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Reserved on **10.02.2026**
Delivered on **26.02.2026**

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 6760 of 2017

Smt. Seema

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Anita Singh, Mary Puncha (sheeb Jose), Mohd. Kalim, Prem Babu Verma, Satya Prakash Sharma, Sudhir Kumar Pathak
Counsel for Respondent(s)	:	G.A.

Connected With

CRIMINAL APPEAL No. - 7030 of 2017

Dildar

.....Appellant(s)

Versus

The State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Arun Kumar Vishvakarma, Ashish Pandey, Onkar Nath

Counsel for Respondent(s) : G.A.

Court No. - 48

HON'BLE CHANDRA DHARI SINGH, J.
HON'BLE DEVENDRA SINGH-I, J.

Per: Hon'ble Chandra Dhari Singh, J

1. After being convicted and sentenced in ST No. 730 of 2007 arising out of Case Crime No. 159 of 2007, under Sections 302/34, 201 and 120B IPC, police station Etmaddaula, district Agra by the learned Additional Sessions Judge, Court No. 1, Agra vide judgement and order dated 24.10.2017, appellant-Seema filed Criminal Appeal No. 6760 of 2017, whereas appellant-Dildar filed Criminal Appeal No. 7030 of 2017.

2. By the impugned judgement and order dated 24.10.2017, the learned Judge convicted and sentenced the appellant Dildar to life imprisonment and a fine of Rs. 20,000/- (rupees twenty thousand only) under Section 302 IPC and in case of default in payment of fine, the appellant was further directed to undergo additional imprisonment of six months. He was further convicted and sentenced to seven years rigorous imprisonment and a fine of Rs. 10,000/- (rupees ten thousand only) under Section 201 IPC and in default, four months' additional imprisonment.

3. Appellant Seema was convicted and sentenced to life imprisonment and a fine of Rs. 20,000/- (rupees twenty thousand only) under Section 120-B read with Section 302 IPC and in default six months' additional imprisonment. All the sentences of the appellants were directed to run concurrently.

4. Since, both the afore-captioned criminal appeals have been filed against the judgement and order dated 24.10.2017 passed by the learned Additional Sessions Judge, Court No. 1, Agra in ST No. 730 of 2017, arising out of Case Crime No. 159 of 2007, under Sections 302/34, 201, 120-B IPC, PS Etmaddaula, district Agra, both the appeals have been heard together and are being disposed of by means of this common judgement.

Facts of the case

5. The facts giving rise to the present criminal appeals, in nutshell, are that a written report was given by Netrapal Singh, son of Shri Saudan Singh, resident of village Maan, police station Iglas, district Aligarh on 16.03.2007 that the marriage of his brother Chandra Pal (hereinafter referred to as the deceased) was solemnized in the year 1996-1997 with one Seema, who was the resident of district Allahabad and that they were not agree with the said marriage. Seema had a daughter named Roshni, who was born from the wedlock of Seema and her earlier husband. Three children were born from the wedlock of Seema and his brother-Chandra Pal. After the marriage, her brother (deceased)

was distressed with the demeanour of his wife, who always used to quarrel with his brother and go to her maternal house. Due to the demeanour of Seema, some persons of the locality used to come to the house to meet Seema. Out of the aforesaid persons, one Dildar (hereinafter referred to as the accused-Dildar) always comes to the house of his brother. In the morning of 16.03.2007, Seema informed that after committing the murder, the dead body of Chandra Pal has been buried in the heap of sand. On the aforesaid information, when the first informant along with family members reached to his brother's house at Sadahra, the police personnel dug out the body from the heap of sand. The first information report further alleges that his brother has been killed by Seema with the help of Dildar and his 2-3 accomplices and hid the body in the heap of sand.

6. On the basis of the aforesaid information, PW-2, Constable Maherwan Singh registered the first information report at Case Crime No. 169 of 2007, under Section 302, 201 IPC against Seema, which was entered in GD No. 27 at 10:30 AM on 16.03.2007.

