NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 95 of 2024

Dinesh Taram S/o Santram Taram, aged about 32 years, R/o Village Bitaal, P.S. Dallirajhara, District Balod (C.G.), Presently Residing at Shikshak Colony, Qr. No. 5, Jhapara, P.S. Sukma, District Sukma (C.G.)

---- Appellant

Versus

State of Chhattisgarh Through Police Station Sukma, District Sukma (C.G.)

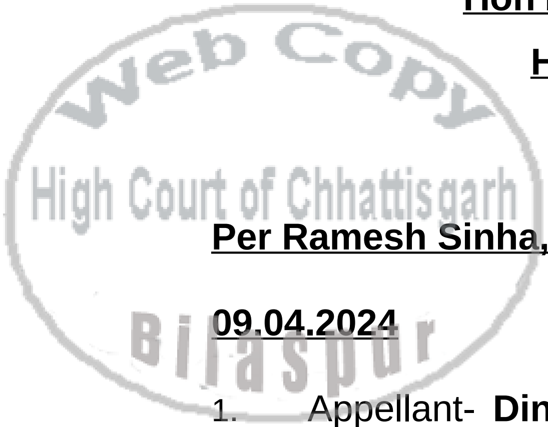
---- Respondent

(Cause-title taken from Case Information System)

For Appellant	:	Mr. P. R. Patankar, Advocate
For Respondent/State	:	Mr. Shrikant Kaushik, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Smt. Rajani Dubey, Judge



Judgment on Board

Per Ramesh Sinha, C.J.

09.04.2024

1. Appellant- **Dinesh Taram** has preferred this criminal appeal under Section 374(2) of the CrPC questioning the impugned judgment dated 26.10.2023 passed by the Sessions Judge, South Bastar, Dantewada (C.G.) in Sessions Trial No. 144 of 2019, by which he has been convicted for offence under Section 302 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.500/-, in default payment of fine to further undergo RI for two months.

2. Case of the prosecution, in nutshell, is that on 12.04.2019 at about 7.30 am the appellant assaulted his wife Sadhna Bhaskar with the help of pickaxe (*Kudal*) due to which she died. It is further case of the prosecution that the accused and deceased Sadhna Bhaskar has

performed love marriage about 8 years ago from the date of incident and the accused always had suspicion about the character of his wife Sadhana Bhaskar which the deceased had informed to her brother Dushyant Bhaskar. On 12.04.2019, the accused/appellant called Dushyant Bhaskar on his mobile phone that his wife Sadhana Bhaskar was having love affair with some other person and for the said reason he has killed his wife using pickaxe. Upon receiving the information, Dushyant Bhaskar along with his friend Yuvraj Singh went to the place of incident at Jhapara where he saw that Sadhna was lying dead in the courtyard being the accused's house. Dushyant Bhaskar gave information about the above incident at Police Station Sukma on which Merg under Section 174 CrPC has been registered vide Ex.P-1. After registering the case and giving notice to the witnesses to prepare the Naksha Panchayatnama vide Ex.P-13, inquest over the dead body of the deceased Sadhana was prepared vide Ex.P-15. On the basis of oral report of Dushyant, First Information under Section 302 IPC was registered against the accused vide Ex.P-2. Dead body of the deceased was sent for postmortem to District Hospital, Sukma vide Ex.P-17, wherein Dr.Praveen Teli (PW-10) conducted postmortem over the dead body of the deceased vide Ex.P-5 and found following injuries:

Web Copy
High Court of Chhattisgarh
Bilaspur

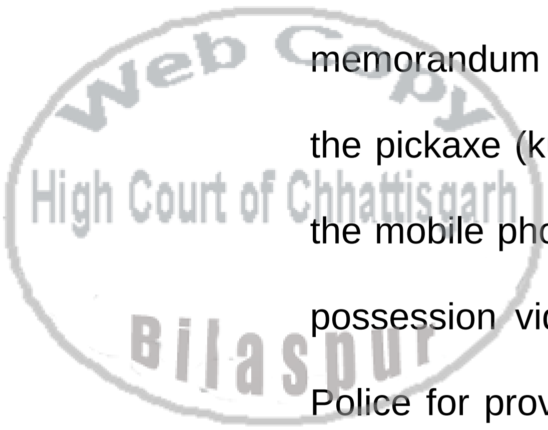
> "Mouth closed, eyes closed, pupils dilated and fixed, blood coming from both nostrils, blood stain seen in both ear canals. No external contusion over body or skin. On scalp three lacerated wounds were found :
>
> (1) 1x6x2 cm^3 laceration over left scalp 10 cm from the mid line 12 cm above the left ear.

