



2026:CGHC:4071-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****Criminal Appeal No. 1414 of 2019**

Durgesh Sinha S/o Bhagwani Sinha Aged About 24 Years
R/o Ward No. 10, Khamhariya, Police Station Thana
Khamhariya, District Bemetara Chhattisgarh.

---Appellant**Versus**

State Of Chhattisgarh Through Station House Officer,
Police Station Khamhariya, District Mahasamund
Chhattisgarh.

---Respondent

For Appellant :- Mr. Vaibhav A. Goverdhan, Advocate

For State :- Mr. Sharad Mishra, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Hon'ble Shri Justice Arvind Kumar Verma****Judgment on Board****23/01/2026****Sanjay K. Agrawal, J.**

1. This criminal appeal under Section 374(2) of CrPC has been preferred by the appellant herein against impugned judgment of conviction and order of sentence dated 18/09/2019 passed by learned Additional Sessions Judge,

Bemetara in Sessions Trial No. 66/16 whereby he has been convicted for offence punishable under Section 302 of IPC and sentenced to undergo life imprisonment with fine of Rs. 500/-, in default of payment of fine, further R.I. for 3 months.

2. Case of the prosecution, in brief, is that deceased Khileshwari Bai @ Shakun got married with the appellant in the month of April, 2016 and the appellant with his parents and brother (co-accused persons who have been acquitted) used to torture her for demand of dowry and on account of the said ill-treatment, on 06/06/2016, deceased poured kerosene oil over her body and set herself on fire.
3. Further case of the prosecution is that nazri naksha was prepared vide Ex. P/1 and merg intimation was registered vide Ex. P/2. Inquest was conducted vide Ex. P/16 and first information report was lodged against the appellant other co-accused persons i.e. his father Bhagwani Singh, his mother Bisahin Sinha and his brother Ashok Sinha vide Ex. P/20. From the spot, half burnt pieces of clothes, matchsticks and a plastic container with kerosene oil were seized vide Ex. P/2. The seized articles were sent for forensic examination and as per the FSL report (Ex. P/23), kerosene oil was found in all these articles. The dead body of deceased Khileshwari Bai @ Shakun was subjected to postmortem which was conducted by Dr. G.S. Thakur (P.W.-9) and Dr. Kunti Thakur (P.W.-10) and as per the

postmortem report (Ex. P/14), cause of death is said to be neurogenic shock due to extensive burn, mode of death is said to be syncope and nature of death is said to be suicidal. After due investigation, the appellant and three other co-accused persons were charge-sheeted for offence punishable under Section 304 Part B read with Section 34 of IPC and in alternative Sections 302 and 306/34 of IPC which was committed to the Court of Sessions for trial in accordance with law. The appellant and the co-accused persons abjured their guilt and entered into defence.

4. In order to bring home the offence, prosecution examined as many as 20 witnesses and brought on record 23 documents. Statements of the appellant and co-accused persons were taken under Section 313 of CrPC wherein they denied guilt, however, they examined none in defence and only brought one document on record.
5. Learned trial Court, after appreciation of oral and documentary evidence on record, though acquitted the three co-accused persons but proceeded to convict the appellant herein for offence punishable under Section 302 of IPC and sentenced him as aforesaid.
6. Mr. Vaibhav A. Goverdhan, learned counsel for the appellant submits that prosecution has failed to prove firstly, that the death of deceased was homicidal in nature and secondly, that the appellant was inside the room when the deceased burnt herself, as such, the trial Court

has erred in invoking Section 106 of the Evidence Act and in convicting the appellant for offence punishable under Section 302 of IPC, therefore, the impugned judgment and order of conviction and sentence passed by the trial Court is liable to be set aside.