7. After the registration of first information report, the law set into motion and investigation of the case was taken up by SI Rajiv Yadav. He copied the FIR and recorded the statement of Chik writer, Constable Maherwan Singh and first informant Netrapal Singh and inspected the spot on the pointing out of the informant and prepared site plan, Ext. Ka-11. Thereafter, he recorded the statements of Rajpat Singh, Shri Chandra

Jaat. He recorded the statement of named accused Smt. Seema and took her into custody. On the pointing out of the accused-Dildar, the investigating officer recovered weapon of assault, i.e. handle of hand pump and spade in the presence of witnesses Raghvendra Singh and Virendra Singh. SI D.P. Singh made the memo of weapon of assault in his writing, which was signed by the investigating officer, Ext. Ka-10. On 19.03.2007, he recorded the statements of witnesses of inquest namely Shri Chandra, Virendra Singh, son of Heera Singh, Virendra Singh, son of Lochan Singh, Roshan Singh, Vijay Pal Singh and Radhey Shyam as well as the scribe of FIR Shri Devendra Kumar. After culmination of investigation, the investigating officer submitted charge sheet against the appellants under Sections 302/201/120-B IPC, which he proved as Ext. Ka-12.

8. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 730 of 2007. Learned Additional Sessions Judge, Court No. 1, Agra vide order dated 09.08.2007 framed the charges against the appellant Dildar under Sections 302/201 IPC. Learned Judge also framed the charges against the appellant Seema under Section 302/34 and 120-B IPC.

9. The charges were read over and explained to both the accused-appellants, who denied the charges and claimed to be tried.

10. To bring home guilt of the appellant beyond all reasonable doubt, the prosecution has examined as many as eight witnesses.

11. PW-1, Dr. Shri Ram, in his examination-in-chief deposed that on 17.03.2007, he was posted as Medical Officer, at Police Hospital, Agra. On that date, he conducted post-mortem on the body of the deceased and found the following ante mortem injuries:

> *"1. A wound of 2 cm x 1 cm x bone deep 4 cm away from the left side of the face.*
>
> *2. A wound of 2 cm x 1.5 cm x bone deep on the left side of face, 1 cm below the left eye.*
>
> *3. A wound of 2 cm x 1.5 cm x bone deep on the left side face, 1.5 cm anterior to left ear.*
>
> *4. A wound of 3 cm x 2 cm on the lower face on the chin.*
>
> *5. Abrasion 3 cm x 1.5 cm on forehead 2 cm above bridge of nose.*

12. Bones of left mandible and maxilla were fractured. Frontal bone was also fractured.

13. In the opinion of the doctor, the cause of death was shock and haemorrhage as a result of ante mortem injures, which may have been caused 3-4 days before.

14. PW-2, Maherwan Singh, in his examination-in-chief deposed that on 16.03.2007, he was posted as Constable in police station Edmaddaula. On that date,

on the basis of written report, he prepared Chik FIR, which he proved as Ext. Ka-1.

15. PW-3, Netrapal Singh, son of Saudan Singh, is the first informant of the case. In his examination-in-chief, he deposed that deceased-Chandra Pal was his younger brother. He lived in Shahadra, Nai Basti, Agra along with his wife and children. He was married to Seema Nishad, who was resident of Allahabad, prior to 12-13 years before the murder of the deceased. She has a daughter named Roshni. Seema deserted her first husband and came to the deceased along with her daughter Roshni. Three children were also born from the wedlock of Seema and the deceased. Four years prior to the murder, he along with the deceased used to reside in the same flat in separate portion. Seema was a lady of bad character and when he objected about the demeanour of Seema, she used to quarrel with him due to which after disposing of his house, he shifted to village. He further deposed that his marriage was solemnized in Assam. Accused-Dildar is his brother-in-law. Initially accused-Dildar used to reside with him, but after his departure, he used to come to the place of Seema as a result thereof he developed illicit relation with Seema.

16. PW-3, Netra Pal further deposed that on 16.03.2007, he received information about the death of Chandra Pal. Seema informed one Gambhir of the village about the death of the deceased, who in turn informed him. On the aforesaid information, he along with his

family members, Rajendra, Prabhu Singh, Balveer and Munna came to the house of the deceased at about 08:30-08:45 AM. On entering the house, he saw that the dead body of the deceased near the heap of sand. Thereafter, he went to the police station Etmaddaula and got a written report scribed by one Devendra Kumar, son of Amar Singh, lodged after putting his thump impression, which he proved as Ext. Ka-9.

17. PW-4, Rajpat Singh, son of Shri Ram Prasad, in his examination-in-chief deposed that he is the resident of Nagla and ex-Pradhan of Nagla Vihari. He knew deceased-Chandra Pal. He lived ahead of his house in Nai Basti, Shahdara. Deceased's wife is Seema. Deceased-Chandra Pal used to live in his house along with his wife and children. Accused-Dildar was the regular visitor of deceased's house. Accused-Dildar is brother-in-law (Sala) of the first informant Netra Pal. Chandra Pal was murdered a year ago. He saw the dead body of the deceased lying on the door. He had neither talked to anyone nor anyone informed him that the dead body of the deceased was lying on the floor.

18. At this juncture, on the request of ADGC, this witness was declared hostile and he was permitted to cross examine him.

19. PW-5, Constable Devendra Kumar, in his cross-examination has deposed that he knows deceased-Chandra Pal, who lives in Shahdara Colony. Accused-Seema also lives with the deceased. The first informant

Netra Pal is the brother of the deceased. Accused-Seema had illicit relation with accused-Dildar. Accused-Seema used to extend threat to the deceased that if he does not desert her, she will get him killed. Seema and Dildar along with their accomplices eliminated the deceased and hid the dead body in the heap of sand. On 16.03.2007, he was told by Netra Pal that Seema has killed Netra Pal and hid the body in the heap of sand. The dead body of deceased-Chandra Pal was dug out by the police in his presence. The report of the occurrence was written by him on the dictation of Netra Pal on which he put his thump impression, which he proved as Ext. Ka-9.

20. PW-6, Virendra Singh, son of Heera Singh, in his examination-in-chief has deposed that the deceased was the resident of Shahdara, Agra. On 16.03.2007, he came to Agra on the information received by him in respect of the death of the deceased where Shri Chandra, who is the brother of the deceased was also present. At that time, police personnel also reached along with Dildar. On the pointing out of accused-Dildar, handle of hand pump and spade were recovered and memos were prepared on which he put his signature. Shri Chandra also put his thumb impression, which was marked at Ext. Ka-10.

21. However, on cross-examination, this witness has been declared hostile.

22. PW-7, Rajiv Yadav, was is investigating officer of the case. His evidence has already been discussed above.

23. PW-8. SI Dinesh Pal Singh, in his examination-in-chief has deposed that on 16.03.2007, he was posted at police station. He prepared inquest report of the deceased Chandra Pal. He appointed Panch (inquest witnesses) and recorded their opinion in the inquest report and obtained their signature. He also prepared required papers.

24. After the closure of the prosecution evidence, the statements of the accused-appellants were recorded under Section 313 Cr.P.C, in which they denied the charges levelled against them and plead false implication and they claimed trial.

25. Kumari Roshni, daughter of the deceased-Chandra Pal and the accused-appellant Seema, was produced as defence witness to prove that the deceased and the accused-Seema had good relation.

26. DW-1, Kumari Roshni in her deposition has stated that her parents used to live together and there was no dispute between them. After the death of her father, her mother has been arrested and sent to jail. At that time, she was kept by her maternal grand-parents, who live in Allahabad. At the time of death of her father, she was with her mother. Her mother was in Allahabad. She had gone to Allahabad along with her mother eleven days prior to the incident in question. At that time, there was holidays on account of Holi. She was living with her maternal grand-parents when her mother was in Jail. She further deposed that the information about the death of

her father was received from her Tau (father's elder brother).

27. Learned Additional Sessions Judge, Court No. 1, Agra after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

28. Hence, these appeals.

29. Heard Shri Mohd. Kalim, learned counsel for the appellant in Criminal Appeal No. 6760 of 2017, Shri Ashish Pandey, learned counsel for the appellant in Criminal Appeal No. 7030 of 2017 and Shri S.K. Ojha, learned Additional Government Advocate-Ist representing the State and gone through the record of the case.

Submissions on behalf of the appellants

30. Learned counsel for the appellants submits that it is a case of circumstantial evidence and there is neither any eyewitness of the occurrence nor any witness of last seen and the appellants have been dragged in the present case only on the presumption that both the accused-appellants have illicit relations without there being any evidence to that effect.

