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Neutral Citation No. - 2025:AHC:49181-DB

A.F.R.

Reserved on 3.3.2025

Delivered on 7.4.2025

In Chamber

Case :- CRIMINAL APPEAL No. - 442 of 2013

Appellant :- Ibrahim

Respondent :- State of U.P.

Counsel for Appellant :- Amit Daga, Yogesh Srivastava

Counsel for Respondent :- Govt. Advocate

And

Case :- CRIMINAL APPEAL No. - 772 of 2013

Appellant :- Sannaur And Another

Respondent :- State of U.P.

Counsel for Appellant :- Ajay Kumar Mishra, Arun
Srivastava, Kandarp Srivastava

Counsel for Respondent :- Govt. Advocate

And

Case :- CRIMINAL APPEAL No. - 789 of 2013

Appellant :- Mussarat And Others

Respondent :- State of U.P.

Counsel for Appellant :- Ajay Kumar Mishra, Avnish Kumar
Srivastava, Sunil Kumar Yadav, V.P. Srivastava

Counsel for Respondent :- Govt. Advocate

Hon'ble Siddharth, J.

Hon'ble Praveen Kumar Giri, J.

(Per Praveen Kumar Giri, J.)

1. Heard Sri Ajay Kumar Mishra, learned counsel for the accused-appellants, Sri Prem Shankar Prasad, learned A.G.A. for the State-respondent and perused the record.

2. The above noted appeals have been filed against the judgment of conviction dated 7.1.2013 and the order of sentence dated 8.1.2013 passed by Special Judge (Prevention of Corruption Act), Meerut, in Sessions Trial No.358 of 2006 (State vs. Ibrahim and others) wherein

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the Trial Court has convicted accused-appellants under Sections 147, 302 read with Section 149 of IPC and sentenced them to life imprisonment under Section 302 read with Section 149 of IPC with fine of Rs.10,000/-, in case of default in payment of fine, further to undergo one year imprisonment and for two years' imprisonment under Section 147 of IPC.

3. The Trial Court's record is received and paper books are ready. With the assistance of learned counsel for the parties, the entire evidence is re-scrutinized and re-appreciated.

4. The prosecution story is that informant- Raees Ahmad, brother of deceased-Sharafat, had given a written report at the concerned police station stating therein that the house of accused-Ibrahim is in front of his house. Accused-Ibrahim and his family members complained to the informant that his brother, Sharafat, had an illicit relationship with his daughter, Soni, therefore, the informant must send his brother out of village otherwise they would face dire consequences. On these facts, informant proposed marriage of his brother with Soni but the accused-appellants denied the proposal and kept a grudge against the informant's family. Thereafter, on 05.02.2006, accused-Ibrahim along with his six sons and two other persons, carrying guns, sticks and axes came assaulting their daughter/sister, Soni, and abducted Sharafat from his home. Thereafter, they killed Sharafat.

5. The informant regarding incident dated 05.02.2006 which occurred at about 11:00 P.M. (Night) lodged a First Information Report on 06.02.2006 at 02:30 A.M. (night) while police station was at a distance of about of 6 KM.

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6. The First Information Report was lodged as Case Crime No. 16 of 2006 under Sections 147, 148, 149, 302 IPC at Police Station-Bahsuma, District- Meerut.

7. The First Information Report was lodged against Ibrahim (father of deceased-Soni) and his six sons, namely, Farukh, Mussarat, Ayub, Sannuar, Kayoom, Shaukin and two unknown persons in presence of eye-witnesses i.e. informant namely, Anvar, Liyaqat Ali, Yameen, Jiju. The incident took place at night and was seen in the artificial lights i.e. Gas Lamp and Torch Light as mentioned in the F.I.R. The place of occurrence is inside the house of the accused-appellants.

8. The motive was that deceased-Sharafat was having illicit relation with the daughter of the informant, Soni, which was diminishing the reputation of the accused-appellants, who happened to be neighbours of the informant.

9. S.I. Resham Singh (P.W.-4) reached on the spot and found two dead bodies which were of Soni and Sarafat, in the house of the accuse-appellants. He prepared panchayatnama/inquest report of deceased-Sharafat on 06.02.2006 at 03:30 A.M. (night) in artificial light in presence of witnesses namely, Ehsan, Jijudin, Shyam Lal Pradhan, Mahkar Singh and Mustkeem. In the panchayatnama/Inquest Report, the dead body was shown to have been found inside the room of the house of the accused-appellants and in the opinion of the witnesses of the panchayatnama/inquest report, deceased-Sharafat died due to injuries caused on the person of Sharafat.

10. This witness (PW-4) also prepared panchayatnama/inquest report of deceased-Soni on 06.02.2006 at 05:15 A.M. in presence of the witnesses of the panchayatnama and in the opinion of the witnesses, deceased-Soni died due to assault and throttling.

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11. Devendra Kumar (PW-9), the Investigating Officer, recorded the statement of Constable Prem Singh (P.W.-5) who was the writer of chick F.I.R., under Section 161 Cr.P.C. while P.W.-5 deposed during trial that contents of the chick F.I.R. were written by him as per the written and signed report given to the police by the the informant.

12. The Investigating Officer (PW-9) on 06.02.2006 prepared site plan/Naksha Nazari as dead body of deceased-Soni was found on the bed/cot lying at place "A" i.e. inside room of the house of the accused-appellants, while dead body of deceased-Sharafat was found lying at place "B" which was also inside room of the same house of the accused-appellants.

13. The I.O./P.W.-9 on 06.02.2006 arrested accused Farukh and Musarrat and, from their possession, the I.O. recovered/discovered two sticks and one tippet (chunni) and mentioned in the recovery memo that the public due to fear refused to be the witnesses of the recovery memo.

14. The post-mortem was conducted by the Doctor P.W.-3, Dr. S.P. Singh on 06.02.2006 at 04:30 P.M. on the person of deceased Soni aged about 16 years. Both her hyoid bones were fractured with following external injuries:

*"(1) Ligature mark on front of neck 22 cm x 1 cm, 3 cm away from rt ear 6 cm below to chin, 7 cm below to left ear.
(2) Multiple abraded contusion in an area of 3 cm x 2 cm on front of center part of forehead
lips lightly cyanosed
Both hyoid bones fractured
Both lungs blooded
Cause of death asphyxia as a result of ante-mortem hanging"*

15. Dr. S.P. Singh (PW-3) in his deposition mentioned cause of her death as under :

"मृतक की मृत्यु 05.02.06 को रात्रि 11 बजे उसके शरीर पर आई चोटो के कारण होना संभव था। उसकी मृत्यु दम घुटने से हुई थी। Ligature mark किसी रस्सी अथवा उसी प्रकार की किसी वस्तु में आना संभव है।"

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16. The post-mortem of deceased-Sharafat, aged about 22 years, was also conducted by Dr. S.P. Singh (P.W.-3) on 06.02.2006 at 05:00 P.M. and in the post-mortem report, he has mentioned that there are fracture of 2 to 11 ribs (right side), right lungs lacerated with following external injuries :

- “(1) Bleeding from nose and mouth*
- (2) Abraded contusion 4 cm x 3 cm on left eyelid.*
- (3) Contusion 4 cm x 3 cm on right eyelid.*
- (4) Abrasion 1 cm x 15 cm on upper part left chick just below the the left eye.*
- (5) Multiple abrasion on front of chest 26 cm x 30 cm of measurement*
- (6) Contusion 6 cm x 2 cm on upper lip*
- (7) Multiple abraded contusion 16 x 8 on front side of left thigh.*
- (8) Contusion 6 cm x 6 cm on right thigh*
- Cause of death haemorrhage and shock.”*

