LAWYER
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HIGH COURT OF ALLAHABAD

Date of Decision: 14-03-2024

BENCH: Rajiv Gupta and Mohd. Azhar Husain Idrisi, JJ.

Jail Appeal No. 4480 of 2016

USMAN

Vs.

STATE OF U.P.

Legislation:

Section 302 of the Indian Penal Code (IPC)

Section 106 of the Indian Evidence Act

Subject: Appeal against the conviction for murder under Section 302 IPC, involving the strangulation of the appellant's wife, with primary evidence from a child witness (the son of the deceased).

Headnotes:

Conviction for Murder – Appellant Usman convicted under Section 302 IPC for murdering his wife by strangulation – Life imprisonment and fine imposed – Child witness testimony crucial [Paras 2, 8, 18, 42-46, 50]

Child Witness – Evidence of son (P.W. 2), aged 6-7, asserting that appellant killed his mother by pressing a pillow on her mouth and using a rope for strangulation – Importance of child witness credibility and lack of tutoring [Paras 18, 19, 43-45]

Circumstantial Evidence and Section 106 of the Evidence Act – Appellant's presence at the crime scene and failure to provide an explanation – Burden of proof shift under Section 106 [Paras 30-31, 40-42]

Autopsy Findings – Ante-mortem injuries and asphyxia due to strangulation confirmed by autopsy [Paras 7, 22]

Testimonies of Relatives – Statements from brother (P.W. 1) and sister (P.W. 3) of deceased, supporting the prosecution's case [Paras 12, 13, 20, 21]

Investigation and Evidence Collection – Police investigation, site plan, recovery of the rope used for strangulation, and inquest proceedings [Paras 5, 6, 24-29]

Appellant's Defense – Claims of false implication and questioning the recovery of the rope and child witness testimony – Court rejects the defense, citing lack of reasonable explanation [Paras 32-34, 46-47]

Legal Precedents and Principles – Reference to Nagendra Sah Vs. The State of Bihar, Balvir Singh Vs. State of Uttarakhand, and Trimukh Maroti Kirkan v. State of Maharashtra for principles on circumstantial evidence and Section 106 of the Evidence Act [Paras 35, 40, 41, 48]

Decision:

Appeal dismissed – Conviction and sentence upheld based on evidence and legal principles, especially the crucial role of the child witness and circumstantial evidence [Paras 49-50]

Representing Advocates:

Shri Arvind Kumar Singh, Amicus Curiae for appellant

Shri J.P. Tripathi, AGA for State

ORDER

Rajiv Gupta, J. - Heard Shri Arvind Kumar Singh, learned Amicus Curiae for the appellant, Shri J.P. Tripathi, learned AGA for the State and perused the record.

2. This instant jail appeal has been filed against the judgment and order dated 30.11.2015 passed by District and Sessions Judge, Bijnor, in Sessions Trial No.221 of 2014 (State Vs. Usman), arising out of Case Crime No. 59 of 2014, under Sections 302 IPC, Police Station Syohara, District Bijnor, whereby the appellant has been convicted for the offence under Section 302 IPC and awarded the sentence of life imprisonment alongwith a fine of Rs.20,000/- with default stipulation.

3. Shorn of unnecessary details, the prosecution story, as mentioned in the FIR, is that Shahana, sister of the first informant Mohd. Hanif (P.W. 1) was married about 12 years back to the appellant Usman, resident of mohalla Aladinpur, Police Station Syohara. Usman used to suspect the character of his wife and very often used to hurl abuses and beat her in a drunken state. It is further stated that every effort was made to counsel him by his family members, but to no avail. Yesterday i.e. on 29.01.2014, at about 08.00 p.m. in the evening, Shahana had called him over phone and informed that her husband Usman is quarreling with her, beating her and threatening to kill her, he, however, pacified his sister and asked her not to quarrel and assured that he will reach by tomorrow to counsel Usman. It is further stated that on 30.01.2014, he along with his brother Mohd. Islam and Akbar Ali reached his sister's house in village Aladinpur and found her dead body lying on a cot having injuries on her neck and face. A rope was found lying near the cot. It is further stated that last night Shahana was done to death with the help of rope by strangulating her.

4. On the basis of a written report (Ext. Ka-1), an FIR was registered vide Case Crime No.59 of 2014, under Section 302 IPC in Police Station Syohara, District Bijnor at 08.30 a.m. Carbon copy whereof was drawn vide G.D. Report No.19 at 08.30 a.m. on 30.01.2014.

