* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : February 10, 2010*
Judgment Delivered on : March 11, 2010

+ CRL.APPEAL NO.922/2004

BALBIR SINGH ..... Appellant
Through: Mr.K.K.Sud, Senior Advocate with Mr.Mukesh Kalia, Advocate and Ms.Sumita Kapil, Advocate.
versus

STATE ..... Respondent
Through: Mr.M.N.Dudeja, A.P.P.

+ CRL.APPEAL NO.904/2004

KAMLA DEVI ..... Appellant
Through: Mr.Mukesh Kalia, Advocate and Ms.Sumita Kapil, Advocate.
versus

STATE ..... Respondent
Through: Mr.M.N.Dudeja, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. Wrought with discrimination and prejudiced by rituals, Indian society has dealt the girl child a rough hand starting

even before her birth and ending with the dusk of her life. Amidst uproar of gender equality and law enforcement, female infants are found dumped in the trash, by the dozens, and unborn female foetuses continue to be sniffed in the womb. The present case highlights the unfortunate plight of the girl child where the parents and siblings of the deceased girl, betrayed the love and trust reposed by the deceased in them by helping her wrongdoers to go scot free.

2. Process of criminal law was set into motion when at around 3.00 P.M. on 31.01.2002 Const.Pappu Singh PW-5, recorded an entry in the daily diary Ex.PW-5 noting therein that one Trilok Singh PW-2, came to Police Station Tilak Nagar and informed that his sister Pinki Kaur (hereinafter referred to as the “deceased”) has died at her matrimonial house bearing Municipal No.B-58, Tilak Vihar, Delhi and that he suspects some foul play in the death of the deceased. A copy of the aforesaid DD entry was handed over to SI Anil Kumar PW-17, for investigation upon which accompanied by Const.Vinod Kumar he proceeded to the house in question where he found that the deceased was lying dead on the floor of a room in the house in question; that there was a ligature mark on the neck of the deceased; that there were some burn marks on the left side of the chest of the deceased and that Surjit Singh PW-1

and Trilok Singh PW-2, the brothers of the deceased, Judia Singh PW-3, the father of the deceased, Vidya Kaur PW-7, the sister of the deceased and appellants Balbir Singh and Kamla Devi, the husband and mother-in-law of the deceased respectively, were present there.

3. SI Anil Kumar PW-17, recorded the statement Ex.PW-2/A of Trilok Singh and made an endorsement Ex.PW-17/A thereon, and at around 04.35 P.M. handed over the same to Const.Vinod Kumar for registration of an FIR. Const.Vinod Kumar took the endorsement Ex.PW-17/A to the police station and handed over the same to HC Jai Kumar PW-13, who recorded the FIR No.61/2002 Ex.PW-13/A.

4. In his statement Ex.PW-2/A, Trilok Singh stated that the marriage of the deceased was solemnized with appellant Balbir Singh on 05.12.2001. The appellants were harassing the deceased for bringing insufficient dowry. On 28.01.2002 he and his sister Vidya Kaur went to the matrimonial house of the deceased where the deceased told them that she is being harassed for bringing insufficient dowry. He and his sister tried to counsel the appellants upon which the appellants told them that they will keep harassing the deceased till their demands for dowry are met.

5. Thereafter SI Anil Kumar recorded the statements Mark PW-1/A, Ex.PW-3/B and Mark PW-7/A of Surjeet Singh, Judia Singh and Vidya Kaur respectively under Section 161 Cr.P.C. wherein they also stated that the deceased was being harassed by the appellants for bringing insufficient dowry.

6. SI Anil Kumar PW-17, prepared the rough site plan Ex.PW-17/B of the house in question; recording therein at point 'A' the room where the deceased was found dead. In the meantime, Gurdeep Singh PW-11, reached the house in question; on being summoned. Gurdeep Singh took the photographs Ex.PW-11/A-1 to Ex.PW-11/A-8 of the body of the deceased and the room where the deceased was found dead; negatives whereof are Ex.PW-11/B-1 to Ex.PW-11/B-8.

7. Since the needle of suspicion was pointing towards the appellants, SI Anil Kumar arrested them. On being interrogated by SI Anil Kumar in the presence of Const.Pappu Singh PW-5, appellant Balbir Singh made a disclosure statement Ex.PW-2/F wherein he stated that he and appellant Kamla Devi had murdered the deceased and that he can get recovered a tie and a press used by him for murdering the deceased. Pursuant thereto, appellant Balbir Singh led the aforesaid police officers to a room in the house in question and got recovered a tie and

a press from an almirah lying in the said room and seized the aforesaid articles vide memo Ex.PW-17/C.

8. On the next day i.e. 01.02.2002 Suraj Bhan PW-16, Sub-Divisional Magistrate, reached the house in question and recorded the statement Ex.PW-3/A of Judia Singh wherein he stated that the deceased was being harassed by the appellants for bringing insufficient dowry.

9. On the day when the dead body of Pinki Kaur was seen by the police in her matrimonial house i.e. on 31.1.2002, the body was seized and sent to the mortuary where on 1.2.2002 Dr.Lalit Kumar PW-4 conducted the post-mortem and prepared the post-mortem report Ex.PW-4/A. The relevant portion of the post-mortem report Ex.PW-4/A of the deceased reads as under:-

> "……Blood stained (illegible) fluid just below the nostrils. Bleeding from pin hole opening in the middle of pina of right ear. Face is seen swollen and flushed. Petechial haemorrhagic spots are seen on both cheeks and chin and both ear lobules. Mouth is partially open and lips are cyanosed and tongue is seen partially coming out of mouth and pressed between the teeth in front. Eyes are seen closed and eye lids are swollen and greenish blue in colour. On cutting the eye lids streak of blood (clotted) is seen present just below (illegible) of the eye lids which is suggestive of blunt impact on both the eyes. On opening eye lids cornea is seen hazy and cloudy. Inner and outer canthus and inner canthus of both the eyes shows haemorrhage and petechial haemorrhagic spot on conjunctive of both the eyes.