17. Dr. S.P. Singh (PW-3) deposed in the court. Relevant extracts of his deposition read as under :

“आन्तरिक परीक्षण

सीधी पसलियां 2 से 11 नम्बर तक की फ्रेक्चर्ड। फेफड़े की झिल्ली प्लूरा खून से लथपथ था। वायां फेफड़ा नार्मल था। पैरीटोनियल खून में लथपथ थी। कैविटी में 500 ml खून मौजूद था। दांत 16/16 थे। ईशो फेगस नार्मल थी। आमाशय में 100 ग्राम अधपचा खाना मौजूद था। छोटी बड़ी आंतों में गैस व मल भरा हुआ था। लीवर 1300 ग्राम लैसरेटेड था। पित्ताशय आधा भरा हुआ था। पैंक्रियाज नार्मल था और पेल था। प्लीहा 80 ग्राम पेल था। किडनी 250 ग्राम पेल। मूत्राशय खाली था।

मृत्यु का कारण

मृतक की मृत्यु खून के अधिक बह जाने व बेहोशी के कारण हुई थी।

मृतक के शरीर की सभी चोटे कुंद आलो अर्थात लाठी डंडो से आना संभव है। मृतक के शरीर पर आयी चोटे मृत्यु के लिए पर्याप्त थी तथा 05.02.06 में रात्रि 11 बजे इन चोटों का आना संभव था। शव विच्छेदन रिपोर्ट शव विच्छेदन के समय मेरे द्वारा तैयार की गई थी। मेरे लेख व हस्ताक्षर में है। प्रदर्श क-2 डाला गया।”

18. The I.O./P.W.-9 after investigation prepared and submitted charge-sheet under Sections 147, 148, 149, 302 IPC against all seven named accused-appellants implicated in the F.I.R. The Judicial Magistrate took cognizance and thereafter committed the case to the court of learned Sessions Judge after compliance of Section 207 Cr.P.C.

19. The case was registered as S.T. No. 358 of 2006 (State vs. Ibrahim and others) under Sections 147, 148, 302, 149; Police Station Bahsuma, District- Meerut but the learned Trial Court only framed

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charges under Sections 147, 302/149 IPC on 17.08.2006. The accused-appellants pleaded not guilty and sought trial.

20. The prosecution, in order to prove its case, has adduced many documentary evidence, namely, F.I.R. (Ex.Ka.17), Written Report (Ex.Ka-1), Recovery Memo of Danda & Lungi (Ex.Ka-16), Postmortem Report of deceased Soni (Ex.Ka-3), Postmortem Report of deceased Sarafat (Ex. Ka-2), Panchayatnama of Sarafat (Ex. Ka-4), Panchayatnama of deceased Soni (Ex. Ka-10), Charge-sheet (Ex. Ka-20) & Site Plan (Ex.Ka-19) and has examined as many as 9 witnesses namely, PW-1, Raees Ahmad, PW-2, Anwar; PW-3, Dr. D.P. Singh; PW-4, Resham Singh; PW-5, Prem Singh; PW-6, Jiju; PW-7, Liyakat Ali; PW-8, Yameen; and PW-9, Devendra Kumar.

21. After completion of Examination-in-chief and cross-examination of P.W.-1 and P.W.-2, the then Presiding Officer amended charges on 21.05.2010 under Sections 504 and 506 IPC and instead of permitting deposition with respect to Sections 504 and 506 IPC, allowed *de novo* trial i.e. under Sections 147, 149/302, 504 and 506 IPC.

22. The examination-in-chief and cross-examination of P.W.-1 and 2 was recorded on 6.6.2009, 12.1.2009, 21.1.2009 & 4.3.2009. Till then, they had supported the prosecution case. On 7.6.2010 & 14.12.2011, just after the charges were amended i.e., on 21.5.2010, they were once again called to depose and then they became hostile.

23. Raees Ahmed (PW-1), the informant of the case in hand, on 6.1.2009 deposed as under :

“साक्षी रईस अहमद एस/ओ नजरे खां आयु करीब 41 वर्ष आर/ओ ग्राम अकबरपुर सादात थाना बहसूमा जिला मेरठ सशपथ ब्यान किया कि मुल्जिमान इब्राहिम, फारुख, मुसरत, अय्यूब, सनव्वर, कय्यूम व शौकीन सभी हमारे गांव के रहने वाले है। दि० 5.2.06 को रात्रि 11 बजे उपरोक्त सभी मुल्जिमान दो अज्ञात व्यक्तियों के साथ जिन्हे सामने आने पर पहचान सकता हूं। कट्टे, लाठी डन्डे व बल्लम लिये हुये अपनी लडकी सोनी को पीटते हुये तथा यह कहते हुये आये कि साली तेरे शराफत से गलत सम्बन्ध है। आज तुम्हारी राड काटनी है। और मेरे भाई शराफत को घर से जबरदस्ती पीटते हुये हथियारो के बल पर ले गये। अपने घर मे

शराफत व सोनी दोनों को ले गये थे। उस दिन दिन में भी ये मुल्जिमान काना फूसी हमारे घर के आस पास कर रहे थे।

शराफत व सोनी को (का०फटा) हुये ले जाते हुये गैस व टार्च की रोशनी में हमने देखा है। मौके पर अनवर, लियाकत, यामीन, जीजू, आदि ने यह वाका गैस व टार्च की रोशनी में पूरा देखा है। सभी मुल्जिमान ने मेरे भाई शराफत को अपने घर में ले जाकर हत्या कर दी। तथा सोनी की भी हत्या कर दी थी।

थाने में रिपोर्ट दर्ज कराते समय तक हमने सोनी का शव नहीं देखा था। इस कारण सोनी की हत्या का जिक्र एफ० आई० आर० मेरी तहरीर में नहीं है।

इब्राहिम का मकान बिलकुल हमारे घर के सामने है। यह हमारी बिरादरी का है। घटना से करीब दस दिन पहले इब्राहिम व उसके परिवार वालों ने हमसे शिकायत की थी। कि तुम्हारे शराफत के हमारी लड़की सोनी से गलत सम्बंध है। तुम लोग शराफत को गांव से बाहर भेज दो वरना इसका गलत अन्जाम होगा।

इस पर हमने अपने शराफत के निकाह का प्रस्ताव उनकी लड़की सोनी से निकाह करने का रखा था जो इन्होंने नहीं माना। और इब्राहिम का परिवार हमारे परिवार से रंजिश मानने लगा था।

गवाह ने पत्रावली ने कागज सं० 536 को देखकर कहा कि यह तहरीर मैंने गांव में कुंवर मुसरत अली एस / ओ फजलूल रहमान अपने गांव वाले से गांव में ही लिखायी थी। मुझे मुसरत (का० फटा) ने तहरीर को पढ़कर सुना दिया (का० फटा) सुनकर व देखकर इस पर मैंने (का०फटा) अपने हस्ताक्षर किये थे। इस पर मुसरत अली के भी हस्ताक्षर हैं। इस पर प्रदर्शक - 1 डाला गया।

इस तहरीर को लेकर थाने गया था और तहरीर देकर थाना (का० फटा) पर मुकदमा कायम कराया था। (का० फटा) सभी मुल्जिमान मेरे भाई शरा (का० फटा) को हमारे घर के अन्दर से ही पीटते हुए (का० फटा) ले गये थे।

मुल्जिमान इब्राहिम, (का० फटा), मुसरत, अय्युब, कय्यूम व सौकीन अदालत में हाजिर हैं। अभियुक्त सनव्वर को नाबालिग घोषित करने के सम्बंध में न्यायालय में कार्यवाही लम्बित है। इस कारण सनव्वर अदालत में उपस्थित नहीं है।"