5. The investigation of the said case was entrusted to the Station Officer, who after copying out the chik FIR and G.D. in the Case Diary, recorded the statement of Head Moharrir and thereafter, recorded the statement of the first informant Hanif, Adnan, son of the deceased and Fatima, sister of the deceased and thereafter on the pointing out of the first informant prepared the site plan, which has been proved and marked as Ext. Ka-3.

6. A plastic rope lying near the cot was also taken in possession and a recovery memo was prepared for the same, which has been proved and marked as Ext. Ka-4. Thereafter, the Investigating Officer instructed S.I. Rajendra Singh, who accompanied him to the place of incident to conduct the inquest. S.I. Rajendra Singh conducted the inquest and prepared the Inquest Memo and at the same time prepared all other relevant documents namely Form-13, photo-lash, challan-lash, letter to C.M.O., letter to R.I., sample seal, which has been proved and marked as Ext. Ka-9 to Ka-14 and thereafter sent the body of the deceased to the mortuary.

7. An autopsy was conducted by Dr. F.C. Verma on the person of the deceased Shahana in District Hopspital, Bijnor on 31.01.2014 and in the post-mortem report, the Doctor has noted two ante-mortem injuries, which are as under:-

(i) Ligature mark 30-20 around the neck below the chin, 5 cm below from both ears brown in colour.

(ii) Abrasion 12 cm x 2 cm below the mouth present on both sides of mandible.

8. In internal examination of the corps, trachea was found congested and ecchymosis was present. Both the lungs were congested. Right chamber of heart was full, whereas the left chamber was empty. Stomach was empty. Gall bladder was full. Spleen, liver and kidneys were found congested. The Doctor has noted the cause of death to be asphyxia due to antemortem strangulation.

9. On 31.01.2014 itself, the appellant Usman is said to have been arrested and his statement was recorded. Thereafter, the Investigating Officer has recorded the statement of relevant witnesses and obtained FSL report and

after concluding the investigation submitted the charge-sheet against the appellant vide Charge-Sheet No.46 of 2014, under Section 302 IPC, proved it and marked as Ext. Ka-5.

10. On the basis of the said charge-sheet, learned Magistrate has taken cognizance. Since the case was exclusively triable by Court of Sessions, learned Magistrate made over the case to the Court of Sessions for trial. The Sessions court vide its order dated 29.05.2014 framed the charge under Section 302 IPC against the appellant, who abjured the said charge and claimed to be tried.

11. During the course of trial, the prosecution has examined as many as three witnesses of fact and three other formal witnesses. Their testimony, in brief, is enumerated hereunder.

12. P.W.1 Mohd. Hanif is the first informant and brother of the deceased and he, in his testimony, stated that about 12 years back, his sister Shahana was married to Usman, who used to suspect her character and very often used to hurl abuses and beat her in a drunken state. On 29.01.2014 at about 08.10 p.m., Shahana informed him over phone that her husband Usman is quarreling with her, beating her and threatening to kill her. He asked his sister not to quarrel and assured her to reach there by tomorrow to counsel Usman.

13. On 30.01.2014, he along with his brother reached the house of Shahana and found her dead body lying on a cot having injuries on her face and neck. The rope lying near the cot was also found and it appeared that her husband Usman had killed her by strangulating with the help of a rope, however, Usman was not present there.

14. In respect of the said incident, he had given written report (Ext. Ka-1) at the police station, on the basis of which, the chik FIR was registered. On the basis of the said FIR, the police reached the place of incident and prepared the fard recovery memo of the rope found lying there.

15. During cross-examination, he stated that Shahana was his sister and was married to Usman. A phone call from his sister was received informing him that there was a threat to her life by her husband Usman. Pursuant to the said phone call, on the next day he reached at his sister's house, where he found mother-in-law of Shahana, her sister-in-law and brother-in-law to be present and except them no one else was present there and in the room, Shahana was lying dead.

16. On the basis of the said incident, he reached the police station and lodged the report. The written report (Ext. Ka-1) was scribed by one Tarik Jaidi and thereafter he had gone in the police station to lodge the report. He further stated that no blood was found on the rope. He further stated that Investigating Officer on the very next day had recorded his statement.

