



2026:CGHC:17108-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 622 of 2022

Sitaram @ Golu Rathore S/o Ghanshyam Rathore Aged About 27 Years
R/o Village Nevri Navapara, P.S. Gaurela, District Gaurela- Pendra -
Marwahi (Chhattisgarh)

... Appellant

versus

State Of Chhattisgarh Through Police Station Gaurela, District Gaurela -
Pendra - Marwahi (Chhattisgarh)

... Respondent

For Appellant	: Mr.Ghanshyam Patel and Mr.D.L.Dewangan, Advocates
For Respondent	: Ms.Anusha Naik, Dy.G.A.

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

15/04/2026

1. This criminal appeal under Section 374(2) of the CrPC is directed against the impugned judgment of conviction and order of sentence dated 25.02.2022 passed by the Additional Sessions Judge, Pendra Road, District Bilaspur in Sessions Case No.15/2020, by which the appellant herein has been convicted for

offence under Section 302 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.100/-, in default of payment of fine, to further undergo RI for 15 days.

2. Case of the prosecution, in brief, is that on 29.04.2020, information regarding the murder of deceased Anita Rathore was given to the Station House Officer, Gaurela, by Bharthari Ekka. The Station House Officer, Gaurela, reached the spot and, as stated by Bharthari Ekka, registered a rural merg intimation. On the basis of the said rural merg intimation, Merg Case No. 11/2020 was registered at Police Station Gaurela, and a First Information Report (Exhibit P-19) was registered against the accused. Spot map was prepared by the investigating officer vide Ex.P-1. Patwari also prepared the spot map vide Ex.P-2. Inquest was prepared over the body of the deceased vide Ex.P-5. Memorandum statement of the appellant was recorded vide Ex.P-7. Bloodstained soil, plain soil and brick stains with blood were seized from the spot vide Ex.P-8. Knife stains with blood and sando banyan stains with blood were seized from the appellant vide Ex.P-9. The appellant was arrested on 30.04.2020 vide arrest memo Ex.P-10. Dead body of the deceased was sent for postmortem to the MCH Sanatorium Gourela vide Ex.P-13A where Dr.Bhagwan Singh Paikra (PW-10) conducted postmortem over the body of the deceased and found following injuries:-

- (i) There was a 10x1cm cut on her neck, caused by a sharp object.

(ii) Another 10x1cm cut on her neck, which severed her windpipe.

The doctor has opined that cause of death is cut oof trachea & respiratory tract and blood vessels. Seized articles were sent for FSL and as per FSL report (Ex.P-24), "O" blood group was found on brick Article C seized from the spot and Article D knife seized from the appellant.

3. After completion of the entire investigation, a charge-sheet under Section 302 of the Indian Penal Code was filed before the Judicial Magistrate First Class, Pendra Road, District Bilaspur (C.G.), from where the case was committed on 28.11.2020 to the Court of Additional Sessions Judge, Pendra Road.
4. Charges under Section 302 IPC were framed against the accused, read over and explained to him, to which he denied the allegation and claimed false implication. In his statement under Section 313 CrPC, the accused stated that he is innocent and has been falsely implicated. The accused did not lead any defence evidence.
5. On behalf of the prosecution, the statements of the following witnesses were recorded before the court: Bharthari Ekka (PW-1), Mohan Singh Rathore (PW-2), Ganesh Prasad Rathore (PW-3), Ghanshyam Adil (PW-4), Rajkumar Rathore (PW-5), Jeevan Yadav (PW-6), Ramsingh Rathore (PW-7), Anju Bai Rathore (PW-8), Chhotelal (PW-9), Dr. Bhagwan Singh Paikara (PW-10),

Varun Lal Sahu (PW-11), Chhatrapal Singh Maravi (PW-12), and Amit Patle (PW-13).

6. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 25.02.2022, convicted the appellant for offence under Section 302 of the IPC and sentenced as mentioned in opening paragraph of this judgment, against which, this criminal appeal has been preferred by the appellant herein.
7. Mr.Ghanshyam Patel, learned counsel for the appellant submits that the impugned judgment convicting the appellant is contrary to the settled principles of criminal jurisprudence. The prosecution has failed to prove the case beyond reasonable doubt, yet the learned Trial Court has erroneously recorded conviction. The case of the prosecution is seriously weakened as Bharthari Ekka (PW-1), the informant, and Mohan Singh Rathore (PW-2), the alleged memorandum witness, have not supported the prosecution version. Mohan Singh Rathore (PW-2), being an independent witness, has turned hostile and has not supported either the memorandum or seizure proceedings, thereby rendering the recovery doubtful. Ganesh Prasad Rathore (PW-3), who is related to the deceased and hence an interested witness, has given an unreliable version. There are material contradictions between Ganesh Prasad Rathore (PW-3) and Rajkumar Rathore (PW-5), Ram Singh Rathore (PW-7), and Chhotelal (PW-9) regarding his presence at the time of memorandum and seizure. While Mohan