The pupil of both eyes is dilated.....Hands are clenched.

Injuries

1. An area of burn injury (11 x 9 cm), dark brown in colour and its margins are irregular and situated in upper part of chest on left side in front and more on medial side and its upper boundary is seen at base of neck and cuts all layer of skin in this area is seen absent. It is hard in consistency and irregular in shape and its margin shows sign of burning.

2. One abraded ligature mark placed transversely in the upper part of neck at the level of upper border of thyroid cartilage all around the neck. The ligature mark is more prominent in front of neck and both side of the neck while it is faintly present on back side of the neck just below the posterior hair line. The ligature mark dark brown in colour at intermittent places while it is red in between. The width of the ligature mark is 2 cm in front of the neck while it varies from 2 cm to 2.5 cm and goes backward. It is hard, dried and parchment like and its margins are ecchymosed. No ligature mark is seen tied around the neck at the time of post-mortem.

.....

Brain Matter (Illegible) - Congested and shows petechial haemorrhagic spots all over the surface of the brain.

.....

Mouth and Tongue - Posterior part of tongue is seen swollen and bruised.

Neck, Larynx, Thyroid and other neck structure- On cutting the ligature mark there is extravasation in subcutananeous tissues under lying ligature mark and also in adjacent tissue and neck muscles. Fracture of right cornua of hyoid bone and haemorrhage is seen around the fractured site.

.....

Trachea and Bronchi – Illegible of trachea is congested and covered with frothy mucus.

....

Lungs – Plura and lungs of both the sides are seen markedly congested and on cutting dark colour blood is seen coming out.

Heart and pericardial sac – Right side of the heart is filled with dark coloured fluidly blood and left side of heart is empty.

.....

Stomach and content – Undigested food 400 mg.

.....

Death is due to asphyxia following strangulation. All injuries are anti-mortem and are of same duration. Time since death is approximately 39 to 40 hrs."

10. Armed with the aforesaid materials, the police filed a charge sheet under Sections 498-A and 304-B IPC read with Section 34 IPC against the appellants.

11. On 17.07.2002 the case was fixed before the learned Trial Court for arguments on framing of charges against the appellants. During arguments, it was contended by the learned public prosecutor that a charge for murdering the deceased i.e. an offence punishable under Section 302 IPC be framed against the appellants. Vide order dated 25.07.2002 the learned Trial Court repelled the aforesaid argument advanced by the learned public prosecutor in following terms:-

> "Addl P.P. has referred to the Post Mortem report according to which cause of death is Asphyxia following strangulation and all the injuries and ligature mark are ante mortem in nature and of same duration. Time since death is 39/40 hours. Post Mortem was conducted on 01.2.2002 at about 4.30 P.M. In that Post Mortem report the external injuries came to be reported which is in an area of burn injury 11 x 9 cm which is situate in upper part of chest. According to prosecution the burn portion allegedly was caused by the accused persons with the hot Iron Press. These are the reasons which the ld. Addl. P.P. make ground for attracting the offence of murder under section 304 IPC. (It may be noted here that due to a typographical error Section 302 IPC has been referred as Section 304 IPC)
>
> I have given thoughtful consideration to this argument of ld. Addl. P.P. But at this stage I am not inclined to accept this argument since there is no direct evidence so at this stage and on perusal of the material and the file before me I find that there exists a prima facie case for the offence under section 498A IPC and 304B IPC read with section 34 IPC against both the accused persons." (Emphasis Supplied)

12. At the trial, the prosecution examined 17 witnesses.

13. Witnesses Surjeet Singh PW-1, Trilok Singh PW-2, Judia Singh PW-3 and Vidya Kaur PW-7, the family members of the deceased, did not support the case of the prosecution and turn hostile. They denied having made statements Mark PW-1/A, Ex.PW-2/A, Ex.PW-3/B and Mark PW-7/A to the police. Judia Singh PW-3, also denied having made statement Ex.PW-3/A to Sub-Divisional Magistrate. Additionally, Trilok Singh PW-2, deposed that in the morning of 31.01.2002 one Darshan Singh informed him over telephone about the death of the deceased

and that the deceased was happy in her matrimonial home. Vidya Kaur PW-7, also deposed that the deceased was happy in her matrimonial home. Thus, the parents of the deceased and her siblings denied that the deceased was being troubled and harassed for dowry by her husband and her mother-in-law, the only two persons with whom she was residing in her matrimonial house. They resiled from what they had told the learned SDM and the investigating officer. It is apparent that the parents and the siblings of Pinki Kaur betrayed her love, confidence and trust.

14. Darshan Singh PW-6, a neighbour of the appellants and the deceased, deposed that he informed the brother of the deceased Trilok Singh over telephone about the death of the deceased.

15. On 07.03.2003 Dr.Lalit Kumar PW-4, was examined by the prosecution. He deposed that the post-mortem report Ex.PW-4/A of the deceased was prepared by him and that his opinion pertaining to the cause of the death of the deceased, based on his observations during post-mortem was that it was a case of homicide and not suicide.