17. He denied the suggestion that some unknown person had killed his sister and, on suspicion, he lodged the report against Usman. He further denied the suggestion that no telephone call was received from Shahana and he had gone to her house at Aladinpur.18. P.W. 2 Adnan is a child witness aged about 6-7 years, who is the son of the deceased and after putting him some formal questions, as to test his understanding, his testimony has been recorded, in which, he has stated that his father, who is present in the court, had killed his mother about one year back by pressing pillow on her mouth and strangulating her by a rope. At the time of incident, he was present in the house and his mother was killed in the night.

19. During cross-examination, he stated that on the day of incident her mother and father were sleeping on different cots and he was sleeping along with his father. He came to know about the killing of his mother in the night itself, when his father was smothering her. At the time of incident, there was some darkness in the room. He further stated that the police interrogated him and he disclosed to the police that his father alone by pillow and a rope had killed his mother but she could not raise any alarm and no one had tutored him to give such statements.

20. P.W. 3 Fatima is the another witness and sister of the deceased, who stated that Shahana was married to Usman and was having a son Adnan. Usman used to suspect the character of his wife and used to assault her. On the day of incident, she was in her mother's place and when the information about the death of Shahana was received, she reached the place of incident and his nephew Adnan disclosed her the entire incident that his father by pressing his mother's mouth by a pillow and by strangulating had killed her.

21. During cross-examination, she stated that on getting the information about the death of her sister, she had reached the place of incident along with Islam, Washeem, Amin and Ayub. When they reached there, they met Adnan but not Usman. She denied the suggestion that Adnan had not disclosed her anything and she for the first time is deposing the said facts in the court.

22. P.W. 4, Dr. F.C. Verma is the Medical Officer at District Hospital Bijnor, who conducted autopsy on the person of the deceased and proved the autopsy report and contents thereof, which has been exhibited as Ext. Ka-2.

23. During cross-examination, he stated that the victim has not died because of smothering but due to strangulation by rope. He further stated that while strangulation by a rope, linear abrasion would not follow but ligature mark would be noted. He denied the suggestion that on account of strangulating by a rope, death is not possible and it is not necessary that at the time of strangulation an alarm would be raised.

24. P.W. 5 is the Investigating Officer, in whose presence the instant case was registered and investigation was entrusted to him. He after copying the G.D. and chik report, recorded the statement of Head Moharrir and reached the place of incident, where he recorded the statement of the first informant and Adnan, son of the deceased and Fatima. He prepared the site plan at the pointing out of the first informant, which is proved as Ext. Ka-3 as well as prepared the fard recovery memo of the rope, which was found lying near the cot at the place of incident.

25. On his instructions, inquest proceedings were made by S.I. Rajendra Singh and after preparing all the relevant documents, the dead body of the deceased was dispatched for autopsy. On 31.01.2004, he arrested the accused and after completing the investigation submitted the charge-sheet.

26. During cross-examination, he stated that he reached the place of incident at 09:00 a.m. and thereafter recorded the statement of the witnesses and that of Adnan, who had informed him that last night his father in a drunken state had killed his mother. He further stated that Adnan had not disclosed him that his father killed his mother by strangulating her, however, at the relevant time he was sleeping with him. He further informed him that he had seen his father near the cot of his mother. He further pointed out that on the rope there was a light spots of blood.

27. He denied the suggestion that during the course of investigation, it was disclosed to him that some other person had killed the deceased and not Usman. He further denied the suggestion that on the day of incident, the appellant was not present in his house and had gone out to ply rickshaw.

28. P.W. 6 is S.I. Rajendra Singh, who, on the instructions of the Investigating Officer, had conducted the inquest on the person of the deceased and

prepared the inquest memo and other relevant papers, which have been proved by him and exhibited as Ext. Ka-9 to Ext. Ka-13. He further stated that at the time of inquest, rope was found near the cot, on which the dead body was lying and its recovery memo was prepared by the S.O. Satish Kumar, which has been marked as material Ext. Ka-4.

29. During cross-examination, he stated that the rope was white in colour and the inquest proceedings were conducted by him at 09:00 a.m. and as per the opinion of the Panches, the cause of death has been mentioned in the inquest report to be strangulation. He denied the suggestion that all exercise of inquest were made in the police station and no rope was recovered from the place of incident.