24. This witness remained consistent in his cross examination dated

12.1.2009. The relevant extracts of his depositions read as under :

"मुल्जिमान छः भाई हैं। फारुख, मुसरत, अय्युब, सन्नवर, कय्यूम व शौकीन हैं। ये सभी इब्राहिम के बेटे हैं। मैं इन सभी सातों व्यक्तियों को अभियुक्त बनाया है।

मैं फजलुरहमान को जानता हूँ। ये मेरे खानदान के हैं। इनके बेटे कुंवर मुसरत अली हैं। और कुंवर मुसरत अली ने मेरी तहरीर लिखी है। मैं स्वयं तहरीर नहीं लिखी है। मैं लिखना पढ़ना जानता हूँ। इस घटना के सम्बन्ध में पुलिस ने मेरा ब्यान रिपोर्ट लिखाते समय थाने पर ही लिया था। मेरा ब्यान रात्रि में ढाई बजे के लगभग लिया था। थाने पर मेरे एक जगह दस्तखत कराये थे। चिक उसे कहते हैं जो रिपोर्ट की नकल होती है। मुझे पहले से पता था कि रिपोर्ट की नकल को चिक कहते हैं। मुझे याद नहीं कि किस कि कागज पर थाने पर मेरे हस्ताक्षर कराये थे। थाने में मैं आधा घन्टा रहा था। जिस समय मैं थाने गया था उस समय दरोगा व थानाध्यक्ष नहीं थे। दीवान जी मौजूद थे। मैं घटना दीवान जी को बतायी थी। दीवान जी ने मेरी बतायी हुयी घटना को नहीं लिखा था। उन्होंने कहा कि दरोगा जी को उठाता हूँ तब रिपोर्ट लिखेंगे। दरोगा जी दो चार मिनट बाद ही थाने पर आ गये थे। दरोगा जी को भी मैंने घटना बतायी थी। दरोगा जी ने जो मैंने घटना बतायी थी वह लिखी थी। इसके बाद तहरीर मैंने दीवान जी को दे दी थी।

थाने पर मैं, अहसान, नवला तीन ही लोग गये थे। हम लोग ट्रैक्टर से गये थे। हमारे गांव से थाना करीब छः किलोमीटर की दूरी पर है। हम लोग थाना सर्वा दो बजे के करीब पहुँच गये थे। मेरे गांव से थाने तक सड़क पक्की है कुछ सड़क टूटी हुयी थी। मेरे गांव से थाना बहसूमा ट्रैक्टर से जाने पर करीब 15 20 मिनट का समय लगता है। हमे अपने गांव से बहसूमा थाने जाने में करीब आधा घन्टे का समय लग गया था। घटना के समय मेरे गांव में टेलीफोन लगे थे। मेरे व मेरे भाई के पास में उस समय कोई मोबाईल फोन नहीं था। हमारे गांव में घटना के समय चौकीदार रहता था।

फारुख मुल्जिम के घर का दरवाजा ठीक हमारे सामने वाले रास्ते में खुलता है। फारुख मुल्जिम के सदर दरवाजे पर घटना के समय लोहे के किवाड चढ़े हुये थे। "

25. On 27.01.2009, further cross examination of this witness was done, the relevant extracts of the depositions are read as under :

“मैं यह बात अपनी एफ०आई०आर० में नहीं लिखायी थी कि ये घटना मैंने भी अपने आँखों से देखी थी। ये मुझ याद नहीं है कि मैंने दरोगा जी को यह बात बतायी थी या नहीं कि घटना मेरे सामने हुयी थी। गवाह से जब ये प्रश्न पूछा गया कि तुमने घटना के सम्बन्ध में पहली बार यह बताया कि घटना तुम्हारे सामने की है और आज न्यायालय में तुमने पहली बार घटना का चश्मदीद साक्षी होने के बारे में बताया है तो गवाह ने कहा कि ये प्रश्न मेरी समझ में नहीं आया।

मैंने दरोगा जी को अपने बयानों में यह बात बताई थी कि रिपोर्ट मैंने गाँव में लिखायी थी तो गवाह ने कहा कि यदि मेरे बयान में यह बात नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता। यदि दरोगा जी ने मेरे बयानों में मेरे द्वारा घटना देखने वाली बात नहीं लिखी तो मैं उसकी कोई वजह नहीं बता सकता। घटना के समय हम सातो भाई एक ही परिवार में व एक ही घर में इक्ठूठा रहते थे।

मुलजिमान में से इब्राहीम पर बल्लम, फारुख व मुसर्रफ पर डन्डे, अय्यूब सन्नवर, शौकीन कय्यूम पर लाठिया थी और अज्ञात व्यक्तियों पर कट्टे थे। मैंने यह बात कि किस अभियुक्त पर हथियार था मैंने एफ०आई०आर० में नहीं लिखायी थी। मैंने दरोगा जी के। अपने बयानों में यह बात बतायी थी कि किस व्यक्ति पर क्या हथियार था यदि दरोगा जी ने मेरे बयानों में यह बातें नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता। घटना स्थल पर मौके पर किसी भी व्यक्ति ने फायर नहीं किया था।

घटना वाले रोज घटना के समय से पूर्व सात बजे हम लोगों ने खाना खा लिया था। शराफत (मृतक) ने भी सात बजे खाना खा लिया था। मुझे यह याद नहीं है कि खाना शाकाहारी खाया था या नहीं। मेरा भाई शराफत तन्दुरस्त था उसे कोई बीमारी नहीं थी।

मुलजिमान सोनी को पीटते हुये व गाली देते हुये अपने घर से हमारे घर पर आये थे। हमारे मकान का सदर दरवाजा लगा हुआ था । उसमें किवाड नहीं थे। सोनी को मेरे सामने मुलजिमान लाठी डन्डों से मारपीट नहीं कर रहे थे। सोनी का घूँसों से सन्नवर कय्यूम ने मारा था। कितने घूँसे मारे थे मैं नहीं बता सकता। मेरा भाई शराफत मृतक उस समय जाग रहा था। और मेरे भाई शराफत को मुलजिमान पकड़कर जबरदस्ती ले गये और सोनी को भी ले गये थे। और दोनों को घर के अन्दर ले जाकर अपने घर का सदर दरवाजा बन्द कर लिया था।

मकान के अन्दर से खाने के बाद किस कमरे में बन्द किया था मैं नहीं बता सकता हम लोग सदर दरवाजे से बाहर थे। मुलजिमान मेरे घर पर पाँच छः मिनट तक रहे होंगे। हम लोग मुलजिमान को जब ये लोग मेरे भाई को ले जा रहे थे डर गये थे। इसलिये कोई आपत्ति नहीं की थी और न ही छुड़ाने का प्रयास किया था। उसके बाद हम गांव में दो ढाई घन्टे मौजूद रहे। हमने मुलजिमान द्वारा मेरे भाई को उठाकर ले जाने की बात ग्राम प्रधान व चौकीदार से नहीं की थी। स्वयं कहा कि मुझे याद नहीं है।

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सोना मृतका के शरीर से खून नहीं निकल रहा था।

बादशाही, इब्राहिम की पत्नि है। यह बात सही है कि बादशाही की रिपोर्ट पर थाना बहसूमा में मेरे पिता नजरे, मेरे, मेरे भाई मोहम्मद अहसान, शौकत सहादत, गुलबहार व तैमूर के खिलाफ, सोनी की हत्या हम लोगों द्वारा किये जाने के सम्बन्ध में हमारे विरुद्ध लिखायी थी। स्वयं कहा कि झूठी रिपोर्ट बचाव में लिखायी थी। मुझे हमारे जानकारी नहीं है कि सोनी की हत्या का मुकदमा हमारे खिलाफ सी० जे०एम० न्यायालय में चल रहा है अथवा नहीं।