16. On 24.02.2004 the learned public prosecutor submitted before the learned Trial Court that a charge for committing

offence punishable under Section 302 IPC be framed against the appellants, for the evidence of Dr.Lalit Kumar establishes that the cause of death of the deceased was strangulation. The aforesaid argument was accepted by the learned Trial Court in the following terms:-

> "....At this stage APP submits that charge is liable to be amended in view of the autopsy surgeon Dr.Lalit Kumar. It is pointed out that the doctor had opined that the death has been caused due to asphyxia due to strangulation and that all injuries were ante mortem. This witness was not cross-examined. Hence it was contended that the charge be modified to one under Section 302 IPC. Learned counsel for the defence on the other hand submits that the charge has been framed under 498A/304B IPC read with Section 34 IPC after hearing all the submissions on behalf of the ld.APP and therefore, there was no occasion now to re-frame the charge. The learned counsel for the defence points out that the relatives of the deceased are all hostile to the prosecution case which factor be also considered.
>
> This would not be the stage in which the assess the evidence on the record. The order dated 25.7.2002 whereby the charge was directed to be framed under Section 498A/304B read with Section 34 IPC did consider the submissions of the learned APP based on the Post Mortem report. The learned court vide the said order observed that at that stage since there was no direct evidence, prima facie case for the offence under Section 498 A and 304 B read with Section 34 IPC alone was made out. However, in the light of the statement on oath of the autopsy surgeon made on 7.3.2003, it does appear that the charge has to be reframed since the doctor's opinion is that death is due to asphyxia following strangulation. Hence, I direct that the charge be re-framed to include an additional charge under Section 302 IPC."

17. Thereafter, and opportunity was granted to the appellants to re-summon for purposes of cross-examination the witnesses who had been examined till date. The appellants chose only to cross-examine Dr.Lalit Kumar and hence Dr.Lalit Kumar PW-4, was recalled for cross-examination.

18. Though the learned public prosecutor did not pray for any leave to further examine Dr.Lalit Kumar, but we note that when Dr.Lalit Kumar was re-summoned, he was further examined in chief and then cross-examined without any objection being raised by the appellants pertaining to Dr.Lalit Kumar being further examined.

19. Thus, save and except to note that during arguments in the appeal an issue was raised qua the further examination of Dr.Lalit Kumar when he was re-summoned, but since no prejudice was shown as having been caused to the appellants, we note no further.

20. On being cross-examined about the burn mark found on the chest of the deceased, Dr.Lalit Kumar stated (Quote): *'The burn injury found on the person of the deceased is not possible if the heated object fell on the body of the deceased or the body fell over the heated object since such burn are possible*

when it has been applied on to the body.' On being cross-examined about the ligature mark found on the neck of the deceased, Dr.Lalit Kumar stated (Quote): *'The injury No.2 is not possible if a person hang herself because the nature of the ligature mark coupled with the placement ligature mark and the internal injury are possible on strangulation.'* It may be noted here that the defence neither put any question nor gave any suggestion to the witness to the effect that he does not have adequate knowledge in the subject of forensic pathology.

21. In their examination under Section 313 Cr.P.C. save and except admitting the facts that the marriage between the deceased and appellant Balbir Singh was solemnized on 05.12.2001; that they and the deceased resided in the house where the deceased was found dead and that SI Anil Kumar visited the house in question on 31.01.2002, the appellants denied everything.

22. With regard to the explanation for the death of the deceased, appellant Balbir Singh stated as under:-

> "I and my mother are innocent. Since the death had taken place in our house we have been falsely implicated in this case. We were sitting outside the house when my wife committed suicide. The burn marks were sustained by her while cooking."

23. With regard to the explanation for the death of the deceased, appellant Kamla Devi stated as under:-

> "It is a false case. I am innocent. I do not know anything about the death. We had got her married to my son in great happiness. I do not know how she died. We were sitting outside the house. She was making rotis. I do not know how she sustained burn injuries."

24. In defence, the appellants examined Chammi Kaur DW-1. She deposed that she resides in the vicinity of the matrimonial house of the deceased. She had met the deceased on several occasions. The deceased never made any complaint to her and was happy in her matrimonial house. On one day in the year 2004 at about 6-6.30 P.M. she learnt from some children that the deceased had sustained burn injuries upon which she went to the matrimonial house of the deceased where she met the deceased. She noticed a burn mark on the chest of the deceased. The deceased told her that she had sustained burn injuries when she felt giddy while cooking and fell on a hot object. On the next morning she came to know that the deceased had hanged herself.

25. Vide judgment and order dated 15.10.2004 the learned Trial Court convicted the appellants qua the charge under Section 302 IPC read with Section 34 IPC but acquitted them qua the charge under Sections 498-A and 304 B IPC read with

Section 34 IPC. The learned Trial Court acquitted the appellants qua charges under Sections 498-A IPC read with Section 34 IPC framed against them on the ground that the prosecution has not been able to establish that the appellants had demanded dowry or that they had harassed the deceased for dowry, since the relatives of the deceased did not support the case of the prosecution. Insofar as the charge under Section 302 IPC framed against the appellants was concerned, it was held by the learned Trial Court that in view of Section 106 of Evidence Act it was incumbent upon the appellants to explain as to how the deceased died a homicidal death as also how the deceased sustained injuries found on her person as the death of the deceased took place in a house at the time when the appellants were present there. It has been held that the fact that the appellants did not furnish a satisfactory explanation in respect of aforesaid circumstances is a clear pointer to the fact that the appellants committed the murder of the deceased. Vide order dated 16.10.2004 learned Trial Court sentenced the appellants to undergo imprisonment for life for committing offence punishable under Section 302 IPC read with Section 34 IPC.

26. During the hearing of the present appeal, following four arguments were advanced by the learned senior counsel for the appellants:-

A The first argument advanced by the learned senior counsel was predicated upon the order dated 24.02.2002 passed by the learned Trial Court. Learned senior counsel argued that a reading of the order dated 24.02.2002 shows that the learned Trial Court did not consider it proper to frame a charge against the appellants for committing offence punishable under Section 302 IPC and therefore once having "consciously" dropped the charge under Section 302 IPC against the appellants the learned Trial Court was not justified in subsequently framing the same charge against the appellants.

B The second argument advanced by the learned senior counsel was predicated upon the evidence of Dr.Lalit Kumar PW-4 and Section 45 of the Evidence Act. It was argued by the learned senior counsel that in view of language of Section 45 of Evidence Act before a person can be characterized as an expert, it is necessary that there must be some material on record to show that he is skilled in the subject on which he testifies and is possessed with adequate knowledge

concerning the same. Thus, before the testimony of an expert witness becomes admissible, his competency as an expert must be shown, by showing that he was possessed of necessary qualification or that he has acquired special skill therein by experience. It was argued that in view of the aforesaid legal position, the evidence of Dr.Lalit Kumar should not be read in evidence for the reason the prosecution has not led any evidence to show that Dr.Lalit Kumar was “skilled” in the subject of forensic pathology. In support of the said argument, reliance was placed upon the decision of Allahabad High Court reported as *Balkrishna Das Agarwal v Radha Devi* AIR 1989 All 33.

C The third submission advanced by the learned senior counsel was predicated upon the post-mortem report Ex.PW-4/A of the deceased and Modi’s Medical Jurisprudence and Toxicology. Counsel submitted that as per Modi’s ‘Medical Jurisprudence and Toxicology’ in case of strangulation the ligature mark found on the neck of the victim is continuous; that the ligature mark is placed low down in the neck; that the base of the ligature mark is soft and reddish and scratches, abrasions, finger nail marks and bruises are usually found on the face, neck and other parts of the body of the victim while in case of hanging the ligature mark found on the neck of the

victim is non-continuous; that the ligature is placed high up in the neck; that the base of the mark is hard, yellow and parchment-like and scratches, abrasions, finger nail marks and bruises are usually not found on the face, neck and other parts of the body of the victim. In the backdrop of aforesaid literature, counsel drew attention of the court to the photographs Ex.PW-11/A-5 and Ex.PW-11/A-8 and the post-mortem report Ex.PW-4/A of the deceased. Counsel pointed out that the photographs Ex.PW-11/A-5 and Ex.PW-11/A-8 of the deceased show that the ligature mark found on the neck of the deceased was non-continuous and that the post-mortem report Ex.PW-4/A of the deceased records that the ligature mark found on the neck of the deceased was placed in the upper part of the neck of the deceased and that the same was hard, dried and parchment-like. Counsel lastly pointed out that a reading of the post-mortem report Ex.PW-4/A of the deceased shows that no scratches, abrasions, finger nail marks or bruises were found on the face, neck or any other part of the body of the deceased. Counsel submitted that the aforesaid three facts pointed out by him are strongly suggestive of the fact that the deceased committed suicide by hanging herself and negative the case of the prosecution that the cause of death of the deceased was strangulation.

D The fourth submission advanced by the learned counsel for the appellants was predicated upon Section 106 of the Evidence Act. The first limb of the submission advanced by the counsel is that it is settled legal position that Section 106 of Evidence Act does not abrogate the well established rule of criminal law that except in very exceptional classes of cases the burden that lies on prosecution to prove its case never shifts and that Section 106 is not intended to relieve the prosecution of that burden. It is not sufficient for the prosecution to establish facts which only give rise to a suspicion and then by reason of Section 106 throw the onus upon the accused to prove his innocence. Counsel argued that in the instant case, not even an iota of evidence was led by the prosecution to establish that the appellants are the perpetrators of the crime of the murder of the deceased and in this view of the matter the learned Trial Court committed an illegality in invoking Section 106 of Evidence Act to infer the guilt of the appellants. In support of the said argument, reliance was placed by the counsel on the decision reported as *Dasari Siva Prasad Reddy v The Public Prosecutor, High Court of A.P.* AIR 2004 SC 4383 and *Vikramjit Singh v State of Punjab* Cri.L.J. 1000.

27. Whether the learned Trial Court committed an illegality in framing the charge under Section 302 IPC against the appellants?

28. The answer to the aforesaid question can be found in Section 216 of Code of Criminal Procedure, 1973 which reads as under:-

> "216. **Court may alter charge -** (1) Any Court may alter or add to any charge at any time before judgment is pronounced.
>
> (2) Every such alteration or addition shall be read and explained to the accused.
>
> (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.
>
> (4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.
>
> (5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

29. With regard to the power of the trial court to add or alter any charge during the trial, in the decision reported as *Hasanbhai Valibhai Quereshi v State of Gujarat* (2004) 5 SCC 347 Supreme Court observed as under:-

> "Section 228 of the Code in Chapter XVII and Section 240 in Chapter XIX deal with framing of the charge during trial before a Court of Sessions and trial of Warrant -cases by Magistrates respectively. There is a scope of alteration of the charge during trial on the basis of materials brought on record. Section 216 of the Code appearing in Chapter XVII clearly stipulates that any court may alter or add to any charge at any time before judgment is pronounced. Whenever such alteration or addition is made the same is to be read out and informed to the accused.
>
> In *Kantilal Chandulal Mehta* v. *State of Maharashtra* 1970 CriLJ 510 it was held that the Code gives ample power to the Courts to alter or amend a charge whether by the Trial Court or by the Appellate Court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about the charge or in not giving him a full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred against him. Section 217 deals with recall, if necessary of witnesses when the charge is altered.
>
> Therefore, if during trial the trial Court on a consideration of broad probabilities of the case based upon total effect of the evidence and documents produced is satisfied that any addition or alteration of the charge is necessary, it is free to do so, and there can be no legal bar to appropriately act as the exigencies of the case warrant or necessitate." (Emphasis Supplied)

