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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1867 of 2022

Rajkumar @ Rajbabbar S/o Jaglal Rajwade Aged About 24 Years Caste Rajwar, R/o Patelpara, Village Basdei, Out Post Basdei, P.S. And District Surajpur Chhattisgarh

... Appellant

versus

State Of Chhattisgarh Through Out Post Basdei, P.S. Surajpur, District Surajpur Chhattisgarh

... Respondent

For Appellant	:	Mr.Pushkar Sinha, Advocate
For Respondent	:	Mr.S.S.Baghel, Government Advocate

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

Judgment on Board

***Per* Ramesh Sinha, Chief Justice**

24/03/2026

1. This criminal appeal under Section 374(2) of the CrPC is directed against the impugned judgment of conviction and order of sentence dated 28.05.2022 passed by the Sessions Judge, Surajpur, District Surajpur in Sessions Case No.42/2019, by which the appellant herein has been convicted

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for offence under Section 302 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.500/-, in default of payment of fine, to further undergo RI for one month.

2. Case of the prosecution, in brief, is that deceased Jugmen used to have frequent disputes with her husband, the accused Rajkumar @ Raj Babbar, on account of her suspicion that he was involved with another woman. On 15.06.2019, between approximately 11:00 AM and 12:00 noon, the appellant and the deceased were alone in their house. The deceased had prepared food, but it was allegedly not properly cooked, which led the accused to scold her. This resulted in an argument during which the deceased allegedly used abusive language and accused the accused of having an illicit relationship with another woman. The situation escalated into a physical altercation. According to the prosecution, during this incident, the accused used a scarf (dupatta) available in the house to strangulate the deceased, causing her death. Thereafter, it is alleged that the appellant attempted to hang the body using the same scarf from a beam in the house. However, the scarf broke, causing the body to fall to the ground, during which the head of the deceased struck a nearby stove, resulting in bleeding.

3. It is further alleged that the accused, after the incident, threw the scarf aside, locked the house from outside, and left with the key. He then went to his cousin Manoj Rajwade's house in

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Manendragarh and informed him about the incident. Manoj, in turn, informed his aunt Urmila Rajwade, who lived near the accused's house, and asked her to inform the family members and neighbors. Subsequently, information was passed to the accused's father Jaylal. Thereafter, Jaylal and his wife, along with the village Kotwar, reported the matter at Police Outpost Basdei. A marg (inquest) was registered, and the locked house was opened in the presence of witnesses. The body of the deceased was found inside, and necessary inquest proceedings were carried out. The body was sent for postmortem examination to the District Hospital, Surajpur, where Dr.Deepak Jaiswal (PW-13) conducted postmortem over the body of the deceased and found following symptoms:-

> "i. Rigor mortis present all over body, all limbane extended & supine in position.
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> ii. Tongue protruded out between jaw.
>
> iii. Eye open.
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> iv. Blackish colour on facial skin.
>
> v. Blebs on chest & abdomen.
>
> vi. Throttling mark illdefined due to putrification of the body."

The doctor has opined that cause of death was asphyxia due to throttling (assault) and nature of death was homicidal.

4. On the basis of the investigation, an offence bearing Crime No. 207/2019 was registered at Police Station Surajpur under Section 302 of the Indian Penal Code. During investigation, the

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appellant was taken into custody and his memorandum statement was recorded. Based on his statement, the scarf allegedly used in the incident and the key of the lock were seized. A site map of the place of occurrence was prepared. Blood-stained soil, plain soil, and a broken lock were also seized. Statements of witnesses were recorded, and the seized articles were sent to the Forensic Science Laboratory for examination.

5. After completion of the investigation, a charge-sheet under Section 302 IPC was filed before the Chief Judicial Magistrate, Surajpur, and the case was committed to the Sessions Court for trial. The accused/appellant abjured the guilt and entered into defence.

6. In order to bring home the offence, the prosecution examined as many as 20 witnesses and exhibited 32 documents Exs.P-1 to P-32. 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.

7. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 28.05.2022, convicted the appellant for offence under Section 302 of the IPC and sentenced as mentioned in opening

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paragraph of this judgment, against which, this criminal appeal has been preferred by the appellant herein.

8. Mr.Pushkar Sinha, learned counsel for the appellant submits that the judgment of conviction and order of sentence passed by the learned trial Court is illegal, incorrect, and perverse, having regard to the prosecution story and the material available on record. The learned trial Court committed an error by applying the “theory of last seen together” without proper corroboration or supporting evidence. He further submits that the learned trial Court failed to appreciate that there is no direct evidence implicating the appellant. Further, the statements of other witnesses are marked by omissions and contradictions, which weaken the prosecution case. The trial Court ought to have considered that there was no established motive or intention on the part of the appellant to commit the alleged crime. The learned trial Court wrongly held that there was a sufficient motive for the appellant to commit the alleged crime, without considering that no reason exists for the appellant to have caused the death of the deceased. He also submits that the conviction is primarily based on circumstantial evidence, which has been incorrectly relied upon by the learned trial Court without establishing the chain of circumstances conclusively pointing to the appellant. The learned trial Court failed to consider that the FSL (Forensic Science Laboratory) report does not support the prosecution case, and therefore

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cannot serve as a basis for upholding the conviction. In light of the facts and circumstances of the case, the conviction of the appellant is without proper application of mind and is perverse as per the provisions of law and the sentence imposed upon the appellant is too harsh and excessive. Hence, the criminal appeal deserves to be allowed and the judgment impugned deserves to be set aside.

9. On the other hand, Mr. S.S.Baghel, learned Government Advocate appearing for the respondent/State supports the impugned judgment and submits that dead body of the deceased was found in the house of the appellant, therefore, provision of Section 106 of the Evidence Act is applicable in the present case and the appellant was required to explain as to under what circumstances Jugmen 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.

10. 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.

11. 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

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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.

12. 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."

13. 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.

14. 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

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cases. The burden would be of a comparatively lighter character.

15. 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.

16. 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

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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."

17. 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

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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."

18. 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 prestine 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.
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> 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.
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> 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

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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."

19. 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.
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> 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

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> 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."

20. 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 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.

21. 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.

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22. 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 died, as the dead body of the deceased was found 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.

23. 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**.

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

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25. 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 and also 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

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