



2025:CGHC:46-DB

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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 947 of 2024**

Bhupendra Sahu S/o Late Bholaram Sahu Aged About 40 Years R/o  
Javargaon, Police Station- Arjuni, District- Dhamtari, Chhattisgarh

... **Appellant**

**versus**

State Of Chhattisgarh Through The Station House Officer, Police  
Station Arjuni, District Dhamtari, Chhattisgarh

... **Respondent**

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For Appellant : Mr.Satya Prakash Verma, Advocate

For Respondent : Mr.Swajit Uboweja, Panel Lawyer

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

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**02/01/2025**

1. This criminal appeal under Section 374(2) of the CrPC is directed against the impugned judgment of conviction and order of sentence dated 24.02.2024 passed by the Additional Sessions Judge, Dhamtari in Sessions Case No.10/2023, 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.5000/-, in default of payment of fine, to further undergo RI for six months.

2. Case of the prosecution, in brief, is that in the night of 26.09.2022 at about 11.30 P.M. mother of complainant Kamta Sahu (PW-1) Dashoda Bai and her nephew Umashankar (PW-9) came to the complainant's house and woke up him up and the complainant's nephew Umashankar (PW-9) told him that his father (accused Bhupendra Sahu) was beating his mother (deceased Indrani Sahu) inside the room by locking the door of his room from inside. They tried to open the door of the room by hitting it with a crowbar from outside, but the door did not open. Then complainant Kamta Sahu (PW-1) went to his house with his mother Dashoda Bai and nephew Umashankar, then his elder brother accused Bhupendra Sahu locked the door of his room from inside. The complainant knocked on the door calling his elder brother's (Bhupendra Sahu) name. After some time the accused opened the door of the room. On going inside, the complainant's sister-in-law Indrani Sahu was lying unconscious on the floor. There were injury marks on her head and neck. After opening the door, the complainant tried to ask his elder brother (accused Bhupendra Sahu) about the incident but he ran away from the house.
3. Complainant Kamta Sahu (PW-1) along with his elder father's son Ashok Sahu (PW-2) and neighbour Shiv Kumar (PW-6) brought his sister-in-law Indrani Sahu in unconscious condition to the District Hospital, Dhamtari in 108 ambulance, then after

examination by the doctor, Indrani Sahu was declared dead. On the basis of information of complainant Kamta Sahu (PW-1) in relation to the information of untimely and sudden death of deceased Indrani Sahu vide Ex.P-1, FIR (Ex.P-2) in Crime No.318/2022 was registered against the appellant for offence under Section 302 of the IPC. Spot map was prepared by the investigating officer vide Ex.P-3. Inquest was prepared over the body of the deceased in presence of the witnesses vide Ex.P-5. Dead body of deceased Indrani Sahu was sent for postmortem to District Hospital, Dhamtari, where Dr.Garima Sharma (PW-15) conducted postmortem of body of the deceased vide Ex.P-6 and found following injuries:-

1. Abrasion wound left forearm 1x0.5cm.
2. Contusion wound present over left side face 10 x 10 cm extending from left side jaw covering left ear, bluish black in colour.
3. Contusion extending from right side chest infraclavicular & supraclavicular 30 x 20 cm covering right side shoulder & neck extending to left side chest, neck & shoulder bluish black in colour. On dissenter subcutaneous hemotoma present, hyoid bone fracture present, contusion & hematoma present over trachea.
4. Multiple hyper pigmentation marks present over back over neck our suprascapular area both side ranging from 0.5 x 3 cm black in colour.
5. Multiple hyper pigmented lesion present over neck ranging from 0.5 x 1 cm.

The doctor has opined that cause of death in this case seems to be due to asphyxia may be caused by heavy objet due to compression force over neck & chest and death seems to be homicidal. Memorandum statement of the appellant was recorded vide Ex.P-12 and on the basis of his memorandum statement, nylon and spanner were seized at the instance of the appellant vide Ex.P-14. Broken bangles and bow were recovered from the spot vide Ex.P-13. The appellant was arrested on 28.09.22 vide Ex.P-15. Patwari also prepared spot map vide Ex.P-21. Seized spanner was sent for examination to the doctor and as per examination report (Ex.P-24) the injuries mentioned under point 1, 2 and 3 in postmortem report can be caused by heavy hand & blunt object which may be due to compression of knee over chest & can be fatal in nature.

4. After completion of investigation, charge-sheet was filed before the Judicial Magistrate First Class, Dhamtari, who in turn, committed the case to the Court of Session, Dhamtari, from where the Additional Sessions Judge, Dhamtari received the case on transfer for trial. The accused/appellant abjured the guilt and entered into defence.
5. In order to bring home the offence, the prosecution examined as many as 16 witnesses and exhibited 26 documents Exs.P-1 to P-26. Statement of the accused/appellant was recorded under Section 313 of the CrPC in which he denied guilt. However, the

appellant-accused examined none in his defence nor any document has been exhibited.

6. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 24.02.2024, 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.Satya Prakash Verma, learned counsel for the appellant submits that learned trial Court has failed to appreciate that the incident took place in a grave and sudden provocation and the appellant had no intention to kill the deceased, therefore, conviction of the appellant under Section 302 of the IPC being unsustainable in the eyes of law, deserves to be quashed. In the present case, there is no eyewitness of the incident. He further submits that the trial Court has failed to appreciate that the material prosecution witnesses including complainant has not supported the case of the prosecution and they turned hostile. He also submits that learned trial Court has failed to appreciate that there are material contradiction and omission in the case diary statement and court deposition of prosecution witnesses, which cannot be relied upon and the same cannot be made basis for conviction of the appellant. He contended that learned trial Court grossly erred in convicting the appellant particularly when the prosecution has failed to prove the case beyond reasonable

doubt. The prosecution can not take the advantage of Section 106 of the Indian Evidence Act unless the motive to kill wife is established and proved. Hence, the criminal appeal deserves to be allowed and the judgment impugned deserves to be set aside.

8. On the other hand, Mr. Swajit Uboweja, learned Panel Lawyer appearing for the respondent/State supports the impugned judgment and submits that dead body of deceased Indrani Sahu 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 Indrani Sahu 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 Indrani Sahu 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. Priti Sahu (PW-3) [daughter of the deceased and the appellant] has stated in para 1 of her evidence that her mother Indrani died about 6-7 months ago. Her father locked her mother Indrani in a room and beat her, which led to her death. At the time of incident, she, her two brothers Umashankar, Gaurishankar and her grandmother Dashodabai were present there. At around 8 P.M., the accused (her father) fought with her mother. At the same time, her father told her mother that he was getting paralyzed and apply oil on his hands and legs, then her mother said that she will apply oil to her father and at the same time her father was fighting with her mother and was holding an iron rod to kill her. In para 3 of her

evidence, she has stated that incident date 26.09.2022 Monday, her mother was applying oil to her father and at that time they were fighting. They were all awake then. Then around 9.30 P.M., her father (accused) told her that he would kill her mother today. Then she forbade her mother to go to her father's room, even after that her mother went to her father's room saying that her father is getting paralyzed, so she will apply oil and went away. At 9.45 P.M., her mother's screaming and shouting was heard.

20. Gourishankar Sahu (PW-8) [son of the deceased and the appellant] has stated in para 3 of his evidence that even after Dinesh left, his father kept abusing his mother. His grandmother was also at home at that time, she also asked his father why are you abusing Indrani and Dinesh, after which, he closed the shop. His father kept his mobile with him and said why he is studying using mobile. His father also abused him and his sister. His father threatened to kill his sister. His mother Indrani started to free his sister. His father told him and his sister that today he will kill their mother. After that they had food. They told mother not to go to father's room. His father forcibly took his mother inside the room.
21. Umashankar Sahu (PW-9) [son of the deceased and the appellant] has stated in para 3 of his evidence that his father used to doubt his mother's character. Any person who came to their house to talk to his mother, his father used to doubt his mother and that person. His father used to beat his mother due to doubt on her character. His father killed his mother in his room. At that

time, he, his elder brother Gaurishankar and his sister were near the door of the room. His father opened the door of the room and ran away.

22. 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. It is thus concluded that the deceased died homicidal nature of death. Considering the answers given by Dr. Garima Sharma (PW-15) vide Ex.P-24 to the queries made by the Station House Officer, Police Station Arjuni and further considering the nature of injuries, which the deceased was found, we are of the considered opinion that death of the deceased was homicidal in nature. It is held accordingly.
23. In the present case, the deceased was found dead in her house 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.

24. Considering the answers given by Dr. Garima Sharma (PW-15) to the queries made by the Station House Officer, Police Station Arjuni, 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