



AFR



2026:AHC:109741-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4514 of 2023

Mahipal

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s) : Bishram Tiwari, Kamlesh Kumar Tripathi, Ram Naresh Nigam, Ritesh Singh, Shyam Shanker Pandey, Sonu Malik, Suresh Singh

Counsel for Respondent(s) : G.A.

Court No. - 42

**HON'BLE SIDDHARTHA VARMA, J.
HON'BLE PRASHANT MISHRA-I, J.**

1. The present criminal appeal has been preferred against the judgment and order dated 7.4.2023 passed by learned Sessions Judge, Rampur, in Session Trial No. 372 of 2017 (State vs. Mahipal and others), in Case Crime No. 552 of 2017 under Section 302 IPC, Police Station – Milak, District – Rampur, whereby the trial court had convicted the appellant to undergo life imprisonment under Section 302 IPC with a fine of Rs. 30,000/- and in case of default of payment of fine, he shall undergo four months additional imprisonment.

2. Upon the death of Mamta, the niece of the first informant Sri Rameshwar, an FIR was got lodged on 15.8.2017 which had given rise to Case Crime No. 552 of 2017. The alleged incident had taken place on 14.8.2017. As per the FIR version, the first informant had informed that

the daughter of the elder brother of the first informant was married around 3 years earlier to Mahipal. In the marriage, it has been said, the elder brother Sompal had given sufficient dowry to the accused Mahipal. However, the in-laws were not satisfied with the dowry and, therefore, immediately after the marriage the husband of the deceased, Mahipal, her father-in-law Sompal, her mother-in-law Sharda, jethani – Saroj, jeth Brijesh and nanad Kumari Annu were from the very beginning after the marriage torturing her. In this regard, a panchayat was also held. However, in the mid night of 14/15.8.2017 they all had together killed his niece Mamta. Upon getting the information about the death of Mamta, he had stated that he had reached the matrimonial house of Mamta and, thereafter, he had found that her dead body was lying and that the family members had run away. He had stated that at the place where the dead body was lying he had left behind his brother Sompal and had gone to get the FIR lodged.

3. Upon the FIR being lodged, the Police got into action and the inquest report was prepared on the 15.8.2017 itself. The inquest had commenced at 10:05am and had got completed at 11:00am. The dead body along with the Panchayatnama and the FIR etc. was sent for post mortem which was conducted on 15.8.2017 at 2:45PM. The cause of death was said to be asphyxia due to ante-mortem throttling. It was, however, said that the viscera was preserved. The police thereafter recorded the statements of various witnesses and also that of the accused persons and submitted its report before the Court, which on 20.1.2018 framed charges under Sections 498-A and 304-B IPC. An alternative

charge under Section 302/34 IPC was also framed on 7.12.2022. The charges were framed against the husband Mahipal, the father-in-law Sompal and the mother-in-law Smt. Sharda.

4. For proving of the prosecution case, as many as 7 prosecution witnesses were examined. Ashok Kumar Singh was produced as the court witness and from the side of the defence, three defence witnesses, namely, Smt. Chameli Devi, Rajpal, Harpal Singh were also examined.

5. P.W.-1 was the first informant, namely, Rameshwar. He had deposed before the Court in his examination in chief that the deceased was his niece and was the daughter of his brother Sompal. He had reiterated the facts as were stated in the FIR. In the statement-in-chief he had stated that for 4 -5 months after marriage in the place of the in-laws everything went off well but after that there were demands of dowry. In the dowry, Rs. 1 lac cash, one car and money for the purposes of building a house were demanded. He had stated that when the dowry was not given then they used to beat the deceased Mamta. After the completion of one year of marriage when the demand of dowry was not fulfilled then Mamta was also turned out of her house. With regard to the turning out of Mamta from her matrimonial house, a report was also got lodged at the Mahila Police Station. However, thereafter, there was an agreement reached between the parties with the help of all the relatives. Upon the rapprochement, Mamta went back to her matrimonial house but again after sometime the in-laws started beating her. On 14.8.2017, he had stated that when dowry was not given she was killed by strangulation and the culprits were Mahipal, Sompal, Sharda, Brijesh