घटना के समय मेरे भाई मोहम्मद की उम्र **36** वर्ष, एहसान की **38** वर्ष, शौकत की **32** वर्ष, सदाकत की **28** वर्ष, गुलबहार की **18** वर्ष, तैमूर की **14** वर्ष आयु थी। मैंने दौरान विवेचना दरोगा जी को गैस का लालटेन व टार्च जिसकी रोशनी में घटना देखी थी। दिखायी थी। घटना स्थल का नक्शा दरोगाजी ने मेरी निशानदेही पर बनाया था। घटना वाली रात को ही नक्शा बनाया था। पुलिस को मैंने वह जगह दिखा दी थी जहां गैस की लालटेन जल रही थी। यदि पुलिस ने नक्शे में गैस की लालटेन जलने की जगह नहीं दिखायी तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने पुलिस को अपने द्वारा व गवाहान के द्वारा खडे होने की स्थिति जहाँ से हमने घटना देखी थी, बता दी थी। यदि पुलिस ने नक्शा नजरी में हमारे खडे होने की स्थिति जहाँ से हमने घटना देखी थी नक्शा नजरी में नहीं दिखायी है तो मैं इसकी कोई वजह नहीं बता सकता।

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ये कहना भी गलत है कि हम आठो व्यक्ति जब सोनी को उठाकर ले जाने लगे तो बादशाही, शाब्बो, सहना व हमदीद जो सोनी की माँ है, ने हमारी इस हरकत का विरोध किया सोनी छूटकर भागने लगी तो हम आठो व्यक्तियों ने सोनी को मारपीट लाठी डन्डो व लात घूँसों से किया हो।”

26. On 21.5.2010, additional charges were framed under Sections 504 & 506 against the accused-appellants and *de novo* trial was

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permitted by the Trial Court. Pursuant to that when this witness was recalled on 7.6.2010, he deposed that on 5.2.2006 at about 11.00 PM, about 8-9 unknown miscreants carrying *lathi*, country-made pistol, *danda & ballam* came to his house. They had covered their face. They took out Sarafat and threatened us of dire consequences. He further deposed that when he came out of the house, the dead body of deceased Sarafat and Soni, were lying on the brick road (khadanza). The persons who were present there had told him that some unknown miscreants had killed Soni by throttling and Sarafat by beating. In cross examination also he deposed that some unknown miscreants had committed the murder of deceased Soni & Sarafat. This witness were declared hostile.

27. Anwar (PW-2) who was also an eyewitness to the incident. The relevant extracts of his depositions of examination-in-chief as well as the cross examination are as under :

“4.3.09

साक्षी अनवर एस/ओ इनायत अली आयु 52 वर्ष आर/ओ ग्राम अकवरपुर सादाब थाना बहसूमा जिला मेरठ

सशपथ बयान किया कि दि० 5/6.02.06 की रात्रि ग्यारह बजे मैं नजरे के मकान पर बैठा हुआ था। शोर सुनकर मैं नजरे के मकान से उठकर उसकी गैलरी में आया। वहाँ गैलरी में शराफत, रईस व लियाकत बैठे थे। इब्राहीम व उसके छः लड़के फारुख, मुसरत, अय्युब, कय्यम, सनवर व शौकीन आये। शोर करते हुये गाली गलौच करते हुये सोनी को मारपीट करते हुये आये। इनके हाथों में बल्लम व लाठी डण्डे थे। दो अज्ञात अजान आदमी थे जिनके हाथ में तमन्चे थे। मुलजिमान सोनी को पीटते हुये कह रहे थे कि तेरे शराफत से नाजायज सम्बन्ध है। आज तुम दोनों को मौत के घाट उतार देगे। ये सभी लोगों शराफत को जवरदस्ती उठाकर इब्राहीम के घर अन्दर ले गये थे। सोनी को भी साथ ले गये थे। मेरे साथ जीजू व यामीन भी घटना स्थल पर आ गये थे। उन्होंने भी सारा वाका देखा है। हम सभी ने यह वाका गैस की लालटेन व टार्च की रोशनी में देखा था।

फिर इब्राहीम के मकान से मुलजिमान सभी ने सदर दरवाजा बन्द करके अपने मकान में शराफत व सोनी की पीट-पीट कर हत्या कर दी। हाजिर अदालत मुलजिमान इब्राहीम व उसके लड़के फारुख, मुसरत, शौकीन, अय्युब व कय्यूम को देखकर कहा कि इन्होंने दो अजान व सनवर के साथ मिलकर शराफत व सोनी की हत्या की थी।

.....xxx.....Cross examination by all the accused

इस घटना के बारे में दरोगा जी ने मेरे से तीन दिन बाद पूछताछ की थी। ये पूछताछ मेरे से नजरे के मकान पर की थी। कितने बजे की थी समय नहीं बता सकता। घटना होने के बाद जब तक मेरा बयान दरोगा जी ने लिया तब तक मैं गांव में रहा था। मैंने दरोगा जी को अपने बयान में यह बात बता दी थी कि मैं नजरे के मकान से उठकर उसकी गैलरी में आया। यदि दरोगा जी ने यह बात मेरे बयान में नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता।

जहाँ मैं बैठा था वहाँ से नजरे की गैलरी चार पाँच गज होगी दोनों मिली हयी है। मैं शराफत, रईस व लियाकत के पास नहीं बैठा था। दो अज्ञात लोगों पर तमन्चे थे। मैंने दरोगा जी को अपने बयान में यह बात नहीं बतायी थी कि आज तुम दोनों को मौत के घाट उतार देगे।

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मैंने दरोगा जी को अपने बयान में यह बात बतायी थी कि ये सभी लोग शराफत को उठाकर इब्राहिम के घर के अन्दर ले गये थे। यदि दरोगा जी ने यह बात मेरे बयान में नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने दरोगा जी को यह बात भी बतायी थी कि सोनी को भी साथ ले गये थे। यदि दरोगा जी ने मेरे बयान में यह बात नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने दरोगा जी को यह बात भी बतायी थी कि जीजू व यामीन भी घटना स्थल पर आ गये थे यदि दरोगा जी ने यह बात मेरे बयान में नहीं लिखी है तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने दरोगा जी को अपने बयान में यह बात बतायी थी कि हम सभी ने यह वाका गैस का लालटेन व टार्च की रोशनी में देखा था यदि दरोगा जी ने यह बात मेरे बयान में नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने दरोगा जी को अपने बयान में यह बात बता दी थी कि फिर इब्राहिम के मकान में सदर दरवाजा बन्द करके सभी ने शराफत व सोनी की पीट पीट कर हत्या कर दी थी। यदि दरोगा जी ने मेरे बयान में उक्त बातें नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता। मेरे बयान में दरोगा जी ने हत्या करने वाली बात लिखी है।

दो अज्ञात व्यक्तियों को मैंने देखा था। मैंने दरोगा जी को यह बयान नहीं दिया था कि दो व्यक्ति अज्ञात मैंने नहीं देखे थे। यदि दरोगा जी ने मेरे बयान में यह बात लिखी है तो मैं इसकी कोई वजह नहीं बता सकता।

मुलजिम फारुख का कोई मकान गाँव में नहीं है। जिस मकान में मुलजिमान दो मृतकों को अपने साथ लेकर गये थे उस मकान का एक ही दरवाजा है। जिससे आ जा सकते हैं। इसी दरवाजे पर किवाड लगे थे जो मुलजिमान ने बन्द कर लिये थे।

जब सोनी को लेकर मुलजिमान आये थे उस समय सोनी की लाठी डन्डो से मारपीट नहीं कर रहे थे हाथ से थप्पड़ मार रहे थे। मेरे सामने सोनी के साथ मुलजिमान ने लाठी-डन्डो से मारपीट नहीं की थी। मेरे सामने मुलजिमान ने शराफत के साथ गैलरी में मारपीट नहीं की थी केवल कट्टे लगाये थे। मैंने यह बात अपने बयान में दरोगा जी को बता दी थी कि मुलजिमान ने शराफत को कट्टे लगाये थे। यदि दरोगा जी ने मेरे बयान में शराफत को कट्टे लगाने वाल बात नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने दरोगा जी ने जब मेरे से पूछताछ की गयी थी उस समय मैंने जिस टार्च की रोशनी में घटना देखी थी टार्च दिखा दी थी। जिस समय मुलजिमान आये उस समय नजरे के घर में रईस, लियाकत व शराफत मौजूद थे बाकी लोग नहीं थे। बाकी उसके लडके अपने घरों में होंगे। मैंने मौके पर बाकी को नहीं देखा। इनकी औरते व बच्चे घरों पर होंगे मैंने नहीं देखा।

मुलजिमान शराफत के घर पर पाँच छः मिनट तक रहे थे। इन पाँच छः मिनट में काफी शोर शराबा होता रहा। शोर शराबा के दौरान नजरे की दो चार पड़ोसी आ गये थे। उनमें से जिनके नाम सेठ, मौसम अली, रज़ाक व (sic) आ गये थे। ये लोग अपने मकान में चले गये और मैं अपने मकान में घुस गया। रईस व बाकी लोग कहाँ गये मुझे पता नहीं है। जब पुलिस आयी थी मैं अपने घर थीं से बाहर निकला था। पुलिस रत को तीन-सवा तीन बजे आयी थी। पुलिस के सामने मैं गया था। पुलिस सुबह के सात सवा सात बजे तक रही थी। और अपने साथ लाश कार से (काफटा) से ले गयी थी "

28. This witness was also recalled after amendment of charges under Sections 504 & 506 of IPC and turned hostile.

29. Dr. S.P. Singh (PW-3) who conducted the post-mortem of both the deceased was cross examined by the accused-appellants and he withstood the depositions made in the examination-in-chief.

30. SI Resham Singh (PW-4) deposed on oath that on 6.2.2006 he was posted as Sub Inspector at Bahsuma Police Station. On that day, FIR No.16 of 2006 under Sections 147,148,149,302 IPC against accused persons was registered, investigation of which was taken up by S.H.O. himself. He reached the spot with the police force, prepared

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the Panchayatnama of deceased Sharafat and Soni upon the orders of senior officers. Panchayatnama of deceased Sharafat was in front of him which was in his handwriting and signature, he had appointed *panchas* and had obtained signatures of *panchas* which was exhibited as Exhibit Ka-4. All the papers related to this Panchayatnama were in his handwriting and signature. The witness on seeing the letter R.I, letter CMO, challan dead body, form number 13, photo dead body and sample stamp, said that all these were prepared at the time of Panchayatnama and were exhibited as Exhibits Ka-5 to Ka-9. This witness further stated that the dead body was sealed, on the spot and sample stamp was taken and the dead body was handed over to Constable Satpal Singh and Constable Brahm Singh. After this he filled the Panchayatnama of deceased Soni which is Exhibit Ka-10, and seeing the letter R.I, letter CMO, challan dead body, form number 13, photo dead body and sample stamp on the spot itself, he said that all these were prepared at the time of Panchayatnama and were exhibited as Exhibits Ka-11 to Ka-15. Both the dead bodies were handed over to Constable Satpal Singh and Constable Brahm Singh. Thereafter, this witness along with S.O. and other police officials went in search of the accused and surrounded the accused Farukh and Mursarat and caught them. From the possession of accused Farukh, they recovered the popular stick (danda) and blue coloured scarf of deceased Soni which was used in the murder. These were sealed and stamped on the spot. The S.O. wrote the recovery memo, on which all of them got their signatures done. The signatures and thumb impressions of the accused were also taken on the same. This witness identified this report as being in the writing and signature of Devendra Kumar. This was exhibited as Exhibit Ka-16. The witness further stated about the blue coloured chunni that it is the same chunni which was recovered from the possession of accused Farukh, with which

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accused Farukh had stated that he had killed deceased-Soni. The *chunni* was exhibited as Exhibit-1 and the bundle of cloth as Exhibit-2 and yellow coloured *chunni* was exhibited as Exhibit-3.

31. PW-5, Constable Prem Singh, was a formal witness. He deposed that he had recorded the chick F.I.R. No. 15 of 2006 which was in his handwriting and signature on which Ex. Ka-17 was given.

32. Jiju (PW-6) deposed on oath that accused Ibrahim, Farukh, Mussarat, Ayub, Sannuar, Kayoom and Shaukeen who were present in the court had not killed Sharafat and Soni rather 13 to 14 unknown miscreants had killed Sharafat and Soni. The same miscreants had come with guns, axes and sticks in their hands with intent to loot and when Sharafat resisted, they killed him. This witness further deposed that some miscreants were dragging the girl Soni. When the family members tried to stop them, Soni was also killed by them. On hearing the noise, there was a stampede in the village, so the miscreants ran away without looting. The dead bodies of Sharafat and Soni were lying on the brick road (*khadanja*). This witness was declared hostile by the prosecution.

33. Liaquat Ali (PW-7) and Yamin (PW-8) had also deposed on the line of PW-6 and were declared hostile.

34. SI Devendra Kumar (PW-9) deposed as under :

"आज दिनांक 19.07.12 को साक्षी देवेन्द्र कुमार एस०आई० थाना कोतवाली देहात जिला बुलन्दशहर को शपथ दिलाई गयी शपथपूर्वक कथन किया कि

दिनांक 06.02.2006 को मैं थाना बहलूमा पर उपरोक्त पद पर तैनात था। मैं बतौर एस०ओ० तैनात था। उस दिन मु०अ०सं० 16/06 अर्न्तगत धारा 147/148/149/302 आई.पी. सी. बनाम फारुख आदि थाना पर मेरी मौजूदगी में थाना पर कायम हुआ था। जिसकी विवेचना मेरे द्वारा ग्रहण की गयी थी। थाना कार्यालय से नकल रपट व नकल चिक व अन्य कागजात लेकर विवेचना में मसकूर हुआ। उस दिन वादी की तहरीर की नकल जीडी में अंकित की। जीडी की नकल तथा वादी रईस अहमद का ब्यान मेरे द्वारा अंकित किया गया तथा उसी दिन एफआईआर लेखक सी/प्रेम सिंह का ब्यान अंकित किया तथा थाने से रवाना होकर घटना स्थल पर आकर वादी की मौजूदगी में उसकी निशान देही पर घटना स्थल का निरीक्षण कर नक्शा नजरी तैयार किया। नक्शा नजरी पत्रावली पर कागज संख्या अ/9 है। मेरे सामने है जो मेरे लेख व हस्ताक्षर में है। इसमें खसरा दर्ज है। अपना लेख व हस्ताक्षर शनाख्त करता हूँ। इस पर प्रदर्श क-19 डाला गया। उसी दिन अभियुक्त फारुख व मुर्सरत को गिरफ्तार किया था। जिसमें अभियुक्त फारुख के कब्जे से लकड़ी का एक डन्डा जो हत्या में प्रयोग किया गया था। व एक चुनरी नीले रंग की बरामद हुई। तथा अभियुक्त मुर्सरत के कब्जे से हत्या में प्रयुक्त एक मोटा डन्डा लकड़ी का बरामद हुआ था मौके पर ही बरामदगी की फर्द तैयार की गयी। फर्द पत्रावली पर मेरे सामने प्रदर्श क 16 है। मेरे लेख व हस्ताक्षर में है। अपना लेख व हस्ताक्षर

शनाख्त करता हूँ। उसी दिन अभियुक्त फारुख व मुर्सरत के ब्यान अंकित किये। दिनांक **07.02.06** को मृतक शराफत व मृतिका सोनी की पोस्ट मार्टम रिपोर्ट प्राप्त हुई। मृतक शराफत के शरीर पर आठ चोटें पाई गयीं और मृत्यु का कारण शॉक एण्ड हेमरेज था। मृतिका सोनी के शरीर पर तीन चोटें पाई गयीं थीं मृत्यु का कारण दम घुटने से और शरीर पर आई चोटों के कारण था। थाने पर मौजूद फर्द बरामदगी के गवाह रेशम सिंह का बयान दर्ज किया। व उसी दिन एचसीपी रोहताश दत्त शर्मा सी/गजेन्द्र सिंह, सी/मुकेश के बयानात अंकित किये।

दिनांक **08.02.06** को वादी के लड़के लियाकत का बयान अंकित किया व तहरीर लेखक मुर्सरत अली का बयान अंकित किया।

दिनांक **09.02.06** को पुनः वादी के मकान ग्राम अकबरपुर आया। जहां पर गवाहान जीजू व अनवर का बयानात अंकित किया तथा वहाँ पर गवाह यशपाल सिंह के बयानात अंकित किये। दिनांक **15.02.06** को मुखबिर की सूचना पर अभियुक्त सनवर, शौकीन कययूम को डीपीएम स्कूल के पास से गिरफ्तार की। और तीनों के बयानात अंकित किये।

दिनांक **16.02.06** को मुखबिर की सूचना पर अभियुक्त अययूब को अमरपाल के ईट के भट्टे के पास से बहलूमा रोड पर गिरफ्तार किया तथा थाना होकर उनके बयान अंकित किये।

दिनांक **18.02.06** को मृतक शराफत व मृतिका सोनी के पंचायत नामा के गवाहान अहसान, श्यामलाल जीजू के बयानात अंकित किये।

दिनांक **22.02.06** को पंचान गवाहान महकार सिंह, मुस्तकीम और यामीन, के बयानात अंकित किये। तथा उसी दिन पोस्ट मार्टम कराने के लिये शव को ले जाने वाले कानिस्टेबिल सतपाल के बयान अंकित किये। तमामी विवेचना व बयानात गवाहान निरीक्षण घटना स्थल पोस्ट मार्टम रिपोर्ट के आधार पर अभियुक्तगण के विरुद्ध जुर्म बखूबी साबित पाया तथा आरोप पत्र उनके विरुद्ध न्यायालय प्रेषित किया गया। आरोप पत्र पत्रावली पर अ/7 है। मेरे लेख व हस्ताक्षर में है। शनाख्त करता हूँ। जिस पर प्रदर्श क-20 डाला गया। "

35. In cross examination, this witness deposed as under :

"घटना रात के ग्यारह बजे की है घटना स्थल का नक्शा नजरी मेरे द्वारा बनाया गया था। नक्शा नजरी बनाते समय मैंने कही भी रोशनी यानि लाईट का कोई जिक्र नक्शा नजरी मे नहीं किया। मेरे द्वारा बनाई गयी फर्द बरामदगी प्रदर्श क-16 मे कही भी मुलजिमान फारुख मुर्सरत के गिरफ्तार करने का स्थान वा दो डन्डे व एक चुन्नी की बरामदगी का स्थान अंकित नहीं किया गया। ना ही गिरफ्तारी व बरामदगी का समय फर्द बरामदगी प्रदर्श क-16 मे ही किया गया। स्वयं कहा कि सी०डी० में है। मैंने ना डन्डे, ना ही चुन्नी एकस्पर्ट के पास परीक्षण हेतु नहीं भेजे थाने से रवाना होने पर जीडी में रवानगी दर्ज की जाती है।

मुलजिमान फारुख, मुर्सरत को गिरफ्तार करने से पहले थाने से रवाना होते समय जीडी मे रवानगी दर्ज की थी। सीडी रवानगी ना तो मेरे सामने है ना मैं साथ लाया हूँ। यह कहना गलत है कि मैंने सारी कार्यवाही थाने पर बैठकर की हो, और जीडी मे इन्द्राज ना किया हो। यह कहना भी गलत है कि फारुख वा मुर्सरत सोनी मृतका व मृतक शराफत की हत्या की रिपोर्ट लिखाने गये हो और उन्हें वही थाने पर बैठाकर उन्ही का झूठा चालान इस मुकदमे मे कर दिया।

फर्द बरामदगी प्रदर्श क-16 में अंकित, "मौके पर आने जाने वाले जनता के गवाहान को गवाही देने को कहा कोई जनता का गवाह तैयार नहीं हुआ।"

मैंने ना तो जनता के गवाहान के नाम पते लिखे ना ही उनके खिलाफ पुलिस रेग्यूलेशन एक्ट के विरुद्ध कोई कार्यवाही ही की।

केवल गवाह अनवर ने अपने बयान **161** सीआरपीसी मे मुलजिमान द्वारा मृतक शराफत व सोनी की हत्या टार्च की रोशनी मे करते हुये देखा है।

मैंने ऐसी किसी टार्च को गवाह अनवर से कब्जे में नहीं लिया। और न ही कोई फर्द ही बनायी। यह कहना गलत है कि मैंने अनवर का ब्यान **161** सीआरपीसी ना लिखा हो। यदि गवाह ने ऐसा बयान दिया हो कि मैंने उसका बयान नहीं लिया तो गलत दिया है। डन्डा चुन्नी माल मुकदमाती आज न्यायालय मे मेरे सामने नहीं है। मुझे इस समय याद नहीं है कि इस केस से मुतालीक एक एफ.आई.आर. वादी रईस वा उसके परिजन के खिलाफ हुई थी। वह मेरे द्वारा विवेचना की हो। यह कहना गलत है कि मैंने सारी कार्यवाही थाने पर बैठकर की हो और न्यायालय मे झूठा आरोप पत्र प्रस्तुत किया।"

36. Thereafter, the statements of the accused-appellants under Section 313 Cr.P.C. were recorded, in which all the incriminating evidence was put to them. They denied all the allegations and stated that they were falsely implicated in the present case.

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37. Thereafter, the Trial Court vide impugned judgement convicted the appellants and sentenced them to life imprisonment as mentioned above.

38. Learned counsel for the accused-appellants submits that none of the witnesses have supported the prosecution case. No one has seen the incident and it is a case of circumstantial evidence where the chain of evidence is not complete. All the eye-witnesses i.e. PW-1, PW-2, PW-6, PW-7 & PW-8 were declared hostile and have not supported the prosecution version.

39. Per contra, learned A.G.A. has argued that the incident occurred on 5.2.2006 at about 11.00 PM in the house of accused-appellants which is in front of the house of the informant. A prompt F.I.R. was registered just after three and a half hours on 6.2.2006 at about 2.30 AM (night) while the distance of police station from the place of occurrence is about six kilometres. The F.I.R. was registered as Case Crime No. 16 of 2006 under Sections 147, 148, 149 & 302 of IPC against Ibrahim, Farukh, Ayub, Sannaur, Kayoom, Shaukeen, Mussarat and two unknown persons. It is a case of honour killing where the accused-appellants have killed their own daughter/sister, namely, Soni aged about 16 years and brother of the informant, namely, Sarafat, aged about 22 years in their house as they were having love affair and accused – appellants were against their relationship.

40. Learned A.G.A. further submits that in the F.I.R., it has been stated that the accused – appellants had already threatened to deceased-Sarafat and his family members for dire consequences as both Sarafat and Soni were having love affair with each other. The informant had proposed marriage of his brother Sarafat (deceased) with daughter/sister of accused-appellants but on 5.2.2006 at about

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11.00 PM, the accused-appellants, having country made pistol, lathi, danda & ballam in their hands, came assaulting the girl and stating that she had illicit relationship with Sarafat and forcibly took Sarafat in their house. This incident was seen in the light of gas lamp and torch. The incident was not only seen by the informant (PW-1) but also by other eye-witnesses, namely, Anwar (PW-2) and other persons. Brother of the informant was killed by the accused-appellants. After lodging of the F.I.R. the police came and recovered two dead bodies from inside the house of accused-appellants. The Investigating Officer (PW-9) prepared the topography report (Naksha Nazri). It is mentioned in the Topography Report (Ex. Ka-19) dated 6.2.2006 that the dead body of Sarafat was found inside the room of the house of accused-appellants while the dead body of Soni was found on a cot in the varandah of the same house. The Topography Report was exhibited as Ex.Ka-19 and proved by the Investigating Officer in the Court. Clearly dead bodies were found inside the house of the accused-appellants, therefore, the burden of proof is on the accused-appellants under Section 106 of the Evidence Act.

41. After hearing the rival contentions and going through the material on record, we find that section 106 of the Evidence Act read as under :

“When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

42. In **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006)10 SCC 681**, the Apex Court has observed as under :

“12. 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 vs. Karnail Singh (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

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

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

43. In view of the evidence that has come on record, the accused persons had taken deceased-Sarafat to their house while beating her daughter/sister, Soni. Thereafter, the dead bodies of both the deceased were found inside the house of the accused-appellants. The topography report (Naksha Nazri) duly proved by PW-9, the Investigating Officer, also shows that the dead bodies were found inside the house of the accused-appellants. Therefore, the burden to show as to what happened after the accused persons taken the deceased to their house and subsequently the dead bodies of the deceased were recovered from the house of the appellants would shift on the accused-appellants as these facts were only within the

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knowledge of accused-appellants and they were failed to discharge the burden under Section 106 of the Evidence Act. Therefore, we are agree with the arguments raised by learned A.G.A. for the State.

44. In the postmortem report, external injuries found on person of deceased Soni are mentioned as “both hyoid bone fractured” and “both lungs were swollen like balloons”. In the post-mortem report, earlier it was mentioned that the cause of death was ‘Asphyxia as a result of strangulation’ but later on correction was made in the post-mortem report and it was mentioned that the cause of death was ‘Asphyxia as a result of ante mortem hanging’.

45. It is case where both hyoid bones were fractured which is a case of strangulation and not of hanging and thus opinion of the Doctor is not acceptable as further evidence has come that both Sarafat and Soni were killed even as per the depositions of PW-1 and PW-2.

46. Postmortem of deceased Sarafat was conducted and eight injuries were found on person of deceased Sarafat. 2 to 11 ribs were fractured and right lung was also lacerated due to the injuries. The death of the deceased was due to haemorrhage and shock. Panchayatnama/Inquest Report was prepared on 6.2.2006 at 3.30 AM (night) and in the Inquest Report it has been mentioned that the same was prepared in proper light and the dead body of deceased-Sarafat was found inside the room of accused-Ibrahim at 5.15 AM on 6.2.2016. The Panachayatnama/inquest report on the dead body of the deceased-Soni was prepared and in the inquest report it was mentioned that the deceased was murdered by throttling her neck and the dead body of deceased-Soni was found in the verandah of the house of the accused-appellant. The inquest report was prepared just after few hours of the alleged incident. Therefore, as per the inquest report of both the deceased, the dead bodies of deceased, Sarafat and

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Soni, were found inside the house of the accused-appellants and the same has been corroborated by the depositions of P.W.-1, P.W.-2 and P.W.-9 in their examination-in-chief and cross-examination.

47. On 17.08.2006 charges were framed under Sections 147, 302/149 against all the accused persons and the depositions of P.W.-1 (informant/brother of deceased-Sarafat) was recorded on 06.01.2009 and he has supported the prosecution case, he was cross examined by the defence on 12.01.2009, 21.01.2009, 27.01.2009 and has proved the contents of the F.I.R., Panchayatnama/inquest report, recovery of dead bodies as well as weapons used in the commission of crime. Thus, P.W.-1 has supported the prosecution case in his examination-in-chief as well as in the cross-examination but in what circumstances the then Presiding Officer again amended charged vide order dated 21.05.2010 under Sections 504 and 506 IPC while these sections were not mentioned in the charge-sheet dated 22.02.2006 and the learned AGA has further submitted that on 22.02.2006, the charge-sheet was submitted under Section 147, 148, 149 and 302 IPC only and charges were framed on 17.08.2006 under Sections 147, 302/149 IPC and examination-in-chief of P.W.-1 was conducted on 06.01.2009 and cross-examination was done on several dates thereafter. The last cross-examination was done on 27.01.2009 and P.W.-1 has supported the prosecution case and not turned hostile till then. On 21.05.2010, the charges were amended in lesser punishment sections i.e. Sections 504 and 506 IPC and the trial court permitted *de novo* trial as his examination-in-chief was to be recorded only with respect to Sections 504 and 506 IPC i.e. 'Intentional insult with intend to provoke breach of peace and criminal intimidation'. However, the learned trial court conducted *de novo* trial under all the Sections i.e. 147, 302/149, 504 and 506 IPC rather than only with respect to Sections 504 and 506 IPC. Thereafter, the informant have not denied the murder of the

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deceased but they tried to twist the story which is not reliable while P.W.-1 has already assigned motive on the appellants for committing murder of both the deceased as honour killing and only in his later examination-in-chief he has stated that some unknown person have committed the murder. P.W.-1 has not denied the totality of the incident as well as the presence of the accused persons on the spot. The Trial Court should not have permitted *de novo* trial in the present case.

48. In **Willi (William) Slaney Vs. State of Madhya Pradesh, 1955 SCC OnLine SC 34**, the Supreme Court has observed as under :

“24. Next, sections 226 and 227 show that errors in a charge, and even the total absence of a charge, do not vitiate a trial from the start so as to render it no trial at all as would the absence of sanction under section 197. This is evident because these errors and omissions can be remedied at any time during the course of the trial in the sessions Court (section 226) or even at the very end of the trial (section 227), and when this is done the trial need not proceed de novo but can go on from the stage at which the alteration was made provided neither side is prejudiced (section 228). That is conclusive to show that no error or omission in the charge, and not even a total absence of a charge, cuts at the root of the trial. The proceedings up to the stage of the alteration, which, as, we have seen, can be at the very end of the trial, are not vitiated unless there is prejudice; they are good despite these imperfections. That is impossible when the error is so vital as to cut at the root of the trial. It follows that errors in the charge, and even a total absence of a charge, are not placed in the non-curable class.”

49. In **Madhusudan and others vs. State of Madhya Pradesh, 2024 SCC OnLine SC 4035**, the Supreme Court has observed as under :

“21. The case materials nowhere indicate that the Court intended to alter the charge and it is unlikely that the altered charge was formally framed, read out, and explained to the accused. A Court may alter or add to any charge before judgment is pronounced but when charges are altered, opportunity must be given under Section 217 of the CrPC, both to the Prosecution and the defence, to recall or re-examine witnesses in reference to such altered charges. More importantly, in case, charges are altered by the Court, reasons for the same must be recorded in the judgment.”

emphasis added

50. In **Rajesh Yadav and anr. Vs. State of U.P., (2022) 12 SCC 200**, the Supreme Court has observed as under :

“21.The expression “hostile witness” does not find a place in the Indian Evidence Act. It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief examination could be termed as evidence. Such evidence would become complete after the cross examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court. It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion.”

51. Deposition of P.W.-1, both in examination-in-chief and cross-examination, cannot be discarded on the basis of his deposition made in the later examination-in-chief being conducted after amending of charges under Sections 504 and 506 IPC.

52. Examination-in-chief of P.W.-2, Anwar, was recorded on 04.03.2009 in which P.W.-2 has deposed as eye-witness account as mentioned in the F.I.R. and his cross-examination was done on the same day. In his cross-examination, he has also deposed that he has seen the incident in the light of gas lamp as well as torch and also deposed that both deceased Sarafat and Soni were killed by the accused-appellants. Thus, P.W.-2 has also supported the prosecution case by deposing on examination-in-chief as well as cross-examination. Later on, when the charges were amended, after a gap of

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four years of the previous charge, on 21.05.2010 P.W.-2, though he only has to depose in respect of amended Sections 504 and 506 of IPC, yet he has tried to deny the alleged incident. However, he has admitted that both the deceased were killed and has not denied the topography report/Naksha Nazari. Thus, depositions of P.W.-2 in later examination-in-chief recalling the testimony in respect of offence under Sections 147, 302/149 IPC and stating that there is no incident occurred as well as the accuse-appellants have not committed the murder of both the deceased, cannot be relied upon when the accused-appellants were acquitted under Sections 504 and 506 IPC.

53. Dr. S.P. Singh (P.W.-3), who has conducted post-mortem on the dead body of the deceased has proved the post-mortem report and mentioned all the injuries which were found on the person of deceased-Sarafat aged about 22 years. This witness has also proved all the eight injuries which were caused on person of deceased and also mentioned that there was fracture of 2 to 11 ribs and right lung and peritoneal were also found lacerated. This witness has also conducted post-mortem on the dead body of deceased Soni aged about 16 years and it was deposed that ligature mark were found on the neck and she died due to asphyxia. This witness has also deposed that the injuries found on the dead body were of 11 O' clock in the night of 05.02.2006.

54. There was no question from the side of the defence as to whether it is a case of strangulation or hanging. In the post-mortem report, both hyoid bone were fractured and the defence has admitted that both the deceased were murdered.

55. S.I. Resham Singh (PW-4) has proved the Panchayatnama and also deposed that the first information report was lodged in his presence in police station at 02:30 A.M. (night). Learned AGA further

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submitted that in a suggestion given by the defence, P.W.-4 deposed that the arrest and alleged recovery are not forged.

56. P.W.-5, namely, Constable Prem Singh has proved the first information report, the chick report as it was scribed by him and the F.I.R. was registered as Case Crime No. 16 of 2006 under Sections 147, 148, 149, 302 IPC (State vs. Ibrahim and 6 others). The F.I.R. was exhibited as Ex.Ka.17.

57. Prosecution has also produced P.W.-6, P.W.-7 and P.W.-8 as eye-witnesses, however, they became hostile. It is submitted that their testimony cannot be relied upon as they have not provided motive on any other person for committing the murder of the deceased, though, P.W.-1 and P.W.-2 have supported the prosecution case.

58. S.I. Devendra Kumar (PW-9/IO) has proved all the documents procured during investigation. He has also deposed that both the death bodies were found inside the house of the accused-appellants. This witness has also proved the topography report prepared by him.

59. In **Bhagwan Dass Vs. State of (N.C.T.) of Delhi, (2011) 6 SCC 396**, the Apex Court, showing concern over honour killing cases, has observed as under :

*“9. Many people feel that they are dishonoured by the behaviour of the young man/woman, who is related to them or belonging to their caste because he/she is marrying against their wish or having an affair with someone, and hence they take the law into their own hands and kill or physically assault such person or commit some other atrocities on them. We have held in **Lata Singh v. State of U.P. & Anr., 2006(3) RCR (Criminal) 870 : 2006(3) RCR (Civil) 738 : 2006(2) Apex Criminal 670 : (2006)5 SCC 475**, that this is wholly illegal. If someone is not happy with the behaviour of his daughter or other person, who is his relation or of his caste, the maximum he can do is to cut off social relations with her/him, but he cannot take the law into his own hands by committing violence or giving threats of violence.”*

60. The submission of learned counsel for the appellant that the conviction of the appellants is not sustainable as all the eye-witnesses

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i.e. PW-1, PW-2, PW-6, PW-7, PW-8 have been declared hostile cannot be sustained in view of the fact that both PW-1 and PW-2 have supported the prosecution case as well as version of the First Information Report in their examination-in-chief as well as the cross-examination done on several dates prior to the recall of witnesses which was after a gap of about one year when charges were added under Sections 504 & 506 of IPC and *de novo* trial was permitted. The scope of the Trial Court was limited to recall the witness only to depose so far as added charges under Sections 504 & 506 of IPC are concerned. We found force in the argument of learned A.G.A. in view of the decision in **Willi (William) Slaney (Supra)** that trial need not proceed *de novo* but can go on from the stage at which the alteration was made. We also find support from the decision in **Bhagwan Das (Supra)** wherein the Apex Court has observed as under :

*"No doubt Smt. Dhillo Devi was declared hostile by the prosecution as she resiled from her earlier statement to the E police. However, as observed in **State: vs. Ram Prasad Mishra & Anr. : ,***

"The evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but can be subjected to close scrutiny and the F portion of the evidence which is consistent with the case of the prosecution or defence may be accepted."

*Similarly in **Sheikh Zakir vs. State of Bihar AIR 1983 SC 911** this Court held :*

"It is not quite strange that some witnesses do turn hostile but that by itself would not prevent a court from finding an accused guilty if there is otherwise acceptable evidence in support of the conviction."

61. It is established law that a man can tell a lie but circumstances cannot. Even the witnesses who later on turned hostile have admitted that both the deceased person were killed. Though they have deposed that some unknown persons had killed the deceased but they have not attributed any motive on those unknown persons for killing the deceased. Whereas, the accused appellants had sufficient motive as

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they felt dishonoured because of the love affair of their daughter/sister, deceased-Soni with deceased-Sarafat and, therefore, they killed both of them.

62. In view of the above, we are of the view that once the examination-in-chief as well as cross examination of the witnesses are already recorded and their evidence is complete, thereafter, if charges are altered/amended/added, the Trial Court should restrain itself from permitting the *de novo* trial so as to enable the said witnesses to discard their earlier depositions. In such circumstances, the Trial Court should permit the witnesses to depose only with respect to the altered/amended/added charges.

63. In view of the above, we concur with the findings of the learned Additional Sessions Judge in holding the accused-appellants guilty under Sections 147, 302/149 of IPC.

64. All these appeals being devoid of merits are **dismissed**. The impugned judgment of conviction and order of sentence are confirmed.

65. The accused-appellants, Ibrahim, Kayoom and Farukh are on bail. They shall be taken into custody forthwith to serve the sentence. So far as accused-appellants, Sannuar, Shaukeen, Mussarat & Ayub are concerned, they are in jail, hence, no order is required regarding them.

66. Record of proceedings of the Trial Court along with a copy of this judgment be transmitted to the Trial Court within two weeks.

Order Date :- 7.4.2025

DKS