30. Therefore, in view of Section 216 of Cr.P.C., the learned Trial Court was completely justified in adding the charge under Section 302 IPC against the appellants when Dr.Lalit Kumar PW-4, entered the witness-box and deposed that the cause of death of the deceased was strangulation. It is also significant to note the use of the expression “at this stage” in the order dated 24.02.2002 passed by the learned Trial Court, relevant portion whereof has been noted in para 11 above. The use of the expression “at this stage” in the order dated 24.02.2002 shows that the material before the Court at that stage was found insufficient to frame a charge under Section 302 IPC; thus it was left open that should at a later stage an occasion arise, charge for the offence under Section 302 IPC may be framed.

31. Section 45, Indian Evidence Act 1872 reads as under:-

> “45. **Opinion of experts** – When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinion upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts.
>
> Such persons are called experts.”

32. Section 45 permits only the opinion of an expert to be cited in evidence. This requires determination of the question

as to who is an expert. The only guidance in the section is that he should be a person “specially skilled” on the matter. Thus, the only definition of an expert available in Evidence Act is that he is a person specially skilled in the subject on which he testifies. The section does not refer to any particular attainment, standard of study or experience, which would qualify a person to give evidence as an expert. The question which arises is that what is the criterion for determining whether a witness is “specially skilled” or not. The answer to this question is to be found in decision of Supreme Court reported as *State of HP v Jai Lal* (1999) 7 SCC 280 wherein it was held that in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

33. Judged in the said background, can it be said that there is no material before the court wherefrom it could be concluded that Dr.Lalit Kumar PW-4, is “specially skilled” in the subject forensic pathology. Dr.Lalit Kumar was working as Chief Medical Officer in Deen Dayal Upadhyaya Hospital at the time when he testified before the learned Trial Court. The facts that Dr.Lalit Kumar was Chief Medical Officer and was conducting

post-mortems in a reputed government hospital are indication in itself that Dr.Lalit Kumar was skilled and had adequate knowledge of forensic pathology. As already noted hereinabove, the defence neither put any question nor gave any suggestion to Dr.Lalit Kumar to the effect that he is not "specially skilled" in forensic pathology. In such circumstances, we do not find any merit in the submission of learned senior counsel that the evidence of Dr.Lalit Kumar cannot be read in evidence.

34. The decision of Allahabad High Court in *Balkrishna*'s case (supra) relied upon by the learned senior counsel for the appellants is clearly distinguishable from the present case. In the said case, the issue of admissibility of the report given by a handwriting report who did not enter the witness-box was raised before the court. In view of the fact that the person who prepared the report did not enter the witness-box, it was held by the court that there is no material on record to show that the said person was an expert within the meaning of Section 45 of the Evidence Act and thus the report given by him could not be admitted in evidence. It was further held by the court that the letter head on which the report was typed alone will not prove that the author of the report was an expert.

35. Whether Dr.Lalit Kumar PW-4, erred in concluding that the death of the deceased was caused by strangulation? Whether the defence is correct in contending that the deceased committed suicide by hanging herself?

36. With regard to strangulation, the relevant portion contained in Modi's 'Medical Jurisprudence and Toxicology' reads as under:-

> "STRANGULATION
>
> .....
>
> Postmortem Appearance
>
> Postmortem appearances are external and internal.
>
> (i) External Appearance
>
> .....
>
> (a) Ligature Mark
>
> Ligature mark is a well-defined and slightly depressed mark corresponding roughly to the breadth of ligature, usually situated low down in the neck below the thyroid cartilage, and encircling the neck horizontally and completely..... The mark may be oblique as in hanging, if the victim has been dragged by a cord after he has been strangled in a recumbent posture, or if the victim was sitting and the assailant applied a ligature on the neck while standing behind him, thus using the force backward and upward. The base of the mark, which is known as a groove or furrow, is usually pale with reddish and ecchymosed margins. It becomes dry, hard and parchment-like, several hours after death, if the skin has been excoriated.... Very often, there are abrasions and ecchymosed in the skin adjacent to the marks.....

Besides these marks, there may be abrasions and bruises on the mouth, nose, cheeks, forehead, lower jaw or any other part of the body, if there has been a struggle.

.....

(b) Appearances Due to Asphyxia

The face is puffy and cyanosed, and marked with petechiae. The eyes are prominent and open. In some cases, they may be closed. The conjunctivae are congested and the pupils are dilated. Petechiae are seen in the eyelids and the conjunctivae.....Bloody foam escapes from the mouth, nose and ears, especially if great violence has been used. The tongue is often swollen, bruised, protruding and dark in colour, showing patches of extravasation and occasionally bitten by the teeth.....The hands are usually clenched.....

(ii) Internal Appearance

.....There is extravasation of blood into sub-cutaneous tissues under the ligature mark or finger marks, as well as in the adjacent muscles of the neck, which are usually lacerated....The cornua of the hyoid bone may be fractured also the superior cornua of thyroid cartilage but fracture of the cervical vertebrae is extremely rare.....

....

The larynx and trachea are congested, and contains frothy mucus.....

It should be noted here that the hyoid bone and superior cornuae of the thyroid cartilage are not, as a rule, fractured by any other means other than by strangulation, although the larynx and the trachea may, in rare cases, be fractured by a fall....

....

The lungs are usually markedly congested, showing haemorrhagic patches and petechiae and exuding dark fluid blood on section....The right side of the heart is full of dark fluid blood, and the left

empty....The brain is also congested and shows petechial haemorrhages.

.....

Differences Between Hanging and Strangulation

The differences between hanging and strangulation are given below in tabulated form:

Hanging	Strangulation
Mostly suicidal	Mostly homicidal
Face – Usually pale and petechiae rare	Face – Congested, livid and marked with petechiae
....	...
Bleeding from the nose, mouth and ears very rare	Bleeding from the nose, mouth and ears may be found
Ligature Mark – Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like	Ligature Mark – Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish
Abrasions and ecchymoses round the edges of the ligature mark, rare	Abrasions and ecchymoses round about the edges of ligature mark, common
...	...
Scratches, abrasions and bruises on the face, neck and other parts of the body – Usually not present	Scratches, abrasions and bruises on the face, neck and other parts of the body – Usually present”

37. With reference to the post-mortem report Ex.PW-4/A of the deceased, when seen in the light of afore-noted literature contained in Modi's Medical Jurisprudence (supra), following findings recorded in the report Ex.PW-4/A point towards the fact that the cause of death of the deceased was strangulation:-

(i) Bleeding near nostrils and ears.

(ii) Petechial haemorrhage spots seen on the cheeks, chin and both the ear lobules.

(iii) Tongue was coming out of mouth.

(iv) Lips were found cyanosed.

(v) Inner and outer canthus of both eyes showed haemorrhage and petechial haemorrhagic spots found on conjunctivae of both eyes.

(vi) The pupil of both the eyes were dilated.

(vii) Hands were clenched.

(viii) The margins of ligature mark were ecchymosed.

(ix) There was extravasation in subcutananeous tissues under ligature mark as well as in adjacent tissues and neck muscles.

(x) Right cornua of hyoid bone was fractured.

(xi) Trachea was congested and covered with frothy mucus.

(xii) Lungs were markedly congested and dark coloured blood was coming out of lungs.

(xiii) Right side of heart was filled with blood and left side was empty.

(xiv) Brain was congested.

(xv) Petechial haemorrhagic spots found all over the surface of the brain.

38. Besides the afore-noted pointers, there are two other circumstances which rule out the possibility that the deceased committed suicide by hanging herself. As per the post-mortem report Ex.PW-4/A of the deceased, a streak of clotted blood was found on the eye-lids of the deceased and that the same was suggestive of blunt impact injuries on both the eyes. (Blunt impact eye injuries occur when the object larger than the eye socket strike the eye). In addition to the said injury, a burn injury was also found on the left side of the chest of the deceased. An attempt was made by the defence to project through the defence of Chammi Kaur DW-1, that the deceased

had accidentally burnt herself when she fell on a hot object while cooking. However, the deposition of Dr.Lalit Kumar PW-4, that *'The burn injury found on the person of the deceased is not possible if the heated object fell on the body of the deceased or the body fell over the heated object since such burn are possible when it has been applied on to the body'* negatives the aforesaid defence of the appellants. Surely, the deceased would not have injured herself before committing suicide.

39. Insofar as the argument advanced by the learned senior counsel pertaining to placement and nature of ligature mark found on the neck of the deceased is concerned, in cases where a cloth is tied as a noose around the neck of the victim and the victim is strangulated by pulling the knot of the cloth, it is possible that the ligature mark found on the neck of the victim would resemble the mark found in case of hanging.

40. Be that as it may, the defence did not put any question to Dr.Lalit Kumar PW-4, pertaining to the placement and nature of the ligature mark found on the neck of the deceased.

41. Having given no opportunity to the witness to explain the placement and nature of the ligature mark found on the neck

of the deceased, no adverse inference can be drawn against the prosecution on that score.

42. In taking the said view, we are supported by a decision of Supreme Court reported as *Rahim Khan v Khurshid Ahmad* AIR 1975 SC 290 wherein it was observed as under:-

> ".....The entry with which we are concerned is 5072A and this is not unusual when by mistake a clerk has written identical figures for two entries. Moreover there is no cross-examination on this point and in the absence of cross-examination giving an opportunity to the witness to explain the circumstances from which an inference is sought to be drawn, no such inference--particularly of forgery and publication of documents--can be permitted to be raised." (Emphasis supplied)

43. In the decision reported as *State of UP V Anil Singh* 1988 (Supp) SCC 686, the eye-witness wrote a report giving fairly all the particulars of the occurrence and lodged the same with the report within few minutes of the occurrence. An argument was raised by the defence that it was impossible for the witness to prepare such an exhaustive report and lodge the same with the police so soon after the occurrence. The said argument was repelled by Supreme Court on the ground that the witness in question was not specifically cross-examined on the said point.

44. In the decision reported as *Sunil Kumar v State of Rajasthan* (2005) 9 SCC 298 great emphasis was laid by the defence on the facts that there was delayed dispatch of the FIR to the Ilaqa Magistrate and delayed recording of the statements of the witnesses under Section 161 CrPC. One of the reasons which weighed with Supreme Court for not drawing an adverse inference against the prosecution was that no question was put to the Investigating Officer regarding the aforesaid delay.

45. In respect of the argument that no scratches, bruises or abrasions were found on the face, neck, nose or parts of the body of the deceased, relevant would it be to note that as per Modi's Medical Jurisprudence (supra), scratches, bruises or abrasions would be found on the body of the victim where the victim tries to struggle with his assailant. Therefore, scratches, bruises or abrasions would not be found on the body of the victim where the victim does not struggle with his assailant because the victim was taken by surprise or any other reason.

46. In respect of the argument that ligature mark found on the neck of the deceased was hard, dried and parchment-like, suffice would it be to state that the post-mortem of the deceased was conducted 39-40 hours after the death of the

deceased as recorded in the post-mortem report Ex.PW-4/A of the deceased and that as per Modi's Medical Jurisprudence (supra) that in case of strangulation the ligature mark found on the neck of the victim becomes hard, dry and parchment-like, several hours after the death.

47. What is the scope and purport of Section 106 of the Evidence Act?

48. Section 106 of the Evidence Act and the illustrations appended thereto reads as under:-

> "106. **Burden of proving fact especially within knowledge-** When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.
>
> Illustrations
>
> (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
>
> (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

49. The earliest cases on the point are decisions of Privy Council reported as *Attygalle v Emperor* (1936) 38 Bom LR 700 and *Stephen Seneviratne v The King* (1937) 39 Bom LR 1. In the said decisions, the Lordships of Privy Council were dealing with Section 108 of Ceylon Evidence Act which corresponded to Section 106 of Indian Evidence Act. It was held that Section

106 of Evidence Act does not affect the onus of proof and throw upon the accused the burden of establishing his innocence.

50. The aforesaid decisions of Privy Council came to be considered by Supreme Court in the decision reported as *Shambhu Nath Mehra v State of Ajmer* AIR 1956 SC 404 wherein it was observed as under:-

> "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. 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 and 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. Emperor A.I.R. 1936 P.C. 169 and Seneviratne v. R. [1936] 3 All E.R. 36, 49.
>
> .....
>
> We recognise that an illustration does not exhaust the full content of the section which it illustrates but

> equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be "especially" within the knowledge of the accused. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts."

51. The decision of *Shambhu*'s case (supra) was noticed by Supreme Court in the decision reported as *State of WB v Mir Mohammad Omar* AIR 2000 SC 2988. The relevant portion contained therein is being quoted herein under:-

> "The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.
>
> In this case, when prosecution succeeded in establishing the afore narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in condition such as this.

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

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

....

In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases 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.” (Emphasis Supplied)

52. It would be most apposite to quote following observations made by Supreme Court in the decision reported as *Trimukh Maroti Kirkan v State of Maharashtra* (2006) 10 SCC 681:-

> “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 Prosecution 1944 AC 315 quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh 2003CriLJ3892). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:
>
> (b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him.

> Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

53. In the decision reported as *Sarojini v State of M.P.* 1993 Supp (4) SCC 632 accused Vinod and Sarojini, the husband and mother-in-law of the deceased, were charged with the offence of committing the murder of the deceased. The death of the deceased took place in a house which was in possession and the occupation of the appellants. Accused Vinod was employed in a bank and it used to take two hours to travel the distance between the house where the deceased had died and the place of work of accused Vinod. The Sessions Court convicted both the accused while High Court acquitted them. High Court acquitted accused Vinod on the ground that there is no evidence to establish that he was present in the house in question at the time of the death of the deceased while accused Sarojini was acquitted on the ground that murder was

committed in such a manner that she alone could not have committed the same and that there is no clinching evidence to show that who had murdered the deceased. In appeal, Supreme Court convicted accused Sarojini on the grounds that she was occupant of the house where the deceased had died; that she had a motive to murder the deceased as she had demanded dowry from the family members of the deceased; that her conduct was suspicious and that she had taken a false defence. Even though there was evidence to show that accused Vinod was present in the house where the deceased died at the time of the death of the deceased, Supreme Court convicted him on the grounds that he was occupant of the house where the deceased died; that his conduct was suspicious; that he had taken a false defence; that he had not given an explanation in his statement under Section 313 Cr.P.C. and that accused Sarojini alone could not have murdered the deceased. The relevant discussion contained in the said decision is being quoted herein under:-

> “The question then is whether the husband and mother-in-law alone have committed the offence. Photography of the scene and the situation of the house disclose that the house consists of ground floor and the first floor. In the first floor, a bed room and another store room was found as per Panchanama. The dead body was found in the store room. There is no other way of ingress or egress to the first floor, except through the staircase lying in

the ground floor of the house. As such it is impossible for any other persons to enter into the house except the inmates. Admittedly, the deceased and Sarojini alone were living in the house while Vinod was working at Sidhi, obviously he was coming and going to his place of duty. The distance between Rewa and Sidhi is 90 km. The High Court also accepted the possibility of the Vinod's coming to Rewa and after committing the offence leaving Rewa as the journey on the high-way would take hardly two hours to reach Sidhi. The murder was committed within hardly three months from the date of marriage and two to three hours after night meal. As per the evidence of DW-4 the deceased was happy in the marital home. It would, therefore, conclusively exclude the theory of suicide as pleaded by Sarojini and death was in the morning at 8.00 or 8.30 a.m. Within a short period of three months, there is no possibility of anyone developing such deep enimity with Rajini to put to end to the life of an young married woman. It must, therefore, be none other than the inmates of the matrimonial home.