7. Per contra, Mr. Sharad Mishra, learned State counsel would support the impugned judgment and submit that the trial Court has rightly invoked the provision contained under Section 106 of the Evidence Act and convicted the appellant for the offence in question, therefore, the instant appeal is liable to be set aside.
8. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
9. The first question for consideration would be whether the death of deceased Khileshwari Bai @ Shakun is homicidal in nature ?
10. A careful perusal of the record would reveal that a team of two Doctors namely Dr. G.S. Thakur (P.W.-9) and Dr. Kunti Thakur (P.W.-10) have conducted postmortem and it has been clearly mentioned in the postmortem report that cause of death is neurogenic shock due to extensive burn and nature of death is suicidal. Dr. G.S. Thakur (P.W.-9) and Dr. Kunti Thakur (P.W.-10) have also stated the same with regard to the death of the deceased being suicidal in nature in their statements before the Court.

11. It is well-settled law that in order to convict an accused under Section 302 of IPC, the first and foremost aspect to be proved by the prosecution is the homicidal death and if the evidence on record produced by the prosecution falls short of the proof of homicidal death, the accused cannot be convicted under Section 302 of IPC. (See: **Madho Singh v. State of Rajasthan and Chandrapal**¹ v. **State of Chhattisgarh**²)
12. In the instant case, since the death of deceased Khileshwari Bai @ Shakun has been held to be suicidal in nature as per the postmortem report (Ex. P/14) which has been duly proved by Dr. G.S. Thakur (P.W.-9) and Dr. Kunti Thakur (P.W.-10), therefore, it is binding on the prosecution. Though the trial Court has also relied upon the postmortem report (Ex. P/14) as well as the statements of Dr. G.S. Thakur (P.W.-9) and Dr. Kunti Thakur (P.W.-10) and held the death of deceased to be suicidal in nature but has proceeded to convict the appellant for offence punishable under Section 302 of IPC which is ex-facie illegal and bad in law.
13. The next question for consideration would be whether the appellant is the author of the crime in question ?
14. The trial Court has invoked the provision contained under Section 106 of the Evidence Act to convict the appellant for offence punishable under Section 302 of IPC, however,

¹ (2010) 15 SCC 588

² 2022 SCC Online SC 705

as per the panchnama (Ex. P/4) recorded at the time of conducting investigation, it has been noted therein that the deceased had bolted the room from inside and poured kerosene oil and set herself ablaze. When other family members noticed smoke and noise coming from the room, they found that the room was locked from inside and a plastic window was broken and fire was extinguished. The panchnama (Ex. P/4) has duly been proved by Amarlal Sinha (P.W.-5) and Paltan Sinha (P.W.-7) yet the trial Court has taken a u-turn and recorded the finding that the room in which appellant was found burnt was bolted from outside. Prosecution is bound by the panchnama (Ex. P/4) which has duly been proved by Amarlal Sinha (P.W.-5) and Paltan Sinha (P.W.-7) and thus, it cannot be allowed to take a u-turn and go about its own way at the time of trial before the Court. Even otherwise, there is no evidence on record that the appellant was present in the house in question on the date and time of the incident. Amarlal Sinha (P.W.-5) has clearly admitted in his statement that on the date and time of the incident, appellant was not in the house and had gone for work, as such, the trial Court is unjustified in invoking Section 106 of the Evidence Act.

15. In view of the aforesaid legal discussion, we are of the considered opinion that the prosecution has miserably failed to bring home the offence in question beyond reasonable doubt as neither it has been proved that the

death of deceased was homicidal in nature nor it has been proved that the appellant is the author of the crime in question. As such, the trial Court is absolutely unjustified in convicting the appellant for offence punishable under Section 302 of the IPC. The impugned judgment of conviction and order of sentence is hereby set aside. The appellant is acquitted of the charges levelled against him. Since he is already on bail, he need not surrender, however, his bail bonds shall remain in operation for a period of six months in view of the provision contained under Section 437-A of CrPC.

16. Accordingly, this criminal appeal stands allowed.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Kumar Verma)
Judge

Harneet