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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 962 of 2011

- Gais Bai, W/o Santram, aged about 50 years, R/o Village Pachhasipara Bamhani, Thana Pendra, District Bilaspur (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through P.S. Pendra, Distt.-Bilaspur, C.G.

---- Respondent

CRA No. 700 of 2012

- Sant Ram S/o Ram Singh Aged About 50 Years R/o Village - Pachhasipara Bamhani, Thana - Pendra, Distt. - Bilaspur C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through PS Pendra, Distt. Bilaspur C.G.

---- Respondent

For Appellant : Shri Yogendra Chaturvedi, Advocate.
For Respondent : Ms. Madhu Nishra Singh, Panel Lawyer.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Gautam Chourdiya, JJ**

Judgment On Board By Prashant Kumar Mishra, J

16/08/2019 :

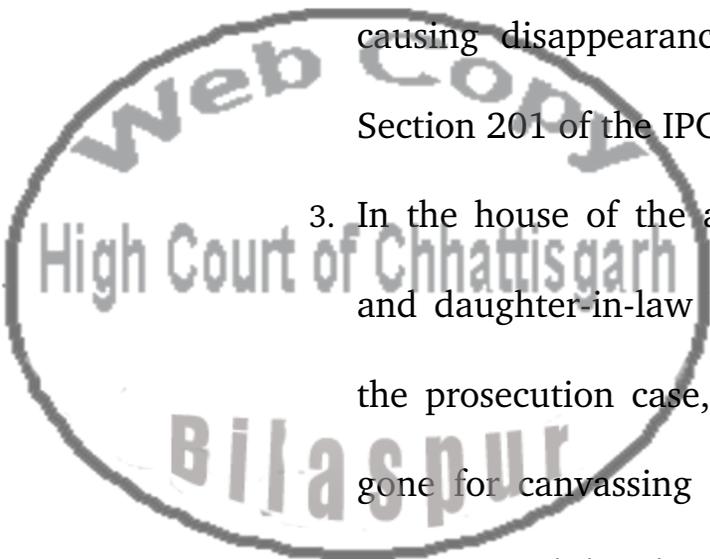
1. Both the appeals are being disposed of by this common judgment,



as they are arising out of the judgment dated 28.11.2011 passed by the Additional Sessions Judge, Pendra Road, Bilaspur in ST No.20/2010.

2. Appellant Santram has been convicted for committing murder of his daughter-in-law deceased Parwati at about 9 pm on 22.1.2010 by assaulting her and thereafter setting her on fire, along with other accused Gais Bai, appellant in CRA No.962/2011, for causing disappearance of evidence of crime punishable under Section 201 of the IPC.

3. In the house of the appellant, their daughter, son Dhyan Singh and daughter-in-law Parwati were residing jointly. According to the prosecution case, at the time of incident, Dhyan Singh had gone for canvassing for Panchayat election. Santram, his wife Gais Bai and daughter were present in the house. The bulls/oxen of the neighbours started becoming uncomfortable and fire was seen inside the house of the appellant. Therefore, neighbours Ratan Singh, Manasram, Laxman etc. rushed to the place and doused the fire. They also removed the roof tiles to witness that the deceased is lying dead on the cot having suffered burn injuries. Her burnt legs were seen and body was covered with blanket (Rajai). Dhyan Singh reached the place of occurrence after hearing the news from the village people.





4. Merg intimation (Ex.-P/8) was lodged by the appellant Santram himself. In the postmortem conducted by PW-9 Dr. Devendra Singh Paikra, it was found that the burn was not cause of death because it looks postmortem burn. Death may be homicidal and may be due to injury to brain as there is haematoma in frontal lobe which is well demonstrated. There is also not any particle or smoke in airways neither any froth nor muscular shreds or necrosis or detached shreds. The autopsy surgeon found the following features and injuries over person of the deceased:-

“A dead body of an average built and pugilistic attitude with badly burnt from all over superficial and deep muscular layer as also bone of face is exposed burnt. Hands (both) completely burnt. Face and head burnt and unidentifiable. Intestines are exposed and burnt. Fissured fracture either side of skull above temples. There is outward bursting of bone flaps & Protution of brain tissues, but frontal and occipital bone shows multiple fracture not resembling sutured line (may be due to violence). The brain resembling frontal fracture, there is intra-cranial haematoma 2 x 8 cm. One oral cavity and upper respiratory air way are clear and congested, larynx, trachea and esophagus are clear.

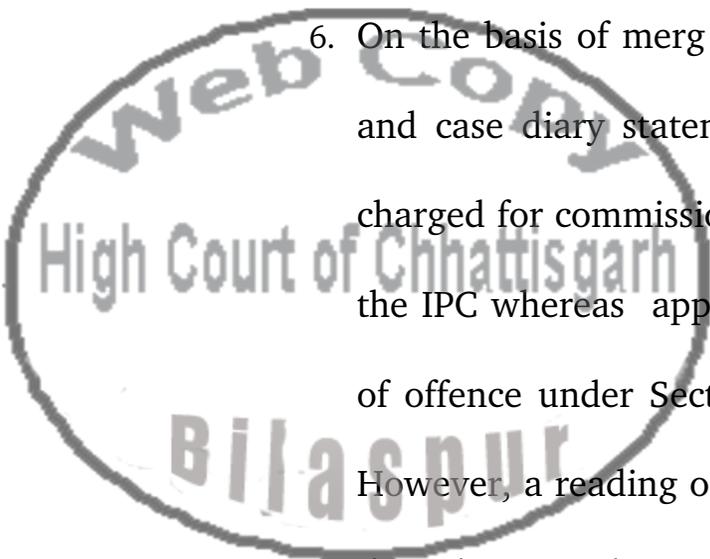
In my opinion, burn is not cause of death because it looks postmortem burn, death may be homicidal and may be due to injury to brain as there is a hematoma in frontal lobe which is well demonstrated. There is also not any particles or smoke in airways neither any froth nor muscular shreds or necrosis or detached shreds.”

5. The Investigating Officer recorded memorandum statement of



appellant Santram vide Ex.-P/2, caused recovery of axe vide Ex.-P/3. However, there is no FSL report nor memorandum or seizure memo would point out presence of blood over axe. The I.O. also recovered one Panchnama (Ex.-P/1) vide seizure memo (Ex.-P/5) from possession of one Pawan Singh, the person who had written Panchanama carrying confessional statement of accused Santram.

6. On the basis of merg intimation, postmortem report, Panchnama and case diary statements of witnesses, appellant Santram was charged for commission of offence under Sections 302 and 201 of the IPC whereas appellant Gais Bai was charged for commission of offence under Section 302 read with Section 201 of the IPC. However, a reading of the charge against Gais Bai would indicate that the ingredients of charge constituted only offence under Section 201 and not 302 of the IPC.
7. On the basis of evidence on record, the trial Judge has convicted the appellant Santram for both the offences whereas Gais Bai has been convicted for commission of offence under Section 201 of the IPC.
8. Shri Yogendra Chaturvedi, learned counsel for the appellant would submit that there is no evidence that appellant Santram was present in the house. Therefore, in view of lack of any

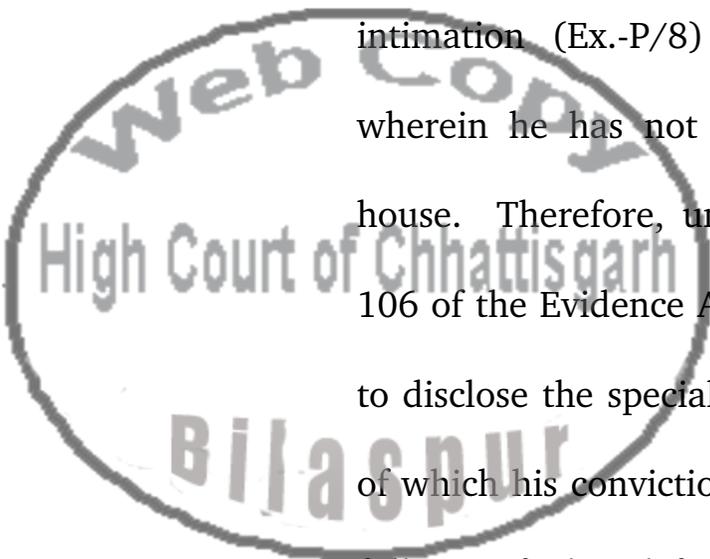




eyewitness or any other incriminating circumstance against him, his conviction under Section 302 of the IPC is without any evidence. He would further submit that there is absolutely no evidence against Gais Bai to the effect that she was aware that the deceased has been murdered and thereafter she concealed any evidence of crime.

9. On the other hand, learned State Counsel would submit that merger intimation (Ex.-P/8) has been lodged by appellant Santram wherein he has not disclosed that he was not present in the house. Therefore, under the principle enshrined under Section 106 of the Evidence Act, appellant Santram was under obligation to disclose the special facts within his knowledge, in the absence of which his conviction under Sections 302 and 201 of the IPC is fully justified and for the same reason, Gais Bai, who was also present in the house, has rightly been convicted under Section 201 of the IPC.

10. Appellant Santram has taken specific plea in his examination under Section 313 CrPC that at the time of incident he had gone to his aunt's house (*Mausi's house*) located at some other place and he is not aware as to the reason of cause of death of the deceased, therefore, we are required to scrutinize the evidence to find out whether the prosecution has proved by producing cogent



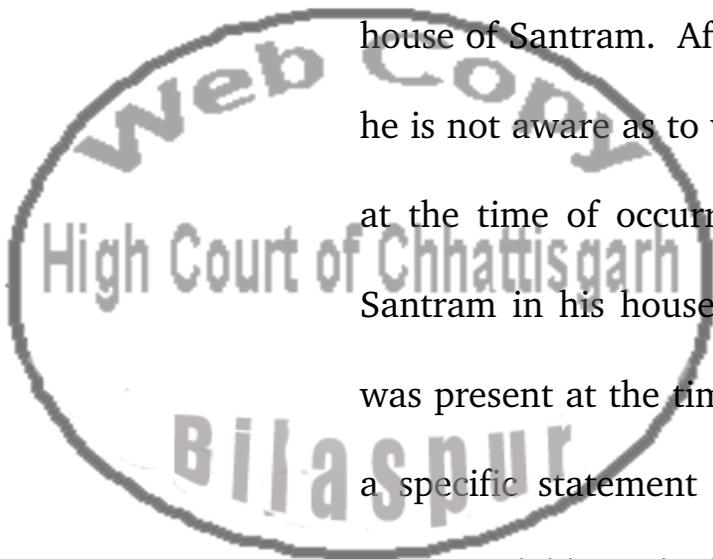


and reliable evidence about the presence of appellant Santram in the house so as to attract the provisions under Section 106 of the Evidence Act against him.

11. (PW-1) Banas Ram Gond resides in the rear side of the house of appellant Santram. He saw fire in the house of Santram but he did not visit the place of occurrence. He only informed Ratiram, Kalyan and Bhagwan Singh by shouting that there is fire in the house of Santram. After being declared hostile, he has stated that he is not aware as to whether Santram was available in the house at the time of occurrence or not. He speaks that he had seen Santram in his house in the evening but is not sure whether he was present at the time of occurrence. In para-4, he would make a specific statement that appellant Gais Bai and her daughter were available in the house at the time of occurrence.

12. (PW-2) Kalyan Singh Gond is the maternal uncle of appellant Santram. This witness has been declared hostile. He resides in the same locality but has stated that he did not find Santram in his house when he had gone to douse the fire. When this witness was informed by Santram about the incident on the next morning, he did not ask as to where was he at the time of occurrence.

13. (PW-3) Ratan Singh has also been declared hostile. He is also not aware as to whether Santram was available in the house at

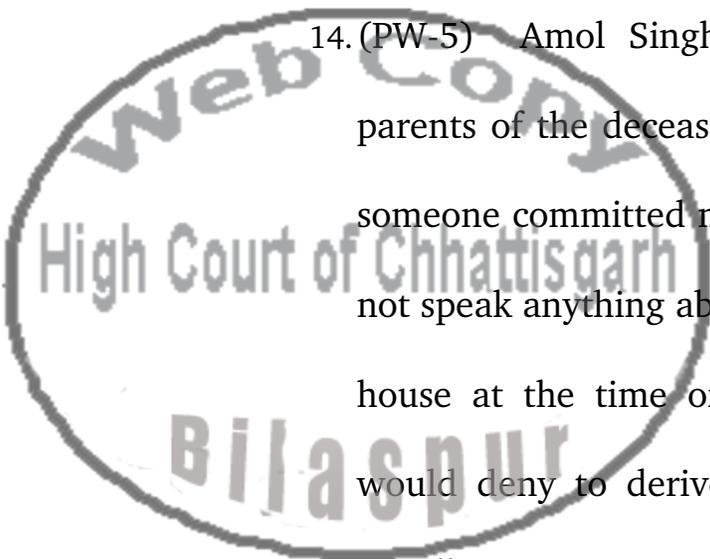




the time of incident. (PW-4) Ram Ratan Singh also makes similar statement. This witness is also a signatory to Panchnama (Ex.-P/1) wherein the appellant has made confessional statement. However, in para-5 of his cross-examination, he would clearly state that Pawan Singh wrote contents of Ex.-P/1 on the dictation of some police officer and he had signed over the document on being asked by the police officer.

14. (PW-5) Amol Singh Gond and (PW-6) Remti Bai Gond are parents of the deceased. Both these witnesses would allege that someone committed murder of their daughter but they too would not speak anything about the presence of appellant Santram in his house at the time of occurrence. (PW-5) Amol Singh Gond would deny to derive any information from the deceased that appellant Santram used to doubt her character. (PW-6) Remti Bai Gond would also not throw much light about the alleged motive for commission of crime. On the contrary, she would speak that her daughter was residing happily with her husband and had never made any complaint about any torture or maltreatment in her marital house.

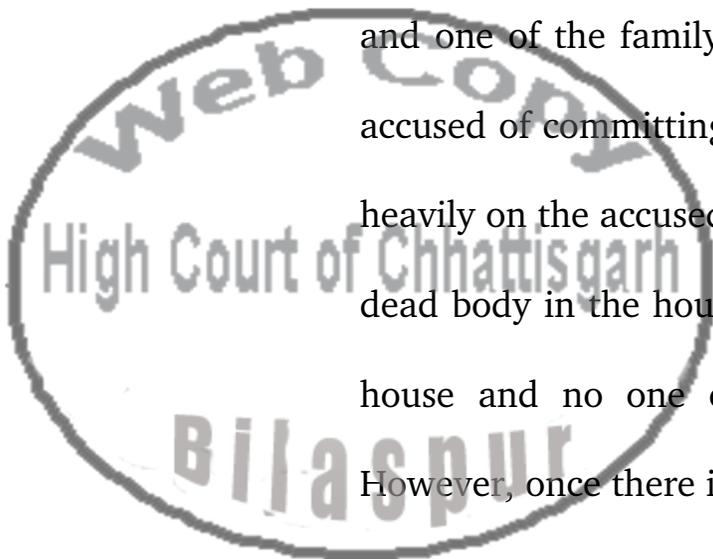
15. (PW-7) Sukhi Ram Gond and (PW-8) Dev Singh Gond are witnesses to the seizure memo (Ex.-P/5) by which Panchnama (Ex.-P/1) has been recovered.





16. (PW-9) Dr. Devendra Singh Paikra is the autopsy surgeon, who has proved the postmortem report (Ex.-P/6). Injuries and cause of death mentioned therein has already been dealt with in the preceding paragraphs. (PW-10) N.L. Maravi is the IO who has conducted investigation.

17. The principle under Section 106 of the Evidence Act is pressed into service more often when murder of a family member occurs and one of the family member who resides in the same house is accused of committing the offence. In such cases, the burden lies heavily on the accused to explain the circumstances of presence of dead body in the house when he or she alone was present in the house and no one else had access to the place of incident. However, once there is evidence either in form of statement under Section 313 CrPC or in form of oral evidence of witnesses that the accused was not present in the house at the time of incident, the burden shifts on the prosecution to prove from other evidence that it was the accused who committed the offence. The principle under Section 106 of the Evidence Act that the fact, which is within the exclusive knowledge of any person, has to be explained by the person concerned may not apply where the prosecution has failed to provide sufficient factual foundation to require the accused to explain that special fact within his knowledge. If the





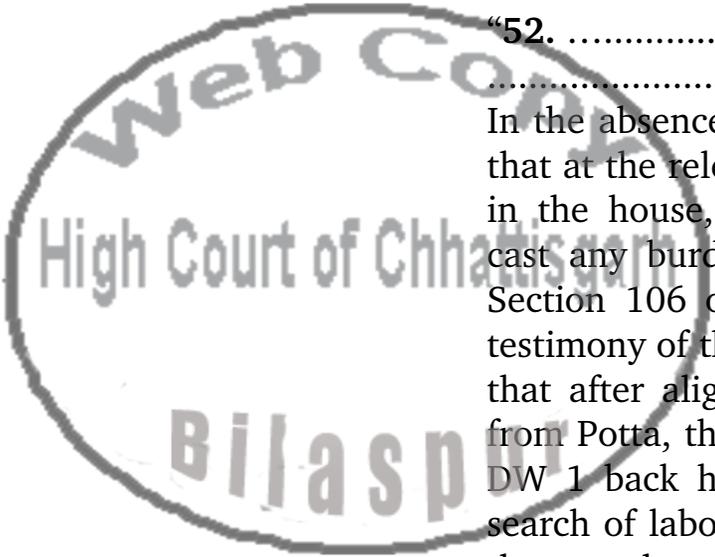
accused fails to explain the circumstances, then it will be one additional circumstance in the chain of circumstantial evidence providing missing link to the whole chain and the same may form basis for conviction by taking entire evidence together.

18. In a recent judgment in the matter of **Jose alias Pappachan Vs. Sub-Inspector of Police, Koyilandy and Another** {(2016) 10 SCC 519}, the Supreme Court has held thus at para-52:-

“52.

.....
In the absence of any persuasive evidence to hold that at the relevant time the appellant was present in the house, it would also be impermissible to cast any burden on him as contemplated under Section 106 of the Evidence Act. The consistent testimony of the appellant and his son to the effect that after alighting from the bus on their return from Potta, the deceased was made to accompany DW 1 back home while the appellant did go in search of labourers for works in his compound on the next day and that thereafter till the time DW 1 had departed for his ancestral house, the appellant did not return home, consolidates the defence plea of innocence of the appellant.”

19. True it is that in the merg intimation, appellant Santram has informed about the incident in which his daughter-in-law died after receiving burn injuries, which fact is otherwise false or incorrect due to different findings about her death recorded by the autopsy surgeon in the postmortem report (Ex.-P/6). However, while lodging this merg intimation Santram was





accompanied with Kotwar Fagun Lal Panika and Mohan Singh Gond, but both these witnesses have not been examined in course of trial. At one place in the merg intimation, it is mentioned that son of Santram (इसका लड़का) and मृतिका के ससुर का लड़का which suggests that the merg intimation was probably dictated by some other persons because otherwise Santram would not mention himself as father-in-law of the deceased (मृतिका का ससुर). Thus, there is doubt as to whether merg intimation was in language spoken by Santram himself or it was dictated by Kotwar Fagun Lal Panika or Mohan Singh Gond, who had accompanied him to the Police Station. In any case, this document by itself is not conclusive of fact that Santram was present in the house at the time of occurrence. None of other witnesses examined by the prosecution have made any statement proving presence of the appellant in the house at the time of occurrence. Thus, the prosecution has not been able to establish that Santram was present/available in the house at the time of occurrence. In the absence of such evidence, Section 106 of the Evidence Act cannot be applied against the appellant necessitating him to explain the circumstances in which the deceased sustained ante mortem injuries or postmortem burn injuries.

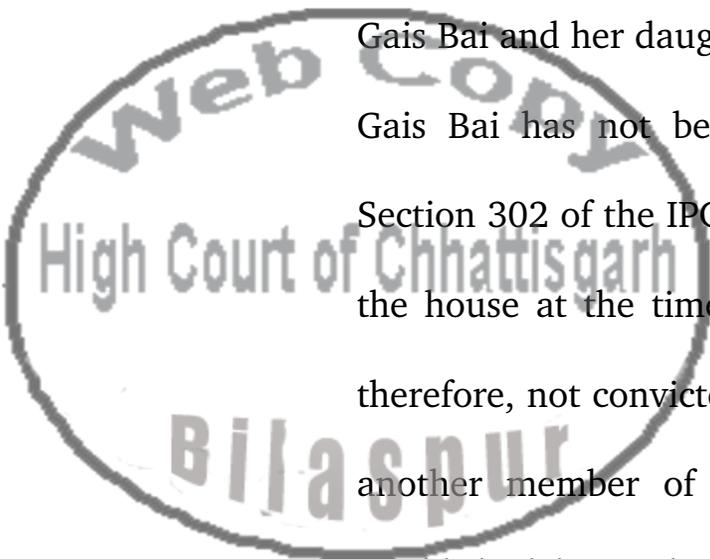
20. The document (Ex.-P/1) has been presented by the prosecution as



confessional statement of the appellant Santram before the villagers. However, (PW-4) Ram Ratan Singh has clearly stated that this document was dictated by the police officer to Pawan Singh. Thus the document having been written in course of investigation in the presence of police officer, it has got no evidentiary value to form basis for conviction.

21. It is also to be seen that there is evidence about the presence of Gais Bai and her daughter in the house at the time of incident, yet Gais Bai has not been charged for committing offence under Section 302 of the IPC. If the person whose presence is proved in the house at the time of occurrence has not been charged and, therefore, not convicted for offence under Section 302 of the IPC, another member of the family whose presence is not at all established by evidence at the time of occurrence, is not to be convicted with the aid of Section 106 of the Evidence Act. Similar is the case with their daughter whose presence is also established but yet she was not sent for trial even for offence under Section 201 of the IPC.

22. For all the above stated reasons, we are of the considered view that conviction of appellant Santram under Sections 302 & 201 of the IPC and that of appellant Gais Bai under Section 201 of the IPC is not supported by evidence available on record. Therefore,



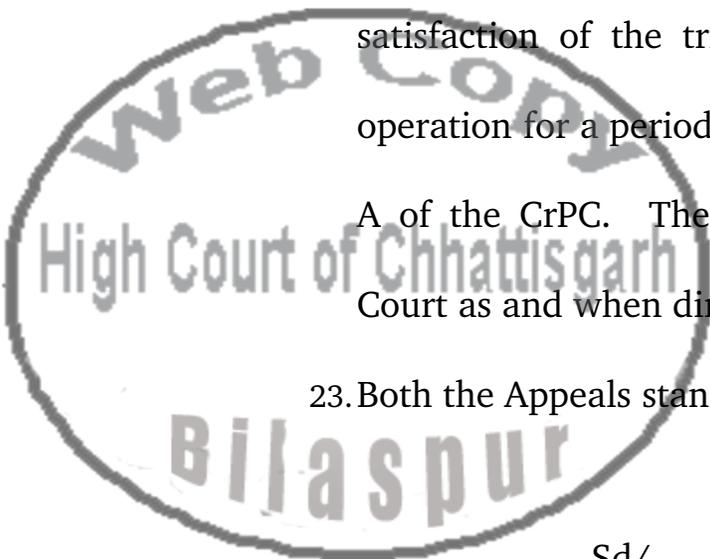


their conviction deserves to be and is hereby set aside. Appellant Gais Bai is already on bail. Her bail bonds shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the CrPC. Appellant Santram shall be released forthwith unless required to be detained in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of 6 months as required under Section 437-A of the CrPC. The appellants shall appear before the higher Court as and when directed.

23. Both the Appeals stand allowed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge





HEADLINES

Once the accused explains the facts within his exclusive knowledge, burden in terms of Section 106 of the Evidence Act shifts on the prosecution to prove from other evidence that it was the accused who committed the offence.



CRA No. 962 of 2011

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CRA No. 700 of 2012

Sant Ram

Versus

State Of Chhattisgarh

Judgment dated : 16/08/2019