... When the deceased was done to death by asphyxia and thereafter the dead body was burnt soaking kerosene on a naked body, it would be obvious that more than one participated in committing the murder. The High Court also found that Sarojini had an associate to screen the evidence of murder. Who would be the other person? Here the presence of Vinod is called into picture. We are surprised to note that PW-10, the investigating officer, not only conducted perfunctory investigation but also gave evidence in a most unsatisfactory manner. He did not make any attempt during investigation to collect the evidence of the presence of Vinod at Rewa during the night or thereafter. The fact that more than one participated in the commission of the crime and the fact that there is no other person inimical to Rajini to commit the crime and the fact that it is not impossible for Vinod to immediately leave Rewa for Sidhi after committing the crime, would clearly connect him to be a participate criminal in committing homicide of his wife Rajini. Without his cooperation and

> participation in committing the crime, on the facts and circumstances, it is impossible for Sarojini alone to commit the crime. Except denial he offerred no explanation in his Section 313 statement. The false theory of suicide is also a circumstance to be taken into account. The remorseless conduct of Sarojini is a relevant fact, conduct of Vinod also is inculpatory. The normal human conduct would be that on hearing the news of the death of his wife he was expected to immediately reach home; to make enquiry for the cause of death and to take further actions which are absent in this case. Under these circumstances we have no hesitation to agree with the Sessions Court and disagree with the High Court that Vinod also was a participis criminal in committing the crime."

54. The legal norm in respect of the application of Section 106 in a given case is contained in the following observations of Supreme Court in *Mir Mohammad*'s case (supra):-

> "The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases 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"

55. Has the prosecution been able to prove facts from which a reasonable inference can be drawn that the appellants are the guilty of the murder of the deceased?

56. The facts proved by the prosecution are being enumerated as under:-

A The deceased died a homicidal death.

B The house where the deceased was found dead was in the possession and occupation of the appellants.

C The appellants were present in the house where the deceased was found dead at the time of the death of the deceased.

D There were no signs of any forced entry or the presence of an intruder/outsider in the house where the deceased was found dead.

E The post-mortem of the deceased was conducted at about 04.30 P.M. on 01.02.2002. As per the post-mortem report Ex.PW-4/A of the deceased, the deceased died 39-40 hours before the conduct of the post-mortem, meaning thereby, that the deceased died at about 12.30-01.30 A.M. in the intervening night of 31.01.2002 and 01.02.2002. What did the appellants do after learning about the death of the deceased? Do they inform the police? Do they inform the family members of the deceased? The appellants do nothing of the kind. They keep silent. The family members of the deceased were informed about the death of the deceased in the morning of 01.02.2002 not by the appellants but by their

neighbour Darshan Singh. The police was informed about the unnatural death of the deceased in the afternoon of 01.02.2002 not by the appellants but by the family members of the deceased. The conduct of the appellants in not informing the family members of the deceased and the police about the unnatural death of the deceased is most suspicious.

57. From the aforesaid conspectus of facts, a reasonable inference can be drawn that the deceased was murdered by the appellants.

58. Have the appellants been able to dispel the aforesaid inference? As already noted herein above, appellant Balbir Singh stated in his examination under Section 313 Cr.P.C. that the deceased committed suicide and that he and appellant Kamla Devi were sitting outside the house in question at that time. The aforesaid explanation given by appellant Balbir Singh is patently false for the reason the deceased died a homicidal death as held by us in the foregoing paras. Appellant Kamla Devi stated in her examination under Section 313 Cr.P.C. that she knows nothing about the death of the deceased as she was sitting outside the house in question. The deceased was injured before being strangulated to death. The deceased must have shrieked or raised some other noise and

the same would have attracted the attention of appellant Kamla Devi. Therefore, the aforesaid explanation given by the appellant Kamla Devi is not plausible.

59. In view of the facts that the prosecution has been able to prove such facts wherefrom a reasonable inference can be drawn that the appellants are the murderers of the deceased and that appellants have furnished false explanations to dispel the said inference, it can be held that the appellants are guilty of the murder of the deceased.

60. In *Dasari*'s case (supra) relied upon by the learned senior counsel, the accused was charged for the offence of murdering 0his wife. The deceased was found dead in the house occupied by her and the accused. On the morning of 20.04.1996 the accused informed the brother of the deceased that something untoward has happened to his sister and took him to his house. The death of the deceased had taken place on the night of 19th April or in the early hours of 20th April. The Sessions Court acquitted the accused. In appeal, the High Court convicted the accused on the ground that only the accused and the deceased were in the house at the relevant time and that there was no possibility for others to enter into the house. Supreme Court reversed the decision of the High Court and

acquitted the accused on the ground that though the circumstances of the case are suggestive of strong possibility of the presence of the accused at his house, the same does not give rise to an irresistible inference that the accused was present in his house around the time of the death of the deceased and the accused alone must have committed the murder of the deceased.

61. There is a fundamental difference between the facts of the said case and the present case. In the said case, there was no evidence to establish the presence of the accused in the house in question at the time of the death of the deceased whereas in the instant case the appellants themselves admit their presence in the house in question at the time of the death of the deceased. Be that as it may, the legal norm culled out in *Mir Mohammad*'s case (supra) as also the decision in *Sarojini*'s case (supra) where Section 106 was invoked to convict an accused even though there was no evidence on record establishing his presence in the house in question at the time of the deceased was not noticed in the said case.

62. The decision in *Vikramjit*'s case (supra) has no application to the present case for therein the deceased was

murdered on a public road and not in the secrecy of a house as is the position in the instant case.

63. There is yet another fact which is worth noticing. The appellants had taken a false defence by leading evidence to the effect that the burn injury found on the chest of the deceased was sustained by her when she fell on a hot object by cooking. It is settled legal principle that the circumstance of false defence taken by an accused is a circumstance which, after the chain of the circumstances appearing an accused is complete, can be added to the said chain to reinforce the guilt of the accused. (See the decision of Supreme Court reported as *Sharad Birdhichand Sarda v State of Maharashtra* AIR 1984 SC 1622.)

64. In view of the above discussion, we do not find any merit in the appeals which are dismissed.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

March 11, 2010
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