and Annu. He had stated that thereafter he had reached the matrimonial house of the deceased on 15.8.2017 where none of the family members were to be found and the dead body was lying on a cot inside the room. On the neck there was an injury and there was a black line on it. On the head, there was a swelling. He had stated that he had got the FIR lodged against all the six accused and he had got it reported by dictating it to his nephew Arvind and he had, thereafter, proved the FIR. In the cross-examination, he had stated that Sompal and he himself i.e. Rameshwar were living in the same house. He had stated that in the morning he along with his nephew Arvind had gone to the place of incident at Partapur. They had started at 7:00am on a bike. After half an hour of their reaching Partapur, the elder brother of the first informant Radhey Shyam, another nephew Poshaki Lal and other relatives also started in two tractor trolleys. One tractor-trolley belonged to the pradhan of the village and the other tractor-trolley belonged to Poshakilal and he had stated that in the village Partapur another daughter of Sompal was got married and the name of the other daughter was Guddi and her husband's name was Jai Virath. Guddi was the eldest daughter amongst the brothers and sisters. He had stated that Guddi had not given the news to him but other persons of the village had given that news. Who had rung him up, he did not know and he had also not asked the name of that person. He had also not verified about the death of Mamta from Guddi. When he had reached Partapur, Guddi was not there and she had also not reached the place of incident till such time as the informant's side was there. He had stated that when he had reached Partapur then no one of

the in-laws side was there. However, when he and his nephew Arvind had reached, the other villagers had reached the place of incident whose name the informant did not know. He had stated that he stayed back at the place of incident for about 15 minutes. Who all had killed Mamta was informed by the person who had informed him of the incident on the phone. For him to reach at Milakh Kotwali from Partapur, it had taken about 15 to 20 minutes. At the police station, the nephew Arvind had scribed the FIR on his dictation. He had in the cross-examination stated that whenever Mamta used to come to her Maika, she used to tell everything about her in-laws. Upon asking the villagers as to where the family members of the in-laws had gone, the villagers had told the informant that they had left the village at around 4:00am in the morning. He had stated that even though the relations with Guddi the elder sister of the deceased were cordial, they had not contacted Guddi. He had stated that he had no idea that the elder brother of the accused Mahipal, namely, Brijesh had gone to Bagad (a place of pilgrimage). He had stated that Mamta was a simple girl and that he had no idea if she was suffering from any fits of anger etc. Upon further cross-examination, he had stated that because there was swelling on the neck and on the head he had stated that there was throttling. Upon a question being asked as to where the child of the deceased was born, he had told that the child was born in the Lovey Hospital. After the child was born, she had stayed for some time with the in-laws and thereafter for sometime, she went to her maika. He had also stated that he had no idea as to how much was the expense of the hospital as the same was borne by his brother. He had

further stated in his cross examination that it was wrong to say that because the husband of the deceased was a driver and because of that reason he used to remain out of the village and, therefore, the husband was vexed when she was not found in the matrimonial house. He had further stated that it was also not correct that because she stayed for long periods in her maika, her husband did not get the happiness she could give. He had stated that in his presence never any altercation had taken place for the purposes of dowry. In fact, he had stated that in the FIR he had not mentioned about the demand of dowry because nothing of that sort had happened in his presence ever.

6. P.W.-2, was the father of the deceased, Sompal. He had stated that the deceased was his daughter and that he had married her off around three years earlier with Mahipal and had given her enough dowry. He had stated that around 8 to 10 months after the marriage, Mamta used to inform him about the demand of dowry by her in-laws. He had also stated that she was turned out of her matrimonial house because of the non-payment of dowry. He had also stated that he had got a report lodged in the Mahila Police Station at Rampur. However, the two families had arrived at an agreement when there was a panchayat of the relatives. For sometime things went off smoothly but thereafter again the demand of dowry started off. He had stated that for a very long period, the deceased was not given food and when she used to fall ill she was not given any money for buying medicines. He had stated that he used to send money for the medicines. He had, thereafter, stated that the incident had taken place around one and a half year prior to the date of the

recording of the testimony in the Court and that on 15.8.2017 his elder daughter Guddi whose house was in the neighbourhood of the house of Mamta had rung him up and had informed him that the in-laws had throttled Mamta. He had stated that upon hearing this, all the family members had gone to the in-laws place at Partapur. There he had found that the in-laws were not present in the house. In the statement-in-chief, further he had stated that when he had reached the house at Partapur, he had found the dead body lying on a cot. He had also found some injury on the neck and head. He had stated that his brother Rameshwar had informed the police about the incident. After all the formalities the dead body was cremated. In the cross-examination he had stated that he had given enough dowry to the husband of the deceased at the time of the marriage. He had also stated in the Court, that he had also given a list of things which he had given as dowry. He had stated that whenever his daughter and son-in-law used to come to the village they were seen off with presents. He had stated that he had not gone to get the FIR lodged and thus the same was lodged by his brother Rameshwar. He had stated that he had given enough dowry at the time of marriage. He had stated that his son-in-law Mahipal was a driver and also used to do farming and had stated that it was correct to say that for many days together his son-in-law used to be out of the house and that his daughter used to stay in her maika. On the date of the incident, he had reached the place of incident half an hour after his brother and his nephew had reached. Thereafter he had stated that at the house the inmates of the susural and various villagers were there. In the cross-examination again he had

stated as to how he had got the information and then he had stated that his son-in-law was present.

7. He had stated that his daughter was never happy in her in-laws house. She had become pregnant after two years of marriage and had stayed in her in-laws house thereafter. The medical treatment was also given by the in-laws. The child, however, was a still born child and was born in the Lovey hospital and that he had got her admitted in the maika in the Lovey hospital. He had however no proof about it. He had stated that the in-laws had kept the daughter admitted for 4 days in the Lovey hospital. From the time she conceived till such time as she delivered the baby she had remained in the matrimonial home. She never came to her maika. After she was discharged from the hospital she had gone to her in-laws. The child was born after full 9 months. When the deceased was pregnant, the maika vala used to visit her. He had stated that he had not got the FIR lodged as he was unconscious at the relevant point of time. He had also stated that police had never taken any statement of his. Upon being confronted with a statement under Section 161 Cr.P.C., he had stated that he had not got any statement under Section 161 Cr.P.C. recorded. On the date of incident he was unconscious. What was got recorded in the FIR he did not know. Whether Brijesh, the Jeth, had gone for pilgrimage he did not know. Why his brother despite knowledge that there was a demand of dowry had not mentioned in the FIR that Rs. 1 lac was demanded, he did know. He had stated that whenever his son-in-law Mahipal used to go out as a driver his daughter i.e. the deceased used to stay with her in-laws and she never used to go to her maika. He

had further stated that he had on many an occasion brought the deceased to his own house. Then he had stated that he had seen the injuries on the body of the deceased and that it was present on the waist and neck and on the neck there were injuries of beating by danda also. He had stated that earlier also she used to get beatings. He had never got reported those beatings as he feared that the son-in-law Mahipal would abandon her. He had in the cross-examination stated that the deceased had never fallen ill and, therefore, earlier when he had stated in his statement that he used to give her medicines was a wrong statement. The fact was that no medicine was required by her. He had stated that his other daughter Maldei (Guddi) was also got married in the village where the deceased had got married and Maldei had never informed of any torture or demand of dowry. He had stated that it was wrong to say that because the father had kept the daughter for a very long time in maika, therefore, Mamta had committed suicide. He had thereafter in the end stated that it is wrong to say that she used to stay very happily in the matrimonial home.

8. P.W.-3 was the Sub Inspector Satendra Kumar who was the Investigating Officer at the relevant point of time. He was also present at the time of the panchayatnama. He had stated in his cross-examination that he had not found any evidence of any broken bangles. She was also wearing a chain(mala) in her neck. There was no apparent injury on the body. On the neck there was a ligature mark. How the death had taken place, he had no idea. She was wearing a round Bindi and her clothes were proper. From the panchayatnama it was apparent that there were a

few people from her maika and a few people from her Sasural. No danda etc. was recovered.

9. P.W.-4 was one Vinod Babu, the brother of the deceased. He had stated in the examination-in-chief that he had solemnized the marriage of his sister in the village – Partapur, Police Station – Milakh, District – Rampur, with Mahipal around 3 years prior to the date of incident. For a period of 8 to 9 months everything went off well and thereafter there was a demand of Rs. 1 lac and a car and some money for the construction of house. The demand was made by the husband Mahipal, her father-in-law Sompal, her mother-in-law Sharda, her sister-in-law Annu, her Jeth Brijesh and jethani Saroj. When the demand was not fulfilled, the deceased was tortured and somehow she used to go to her village i.e. her mother's place. When a complaint was made with the police then the in-laws asked for forgiveness and they also stated that they would never in future demand any dowry. For some time everything went off well but subsequently he states that Mahipal and his family members killed the deceased. Upon getting the information about the death of the deceased, he had stated that he had reached the village – Partapur where he had found the dead body on a cot. He had stated that he had seen the injuries on the eye-brows, neck and at that point of time, the accused persons were not available in the house and the FIR was lodged by his uncle Rameshwar. He had also signed on the Panchayatnama. The compromise which was earlier entered into was also seen by him and he had stated that it was a Panchayatnama which was entered between the family members of the deceased and her in-laws. In the cross-

examination, he had stated that information with regard to the death had reached his uncle on phone. He or his father had not received any information. In the cross-examination, further he had stated what he had got recorded in the examination-in-chief. Upon a question being asked whether he had got any case lodged earlier then he had said that he had got a case lodged in the Mahila Police Station. He, however, had stated that he did not have a copy of the FIR as the matter had resulted in a compromise. He had, in fact, not known even about the case crime number. He had stated that the deceased never used to stay continuously for 15 to 20 days in her susural. Even though she used to get a beating at the in-laws place he had stated that he never used to get a medical done. Whenever they used to say that they would not torture her then they used to take her to the in-laws place. When the deceased was pregnant, he had stated that the routine check up was got done by in-laws as also by her family members on the mother's side. He had stated that he did not remember as to who had taken the discharge certificate. The still born child was born almost after one and a half or two years of the marriage of Mamta.

10. P.W. -5 is the Doctor who had conducted the post mortem along with other doctors in the panel. He had stated about the ante- mortem injuries that were there, namely traumatic swelling on the top of the head and on the right eye-brow. There was also an injury on the neck, both on the front side and on the back side. There was an abrasion on the chest of the left side. The doctor had stated that the hyoid bone was intact and the opinion given by the doctor was that it could have been caused by

throttling. However, the viscera was preserved. He had also stated that at the time of post mortem all the articles of make up, namely, bangles etc. were in proper state. He had also given an opinion that the case could have been that of hanging and the injuries could have been because the body had fallen down when it was being taken down from the rope. There were no thumb impressions on the throat which are usually found at the time of throttling and, therefore, he also stated that the death could happen because of hanging and that it also could be a case of suicide. In the cross-examination, however, further he had stated that there was no sign of any rope being used for hanging. He had then stated that if throttling by hand was done then there would have been some signs of nails on the neck. Upon a question being put as to whether it was essential for the finger prints to be there if there was throttling then he had answered that it was not possible without them. He has stated that hyoid bone normally got broken in the case of throttling but it was not essential at all times.

11. P.W.-6, Sri O.P. Arya was the investigating officer and he had stated the manner in which the investigation was done. He had stated that it was right to say that at the time of the incident most of the family members were not there but the whereabouts of Mahipal, the husband who was a driver could not be told. He had, however, stated that it was wrong to say that she had committed suicide as she was tired of the people in the maika.

12. P.W.-7 was the constable Harendra Singh who had proved the chik.

13. A Court Witness by the name of Ashok Kumar Singh was also summoned and had stated that on 15.8.2017 he was posted at Tehsil Milakh as Tehsildar and he had gone to oversee the panchayatnama on the relevant date. He had stated that on the body of the deceased there was no sign of any resistance and, there was no injury to that effect. However, there was only a ligature mark on the throat. There was absolutely no sign of any weapon having been used. The ligature mark, it was said could have been there because of hanging. The other articles of make up namely a chain (neckless) Bindi and bangles were found intact.

Thereafter, the statements of the accused persons were recorded under Section 313 Cr.P.C. They had denied having committed the crime.

14. From the side of the defence also, certain witnesses had appeared. D.W.-1 was Smt. Chameli Devi. She had very categorically stated that Mamta had died by hanging. The door was closed from inside and she had hung herself to death with the help of a Chunni. She had stated that father of Mahipal had informed her that Mahipal had gone somewhere else in some programme of Janamasthmi. When the incident had occurred, the mother of Mahipal had raised a hue and cry and quiet a few people of the village had collected and from the window they had seen Mamta hanging. They broke down the door and entered. She had stated very categorically that Mamta had committed suicide. She had, upon a question being asked as to why she was taken down from hanging position then she had replied that it was thought that she might have been saved by taking her down from the hanging position. She had also stated that her in-laws never tortured her. She had stated that Mahipal

used to go for driving and was very often out of the house. She had basically stated that the deceased was happy in the house of the in-laws and there was no torturing etc done. The child of Mamta was also born by surgery and that the entire expenses were borne by Mahipal, the accused.

15. In the cross-examination, she stood firm and had stated that Sompal, the father-in-law of the deceased had come and informed her about the death of Mamta.

16. D.W.-2 Rajpal had also stated somewhat the same thing as was stated by the D.W.-1. He had also stated that he was not in any manner related to the accused persons.

17. D.W.-3 is Haripal Singh. He had also stated exactly what the D.W.- 1 and 2 had stated that Mamta had died by hanging herself.

18. Upon completion of the Trial, the court on 7.4.2023 had acquitted Sompal @ Dhyan Singh and Smt. Sharda of the charges under Section 498-A, 304-B, 302/34 IPC and Section 3/4 of the Dowry Prohibition Act. However the Trial Court convicted the accused – appellant Mahipal under Section 302 IPC, then the instant criminal appeal was filed by Mahipal.

19. Learned counsel for the appellant Sri Bishram Tiwari assisted by Sri Ritesh Singh has submitted that the witnesses of fact i.e. the P.W. 1, 2, 3 and 4 had simply concluded that because of the fact that the incident had occurred in the house of the appellant Mahipal, the appellant alone was responsible and had to be convicted.

20. Learned counsel for the appellant assailed this aspect of the case by submitting that as per the law laid down by the Supreme Court in the judgement of **Smt. Gargi v. State of Haryana** reported in **AIR 2019 SC 4864**, settled law was that even if the appellant was the husband of the deceased and both of them were staying under the same roof, the fact remained that such companionship in itself did not mean that a presumption of guilt of the appellant had to be drawn. The Trial Court could not have thus proceeded in the manner it had proceeded by presuming that the appellant was guilty as per the provisions of Section 106 of the Evidence Act. He had submitted that it was the bounden duty of the prosecution to discharge its primary burden of proving the case of the prosecution beyond reasonable doubt. The prosecution first had to work its way through various evidence to find out that the appellant was actually in the house at the relevant point of time. Learned counsel for the appellant submits that the appellant was a driver and there was every possibility that he was not in the house at all.

21. Since the learned counsel for the appellant relied upon paragraph no. 33 of the judgment in the case of **Smt. Gargi v. State of Haryana** reported in **(2019) 9 SCC 738**, they are being reproduced here as under:-

“33. The prosecution has relied upon another circumstance that the deceased was lastly in the company of the appellant and she had failed to explain his whereabouts as also the circumstances leading to his death.

33.1 Insofar as the “last seen theory” is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean

that a presumption of guilt of the appellant is to be drawn. The trial court and the High Court have proceeded on the assumption that Section 106 of the Evidence Act [“**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.”] directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in *Sawal Das* [*Sawal Das v. State of Bihar*, (1974) 4 SCC 193 : 1974 SCC (Cri) 362] in the following: (SCC p. 197, para 10)

“10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused.”

33.2. On the facts of the present case, it emerges that as per the version of PW 7, the deceased was lastly in his company on 28-4-1997 when he allegedly expressed his dejection and fear as also his plan to return with luggage. The appellant has pointed out that the deceased was with her in the morning of 29-4-1997 when he pointed out his tour programme commencing that day with scheduled return on 3-5-1997. It is not in dispute that the deceased was regularly on tour for longer durations of about two weeks in connection with his duties. The dead body was recovered on 1-5-1997 and as per post-mortem report, the probable time that had elapsed between death and post-mortem (on 2-5-1997 at 12.30 p.m.) was 24 to 72 hrs. On the basis of this opinion, it cannot be assumed by way of arithmetical calculation that the deceased might have met with his end on 29-4-1997. The possibility of it being a day later is not ruled out.

33.3. In the given set of circumstances, the last seen theory cannot be operated against the appellant only because she was the wife of the deceased and was living with him. The gap between the point of time when the appellant and the deceased were last seen together and when the deceased was found dead had not been that small that possibility of any other person being the author of the crime is rendered totally improbable. In *Sk. Yusuf [Sk. Yusuf v. State of W.B., (2011) 11 SCC 754 : (2011) 3 SCC (Cri) 620]*, this Court has said: (SCC pp. 760-61, para 21)

“21. The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.”

22. The other arguments raised by the learned counsel were as follows:-

I. Still further, learned counsel for the appellant submitted that one more sister of the deceased known by the name of Guddi @ Maldeihad got married in the very same village where the deceased had got married but she had never given the information of the death and also the sister of the deceased was not in the know of the fact that her own sister was being tortured in any manner whatsoever.

II. Learned counsel for the appellant further submitted that if the evidence of the various prosecution witnesses of fact are seen then also it becomes clear that the first informant was the uncle of the deceased and he had stated that somebody had rung him up to inform about the death but in fact he was unable to tell the name

of the person who actually had informed him and the call details were also not looked into when the investigation had taken place and, therefore, it was not reliable to believe that somebody had informed him. Further, the case of the P.W.-1 becomes doubtful when P.W.-2 who was the father had said that he had directly got information at around 8 to 9 AM in the morning on the date of the incident. The father had also never got the FIR registered but he was stating that he had got the FIR scribed. The source from where the father got information also was the elder daughter and this fact was never disclosed by P.W.-1.

III. Learned counsel for the appellant had submitted that when the still born child of the deceased was born there were contradictory stands taken by the prosecution witnesses as to who had met the expenses of the treatment. The P.W.-1 had stated that it was the Maikawala who had got the treatment done whereas the P.W.-2 and other prosecution witness i.e. the brother of the deceased had stated that the in-laws had got the treatment done.

IV. Learned counsel for the appellant had further stated that when there were statements from the side of the defence also that they had seen the incident actually with regard to the hanging of the body from the roof then that aspect of the matter ought to have been looked into by the Trial Court.

V. Learned counsel for the appellant further stated that if there had to be a strangulation there in the absence of any hyoid bone being fractured then a definite medical opinion ought to have been

there with regard to the fact as to whether there were any thumb nail marks on the throat. Learned counsel for the appellant states that when thumb nail marks on the throat were absent and the ligature mark was there present on the neck and throat then there was a possibility that the deceased had died owing to hanging.

VI. Learned counsel for the appellant had submitted that when other co-accused had been discharged of the charges levelled against them and the evidence was led with regard to all the accused virtually on the same ground that the deceased and the accused were all living under the same roof then for the trial court to take a view different for the accused definitely had a prejudicial effect on the case of the appellant who was the only accused who was convicted.

23. Learned AGA Sri Amit Sinha opposed the appeal and submitted that in view of the evidence which was there against the accused and in view of the fact that the deceased had died in the house of the accused appellant then there was no other presumption to be drawn than the one which had been drawn by the trial court.

24. Having heard the learned counsel for the parties, we are of the view that the prosecution did not discharge its duty of actually coming up with the evidence which would have gone to prove that despite the fact that the husband i.e. the accused appellant was staying with the deceased under the same roof he alone was the person who had actually committed the crime. In the instant case, we find that the appellant's husband was a car driver and he quite often used to be away in

connection with his job but at no point of time the prosecution specifically pointed out that in fact the appellant alone had committed the crime and conclusions had been drawn because of the provisions of Section 106 of the Evidence Act that if the accused was living with the appellant then it was the appellant's duty to have explained as to how the murder had taken place. In the instant case, we find that the very first prerequisite was that the prosecution should have come up with the case whereby it would have been found that the husband was on that particular date in the house where the deceased had died. In the absence of the primary function which had to be performed by the prosecution whereby they had to prove that the husband was actually present in the house at that particular point of time, we are of the view that the prosecution had failed in its duty and thus the only irresistible conclusion is that when the prosecution itself had failed to discharge its duty of bringing in evidence to prove that the husband i.e. the appellant was in the house at the relevant point of time and had committed the murder, then the accused – appellant is entitled for acquittal. Also it is noteworthy to mention here that one of the most important witnesses of cruelty, harassment and demand of dowry, etc. was the elder daughter of Sompal i.e. Maldei alias Guddi, who was married in the very same village where the deceased Mamta was married. She has not been produced by the prosecution. She would have been the test witness regarding the allegations levelled by the in-laws of Mamta (deceased) as both were real sisters and were married in the same village. Had Maldei

alias Guddi was examined by the prosecution she would have been a much better witness than those produced by the prosecution.

25. Further, PW-2, in his examination-in-chief, has very clearly stated that Maldei alias Guddi was married in the neighbourhood of Mamta's matrimonial home and he has also stated that Maldei informed him on telephone that Mamta was beaten and was throttled to death by her in-laws, whereas PW-1, on the other hand who is the uncle of deceased Mamta, has vehemently stated in his cross-examination that the information as to the death of Mamta was not given by Guddi. So, at this juncture, there is a big contradiction between the version of the witnesses. It has also been stated by the prosecution witnesses that the cost of treatment during pregnancy of Mamta was borne by the Maikawalas and in the same context the other prosecution witness says that the cost was borne by the in-laws of the deceased. Therefore, here also appears a contradiction which although not very material to the case but holds an importance as the family members of the deceased would have known the fact as to who borne the expenses when the deceased was undergoing a surgery during her pregnancy, when still born child was born.

26. Moreover, the defence witnesses, namely, Chameli Devi, Rajpal and Harpal Singh have also been examined and they all have stated that Mamta died due to hanging and they have also stated about the injuries which they saw on the body of the deceased. The doctor, who conducted the post-mortem of the deceased, has also stated in his cross-examination

that the injuries caused on the body of the deceased, may be due to hanging.

27. Therefore, in view of the above, we are of the view that prosecution has completely failed to establish the charges levelled against the appellant and that if on the same set of evidence, the two accused Sompal alias Dhyan Singh and Smt. Sharda Devi were acquitted of the charges levelled against them, it was bad to convict the sole appellant-Mahipal on account of the same evidence.

28. Thus in view of what has been stated by us, we are of the view that the appeal deserves to be allowed and the judgment and order dated 7.4.2023 passed by the Sessions Judge, Rampur, be set aside.

29. The instant criminal appeal is, therefore, allowed and the judgement and order dated 7.4.2023 passed by the Sessions Judge, Rampur, is set aside.

30. That the appellant is honourably acquitted of all the charges under which he was tried. Since the appellant is acquitted of all the charges, the sureties and bail bonds be discharged. The appellant be, therefore, released forthwith if he is not required in any other case.

(Prashant Mishra-I,J.) (Siddhartha Varma,J.)

May 12, 2026

PK