31. Learned counsel for the appellants further submitted that so called recovery of handle of hand pump and spade have been effected on the pointing out of the accused-Dildar in the presence of PW-6, Virendra

Singh and Shri Chandra. PW-6, Virendra Singh did not support the prosecution case and declared hostile, whereas Shri Chandra has not been produced by the prosecution, which makes the recovery doubtful.

Submissions on behalf of the State

32. On the other hand Shri S.K. Ojha, learned Additional Government Advocate supported the findings of the learned trial court by stating that the prosecution has discharged its burden by establishing the guilt of the appellant beyond reasonable doubt. He further submitted that the judgement is well reasoned and calls for no interference by this Court.

Analysis and conclusions

33. So far as the contention of learned counsel for the appellants that it is a case of circumstantial evidence and there is no witness of last seen, is concerned, it may be noted that in a case based on circumstantial evidence, settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete forming a chain and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally in consistent with his evidence. It has been consistently laid down by the Hon'ble Apex Court that where a case rests on circumstantial evidence, the inference of the

guilt can be justified only when all the incriminating facts and circumstances are found to be in compatible with the innocence of the accused or guilt of any other person.

34. In ***Sharad Birdhichand Sarda Vs. State of Maharashtra***, AIR (1984) (SC) 1622, the Hon'ble Apex Court has framed five golden principles for the circumstantial evidence, which are as under;

> (*i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.*
>
> *(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
>
> *(iii) The circumstances should be of conclusive nature and tendency*
>
> *(iv) They should exclude every possible hypothesis except the one to be proved and,*
>
> *(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

35. In ***State of U.P. Vs. Ashok Kumar Srivastava,*** (1992) Crl. L.J. 1104, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in the favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

36. In the case of ***Hanumant Govind Nargundkar v. State of M.P.****, AIR 1952 SC 343, Hon'ble Apex Court observed as under:*

> *"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. ...."*

37. In the case of ***Padala Veera Reddy v. State of A.P.,*** 1989 Supp (2) SCC 706, Hon'ble Apex Court opined as under:

> *"10. Before adverting to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:*
>
> *(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
>
> *(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*
>
> *(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See* ***Gambhir v. State of Maharashtra****, (1982) 2 SCC 351)"*

38. *In the case of* ***C. Chenga Reddy & Ors. v. State of A.P.****, (1996) 10 SCC 193, Hon'ble Apex Court while considering a case of conviction based on the circumstantial evidence, held as under:*

> *"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."*

39. In the case of ***Ramreddy Rajesh Khanna Reddy v. State of A.P.,*** (2006) 10 SCC 172, Hon'ble Apex Court again considered the case of conviction based on circumstantial evidence and held as under:

> *"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See* ***Anil Kumar***

> ***Singh v. State of Bihar****, (2003) 9 SCC 67 and* ***Reddy Sampath Kumar v. State of A.P.,*** *(2005) 7 SCC 603)."*

40. In the case of ***Sattatiya v. State of Maharashtra,*** (2008) 3 SCC 210, Hon'ble Apex Court held as under:

> *"10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances." This Court further observed in the aforesaid decision that:*
>
> *"17. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court--Bharat v. State of M.P., (2003) 3 SCC 106. "*

41. In the case of **State of Goa v. Pandurang Mohite,** (2008) 16 SCC 714, Hon'ble Apex Court reiterated the settled law that where a conviction rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

42. The decision in **Sharad Birdichand Sarda** (Supra) has recently been followed by Hon'ble Supreme Court in catena of judgement including **Laxman Pradad alias Laxman Vs. State of Madhya Pradesh**, 2023(3) SCC (Cri) 27 and **R. Sreenivasa Vs. State of Karnataka** (2024) 17 SCC 426.

43. In the light of the above pronouncements of Hon'ble Apex Court, we shall now consider whether in the present case, the prosecution succeeded in establishing the chain of the circumstances leading to an inescapable conclusion that the accused-appellant had committed the crime. The following circumstances have to be proved.

1. Whether the death of the deceased-Chandra Pal was homicidal.

2. Whether weapons of assault, i.e. handle of hand pump and spade and dead body of the deceased-Chandra Pal have been recovered on the pointing out of the appellant-Dildar.

3. Whether deceased was done to death by the appellant-Dildar with criminal conspiracy of appellant-Seema.

44. PW-1, Dr. Shri Ram, who conducted the postmortem examination on the body of the deceased noted the following ante-mortem injuries:

> *“1. A wound of 2 cm x 1 cm x bone deep 4 cm away from the left side of the face.*
>
> *2. A wound of 2 cm x 1.5 cm x bone deep on the left side of face, 1 cm below the left eye.*
>
> *3. A wound of 2 cm x 1.5 cm x bone deep on the left side face, 1.5 cm anterior to left ear.*
>
> *4. A wound of 3 cm x 2 cm on the lower face on the chin.*
>
> *5. Abrasion 3 cm x 1.5 cm on forehead 2 cm above bridge of nose.”*

45. Bones of left mandible and maxilla were fractured. Frontal bone was also fractured.

46. In the opinion of the doctor, the cause of death was shock and haemorrhage as a result of ante mortem injures, which may have been caused 3-4 days before. Doctor further opined that ante-mortem injuries received

by the deceased was sufficient to cause death. He also stated that the injuries can be caused by the rod of hand pump. In the opinion of the doctor, the death was caused at about 11:00 PM on 13.03.2007. Doctor further opined that if the dead body is buried under the sand, the symptom which is found in this case during postmortem examination is present. The dead body was covered in soil.

47. From the evidence of the doctor coupled with the evidence of prosecution witnesses, it is clear that the death of the deceased-Chandra Pal was homicidal.

48. The genesis of the case is the alleged information given by the accused-appellant Seema to one Gambhir for being conveyed to the first informant Netra Pal, about the death of the deceased-Chandra Pal. The first informant in his deposition has stated that on the basis of information given by the appellant-Seema when he rushed to the house of the deceased-Chandra Pal along with Rajendra, Prabhu Singh, Balveer and Munna, at about 08:30-08:45 AM and when he entered the house, he saw that the dead body of Chandra Pal was lying beside the heap of sand. Thereafter, he lodged the report scribed by PW-5, Devendra Kumar. Thereafter, he came back to the house of the deceased Chandra Pal along with police personnel, where dead body was dug out of the sand and after conducting inquest on the body of the deceased, it was sent for postmortem examination.

49. The weapons of assault, i.e. handle of hand pump and one spade, were recovered on the pointing out of the appellant-Dildar from the house of the deceased, which was hidden behind the double bed. As the aforesaid articles do not have bloodstained, they were not sealed. Memo Ext. Ka- 10 was prepared, which was signed by Virendra Singh, Heera Singh and the accused-appellant Dildar. While recording the statement of the accused-appellant Dildar under Section 313 Cr.P.C., when this question was put to the accused-Dildar that weapon of assault was recovered on his pointing out, he has not given any specific reply and only stated that false charge sheet has been filed against him.

50. Accused-appellant Dildar is real brother-in-law (*Sala*) of PW-3, Netra Pal, who is the elder brother of the deceased Chandra Pal. In his deposition PW-3, Netra Pal, the first informant has stated that the character of appellant-Seema was not good and when he complaints about her demeanour, she used to quarrel. Due to her bad conduct, PW-3 Netra Pal sold out his house and settled in the village. His marriage was solemnized in Assam. Accused-Dildar is his real brother-in-law. Initially, he used to live with him, but after his departure, he used the come to Seema and developed illicit relations with Seema. On 16.03.2007, Seema informed Gambhir, who is his cousin about the murder of deceased-Chandra Pal.

51. PW-4, Rajpat Singh, who was later on declared hostile, in his examinaion-in-chief has stated that

accused-appellant Dildar was the regular visitor to the house of deceased-Chandra Pal.

52. PW-5, CP Devendra Kumar in his deposition has stated that accused-Dildar used to come to the house of accused-Seema. He was having illicit relation with accused-Seema. Accused-Seema used to extend threat to the deceased that if he does not desert her, she will get him killed. Seema and Dildar along with their accomplices eliminated the deceased and hid the dead body in the heap of sand.

53. PW-6, Virendra Singh in his examination-in-chief has deposed that on 16.03.2007, he came to Agra on the information received by him in respect of the death of the deceased where Shri Chandra, who is the brother of the deceased was also present. At that time, police personnel also reached along with Dildar. On the pointing out of accused-Dildar, handle of hand pump and spade were recovered and memo whereof was prepared on which he put his signature. Shri Chandra also put his thumb impression, which was marked at Ext. Ka-10.

54. Cumulative effect of the statements of the aforesaid witnesses is that the appellant-Seema had illicit relation with appellant-Dildar and that the weapon of assault has been recovered on the pointing out of the appellant-Dildar. Appellant Dildar has also confessed to have killed the deceased.

55. So far as the evidence of hostile witness is concerned, a three Judge Bench of Hon’ble Supreme

Court in **Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh** (1991)3 SCC 627, relying upon catena of judgement of Hon'ble Supreme Court, held that "evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

56. In **State of U.P. Ramesh Prasad Mishra,** (1996) 10 SCC 635, Hon'ble Supreme Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon.

57. Hon'ble Supreme Court in ***Bhajju Vs. State of Madhya Pradesh (2012) 4 SCC 327*** discussed the worth of the evidence of a hostile witness in the following words:

> *"It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such*

> *testimony, if corroborated by other reliable evidence...”*

58. In **Selvamani Vs. State represented by Inspector of Police,** 2024 SCC OnLinw SC 837, after considering a catena of its earlier judgements on the point, Hon’ble Supreme Court held as under:

> *“Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.”*

59. The judgement in Ramesh Prasad Mishra (Supra) was reiterated by the Hon’ble Supreme Court in **Dadu alias Ankush and another Vs. State of Madhya Pradesh and another**, 2025 LiveLaw (SC) 1178.

60. In view of the above, the contention of learned counsel for the appellants that evidence of some of the prosecution witnesses, who turned hostile, cannot be taken into account has no leg to stand.

61. Now the question for consideration before this Court is as to how the accused-appellant Seema, who claims that she was not present in Agra and was in Allahabad, had the knowledge about the death of the deceased.

62. The First Information Report has been lodged on 16.03.2007 at 10:30 AM and autopsy on the cadaver

was done on 17.03.2007. Dr. Shri Ram, who conducted the postmortem examination on the body of the deceased opined that the death was caused at about 11:00 PM on 13.03.2007. From the above observations, of the doctor, it cannot be denied that the appellant-Seema was present in Agra and after the incident she left for Allahabad and on 16.03.2007, she informed Gambhir about the death of the deceased.

63. Moreover, the dead body of the deceased was recovered from the house of the appellant-Seema and burden lies on her to explain as to how body had been buried in her house.

64. Scope of Section 106 of the Indian Evidence Act was examined inconsiderable details by Hon'ble Supreme Court in **Shambhu Nath Mehra Vs. State of Ajmer,** AIR 1956 SC 404, wherein Hon'ble Supreme Court spelt out the legal principle in paragraph 11, which is as under:

> *11."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."

65. The question of burden of proof, where some facts are within the personal knowledge of the accused, was examined by this Court in the case of **State of West Bengal Vs. Mir Mohammad Omar, (2000) 8 SCC 382** in the following words:

"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 recognized 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 reaches 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 the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short

> *time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody." (Emphasis supplied)*

66. The applicability of Section 106 of the Indian Evidence Act, 1872 has been lucidly explained by the Supreme Court in the case of **State of Rajasthan Vs. Kashi Ram,** JT 2006 (12) SCC 254, which reads as under:-

> *The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden.*

67. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In

view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet 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 an explanation.

68. The Supreme Court in **Trimukh Maroti Kirkan Vs. State of Maharashtra,** (2007) 10 SCC 445 reiterated as here 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. xxxxxx*
>
> *15. Where an offence like murder is committed in secrecy inside a 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 of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet 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 an accused to offer any explanation."