Singh Rathore (PW-3) claims presence between 11 PM to 12 AM, Ram Singh Rathore (PW-7), Anju Bai Rathore (PW-8) and Chhotelal (PW-9) clearly state that Mohan Singh Rathore (PW-3) was present in the hospital till 2 PM. Such contradictions go to the root of prosecution case and make PW-3's testimony unsafe to rely upon. He further submits that PW-5 has admitted in cross-examination that the knife and clothes were already lying near the dead body and were seized by police in the night itself. If this is so, the subsequent memorandum and alleged recovery at the instance of the accused becomes highly doubtful and appears to be a planted story. The medical evidence does not conclusively establish that the injuries were caused by the alleged weapon. The FSL report also does not support the prosecution case, thereby breaking the chain of circumstances. He also submits that as per the FSL report, blood group O+ was found on certain articles, but no conclusive linkage has been established between the blood on seized articles and the deceased due to absence of proper control sample. Hence, it cannot be said that the recovered articles were connected to the offence or the deceased. The prosecution has failed to prove beyond reasonable doubt that the appellant committed the alleged offence under Section 302 IPC. There is no direct evidence and the circumstantial evidence does not form a complete and unbroken chain pointing only towards the guilt of the accused. There is no evidence establishing any act of murder committed by the appellant, nor any material to prove

intention to cause death of the deceased. He contended that the alleged recovery of knife and vest at the instance of the appellant is highly doubtful as the same was made from an open place accessible to all. Moreover, there is no independent material linking the appellant to the recovered articles, rendering the recovery inadmissible and unreliable. The prosecution has failed to prove any strained relationship, quarrel, or motive between the appellant and deceased immediately prior to the incident. Even independent witness PW-6 has not supported any allegation of quarrel or disturbance. In cases based on circumstantial evidence, motive assumes importance, which is absent here. He further contended that the prosecution version is doubtful as FIR was registered prior to the mere intimation under Section 174 CrPC. This reversal of procedure creates serious doubt regarding the genuineness of the prosecution story and suggests fabrication of narrative. The Trial Court failed to appreciate that all incriminating circumstances were not properly put to the accused under Section 313 CrPC, causing prejudice. Further, the prosecution withheld the most material witness, namely the son of the appellant, who could have thrown light on the incident. The dead body was recovered from an open place accessible to all. Hence, there is every possibility of involvement of some unknown person, and the presumption of guilt against the appellant cannot be drawn. Hence, the criminal appeal deserves to be allowed and the judgment impugned deserves to be set aside. He relied upon the

judgments of the Supreme Court in the matters of **Balvir Singh v. State of Uttarakhand** reported in **(2023) 16 SCC 575**, **Anees v. State Government of NCT** reported in **(2024) 15 SCC 48** and **Nilesh Baburao Gitte v. State of Maharashtra** reported in **2025 SCC OnLine SC 2151**.

8. On the other hand, Ms. Anusha Naik, learned Deputy Government Advocate appearing for the respondent/State supports the impugned judgment and submits that dead body of deceased Anita Rathore was found lying in the house of the appellant, therefore, provision of Section 106 of the Evidence Act is applicable and the appellant was required to explain as to under what circumstances Anita Rathore died in his house. He further submits that appellant has failed to explain the death of the deceased and therefore, conviction of the appellant for offence under Section 302 of the IPC is well merited and the appeal deserves to be dismissed.
9. We have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.
10. The question for consideration is whether the appellant is the author of the crime, which the trial Court has answered in affirmative relying upon the circumstantial evidence available on record. The trial Court has convicted the appellant with the aid of Section 106 of the Evidence Act holding that it is house murder,

which the appellant was required to offer explanation in his statement under Section 313 of the CrPC, which he has failed to offer and consequently, finding other circumstance established, proceeded to convict him for offence under Section 302 of the IPC.

11. Section 106 of the Indian Evidence Act, 1872, 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.”

12. The law regarding under Section 106 of the Indian Evidence Act, 1872 is well settled. The unnatural death of Anita Rathore took place in the house of the appellant.

13. As per the requirement of Section 106 of the Indian Evidence Act, the accused was required to give plausible and convincing explanation about the circumstances, in which, the deceased was found dead in his house. Where an offence like murder is committed inside the 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. The burden would be of a comparatively lighter character.

14. In view of Section 106 of the Indian Evidence Act, 1872, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how crime was committed. The inmates

of the house cannot keep away by simply keeping quite 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 the accused to offer any explanation.