30. Thereafter, the statement of the accused-appellant under Section 313 Cr.P.C. has been recorded by putting all the incriminating circumstances to him. The appellant denied all the incriminating circumstances, however, the defence has not led any evidence to show his presence at some other place.

31. The trial court after appreciating the evidence on record has held that the prosecution has successfully established its case against the appellant by relying upon the testimony of P.W.-2, being the natural witness, whose presence at the time and place of incident has been cogently and unerringly established, who has categorically pointed out the presence of the appellant in the house at the time of incident. Furthermore the appellant has failed to lead any evidence to rebut the presumption drawn against him under Section 106 of Indian Evidence Act.

32. Learned amicus curiae for the appellant has submitted that the incident has not taken place in the manner as alleged by the prosecution and some unknown person killed the deceased and the appellant has been falsely implicated by creating an eye-witness account of a child witness, who has been tutored to depose before the trial court.

33. Learned amicus curiae for the appellant has further submitted that P.W.1 and P.W. 3 are not the eye-witness of the incident but are deposing on the basis of hearsay and therefore, their testimony is liable to be discarded. He has further submitted that the recovery of rope from the place of incident has not been cogently established, therefore, it creates serious dent in the prosecution story.

34. Learned amicus curiae for the appellant has next submitted that the prosecution has failed to discharge the initial burden of establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts, which are within the special knowledge of the accused, in the absence of which, it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt and the appellant is entitled to be acquitted.

35. Learned amicus curiae in support of his contention has placed reliance upon the case of **Nagendra Sah Vs. The State of Bihar, (2021) 10 SCC 725**.

36. Per contra, learned AGA has submitted that in the instant case, the prosecution has successfully proved its case beyond reasonable doubt. He has further submitted that the time and place of incident has been cogently established. He has further submitted that the incident in question has taken place within the four walls of the house of the appellant, in which his presence has been cogently and unerringly established, however, he has failed to offer any reasonable explanation for discharge of burden placed upon him by virtue of Section 106 of the Indian Evidence Act.

37. Learned AGA has next submitted P.W.2, even though is a child witness, yet in his statement has clearly and cogently established the fact that at the time of incident, the appellant was present in the house and had killed his mother by pressing her mouth by a pillow and further strangulating her by a rope, which factum is clearly corroborated by the post-mortem report.

38. Learned AGA has next submitted that by no stretch of imagination, the evidence tendered by P.W.2, who though is a child witness cannot be said to be tutored. In the backdrop of the said circumstances and, particularly, when the appellant has failed to offer any reasonable explanation in discharge of burden placed upon him by virtue of Section 106 of the Indian Evidence Act, failure of which provides an additional link to the prosecution story, it cannot be said that prosecution has failed to prove its case beyond reasonable doubt against the appellant.

39. Having considered the rival submissions made by learned counsel for the parties and in light of the evidence adduced, though the only question falls for our consideration is whether the trial court has committed any error in passing the impugned judgment and order.

40. The Hon'ble Apex Court in the case of Balvir Singh Vs. State of Uttarakhand passed in Criminal Appeal No. 301 of 2015, dated 06.10.2023 has held as under:

34. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".

35. In **Shambhu Nath Mehra v. The State of Ajmer reported in AIR 1956 SC 404**, this Court while considering the word "especially" employed in Section 106 of the Evidence Act speaking through Vivian Bose, J., observed as under:

"11... The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.

It is evident that that cannot be the intention & the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are **Attygalle v. The King, 1936 PC 169** (AIR V 23) (A) and **Seneviratne v. R, 1936- All ER 36** at p. 49 (B)."

36. The aforesaid decision of **Shambhu Nath** (supra) has been referred to and relied upon in **Nagendra Sah v. State of Bihar reported in (2021) 10 SCC 725**, wherein this Court observed as under:

"22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused." (Emphasis supplied)

37. In **Tulshiram Sahadu Suryawanshi and Another v. State of Maharashtra reported in (2012) 10 SCC 373**, this Court observed as under:

"23. It is settled law that 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 court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the following observation in **State of W.B. v. Mir Mohammad Omar [(2000) 8 SCC 382 : 2000 SCC (Cri) 1516]**: (SCC p. 393, para 38)

"38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In **Shambu Nath Mehra v. State of Ajmer [AIR 1956 SC 404 : 1956 Cri LJ 794]** the learned Judge has stated the legal principle thus: (AIR p. 406, para 11)

'11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.'"" (Emphasis supplied)

38. In Trimukh Maroti Kirkan v. State of Maharashtra reported in (2006) 10 SCC 681, this Court was considering a similar case of homicidal death in the confines of the house. The following observations are considered relevant in the facts of the present case:

"14. 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 : (1944) 2 All ER 13 (HL)]** - quoted with approval by Arijit Pasayat, J. in **State of Punjab v. Karnail Singh [(2003) 11 SCC 271 : 2004 SCC (Cri) 135]**.) 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."

