



2026:CGHC:17781-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 219 of 2024**

1 - Devendra Kumar Singh S/o Shri Laldev Singh Aged About 25 Years R/o Village Bargawa Tilwaridand, Police Station Darima, District Surguja (C.G.)

... Appellant**Versus**

1 - State of Chhattisgarh Through Station In Charge, Police Station Darima, District Surguja (C.G.)

... Respondent(s)

For Appellant	:	Shri K. Rohan, Advocate.
For Respondent	:	Shri Shailendra Sharma, Panel Lawyer.

Hon'ble Shri Justice Ramesh Sinha, CJ**Hon'ble Shri Justice Ravindra Kumar Agrawal, J****Judgment on Board****20.04.2026****Per, Ravindra Kumar Agrawal, J.**

- 1 Though the matter was listed for consideration on application for suspension of sentence and grant of bail, however, with the consent of the parties the appeal is being finally heard as the appellant is in jail since 06.07.2021.
- 2 The present appeal under Section 374 (2) CrPC has been filed by the appellant against the impugned judgment of conviction and order of sentence dated 23.12.2023 passed by the Vth Additional Sessions Judge, Ambikapur, in Sessions Case No.202/2021 whereby the appellant has been convicted for the offence under Section 302 IPC



and sentenced to undergo Rigorous Imprisonment for life with fine of Rs.500/-, upon failure to pay which, additional RI for one month.

- 3** Brief facts of the case are that, on 06.07.2021 at about 07:30 AM, the complainant Laldev Singh, PW-4, father of the appellant, gave a mereg intimation to the police that in the morning when he was proceeding to his new house, on the way, his neighbor Dhaneshwar Bargah informed him that his son Devendra (appellant) committed murder of his wife Radha by causing injury by an Axe and her dead body is lying in the house. The police recorded mereg intimation Ex.P/8 and based on said mereg intimation an FIR Ex.P/9 was registered against the appellant for the offence under Section 302 IPC. Inquest Ex.P/2 of the deadbody of the deceased was prepared in presence of witnesses and then the dead body was sent for its postmortem to Primary Heath Centre, Darima where PW-7, Dr. Janeshwar Singh conducted postmortem of the dead body and gave his report Ex.P/12. While conducting the postmortem of the dead body of deceased, he noticed three incised wound over occipital region and multiple incised wound over Neck at Back and all the structures were cut off. He opined the cause of death is hemorrhagic shock due to incised wound in Neck leading to cardio respiratory arrest and it is homicidal in nature. Spot map Ex.P/7 was prepared by the Patwari and P/10 by the Police. Bloodstained and plain soil was seized from the spot vide seizure memo Ex.P/4. The appellant was arrested on 06.07.2021 and his memorandum statement Ex.P/3 was recorded. Based on his memorandum statement, one Axe and bloodstained Shirt was seized from appellant vide seizure memo Ex.P/5. Plain soil as well as bloodstained soil were seized from spot,



Axe and Shirt seized from appellant were sent for its FSL to regional FSL, Ambikapur, from where report Ex.P/18 was received, according to which, human blood was found on the bloodstained soil, Axe and Shirt seized from the appellant.

- 4 The statement under Section 161 CrPC of the witnesses were recorded. After completion of usual investigation, charge sheet was filed against the appellant for the offence under Section 302 IPC before the Judicial Magistrate First Class Ambikapur. The case was committed to the Court of Sessions Judge Ambikapur from where it has been transferred to the trial Court for its trial.
- 5 The trial Court has framed charge against the appellant for the offence under Section 302. The appellant abjured his guilt and claimed trial.
- 6 In order to establish charge against the appellant, the prosecution has examined as many as 8 witnesses. Statement under Section 313 CrPC of the appellant has also been recorded in which he denied the circumstances appears against him, plead innocence and have submitted that he is innocent and falsely implicated in the offence. He also stated that on the date of incident he had gone to village Sargawan to his elder father Tarkeshwar Singh's house.
- 7 After appreciation of oral as well as documentary evidence led by the prosecution, the trial Court has convicted the appellant and sentenced him as mentioned in opening para of this judgment. Hence this appeal.
- 8 Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material inconsistencies in the evidence of witnesses which cannot be made basis to convict him for the alleged offence. At the time of



incident, the appellant was not in his house and went to village Sargawan to his elder father's house. Though the deceased was wife of the appellant, but presumption under Section 106 of the Evidence Act cannot be drawn against him as dead body was found in an open place i.e. outside the house and there is no evidence available on record that accused was present in the house at the relevant point of time. There is no eyewitness to the incident. The appellant has explained that he had gone to the house of elder father at village Sargawan. The prosecution could not establish and discharge his primary burden to prove the presence of appellant and deceased together in the house in the night. The case of prosecution is based on circumstantial evidence and there are various components missing to complete the chain. The FSL report itself is not conclusive as there is no report regarding matching of blood group with the blood found on the cloths of appellant as well as blood found on spot. Therefore, the evidence produced by the prosecution is not sufficient to hold him guilty and he is entitled for acquittal.

- 9 On the other hand, the counsel for the State opposes the submissions made by the counsel for the appellant and have submitted that there is ample evidence against the appellant to convict him for the alleged offence, but for minor omissions or contradictions, the evidence of victim as well as other witnesses are fully reliable and conviction can be made on the basis of evidence came on record. It is not in dispute that appellant is the Husband of deceased and from the spot map it has been proved by the prosecution that dead body of the deceased was found adjacent to the house within the premises of his house. Number



of injuries have been found on the body of deceased which were caused by Axe which was seized from appellant and human blood was found on the said Axe and shirt of appellant for which there is no explanation in his 313 CrPC statement. The accused took the defence of plea of Alibi that he had gone to the house of his elder father at village Sargawan, however, he failed to establish his defence by examining any of the witnesses or producing any material which proves that he was not present in his house, but went somewhere else. From the evidence of PW-4, the father of appellant, it further transpires that the accused and deceased were residing together in the same house and on the date of incident also they were together and his father PW-4 went another house in the night after having diner and in the next morning the deceased was found dead having injuries on her body. There is no explanation as to when and where the appellant had gone leaving the company of deceased. Therefore, there is ample material against the appellant to draw a presumption that he committed the murder of deceased as provided under Section 106 of the Evidence Act. The judgment passed by the trial court is based on proper appreciation of evidence which does not suffer from any infirmity and the appeal is liable to be dismissed.

- 10** We have heard the counsel for the parties and perused the records of the case.
- 11** The homicidal death of the deceased has been proved by the prosecution by the evidence of PW-4, Laldev Singh, the father of appellant, who lodged the merg intimation to the police; evidence of witness to inquest i.e. PW-4, Laldev Singh, PW-1, Dhaneshwar, PW-2,



Ghauru, who deposed that they saw the dead body of deceased Radha who received number of injuries on her body. Further, PW-7, Dr. Janeshwar Singh, who conducted the postmortem of the dead body has proved the homicidal death of the deceased. He stated in his evidence that he conducted the postmortem of the dead body of the deceased on 06.07.2021 and found three incised wound on occipital region of the deceased, multiple incised wound over neck at back with all structures cut off and opined the mode of death is hemorrhagic shock due to incised wound in Neck leading to cardio respiratory arrest which is homicidal in nature. In cross examination, the suggestion given by the defence that deceased received injuries on her body by falling on a sharp edged stone, but he denied the suggestion and stated that in such a situation only one or two injuries could be possible, however, the deceased received multiple injuries on her Head and Neck.

- 12** From the evidence of doctor, the defence could not extract any material so that the nature of death of deceased could be disbelieved that she was not died due to homicidal death, but for any other reason. Thus, the findings recorded by the trial court that death of deceased is homicidal in nature is hereby affirmed.
- 13** So far as involvement of appellant in the offence in question is concerned, the case of prosecution is based on circumstantial evidence. The deceased is the wife of appellant and PW-4 is the father of appellant who lodged merger intimation. In merger intimation Ex.P/8 the father of appellant informed the police that dead body of deceased is lying in the veranda of the house having injuries on her body whereas,



in his deposition he has stated that on the date of incident when he was proceeding to the house of appellant who was residing in a new house, on the way, Dhaneshwar accompanied him and after some distance they found the dead body of deceased and thereafter he took the dead body to his new house and then he lodged the report. When this witness have not supported the prosecution case, a leading question was asked to him to which he replied that the appellant bring back the deceased from her parent's house with the condition that they will reside together in a separate house and thereafter they were residing at new house at village Bargawa Tilwaridand. The place where the dead body of deceased was lying, blood was spread up there.

In cross examination, he admitted that the dead body of deceased was lying in between his new house and old house and distance between the two is about 1 KM.

From perusal of spot map Ex.P/11 prepared by the police it clearly reveals that the place-A shown in the map is the place where the dead body was lying which is adjacent to the room. The same position was also there in the map Ex.P/7 prepared by the Patwari. It is nowhere mentioned that the dead body of the deceased was found at a distance or PW-4 Laldev took the dead body from distance up to the house of the appellant. Laldev, PW-4, is the witness in both these spot maps. Therefore, his evidence that the dead body was found in between old and new house is belied and it is found that dead body was found in the varanda of the house of appellant.

- 14** PW-1, Dhaneshwar is the person who accompanied PW-4, Laldev while going to the house of appellant. He stated same version as PW-



4, however, his evidence is also not supported by the document Ex.P/7 which is spot map prepared by the Patwari in which he was the witness. He too turned hostile and not supported the case of prosecution.

15 PW-2, Bhulau Singh, is the brother of deceased in relation. He is the witness of seizure memo Ex.P/4 by which bloodstained soil was seized from spot. The spot from where bloodstained soil was seized is adjacent to the house of appellant. There is no spot except adjacent to the house of the appellant where dead body was lying. Though he is not an eyewitness to the incident, but he has supported seizure of bloodstained soil from the spot which is adjacent to the house of appellant.

16 PW-3, Shiv Shankar Singh, is the brother of deceased. He stated in his evidence that his sister was residing in his house for 2-3 months and thereafter the appellant took her back with him at village Tilwaridand. After three days, he received information about her murder.

17 PW-5, Satnam Rajwade, is the Patwari, who prepared spot map Ex.P/7. In cross examination he has stated that he prepared the spot map on the basis of information given by Laldev Singh. He denied that he received information about the fact that dead body of deceased was found in between the old and new house of the appellant. This witness remain stuck in saying that he prepared the spot map of a place where the dead body was found which is the varanda of the house of appellant.

From the evidence of this witness, it transpires that due to some dispute between appellant and deceased, the deceased went to her



parents house where she resided for 2-3 months and just before 3 days from the date of incident, he took the deceased back from her parents house with the condition that they will reside in a separate house and as per the evidence of father of appellant PW-4, the deceased was residing with his wife in a new house and he (father of appellant) himself was residing in a old house. From spot map and evidence of witnesses it also transpires that the dead body was found in the varanda of the house of the appellant which is within the premises of house. Though defence was taken by the appellant that he went to the house of his elder father at village Sargawan, however, he could not substantiate his defence by examining his elder father or any of the witnesses from that place. Even distance between Sargawan and the place of incident has not been disclosed by him.

18 In the case of ***Nagendra Sah Vs. The State of Bihar (2021) 10 SCC 725*** the Hon'ble Supreme Court in Para 23 has held as under:

“23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances.”

19 In the case of ***Balvir Singh v. State of Uttarakhand, (2023) Live Law (SC) 861*** the Hon'ble Supreme Court in Para 33 and 34 has held as under:

“33. Section 106 of the Evidence Act, states 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. Illustration (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.

34. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the



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

20 The further circumstances against the appellant is the human blood found on the shirt of the appellant for which there is no explanation. As per the FSL report Ex.P/18, human blood was found on the bloodstained soil seized from spot i.e. varanda of the house of the appellant, Axe allegedly seized from appellant as also in his shirt for which there is no explanation in his 313 CrPC statement which is a corroborative circumstance towards guilt of the appellant.

From the overall facts and circumstances of the case, it clearly established that the deceased was wife of the appellant, she went to her parents house due to some dispute between them, just three days before the date of incident she was brought back by the appellant with the condition that they will reside in a separate house and they started residing in a new house and the father of appellant was residing separately in old house. The plea of alibi that he went to village Sargawan to his elder father's house does not found proved by the defence. Human blood was found on the Axe and shirt seized from appellant for which there is no explanation. Thus, when the appellant failed to establish his plea of alibi and circumstances proved that he was in the house with the deceased where the deceased received



multiple injuries on her body, it is for the appellant to explain as to how the deceased received multiple injuries on her body, however, the appellant failed to explain the same and as such there are sufficient reasons to draw an adverse presumption against the appellant as provided under Section 106 of the Evidenced Act.

- 21 A false unsubstantiated defence of alibi is an additional incriminating factor against the appellant. In ***Trimukh Maroti Kirkan v. State of Maharashtra***, 2006 (10) SCC 681, it was observed as follows :-

“22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of H.P.* it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with “khukhri” and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of T.N. v. Rajendran* the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter.



The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.”

- 22** Considering the entire facts and circumstances of the case as well as law laid down by the Hon’ble Supreme Court in the filed of presumption under Section 106 of the Evidence Act, the learned trial court has held the appellant guilty for commission of murder of his wife in which we do not find any illegality or perversity.
- 23** In the result, the appeal fails and his hereby **dismissed**. The appellant is reported to be in jail since 06.07.2021. He shall undergo the entire sentence as awarded by the trial court.
- 24** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this court by preferring an appeal before the Hon’ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
- 25** The records of the case along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice