

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr. Appeal (S.J) No.122 of 2019**

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[Against the Judgment of conviction dated 06.08.2018 and Order of sentence dated 18.08.2018, passed by the learned Additional Sessions Judge - III, Garhwa in Sessions Trial No.141 of 2016, arising out of Nagar Untari P.S. Case No.293 of 2015 (G.R. No.2444 of 2015)]  
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1. Paramsheela Devi, aged about 40 years, Wife of Late Birendra Ram.
  2. Arun Kumar, aged about 21 years, Son of Late Birendra Ram
- Both are resident of Village - Jangipur, P.O and P.S - Nagar Untari, District - Garhwa. .... **Appellants**

**Versus**

The State of Jharkhand ..... **Respondent**

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**PRESENT**

**HON'BLE MR. JUSTICE RAJESH KUMAR**

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For the Appellants : Mr. Anurag Kumar, Advocate  
For the State : Mr. A. P. Topno, A.P.P  
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**Order No.05/ Dated: 21<sup>st</sup> April, 2026**

1. Heard Mr. Anurag Kumar, learned counsel for the appellants and Mr. Anup Pawan Topno, learned A.P.P.
2. The present appeal is directed against the Judgment of conviction dated 06.08.2018 and order of sentence dated 18.08.2018, passed by the learned Additional Sessions Judge - III, Garhwa, in Sessions Trial No.141 of 2016, arising out of Nagar Untari P.S. Case No.293 of 2015 (G.R. No.2444 of 2015), whereby the appellants have been convicted under Sections 304 Part-II read with Section 34 of the Indian Penal Code (IPC), and have been sentenced to undergo rigorous imprisonment for three and half years.
3. The criminal law has been put into motion by lodging

an F.I.R being Nagar Untari P.S. Case No.293 of 2015 dated 10.12.2015 under Sections 302/ 34 IPC against four named accused persons including the present appellants.

The prosecution story, in short, is that one Kuldeep Kumar lodged a F.I.R being Nagar Untari P.S. Case No.293 of 2015 on 10.12.2015 stating that his father Birendra Ram returned back after work at 6:00 evening then his younger brother, Arun Kumar, mother, Paramsheela Devi and sister Rinki Devi assaulted his father due to previous dispute causing his death. This informant was informed regarding the incident. Thereafter, the informant and brother, Dilip Kumar went to see at 8:30 night and found his father dead. Chowkidar was informed about the incident.

The police, after completing the investigation, has submitted the charge-sheet only against two accused persons, i.e. the present appellants and the trial court has framed the charge under Sections 302/ 34 IPC against the present appellants. Thereafter, the case has been committed to the court of Sessions to which the appellants have pleaded innocence and claimed to be tried and accordingly, the trial has commenced.

**4.** To substantiate the charges, the prosecution has examined altogether 11 witnesses and their depositions, in short, are as follows:-

**5. P.W.-1, Leelawati Devi**, is a hearsay witness and she has not seen the occurrence.

In her cross-examination, she has stated that she

does not know the reason behind the quarrel between the family members.

**6. P.W.-2, Sangeeta Devi**, is daughter-in-law of the deceased and wife of the informant. She has deposed that no injury was found on the person of the deceased. She has identified the accused.

In her cross-examination, she has stated that she has not seen the occurrence and only saw the deadbody.

**7. P.W.-3, Teja Kuar**, is the mother of the deceased. She has stated that on information, she went to the house of her son and found him dead..

**8. P.W.-4, Kuldeep Ram**, is the informant of the case. He was informed about the occurrence by one of the accused namely, Arun Kumar. He has proved the *fardbeyan* marked as Ext.-2.

**9. P.W.-5, Ram Suresh Ram, P.W.-6, Pintu Ram and P.W.-7, Mohan Ram** - They are the hearsay witnesses.

**10. P.W.-8, Dr. Pawan Kumar Anil**, is the doctor and he has proved the post-mortem report. He has opined that the cause of death is due to hemorrhage and shock. caused by hard and blunt substance.

**11. P.W.-9, Shiv Ram**, has been declared hostile.

**12. P.W.-10, Chandramani Bharti**, is the Investigating Officer of the case.

In cross-examination, he has stated that during investigation, he did not find any evidence of earlier dispute between the parties. As per the statement of the

informant, he has stated that many persons used to visit the place of occurrence,

**13. P.W.-11, Sarju Ram**, is the relative of the informant and deceased.

In cross-examination, he has admitted that he has not seen the accused persons assaulting the deceased to death.

**14.** On consideration of above materials on record, the trial Court has convicted the appellants under Section 304 Part-II/ 34 IPC on the strength of Section 106 of the Indian Evidence Act, 1872 and sentenced them as stated above.

**15.** Being aggrieved by the aforesaid judgment of conviction, the appellants have preferred the present appeal.

**16.** Learned counsel for the appellants, while assailing the impugned judgment of conviction, has stated that there is no evidence against these appellants. They have been convicted only on the strength of Section 106 of the Indian Evidence Act, stating that they were in exclusive possession of the deceased. Referring to the statements of the above witnesses, it has been further submitted that :-

**(i)** the place of occurrence is an Indira Awas and accessible to so many persons. In fact, the witnesses have stated that many persons used to come at that place and as such, it was not in their exclusive possession.

**(ii)** even four persons have been charged, but two persons have been ousted, without any rhyme

and reasons. Thus, the prosecution has utterly failed to prove the circumstances for invoking Section 106 of the Indian Evidence Act.

**17.** In that view of the matter, it has been submitted by the learned counsel for the appellants that the judgment of conviction and order of sentence, is not sustainable and it requires interference by this Court.

**18.** On the other hand, learned counsel for the State has supported the judgment of conviction and order of sentence, but could not find out any material, justifying the presumption of Section 106 of the Indian Evidence Act.

**19.** Having heard learned counsel for the parties and from perusal of the records, it appears that the trial court has convicted the appellants, taking the aid of Section 106 of the Indian Evidence Act. The requirement of Section 106 of the Indian Evidence Act is that the deceased must be in the exclusive possession of the charged persons. In the present case, the witnesses have clearly suggested that the place of occurrence was accessible to so many persons. Even, as per the F.I.R., four persons were residing in the said premises along with the deceased, but only two persons have been convicted, without any rhyme and reasons.

**20.** Thus, on evaluation of evidence, this Court finds that the place of occurrence was accessible to other persons also and as such solely conviction of the appellants on the strength of Section 106 of the Indian Evidence Act is not

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sustainable. Accordingly, the Judgment of conviction dated 06.08.2018 and order of sentence dated 18.08.2018, passed by the learned Additional Sessions Judge - III, Garhwa, in Sessions Trial No.141 of 2016 is, hereby, quashed and set aside.

**21.** In the result, the appeal stands allowed and accordingly disposed of.

**22.** The appellants are on the bail, hence, they are discharged from the liability of bail bond.

**23.** Let the Trial Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgment.

**(Rajesh Kumar, J.)**

*Jharkhand High Court, Ranchi*  
*Dated, the 21<sup>st</sup> April, 2026*  
**Ravi-Chandan/- NAFR**  
**Uploaded on 29.04.2026**