15. 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.

xxx xxx xxx

22. 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...." (Emphasis supplied)

41. Thus, taking in view the above settled legal position and applying the said principles in the instant case, it is evident that the instant incident has taken place inside the privacy of a house where the appellant had all the opportunity to plan and commit the offence at the time and circumstance of his choice.

42. In the instant case, from the evidence adduced by P.W.2, who though is a child witness, has categorically stated in his statement recorded during the course of trial that his father was present in the house at the time of incident and committed the offence, as such, in the given circumstance, it is thus obvious that the prosecution has discharged its onus by proving all the ailments necessary to establish the evidence and now the burden has shifted upon the accused to offer a reasonable explanation to show as to how the crime was committed, which is in his special knowledge, however, in the

absence of the same, the accused would be guilty of the said offence, which burden the appellant has failed to discharge.

43. The next important question to be considered in the instant case is whether the testimony of a child witness under Section 118 of the Indian Evidence Act governs competence of the persons to testify, which also includes a child witness. Evidence of a child witness and its credibility could depend upon the facts and circumstances of each case. There is no rule of practice that in every case, the evidence of a child witness be corroborated by other evidence before a conviction can stand. The only precaution the Court should bear in mind, while assessing the evidence of a child witness, is that the witness must be a reliable one and his demeanor must be like any other competent witness and that there exists no likelihood of being tutored, however, in case, his deposition inspires confidence of the court and there is no embellishment or improvement, the court may rely upon the evidence of a child witness.

44. Furthermore, every witness competent to depose, unless the Court considers that he is prevented from understanding the questions put to him due to tender age and only in excess, there is no evidence on record to show that the child has been tutored, can the court reject their statement partly or fully. An inference as to whether the child has been tutored or not can be drawn from the contents of his deposition.

45. In the instant case, statement of P.W. 2 has been fortified and proved by other attending circumstances of the case and medical evidence. His deposition being precise, concise and specific without any improvement or impropriety is worth relying. P.W.2, in his statement after answering the relevant questions put to him, has very precisely stated that the appellant Usman, who is present in the court, had killed his mother by strangulating her and at the relevant time, he was at his home and that his mother was killed in the night. He has further stated that he had disclosed to the police that his father killed his mother by a pillow and a rope and her mother did not raise any alarm. He has further categorically stated that he has not been tutored at at all by any one.

46. Thus, we find that the statement of P.W. 2, even though being that of a child witness, inspires our confidence coupled with the fact that the appellant has completely failed to rebut the presumption raised against him under Section 106 of the Indian Evidence Act. Even in the statement recorded under

Section 313 Cr.P.C., there is no whisper explaining his conduct regarding the death of his wife within the four corners of his house, where he was, admittedly, present in the night hours.

47. The cases cited by the learned amicus curiae for the appellant are completely distinguishable on the facts of the instant case and on the basis of the aforesaid discussions, they are of no help to the appellant.

48. Thus, as held by the Hon'ble Supreme Court that 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 resides, it has been consistently held that if the accused does not dispute his presence at home at the relevant time and does not offer any explanation as to how the wife received injuries, it is a strong circumstance which indicates that he is responsible for commission of the crime.

49. Applying the aforesaid principles in the instant case, we are of the opinion that the prosecution has proved its case beyond reasonable doubt against the appellant, as such, the impugned judgment and order passed by the trial court is liable to be upheld. The appeal has no force and it is, accordingly, liable to dismissed.

50. Accordingly, the present criminal appeal is dismissed. The conviction and sentence against the accused-appellant vide impugned judgment and order dated 30.11.2015 is hereby confirmed. The appellant is in jail. He is directed to serve out the sentence imposed upon him by the trial court.

51. Let a copy of this order be forwarded to the trial court along with the record for information and compliance.