15. In the matter of **Trimukh Maroti Kirkan v. State of Maharashtra** reported in **(2006) 10 SCC 681** the Supreme Court whilst applying provisions of Section 106 of the Indian Evidence Act, observed in para 14 reads as under:

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. 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."

16. On the interpretation of Section 106 of the Indian Evidence Act, 1872 in the matter of **Shambhu Nath Mehra v. State of Ajmer** reported in **AIR 1956 SC 404** in paragraph 9 it was observed by the Supreme Court thus:

"9. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not."

17. In the matter of **State of West Bengal v. Mir Mohammad Omar and others** reported in **(2000) 8 SCC 382**, the Supreme Court has observed in paras 31 to 33 as under:

"31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule nor would it

impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore narrated circumstances, the Court has to presume the existence of certain facts. Presumption is a course recognized by the law for the court to rely on in conditions such as this.

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

18. The decision of the Supreme Court in **Shambhu Nath Mehra** (supra) was followed with approval in the matter of **Nagendra Sah v. State of Bihar** reported in **2021 10 SCC 725** in which it has been held by their Lordships of the Supreme Court as under:

“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has

succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

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

19. The Trial Court in para 42 of its judgment has observed that from the facts of the case, it is clearly established that the deceased Anita Rathore was the wife of the appellant. There were frequent disputes between them after marriage, and about one month prior to the incident, the deceased was persuaded and sent back from her parental home to her matrimonial home, after which the incident occurred. The deceased Anita Bai and the accused were residing together in a house situated near the place of occurrence. On 29.04.2020 at about 08:30 P.M., the dead body of the deceased was found lying in the backyard (bari) adjoining the house of the accused, with her throat slit by a knife. The weapon

of offence, i.e., a blood-stained knife, and blood-stained clothes (sando baniyan) were seized at the instance of the accused from behind the toilet of his house. The blood group found on the knife matched with the blood group found on the blood-stained brick recovered near the dead body, as per report Ex.P-24. This establishes that the knife recovered at the instance of the accused was the same weapon used in causing the death of the deceased. Thus, all the circumstantial evidence forms a complete chain connecting one circumstance with another. In these circumstances, there remains no doubt that the accused caused the death of his wife Anita Rathore.

20. The next question that arises is whether the death of Anita Rathore caused by the accused amounts to murder or culpable homicide not amounting to murder. From the evidence on record, it is found that the accused inflicted injuries on the neck of the deceased, who was his wife, with a sharp-edged weapon (knife), as a result of which she died at the spot. The accused / appellant caused injuries to a vital part of the body, namely the neck, by a sharp weapon and cut the vein, which clearly indicates that the intention of the accused was to cause the death of the deceased. There is no material on record to show that the act of the accused falls within any of the exceptions under Section 300 of the Indian Penal Code. Therefore, it is clearly proved that the act of the accused / appellant in causing the death of Anita Rathore

amounts to murder falling within the category of culpable homicide.

21. It is to be remembered here that homicidal nature of death need not always be proved through direct evidence. It has to be inferred from the circumstances and the nature of injuries noticed on the dead body. The instant case is about the death of a wife committed by the husband within four walls of the house. When the assailant is the husband, it is difficult indeed to get direct evidence on the nature of injuries.
22. In the present case, the deceased was found dead in backyard (bari) adjoining the house of the accused and at that time, only the appellant and the deceased were present in the house and as per the provision of Section 106 of the Evidence Act, the burden to prove that the appellant was not present in the house at the time of incident and he was present elsewhere is on the appellant, which he admittedly failed to prove in his statement under Section 313 of the CrPC.
23. As such, the judgments relied upon by learned counsel for the appellant are not helpful to him and are distinguishable to the facts of the present case.
24. Taking into consideration that the burden of proving a plea specially set up by the appellant which may absolve him from criminal liability, certainly lies upon him and he has not offered any plausible explanation, further taking into consideration that the

appellant was required to explain as to how the deceased suffered such injuries, as the dead body of the deceased was found lying inside the house of the appellant, which he has admittedly not explained in his statement under Section 313 of the CrPC and the material collected by the prosecution, we are of the considered opinion that the above chain of circumstances is complete and leads only to one conclusion that it was the accused/appellant who caused death of the deceased. The view taken by the learned trial Court that the appellant is the author of the crime is a pure finding of fact based on evidence available on record. We hereby affirm that finding.

25. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant. The conviction and sentence as awarded by the trial court to the appellant is hereby upheld. The present criminal appeal lacks merit and is accordingly **dismissed**.

26. It is stated at the Bar that the appellant is in jail. He shall serve out the sentence as ordered by the trial Court.

27. The Registry is directed to transmit the certified copy of this judgment along with the record to the trial Court concerned for necessary information and compliance.

28. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is

undergoing his jail term, 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 the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice