

BEFORE

THE HONOURABLE PRINCIPAL DISTRICT & SESSIONS JUDGE

BANGALORE RURAL DISTRICT, BANGALORE

2015

TRIAL UNDER SECTION 177 r/w 209 OF CRIMINAL PROCEDURE CODE

IN THE MATTER OF:

STATE OF KARNATAKA - - - - - - PROSECUTION

V.

UNKNOWN - - - - - - - DEFENDANT

WRITTEN SUBMISSION ON BEHALF OF THE DEFENDANT

TABLE OF CONTENTS

1.	INDEX OF ABBREVIATIONS	-	-	-	-	-	-	II
2.	INDEX OF AUTHORITIES	-	-	-	-	-	-	IV
3.	STATEMENT OF JURISDICTION	-	-	-	-	-	-	VII
4.	STATEMENT OF FACTS	-	-	-	-	-	-	VIII
5.	QUESTIONS PRESENTED	-	-	-	-	-	-	X
6.	SUMMARY OF ARGUMENTS	-	-	-	-	-	-	XI
7.	PLEADINGS AND AUTHORITIES	-	-	-	-	-	-	1
I.	WHETHER PW1, PW2 AND PW3 ARE RELIABLE WITNESS.	-	-					1
	A. THERE IS NO DIRECT EVIDENCE IN PRESENT CASE.							
	B. TESTIMONY OF PW1 IS NOT RELIABLE.							
	C. TESTIMONIES OF PW2 AND PW3 ARE NOT RELIABLE.							
II.	WHETHER SEIZURE MAHAZAR IS VALID.	-	-	-	-			3
III.	WHETHER THE PROSECUTION HAS BEEN ABLE TO ESTABLISH THE CASE BEYOND REASONABLE DOUBT.	-	-	-	-	-	-	4
	A. THERE ARE SERIOUS CONTRADICTIONS BETWEEN PROSECUTION CASE AND TESTIMONIES OF WITNESSES.							
	B. PROSECUTION HAS NOT ESTABLISHED ALLEGED MOTIVE OF THE ACCUSED.							
8.	PRAYER	-	-	-	-	-	-	XII

INDEX OF ABBREVIATIONS

¶	Paragraph
&	And
A./App.	Appeal
AIR	All India Reporter
A.P.	Andhra Pradesh
All.	Allahabad
Anr.	Another
Art.	Article
Bom.	Bombay
CBI	Central Bureau of Investigation
CrPC	Criminal Procedure Code
Crl.	Criminal
Dr.	Doctor
DRJ	Dispute Resolution Journal
Edn. / Ed.	Edition / Editor
FIR	First Information Report
Guj.	Gujarat
Govt.	Government
Hon`ble	Honourable
HP	Himachal Pradesh

I.L.R	Indian Law Reporter
Id.	Ibid
J & K	Jammu & Kashmir
Jhar.	Jharkhand
L.J.	Law Journal
Mr.	Mister
Mad.	Madras
MP	Madhya Pradesh
No.	Number
HC	High Court
Ors.	Others
P.C.	Privy Council
Pvt. Ltd.	Private Limited
R.	Reporter
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SC	Supreme Court
Sd/	Signed
St.	State
U.P.	Uttar Pradesh
UOI	Union Of India
V.	Versus

INDEX OF AUTHORITIES

CASES REFERRED:-

SUPREME COURT

1. Anil Kumar Singh v. State of Bihar, (2003) 9 SCC 67.
2. Babuli v. State of Orissa, AIR 1974 SC 775.
3. Bhagwan Singh & Ors. v. State of MP, AIR 2003 SC 1088.
4. Ganga Prasad v. State of UP, (1987) 2 SCC 232.
5. Krishna Ghosh v. State of West Bengal, 2009 Cri LJ 2820 (SC).
6. Kiran Bedi & Ors v. Committee of Inquiry & Anr., (1989) 1 SCC 494.
7. Liyakat v. State of Uttarakhand, AIR 2008 SC 2819.
8. Mahendra Pratap Singh v. State of UP, (2009) 11 SCC 334.
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11. Reddy Sampath Kumar v. State of AP, 2005 Cri LJ 4131.
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16. State of M.P. through CBI & Ors. v. Paltan Mallah & Ors., 2005 Cri LJ 918.
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18. Wakkar v. State of UP, (2011) 3 SCC 306.

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1. Basant Agarwaal v. State, (2006) 1 Crimes 115 (MP).
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7. State of HP v. Roshan Lal, AIR 1989 HP 67.
8. Sudama Singh v. State of Bihar, 2007 Cri LJ (NOC) 765 (Jhar.)
9. Sudir Engineering Company v. Nitco Roadways Ltd., 1995 (34) DRJ 86.

STATUTES AND OTHER AUTHORITIES:-

1. Indian Penal Code, 1860
2. Code of Criminal Procedure, 1973
3. Indian Evidence Act, 1872

JOURNALS REFERRED:-

1. All India Reporters
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3. John Woodroffe, Commentaries On Code Of Criminal Procedure, 1972 (Law Publishers (India) Pvt. Ltd., 2009)

4. Justice C.K. Thakkar, Encyclopedia Law Lexicon, (Ashoka Law House, New Delhi, 2010)
5. Justice GP Singh, Principles Of Statutory Interpretation (13th Ed., Lexis Nexis Butterworths Wadhwa, Nagpur)
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7. K.D. Gaur, Commentary on the Indian Penal Code (2nd Ed., Universal Law Publishing Co Pvt Ltd., 2013)
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12. Underhill`s Criminal Evidence, Fifth Ed. Vol. I, page. 664.

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1. <http://www.scconline.com> (last visited on 15th January, 2016).
2. <http://www.manupatra.com> (last visited on 15th January, 2016).
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STATEMENT OF JURISDICTION

The counsels representing the prosecution have endorsed their pleadings before the Hon`ble Principal District & Sessions Court, Bangalore, under Section 177<sup>1</sup> r/w 209<sup>2</sup> of the Code of Criminal Procedure, 1973 in which the Hon`ble Court has the jurisdiction.

The present memorandum sets forth the facts, contentions and arguments.

¹ **177. Ordinary place of inquiry and trial**—Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

² **209. Commitment of case to Court of Session when offence is triable exclusively by it**—When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—

(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

STATEMENTS OF FACTS

For the sake of brevity and convenience of the Hon`ble Court the facts of the present case are summarized as follows:

RELEVANT INCIDENT

On 26.07.2008 at about 1:15 am, the accused committed murder of his wife, Sheela, in his house in Varthur by stabbing her with a knife, when she cried out for help, both the children got up and saw that the accused was there and that their mother had already been stabbed. On being stabbed, the deceased started moving toward the front door but she could not go out of the house.

INFORMATION TO POLICE

The children rushed to the house of their maternal uncle, Shankara, who is the complainant and resides in the immediate vicinity of the house of the accused. However, the children also stated in their testimony that one of them had gone directly to the beat police stationed around 500 metres away from their house and alerted them. The complainant, along with other relatives, came to the scene and saw the deceased lying in a pool of blood in front of the neighbour's house. The beat police were also present at the scene by the time the complainant came there. The deceased was shifted by the complainant and the police in an injured condition to the hospital, where she died at 6:20 am while undergoing treatment.

FIR AND ARREST

The statement of Shankara was recorded by the police at the hospital on the basis of which the first information report was prepared at 5:30 am. The accused was arrested and investigation was conducted by the police into the said incident. The police completed investigation and submitted the charge sheet with 42 witnesses.

POLICE INVESTIGATION

MO6 and MO7 which are two knives recovered from the house of the accused. Prosecution introduced these as the murder weapon. At the time the police seized MO6 and MO7 from the scene of the crime, a seizure mahazar Ex. P4 was drawn up. One of the witnesses to the seizure, PW11, who also signed the mahazar, on his cross examination, states that he did not read the contents of the mahazar. He also stated that he was illiterate and only knew how to write his name (signature).

RECORDING OF EVIDENCE

Shankara was examined as PW1 and stated that the accused had stabbed the deceased thereby killing her. Shankara further states that after the death of his wife, her two children are living with him and his family. He said that on the night of the murder, the two children came running to his house at around 1:30 am and said that their mother had been murdered. The prosecution examined the two children as PW2 and PW3 who stated that their father and mother used to live harmoniously. However, the witnesses also stated that the accused murdered the victim.

PW7 is the driver of the police jeep which was parked at the beat police check post 500 meters away from the scene of the crime. He testifies that one child aged around 6 years came running to him on the night of the murder. He said that the child was crying and managed to tell him to come to his house because his mother had been murdered. Thereafter, PW7 immediately left with the child to reach the scene of the crime, where some people had already assembled. He states that the murder victim was lying in a pool of blood in front of a house. Thereafter, he immediately contacted the jurisdictional police station, Varthur and informed the SHO on duty of the occurrence of a cognisable offence within the police station limits. This was around 1:45 am.

PW8 is the SHO on duty at the time the murder was committed. He admits to having received the wireless communication from PW7 and states that he immediately dispatched 2 police constables and another police jeep to go to the murder scene and guard the area. Thereafter, at around 4:30 am, he himself proceeded to the hospital to record the dying declaration of the victim and the complaint.

PW12 is the treating doctor at the hospital who treated the victim, He testifies that the victim was in a fit condition to make a statement till 12 around 4 am and after that she lost consciousness until she died at around 6:20 am. He states that the cause of the death was excessive haemorrhage and trauma due to lacerated cuts which had penetrated portions of the colon, stomach and liver of the victim. His version is verified by the post mortem report, Ex P3.

FINAL ARGUMENTS

The present case is now before the Hon`ble Principal District & Sessions Judge, Bangalore Rural District, Bangalore for the Final Arguments.

QUESTIONS PRESENTED

The following questions are presented before this Hon`ble court for adjudication in the instant matter:

- I. WHETHER PW1, PW2 AND PW3 ARE RELIABLE WITNESSES.**
- II. WHETHER SEIZURE MAHAZAR IS VALID.**
- III. WHETHER THE PROSECUTION HAS BEEN ABLE TO ESTABLISH THE CASE BEYOND REASONABLE DOUBT.**

SUMMARY OF ARGUMENTS

I. PW1, PW2 AND PW3 ARE NOT RELIABLE WITNESS.

Firstly, PW1 is not a reliable witness because he was never present when murder was committed.

Secondly, PW 2 and PW3 are not reliable witness as they were tutored by PW1.

Thirdly, PW 2 and PW3 were not admitted oath at the time of recording of evidences which establish that judge was having doubt in the credibility of child witnesses.

II. SEIZURE MAHAZAR IS NOT VALID.

Firstly, injuries caused to the deceased were the result of a blunt weapon.

Secondly, seizure mahazar is not valid as the signatory to it was unaware about the contents of it and was not able to prove the contents and whatever happened at search location is irrelevant.

III. PROSECUTION HAS BEEN ABLE TO ESTABLISH THE CASE BEYOND REASONABLE DOUBT.

Firstly, prosecution has not been able to establish its case beyond reasonable doubt as there are serious contradictions between prosecution story and testimonies of witnesses.

Secondly, prosecution was also not able to establish the alleged motive of the accused.

Thirdly, accused is not liable to give any explanation under section 313 of CrPC, 1973 because prosecution could not establish its case.

PLEADINGS AND AUTHORITIES

I. PW1, PW2 AND PW3 ARE NOT RELIABLE WITNESSES.

1. It is humbly submitted before this Hon'ble Court that PW1, PW2 and PW3 are not reliable witnesses. There is no eye witness in this case which is very important in establishing the case prima facie.³ Judge himself omitted the oath in examination of PW2 and PW3 which means credibility of such witnesses is dubious. Testimony of PW1 against the accused is also not reliable because he was never present at the murder site and was informed about the death of his sister by PW3. Finally, testimony of PW2 and PW3 is not reliable because they were tutored by PW1. This argument is threefold:

A. THERE IS NO DIRECT EVIDENCE IN THE PRESENT CASE.

2. As per the story of the prosecution when the children got up, they saw that the accused was in the room and their mother had already been stabbed. It means children never saw accused assaulting the deceased, however, in their testimony instead of narrating the incident they had stated that their father murdered their mother which was never seen by them. It is significant to mention that a witness has to state only those facts which he has seen. A witness can't infer anything from the circumstances, such power lies only with court.⁴ Prosecution in its story nowhere established that Children saw accused assaulting the deceased. Thus, Prosecution has failed to produce any direct evidence.

B. TESTIMONY OF PW1 IS NOT RELIABLE.

3. PW1 i.e. maternal uncle can't be believed and his testimony against accused is liable to be rejected. To be a reliable witness an individual has to prove his presence on the crime scene⁵ and that he had seen the incident. However, in present case PW1 was never present at the murder site. He was informed by PW3 about death of his sister, on the basis of which he presumed that accused is the murderer of victim. It is well settled legal principle that suspicion, however strong it may be cannot take the place of proof.⁶ Therefore, testimony of PW1 is not reliable in present case and should be rejected.

³Dushyant v. State of Gujarat, CR.MA/15361/2011.

⁴Babuli v. State of Orissa, AIR 1974 SC 775.

⁵Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1.

⁶Anil Kumar Singh v. State of Bihar, (2003) 9 SCC 67; *See also*: Reddy Sampath Kumar v. State of A.P., 2005 Cri LJ 4131; Basant Agarwal v. State, (2006) 1 Crimes 115 (MP).

C. TESTIMONIES OF PW2 AND PW3 ARE NOT RELIABLE.

4. Both the children PW2 and PW3 have specifically mentioned in their testimony that accused had murdered the victim. It is questionable that how they came to this conclusion that accused murdered the deceased, despite of the fact that they had never seen accused committing the murder. As per the story of the prosecution mother had been already stabbed when children awake from their sleep. It means that children could not have seen accused assaulting the victim but in their testimony, they have named accused as murderer of victim.
5. Aforementioned proposition can be affirmed through two instances which occurred soon after the death. Firstly, PW2 soon after the death of the victim ran to PW7 and stated that his mother has been murdered. Secondly, PW3 soon after the death of the victim ran to PW1 and he also stated only that his mother has been murdered. Both of them did not take the name of their father as murderer to PW7 and PW1 respectively. Both the children stated the same thing at the same time at different places soon after the death of victim which means whatever both had seen they had only stated that thing. However, at the time of recording of evidences, both the children narrated entirely different story from what they have stated to PW1 and PW7 and stated that accused had murdered the victim. In reality PW2 & PW3 had never seen accused at the crime scene. They had seen only the stabbed body of the mother. This serious variance in statements of PW2 & PW3 leads to this prudent conclusion that both the children were tutored by PW1 who himself is untrustworthy witness in this case.
6. The evidence of child is required to be evaluated carefully because he is an easy prey to tutoring.⁷ In the present case, it is significant to mention that since 2 years children were living with PW1 who was taking care of all their needs. Since PW2 and PW3 are children of tender age, there is strong possibility of their tutoring by PW1. It is settled proposition of law that a child must explain the relevant events of the crime without improvements or embellishments, and the same should inspire confidence of the Court then only such child witness can be relied.⁸
7. Furthermore, Judge had also doubt regarding the credibility of the children that is why he did not administer oath to both the children. It is pertinent to mention here that omission of oath directly affects credibility of the child witness.⁹
8. It is also important to mention that in the present case children were administered the oath at the time of cross examination. However, administration of oath at the time of cross

⁷Bhagwan Singh & Ors.v. State of MP, AIR 2003 SC 1088.

⁸State of MP v. Ramesh & Anr., (2011) 4 SCC 786.

⁹Rameshwar v. State of Rajasthan, AIR 1952 SC 54; *See also*: Raj Kishor Rai v. State of Bihar, Cri. App. (SJ) No. 128 of 2011, MANU/BH/0038/2014.

examination is only relevant to extract truth or false from the mouth of the witness and nothing more than that.¹⁰ This oath is different from the oath which is administered at the time of examination in chief because at the time of examination in chief, it is expected from the witness that he would narrate the scene without any change. However, in cross examination, witness is required to give true answers regarding his own testimony and no question can be asked beyond his testimony. Thus, administration of oath at the time of cross examination is irrelevant to determine credibility of the child witness.

9. Hence, serious variances in the statements of the child witnesses and the lack of faith by judge in them clearly establish that both children were tutored.

II. SEIZURE MAHAZAR IS NOT VALID.

10. In the present case MO6 & MO7 which are two knives are introduced by prosecution as murder weapons. These weapons do not have connection to the injuries caused i.e., lacerated cuts to the deceased as affirmed by Ex. 4. Now, it has to be seen that what kind of weapons can cause lacerated wounds.
11. Medical Classification of wound says,¹¹-
 - Blunt forces injuries- can be abrasions, contusions or lacerations.
 - Injuries caused by sharp cutting weapons are incised wounds.
 - Injuries caused by piercing weapons are called stab wounds. There are incised stab wounds which are caused by sharp pointed weapons like dagger or pen knife. Lacerated stab wounds are caused by blunt pointed weapons like cycle spokes, umbrella ribs and screw drivers.
12. In *Ganga Prasad v. State of UP*¹², the Supreme Court held, “*Injuries on the nature of lacerated wound could not be caused by an impact of a sharp-edged weapon. Such injuries are only possible by the use of a hard and blunt object.*”
13. Thus, the above facts and case law establish that the injuries caused to the deceased were the result of using a blunt weapon or the blunt side of the sharp weapon and not by MO6 & MO7 which are two knives.
14. Furthermore, it is submitted that circumstances of the present case indicate that well settled principles regarding proof of seizure memo are not corresponded, thus, renders it invalid in eyes of law.

¹⁰Kiran Bedi & Ors v. Committee Of Inquiry & Anr., (1989) 1 SCC 494.

¹¹Modi Jaising, *Medical Jurisprudence And Toxicology*, 23rd Ed., Lexis Nexis Butterworths, 2006.

¹²(1987) 2 SCC 232.

15. As per the settled position of the law it is required that the contents of the seizure memo have to be proved by the person signatory to it.¹³ Section 61 of the Evidence Act also states that contents of document should be proved by way of primary evidence or by way of secondary evidence. Thus, seizure mahazar has to be proved through the signatory and whatever happened at search location is irrelevant unless it is affirmed through seizure mahazar.
16. As per the above principle laid down by Court it is to be ensured that the facts of the panchnama or seizure memo are proved by the panch himself. However, that has not happened in the instant matter.
17. In the present case, it is to be considered that PW11 who is a witness and signatory to seizure memo is an illiterate person and he informed the court that he signed the seizure memo without reading it. Consequently, it can be inferred that PW11 has not proved mahazar as he is totally unaware of the content of seizure memo prepared by the police.
18. Therefore, it can be safely concluded that the seizure mahazar in the present case is invalid and not deserved to be considered by court for deciding present matter. Thus, it raises a doubt on the recovery of weapons from the house of the accused.

III. PROSECUTION HAS NOT BEEN ABLE TO ESTABLISH THE CASE BEYOND REASONABLE DOUBT.

19. It is humbly submitted that prosecution has not been able to establish their case beyond reasonable doubt. There are serious contradictions between the prosecution case and testimonies by the witnesses. In addition to this, prosecution has completely failed to establish the alleged motive behind the incident in question which is material in the present case because prosecution story is wholly based upon the chain of evidences.

This argument is threefold:

A. THERE ARE SERIOUS CONTRADICTIONS BETWEEN PROSECUTION CASE AND TESTIMONIES OF WITNESSES.

20. It is a settled position of law that the circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from these circumstances.¹⁴
21. In the present case, the principal fact is the presence of the accused at the crime scene which is disputable because PW2 & PW3 have never stated his name either to PW1 or PW7 while narrating the incident. Now, there is a need to connect prosecution story to the principal fact.

¹³State of Himachal Pradesh v. Roshan Lal, AIR 1989 HP 67; See also: Sudir Engineering Company v. Nitco Roadways Ltd., 1995 (34) DRJ 86.

¹⁴Krishna Ghosh v. State of West Bengal, 2009 Cri LJ 2820 (SC); See also: Mujeeb & Anr. v. State of Kerala, (2000) 10 SCC 315; and State of UP v. Satish, AIR 2005 SC 1000.

22. As per prosecution case location of the victim's body is ambiguous. Prosecution has stated that when the victim was stabbed she started moving towards the front door but she could not get out of the house. However, the body of the victim was found by PW1 and the police in front of neighbour's house from where she was shifted to the hospital. Since, the body is found in front of neighbour's house, therefore, there is high possibility that the incident in question occurred outside the accused house.
23. Furthermore, prosecution has also stated in its case that on the night of the incident both PW2 & PW3 rushed to the house of PW1, who resides in the immediate vicinity of the house of the accused. This part of the story of prosecution is contradictory to the testimonies of PW2, PW3 & PW7. Both PW2 & PW3 have stated in their testimony that one of them had gone directly to the beat police stationed around 500 meters away i.e. to PW7. PW7 has also stated in his testimony that one child aged around 6 years came to him on the night of the incident and he was taken to the crime scene by PW2. PW1 on the other hand has stated in his testimony that both PW2 & PW3 came running to his house on the night of the incident, which is contrary to establish facts, thus, raises serious doubt on the prosecution story. In such circumstances, witnesses may not inspire confidence and it may create a reasonable doubt favoring the accused.¹⁵
24. It's the duty of the prosecution to provide reliable and truthful evidences to confirm accused involvement in the matter as it is a settled position of law that findings based on conjectures and surmises which does not complete the chain of evidences would lead to acquittal.¹⁶
25. Therefore, in the present case, it is a prudent conclusion that there are serious contradictions between prosecution case and witnesses testimonies which should be a ground for disbelieving and discrediting their evidences.

B. PROSECUTION HAS NOT ESTABLISHED ALLEGED MOTIVE OF THE ACCUSED.

26. It is a settled position of law that motive has to be established by the prosecution in cases wherein the guilt of the accused is dependent upon the chain of evidences.¹⁷ Proving of motive is necessary and just mentioning motive by itself is not sufficient to prove the guilt.¹⁸ In the present case, prosecution has alleged that the motive behind the crime was that the accused doubted chastity of his wife. However, nowhere prosecution has been able to

¹⁵Mahendra Pratap Singh v. State of UP (2009) 11 SCC 334; *See also*: State of Maharashtra v. Shriram Gangaram Ghoderao, 1997 Bom.CR (Cri) (A) 549.

¹⁶Sudama Singh v. State of Bihar, 2007 Cri LJ (NOC) 765; *See also*: Liyakat v. State of Uttarakhand, AIR 2008 SC 2819; State of U.P. v. Desh Raj, AIR 2006 SC 1712; Ramesh Chand v. State of U.P., 1985 Cri. LJ 530.

¹⁷Wakkar v. State of UP, (2011) 3 SCC 306; *See also*: Tomaso Bruno v. State of UP, Cr. A. No. 142 of 2015.

¹⁸State of MP through CBI & Ors.v. Paltan Mallah & Ors., 2005 Cri LJ 918.

establish the alleged motive. On the contrary, PW2 & PW3 have stated in their testimony that their parents used to live harmoniously.

27. Therefore, it is safe to conclude that the motive alleged by the prosecution is fabricated and holds no ground.

C. DENIAL TO GIVE ANY EXPLANATION REGARDING OFFENCE ALLEGED AGAINST HIM UNDER SECTION 313 OF Cr.P.C. DOES NOT LEAD TO ANY CONCLUSION.

28. In the present case, denial of accused to give any explanation regarding the incriminating circumstances which were put before him does not lead to any conclusion because as per the position of law first of all prosecution has to prove its case, then only if accused fails to give explanation, such failure can be used as additional link in the chain of evidences.¹⁹

However, in present case accused was examined under section 313 of CrPC only after recording of the evidences and no arguments were made. It means at the time of examination under section 313 of CrPC incriminating circumstances were never proved by the prosecution. It is established position of law that mere silence on part of a person or absence of explanation shall not lead to the inference that the person is guilty of offence.²⁰ Therefore, his refusal to give explanation at the time of examination has no adverse effect on the case of the defence.

29. Hence, PW1, PW2 & PW3 are not reliable witnesses, seizure mahazar is not valid and prosecution has not been able to establish the case beyond reasonable doubt.

¹⁹Neel Kumar v. State of Haryana, (2012) 5 SCC 766.

²⁰Prakash Sen v. The State, 1988 Cr LJ 1275.

PRAYER FOR RELIEF

Wherefore, in light of the facts stated, issues raised, authorities cited & arguments advanced may this Hon`ble Court be pleased to *adjudge & declare that*:

1. PW1, PW2 and PW3 are not reliable.
2. Seizure Mahazar is invalid.
3. Prosecution is failed to establish the case beyond reasonable doubt.
4. Accused is granted acquittal.

AND

Pass any other order that it may deem fit in the interest of justice, equity & good conscience.

All of which is most humbly prayed.

On behalf of

ACCUSED

Counsel for the Defendant

Sd/