69. In **Jagdish Vs. State of Madhya Pradesh,** (2009)9 SCC 495, Hon'ble Supreme Court observed as under:

> *"It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt."*

70. The Supreme Court in the case of **State of Rajasthan Vs Thakur Singh**, (2014) 12 SCC 211, while allowing the appeal preferred before it by the State of

Rajasthan against the judgment and order of the Rajasthan High Court, by which the High Court had set aside the conviction of accused Thakur Singh recorded by the trial court under Section 302 I.P.C. on the ground that there was no evidence to link the respondent with the death of the deceased which had taken place inside the room in the respondent's house, in which he had taken the deceased (his wife) and their daughter and bolted it from within and kept the room locked throughout and later in the evening when the door of the room was broken open the deceased was found lying dead in the room occupied by her and the respondent-accused. The High Court did not consider the provisions of Section 106 of the Evidence Act at all. The law is quite well settled, that burden of proving guilt of the accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused, and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts. In the instant case, since the deceased died an unnatural death in the room occupied by her and the respondent, cause of unnatural death was known to the respondent. There is no evidence that anybody else had entered their room or could have entered their room. The respondent did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred, nor did he set up any case that some other person entered room and cause to the unnatural

death of his wife. The facts relevant to the cause of the death of the deceased being known only to the respondent, yet he chose not to disclose them or to explain them. The principle laid down in Section 106, Evidence Act, is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that the deceased was murdered by the respondent. It is not that the respondent was obliged to prove his innocence or prove that he had not committed any offence. All that was required of the respondent was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this.

71. The Hon’ble Supreme Court further held as under

> “*In our opinion,he High Court has very cursorily dealt with the evidence on record and has upset a finding of guilt by the trial court in a situation where the respondent failed to give any explanation whatsoever for the death of his wife by asphyxia in his room. In facts of the case, approach taken by the trial court was the correct approach under the law and the High Court was completely in error in relying primarily on the fact that since most of the material prosecution witnesses (all of whom were relatives of the respondent) had turned hostile, the prosecution was unable to prove its case. The position in law, particularly Section 106, Evidence Act, was completely*

overlooked by the High Court, making it a rife at a perverse conclusion in law.”

72. In **Nagendra Sah Vs. State of Bihar** reported in (2021) 10 SCC 725, wherein Supreme Court observed 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."

73. In a recent judgement in **State of Madhya Pradesh Vs. Balveer Singh,** 2025 SCC OnLine SC 390, Hon'ble Supreme Court after considering a catena of judgements on the point, held thus:

"86. Cases are frequently coming before the Courts where the husbands, due to strained marital relations and doubt as regards the character, have gone to the extent of killing the wife. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family like in the case on board, even if he is a witness of the crime, would come forward to depose against another family member.

87. If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at the time and in the circumstances of its choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused. It is to resolve such a situation that Section 106 of the Evidence Act exists in the statute book.

> *In the case of Trimukh Maroti Kirkan (supra), this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. The Court proceeded to observe that 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."*

74. In view of the legal position enunciated herein above, we are of the view that the aforementioned circumstances constitute more than a prima facie case to enable the prosecution to invoke Section 106 of the Evidence Act and shift the burden on the accused to explain the following circumstances:

1. How the deceased-Chandra Pal died.

2. How and who buried the body of the deceased under the heap of sand.

3. How the appellant-Seema came to know about the presence of the dead body in her house.

4. How weapon of assault reached the house of Seema.

5. How the appellant-Dildar had the knowledge of weapon of assault in the house of appellant-Seema.

75. In the instant case both the accused-appellants have failed to give any explanation about the afore-mentioned foundational facts. When the aforesaid facts have been put to the accused-appellants while recording their statements, under Section 313 Cr.P.C., they have not not made any whisper in this regard.

76. In view of what has been indicated herein above, this Court is of the view that the prosecution has successfully proved its case beyond reasonable doubt against the appellants. The impugned judgement and order dated 24.10.2017 passed by the Additional Sessions Judge, Court No. 1, Agra in ST No. 730 of 2007, which has been assailed in these criminal appeals do not call for any interference.

77. Accordingly, both the criminal appeals are dismissed. Appellants are in jail. They shall remain in jail to serve out the sentence awarded to them by the Trial Court.

78. Office is directed to send a copy of this order to the court concerned for compliance and compliance report be submitted to this Court within two months.

(Devendra Singh-I, J) (Chandra Dhari Singh, J)

February 26, 2026
Ishrat