manikchak P.S. case No. 48/97 and during investigation he visited the P.O. at 5.30 a.m., prepared sketch map of the P.O. with index, found decomposed dead body of Baby Mondal in the bedroom of Mittan Mondal in the house of Pralhad Mondal, father of Mittan Mandal, at Umeshghoshtola, held inquest in presence of witnesses and B.D.O. sent the dead body for post-mortem examination by a challan, he examined available witnesses and recorded their statements, held raid to arrest the accused persons, arrested accused Belo Bewa and forwarded her to Court, seized the wearing apparel of the deceased being produced by constable Sadhan Kumar Sen under a seizure list, seized the photograph and invitation card of the marriage of the accused and the deceased, collected P.M. report, and made over the CD being transferred, PW-16 has also deposed that accused Mittan, his elder brother Sudhir, and his wife Gita, Belo Bewa, their mother, used to reside in the same house where the deceased also used to reside during her life time, PW-16 has further deposed that S.I S.K. Mondal submitted charge-sheet as other I.O. of the case showing Mittan and Gita Mondal as absconders.

26. In such a case the onus lies upon his Prosecution to prove its case by sufficient reliable evidence beyond all reasonable doubts. Apparently there was no

eye-witness to the alleged incident and the prosecution case is based upon circumstantial evidence. It is an established principle of law as per the decision reported in Reddy Sampath Kumar, 2005 (7) SC 603 and Narendra Singh, AIR 2004 SC 3249 and a plethora of judgments that when a case rests purely on circumstantial evidence only then such evidence must satisfy three tests--Firstly, the circumstances from which an inference of guilt is sought to be proved, must be cogently and firmly established. Secondly, the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly, the circumstances taken cumulatively must 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 none else. That is to say that the circumstances should be incapable of explanation on any reasonable hypothesis save that of the guilt of the accused, and the circumstances should be incapable of explanation on any hypothesis consistent with the innocence of the accused. The circumstances from which an inference as to the guilt of the accused is to be drawn has to be proved beyond all reasonable doubts and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. It is also well settled now that circumstantial evidence alone by itself is enough to form basis of conviction, provided however, there is no snap or gap in the chain of events and thus the chain of events must be complete in such a way so as to point to the guilt of the accused and none other.

27. In the light of the above noted principles of law regarding circumstantial evidence the present case may be considered. It appears that in this case the following circumstances have been established by the evidence of the prosecution witnesses beyond all reasonable doubts:--

Firstly, the fact that the dead body of the married wife, which fact has not been denied by the appellant/accused, was found lying in a decomposed condition in the bedroom of the appellant inside the dwelling house of the present appellant/accused, who is the husband of the deceased, and that is a very telling circumstance against him and he owes a duty to explain as to how the dead body of his wife, which was resultant of an unnatural death, remained in his house inasmuch as there is no such evidence that her death was natural one, and in absence of any such explanation from him, the implication of the said circumstance is definitely adverse to the present appellant/accused.

Secondly, though as per the evidence of P.Ws. 5, 14 and 7 mother, brother's wife of the appellant used to stay in that dwelling house with the deceased and the appellant having another house, where he used to stay occasionally and which was inundated at the relevant time, used to visit the said dwelling house where his mother and wife used to reside, very often, yet at the relevant time none other except the dead body of the deceased was found there, and the door of that house was closed which was opened after the neighbours gathered there obtaining foul

smell therefrom.

Thirdly, the present appellant/accused and his other family members were found absconding after the said incident of death of the deceased wife and the appellant/accused did not appear before the P.S. or Court since after the said incident, as mentioned by the learned counsel for the prosecution.

Fourthly, the appellant gave no intimation regarding death of his wife to her parents or to the police station or Court and he sat tight over the matter for a long time of about 25 months after the said incident as pointed out by the learned Public Prosecutor. The appellant/accused never appeared during the investigation nor co-operated in the course of investigation and charge-sheet was submitted against him showing him as absconder.

Fifthly, as per the evidence of the autopsy surgeon and the post-mortem report death of the deceased was due to asphyxia by manual strangulation or pressure which could not be caused by hanging, and that was homicidal which excludes the possibility of suicidal death by hanging.

Sixthly, no such case has been pleaded or proved that any outsider had any enmity, grudge or malice against the deceased for which she was killed, though evidently she died only about one year five months after her marriage, while she was allegedly living peacefully with her husband, and her dead body was found inside the bedroom of the house of the appellant/accused, for which he failed to give any reasonable and reliable explanation.

28. Mr. Mukherjee learned counsel for the appellant has contended that there is no eye-witness to the alleged incident and entire prosecution case is based on circumstantial evidence and other two accused persons have already been acquitted by the learned Trial Court while the present appellant only has been convicted, but no motive has been ascribed to the present appellant as to why he would commit murder of his wife, and he resides at different place from the house where his wife was residing, and the informant Sankar has not been examined for which presumption u/s 114(g) of the Evidence Act can be drawn, and the concerned doctor's evidence was not conclusive but speculative and the doctor was not certain that death of the deceased was caused by asphyxia or by manual strangulation and sub-laxation as mentioned by the doctor concerned is not fracture but only dislocation, and the liability of the accused must be proved and not may be proved for conviction, and chain of circumstances is not complete and that does not prove the guilt of the convict beyond all reasonable doubt and every circumstance in the chain must be complete and there should not be any missing link and in case there be any missing link, then the appellant would get the benefit of every reasonable doubt and in support of his various contentions the learned counsel for the appellant has relied upon the decisions reported in [Tulshiram Sahadu Suryawanshi and Another Vs. State of Maharashtra](#), in the case of [Joydeb Patra and Others Vs.](#)

[State of West Bengal](#), in the case of *Rahaman v. The State of U.P.*, AIR 1972 Supreme Court 110 (Para 21), in the case of [Matru alias Girish Chandra Vs. The State of Uttar Pradesh](#), and in the case of [Raghubir Singh Vs. State of U.P.](#),

29. On the other hand learned counsel for the State has argued that the deceased died an unnatural death and her decomposed body was found in the bedroom of the house of the present appellant, which is the house of her husband, and though there was no eye-witness of the alleged incident, yet there were plenty of incriminating circumstances against the present appellant which have clearly been mentioned in the Pages 27, 28 of the impugned Judgment, and the maker of the FIR has not been examined as he has expired and the present appellant was absconding for about 25 months after the death of his wife, but there is no explanation as to, why he absconded after the death of his wife, and the deceased wife died an unnatural death, but the appellant did not inform police or parents of the deceased or to their neighbours, rather he absconded for a long time and such conduct of the appellant is not natural though the deceased died only about one year five months after her marriage with the present appellant, and no explanation has been given how and why she died in the house of her husband and as the matter was within especial knowledge of the present appellant, so it was incumbent upon him to give a proper explanation as to how and why his wife died in his house in an unnatural way, and why and how decomposed body of his wife was found in his house while none of the inmates of his house was present there, and in absence of any sufficient explanation in that regard an adverse presumption can easily be made against him regarding his guilt in the commission of causing death of his wife, and even during his examination u/s 313 of the Code of Criminal Procedure the present appellant/accused also did not explain as to how and why his wife died in his house and in support of his various arguments learned counsel for the State has relied upon the decisions reported in the case of [State of Punjab Vs. Karnail Singh](#), in the case of [Trimukh Maroti Kirkan Vs. State of Maharashtra](#), and in the case of [Narendra Vs. State of Karnataka](#),

30. It has been established by the evidence of all the PWs specially the P.Ws. 2, 3, 5, 6, 7, 14, 15, 16 as well as the P.M. report and other documents that the dead body of the deceased wife was found in decomposed condition in the house of the present appellant accused, which was under lock and key and which was opened after the neighbours gathered there sometimes after the death of the deceased wife in the house of the present appellant/accused obtaining foul smell therefrom, when none of the inmates of the house of the appellant/accused or the present appellant/accused himself was found in that house, and the present appellant/accused absconded and appeared before the Court about 25 months after the said incident, in which the deceased wife died about one year five months after her marriage with the present appellant, and the present appellant/accused did not inform anywhere about the death of his wife and did not co-operate in the investigation of the case.

31. It also appears that there is no eye-witness of the alleged incident and the entire case is based on circumstantial evidence. So, the said circumstantial evidences may be noted here.

32. In the instant case it has been established by the evidence of the PWs. that the dead body of the deceased wife was found in the bedroom inside the house of the appellant/accused in decomposed condition and that dead body was taken from the house of the appellant/accused by police, and though there is no eye-witness of the alleged incident of death of the deceased, yet as per the evidence of P.Ws 3, 5 and 7 appellant Mittan has another house on the other side of Ganga and wife of Mittan and mother of Mittan used to live in his ancestral house, and though Mittan has another house at Samastipur about two kilometers away from their village, yet Mittan used to come to his house where his mother and wife used to reside every now and then, and there is no denial by the appellant/husband that he also used to live in his ancestral house with his wife and other family members very often in spite of his having a farm house on the other side of the river where he used to stay occasionally. But it is also evident from the evidence of PW-7 that at the relevant time that farm house area was inundated due to flood, and appellant Mittan used to stay there occasionally where domestic animals were kept. But that does not mean that he used to stay there regularly in the farm house and he never came to his dwelling house where his mother and wife used to reside usually and the dead body of his wife was found, rather it is evident that he used to come to his house where his wife and mother used to stay very often, and from that point of view it was not improbable for the appellant/accused to come to his dwelling house before the death of his wife and leaving that house after causing the death of his wife. It appears that during his examination u/s 313 of the Code of Criminal Procedure, the appellant/accused stated in reply to question No. 20 that it is true that his younger brother Naren, Sudhir and his mother reside near the place of occurrence, and in reply to question No. 6 as to why they were not found in their house, he stated that they were in Kamat Bari, which may be his farm house, and only one person resides in his house. It is also not believable that his wife alone would be kept in his dwelling house and leaving her alone he and his mother and other family members would live elsewhere and generally it is expected that husband and wife would live together. Apparently he has tried to take a plea of alibi thereby, the onus of proving which is upon him, but he has failed to discharge that onus by sufficient evidence. In reply to question No. 10 during his examination u/s 313 of the Code of Criminal Procedure that as per the deposition of P.W. 6, 10/11 years ago his wife died, the appellant/accused replied that he does not know. It is not expected and cannot be believed that a responsible husband wherever he resides, would not know the whereabouts of his wife, and even after her death, he would make no query in that regard nor he would inform the neighbouring people or police or the parents of the deceased wife about the unnatural death of his wife.

33. In this regard learned Court below has also pointed that in such case:

"... Normal course of action would have been to inform police but the accused Mittan Mondal being the husband not only maintained stunning silence but deserted his house. Conduct of the appellant/accused subsequent to the death of his wife was not normal or natural. Charge-sheet was submitted showing this particular accused person absconder. This action or omission on the part of the accused person imposes an obligation upon the accused Mittan Mondal to give an explanation as envisages u/s 106 of the Evidence Act. But he fails not only to offer any reasonable explanation in discharge of the burden cast upon him by section 106 of the Evidence Act."

When the wife of the appellant/accused had an unnatural death in his house, then the appellant/accused is the best person to say about how and why he and his mother, who was living together with his wife in that house, left that house, and in absence of any explanation of the appellant/accused in that regard it would not be unjust to presume that the appellant/accused and his mother left that house after the unnatural death of the deceased caused by the appellant/accused himself and that is an additional link in the proved chain of circumstances. Motive in such a case is not a sine qua non to prove the case of the prosecution. Moreover there is a probability of the prosecution case in this regard as pointed out by the learned Public Prosecutor that the appellant/accused Mittan had extra-marital relation with his brother's wife to which the deceased protested, for which she was tortured and murdered. It is an established principle of law that when a case is based upon circumstantial evidence and 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 chain in the circumstances to make it complete.

34. It has been held in this regard by the Hon"ble Supreme Court in the decision reported in [Narendra Vs. State of Karnataka](#), in paragraph 6 that:--

"If an offence takes place inside the privacy of a house and in such 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 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 Prosecutions* (1944 AC 315) quoted with approval by Arijit Pasayat, J. in [State of Punjab Vs. Karnail Singh](#), 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 travelling on a railway without ticket. The burden of proving that he had a ticket is on him".

35. In view of the decision of the Hon"ble Supreme Court reported in the case of [Trimukh Maroti Kirkan Vs. State of Maharashtra](#), as referred by the learned counsel for the State, it cannot be said that there was no duty at all on the accused to offer any explanation in such case. In this regard it would be appropriate to note the observation of the Hon"ble Supreme Court in this regard that:--

"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."

36. It has further been observed by the Hon"ble Supreme Court in Para-16 of the aforesaid decision that:--

"...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".

37. In para-16(32) of the aforesaid decision it has further been observed by the Hon"ble Supreme Court that:--

"... on the principle underlying section 106, Evidence Act, the burden to establish those facts is cast on the person concerned; and if he fails to establish or explain those facts, an adverse inference of fact 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. 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 aforementioned principles of law can be applied to the facts and circumstances of the present case also inasmuch as the prosecution has initially proved its case regarding unnatural death of the wife of the appellant/accused in the bedroom of his house beyond all reasonable doubts.

38. Though it has been observed in the decision reported in [Joydeb Patra and Others Vs. State of West Bengal](#), as relied upon by the learned counsel for the appellant, that mere non-explanation of the reasons for the death of the deceased the appellant cannot be held guilty for the offence u/s 302 of the Indian Penal Code, yet it appears that the facts and circumstances of the said case and the facts and circumstances of the present case are different and in that case the decisions reported in [Trimukh Maroti Kirkan Vs. State of Maharashtra](#), [State of Punjab Vs. Karnail Singh](#), and [Narendra Vs. State of Karnataka](#), were not considered at the time of that decision. As such the principles of law laid down in that case cannot be applied in the facts and circumstances of the present case.

39. Though by referring to the decisions reported in [Raghubir Singh Vs. State of U.P.](#), the learned counsel for the appellant has sought to say that mere absconding, if any, by itself is not conclusive either of guilt or of guilty conscience, for a person may abscond for various reasons or out of fear, and even if proved that is a weak link in the chain for establishing the guilt of the accused, yet in this case it appears that the fact that the dead body of the deceased wife was found in the bedroom of the appellant/accused in his house is a very telling circumstance against him and the appellant owes a duty to explain as to how the dead body of his wife, which was the resultant of an unnatural death, happened to be in his house, and why all the inmates of his house absconded or abandoned his house closing the same leaving the dead body of his wife there, has not been explained, for which there would be no other hypothesis except the guilt of the appellant/accused. Further death can either be natural, accidental or homicidal, but depending on the facts of each case, by process of elimination the Court on the basis of circumstances appearing in the record can conclude that death was homicidal in nature, and in this case the evidence of the autopsy surgeon, PW 15, also shows that death of the wife of the appellant-accused was homicidal, which cannot be caused by hanging, and under such circumstances absconding of the accused husband after the death of his wife cannot be said to be a normal conduct. It cannot also be said that he is not guilty for that conduct. As such the aforesaid decisions relied upon by the learned counsel for the appellant do not apply to the facts and circumstances of the present case.

40. Thus having regard to the submission of the learned counsel for the parties, facts and circumstances of the case, evidence and other materials on record it appears that the circumstances from which an inference of guilt is sought to be proved have cogently and firmly been established in this case, and the said circumstances have a definite tendency unerringly pointing towards the guilt of the present appellant/accused, and the circumstances taken cumulatively form a chain

so complete that there is no escape from the conclusion that within all human probability the crime of causing death of his wife Baby Mandal was committed by the present appellant/accused and none other, and as such the learned Trial Court was not wrong, illegal, incorrect or unjustified in passing the said judgment convicting the present appellant/accused for the said offence and sentencing him for the said offence of murder of his wife, and considering the circumstances of the case the sentence was not also excessive or unjust. As such there is no reason or scope of extending the benefit of doubt to the present appellant/accused. In this regard the observation of Krishna Iyer, J., reported in [Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra](#), in the case of [Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra](#), should always be kept in mind, which runs thus:--

"The excessive solicitude reflected in the attitude that a thousand guilty men may go out but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light-heartedly goes must beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishments of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent"

(Emphasis Supplied)

41. Accordingly, for preventing the miscarriage of justice and ensuring the ends of justice the finding of the learned Court below in this regard, which suffers from no illegality or inconsistency, should be maintained. It may also be noted here that the learned Trial Court has noted rightly in his finding regarding the mother and sister-in-law of Mittan Mondal in his judgment. As such there is no reason to interfere with the said judgment and order of the learned Court below in this regard which should be upheld.

42. As a result the appeal fails and is dismissed.

43. The judgment and order passed by the learned. Trial Court in sessions case No. 101/08, S.T. No. 61/08, on 03.01.2009 and 05.01.2009 are hereby affirmed. The appellant, who is in jail, be directed to serve out the remaining part of his sentence.

44. A Copy of this Judgment and order be given to the convict free of cost.

45. Let the Lower Court Record be sent down to the learned Court below at once along with a copy of this judgment and order for information and necessary action.

Urgent photostat certified copy of this Judgment and order be given to the parties, if applied for, on compliance of usual formalities.