(2) $3x0.5x1.3\ cm^3$ laceration 16 cm from the left ear and 12 cm lower to the occipital

(3) $1x5x1cm^3$ laceration over left scalp 10 cm behind the left ear with clear margin seen in all lacerations.

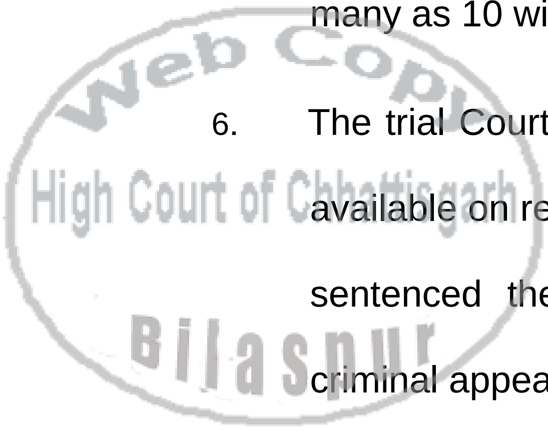
The doctor opined that cause of death is cardio respiratory arrest due to head injury caused by hit with hard and sharp object and it is homicidal in nature.

3. During the investigation, a map of the incident site was prepared vide Ex.P-4. Spot map was prepared by the Patwari vide Ex.P-26. Pieces of bloodstained plaster concrete and plain plaster concrete were recovered from the spot vide Ex.P-14. On the basis of memorandum statement of the accused (Ex.P-8), on his inspiration, the pickaxe (kudal) used in the incident was seized vide Ex.P-9 and the mobile phone of Vivo company with 02 SIM was seized from his possession vide Ex.P-11. A memo was sent to Superintendent of Police for providing of CDR of Mobile No.8770771581. The nightie worn by the deceased was seized vide Ex.P-18. Query report (Ex.P-21) was obtained from the doctor regarding presence of human blood in the seized pickaxe (kudal). The seized pieces of plaster concrete, pickaxe and the deceased's nightie were sent to Regional Forensic Science Laboratory, Jagdalpur through the Superintendent of Police for testing vide Ex.P-22, wherefrom FSL report was obtained vide Ex.P25, as per the said report bloodstains were found in the pieces of bloodstained plaster concrete, seized pick axe (kudal) and nightie of the deceased. The accused was arrested and arrest panchnama was prepared vide Ex.P.10.



4. After due investigation and other proceedings in the case, the charge-sheet was presented in the Court of Chief Judicial Magistrate, Sukma, who has committed the case to the Court of Sessions for trial. When the allegation under Section 302 IPC was framed against the accused and read & explained to him, he denied the allegation and claimed for trial. On being recording the statement of the accused under Section 313, he declared himself as innocent and stated that he has been falsely implicated. When the accused was admitted into defence, he got the statement of 03 defense witnesses.

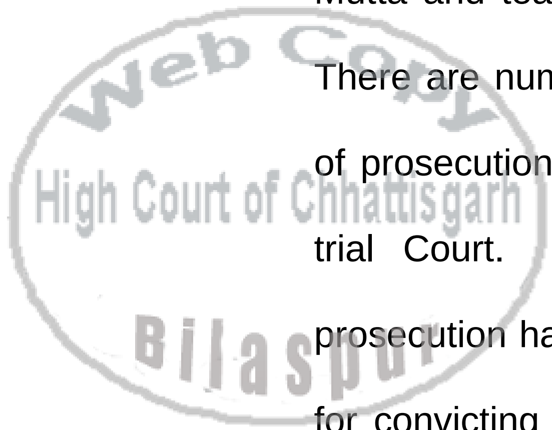
5. In order to bring home the offence, the prosecution examined as many as 10 witnesses and exhibited 32 documents Exs.P-1 to P-32.



6. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 26.10.2023, convicted and sentenced the appellant as aforementioned, against which, this criminal appeal has been preferred.

7. Mr. P.R. Patankar, learned counsel appearing for the appellant would submit that in the present case, there is no eye witness and whole case of the prosecution is based on circumstantial evidence. He would further submit that the learned trial Court failed to appreciate that the prosecution has utterly failed to prove its case beyond reasonable doubt. He would further submit that the learned trial Court further failed to appreciate that PW-5 Dular Singh Gawre who was seizure witness has turned hostile and has not supported the case of prosecution. PW-4 Maneshwar Jurri has also admitted that Exs.P-8 to P-12 were not prepared by the police on the spot, but they were prepared at police station and was signed by him at the police

station. He would also submit that PW-7, the Investigating Officer, Ekeshwar Kumar Nag has also admitted in his cross-examination that there is no eye witness to the incident and nobody has seen the incident and has also admitted in para 14 that the finger prints on the handle of pickaxe were of the accused or somebody else have not been investigated or examined nor the cloths of the accused were seized and has also further admitted that the pick axe which has been seized is readily available in the market and no documentary evidence has been produced before the Court to show affair of Sadhna Bhaskar with some other persons and the neighbours Hakka Mutta and teacher Amrit have not been made witness in the case. There are number of omissions and contradictions in the statement of prosecution witnesses and this has been omitted by the learned trial Court. The case is of circumstantial evidence and the prosecution has utterly failed to establish the chain of circumstances for convicting the accused under Section 302 of IPC. He contend that the appellant is young man of 32 years and his entire life would be ruined if he is detained in jail along with hard core criminals. He further contend that the learned trial Court ought to have considered that most of the witnesses have turned hostile and thereby they have not supported the case of the prosecution and therefore, convicting the appellant solely on the basis of circumstantial evidence is wholly untenable and unsustainable in the eyes of law. Moreover, no reliable witnesses have been examined by the prosecution to prove the guilt of the appellant beyond reasonable doubt. As such, the appeal deserves to be allowed and the impugned judgment deserves


Web Copy
High Court of Chhattisgarh
Bilaspur

to be set aside.

8. On the other hand, Mr. Shrikant Kaushik, learned Panel Lawyer, appearing for the respondent/State would support the impugned judgment and submit that the conviction of the appellant / accused is based on direct as well as circumstantial evidence. The prosecution during investigation recorded the statements of the prosecution witnesses in which they have categorically deposed in their statements regarding conduct and commission of offence by the accused/appellant, which is concurrent evidence against the accused / appellant and thus, the learned trial Court has rightly convicted and sentenced the accused / appellant. He would further submit that the prosecution has proved its case beyond reasonable doubt and the judgment of the trial Court is just and proper and does not call for any interference by this Court and as such, criminal appeal deserves to be dismissed.

Web Copy
High Court of Chhattisgarh
Bilaspur

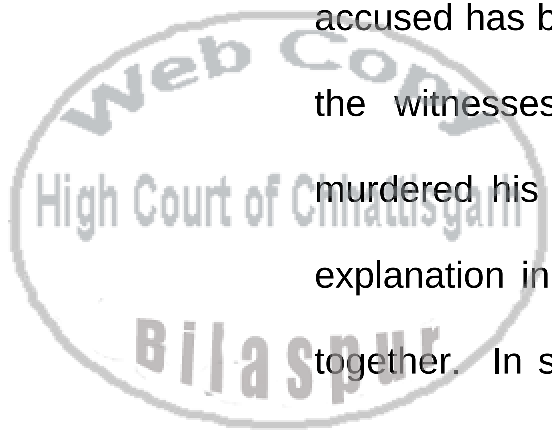
9. We have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

10. The first question for consideration would be, whether the trial Court was justified in holding that death of deceased Sadhna Bhaskar was homicidal in nature ?

11. The trial Court relying upon the statement of Dr. Praveen Teli (PW-10), who has conducted postmortem on the body of deceased Sadhna Bhaskar vide Ex.P-5, has stated that during postmortem he has found three lacerated wounds over the scalp of the deceased

and has opined that cause of death is cardio respiratory arrest due to head injury caused by hit with hard and sharp object and it is homicidal in nature. The said finding recorded by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, it has not been seriously disputed by the learned counsel for the appellant. We hereby affirm the said finding.

12. The learned trial Court after appreciating oral and documentary evidence available on record has convicted the appellant for offence under Section 302 of the IPC by coming to the conclusion that the accused has been unable to tell, either through cross-examination of the witnesses to through the statement of the accused, who murdered his wife in the verandah inside the house. There is no explanation in this regard, although the accused and his wife lived together. In such a situation, considering the circumstances of the case and the available evidence, Section 106 of the Evidence Act is applicable, i.e. the prosecution has discharged its burden due to the fact that the accused had special knowledge of the murder of his wife in the verandah of his house. In the absence of any convincing explanation being given by the accused after the murder, it proves that the accused is the author of the crime of murder of his wife. Therefore, since no explanation was given by the accused regarding the injury the deceased Sadhna suffered and how she was murdered and this fact was within his specific knowledge, thus, this Court comes to the conclusion that the accused himself murdered his wife Sadhna.



13. It is the case of no direct evidence, rather conviction is based on circumstantial evidence. Five golden principles which constitute *Panchseel* of proof of case based on circumstantial evidence have been laid down by the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**[1], which state as under :-

> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;
>
> (2) 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;
>
> (3) the circumstances should be of a conclusive nature and tendency;
>
> (4) they should exclude every possible hypothesis except the one to be proved; and
>
> (5) 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."

Web Copy
High Court of Chhattisgarh
Bilaspur

14. The next question for consideration would be, whether the trial Court has rightly held that the appellant is the author of the crime by relying upon the following circumstances:-

(i) Homicidal death was proved by the prosecution as per postmortem report (Ex.P-5) of Dr. Praveen Teli (PW-10) who conducted autopsy.

1 (1984) 4 SCC 116

(ii) As per the case of the prosecution, the fact of death of deceased Sadhna Bhaskar was within the knowledge of the appellant, however, there was no any explanation given by the appellant in his statement under Section 313 of the CrPC. Thus, burden of proof was on the appellant to explain such circumstance, which he failed to explain.

15. Now, the question would be, whether Section 106 of the Evidence Act would be applicable or not?

16. 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."

Web Copy
High Court of Chhattisgarh
Bilaspur

17. This provision states that when any fact is specially within the knowledge of any person the burden of proving that fact is upon him. This is an exception to the general rule contained in Section 101, namely, that the burden is on the person who asserts a fact. The principle underlying Section 106 which is an exception to the general rule governing burden of proof applies only to such matters of defence which are supposed to be especially within the knowledge of the other side. To invoke Section 106 of the Evidence Act, the main point to be established by prosecution is that the accused persons were in such a position that they could have special knowledge of the fact concerned.

18. In the matter of **Shambhu Nath Mehra v. The State of Ajmer**[2], their Lordships of the Supreme Court have held that the general rule that in a criminal case the burden of proof is on the prosecution and

2 AIR 1956 SC 404

Section 106 of the Evidence Act 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 Supreme Court while considering the word "especially" employed in Section 106 of the Evidence Act, speaking through Vivian Bose, J., observed as under: -

> "11. … The word "especially" stresses that it means facts that are preeminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. The King, 1936 PC 169 (AIR V 23) (A) and Seneviratne v. R. 1936-3 ER 36 AT P. 49 (B)."

Web Copy
High Court of Chhattisgarh
Bilaspur

Their Lordships further held that Section 106 of the Evidence Act cannot be used to undermine the well established rule of law that save in a very exceptional class of case, the burden is on the prosecution and never shifts.

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**[3] in which it has been held by their Lordships of the Supreme Court as under: -

3 (2021) 10 SCC 725

> "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."

Web Copy
High Court of Chhattisgarh
Bilaspur

20. Similarly, the Supreme Court in the matter of **Gurcharan Singh v. State of Punjab**[4], while considering the provisions contained in Sections 103 & 106 of the Evidence Act, held that the burden of proving a plea specially set up by an accused which may absolve him from criminal liability, certainly lies upon him, but neither the application of Section 103 nor that of 106 could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It was further held by their Lordships that 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. Their Lordships also held that the burden of proving a plea specifically set up by an accused, which may absolve him from

4 AIR 1956 SC 460

criminal liability, certain lies upon him.

21. The principle of law laid down by their Lordships of the Supreme Court in **Gurcharan Singh** (supra) has been followed with approval by their Lordships of the Supreme Court in the matter of **Sawal Das v. State of Bihar**[5] and it has been held that burden of proving the case against the accused was on the prosecution irrespective of whether or not the accused has made out a specific defence.

22. The Supreme Court in the matter of **Sucha Singh v. State of Punjab**[6] has held that once the person concerned has been shown as having been kidnapped, the onus would shift on the kidnapper to establish how and when the kidnapped individual came to be released from his custody. In the absence of any such proof produced by the kidnapper, it would be natural to infer/presume that the kidnapped person continued in the kidnapper's custody till he was eliminated. In this regard, in **Sucha Singh** (supra), their Lordships of the Supreme Court have held as under:-

Web Copy
High Court of Chhattisgarh
Bilaspur

> "15. The abductors alone could tell the court as to what happened to the deceased after they were abducted. When the abductors withheld that information from the court there is every justification for drawing the inference, in the light of all the preceding and succeeding circumstances adverted to above, that the abductors are the murderers of the deceased.
>
> 19. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any

5 AIR 1974 SC 778
6 (2001) 4 SCC 375

explanation which might drive the court to draw a different inference.

20. We have seriously bestowed our consideration to the arguments addressed by the learned Senior Counsel. We only reiterate the legal principle adumbrated in *State of W.B. v. Mir Mohd. Omar*[7] that when more persons than one have abducted the victim, who was later murdered, it is within the legal province of the court to justifiably draw a presumption depending on the factual situation, that all the abductors are responsible for the murder. Section 34 IPC could be invoked for the aid to that end, unless any particular abductor satisfies the court with his explanation as to what else he did with the victim subsequently, i.e. whether he left his associates en route or whether he dissuaded others from doing the extreme act etc. etc.

21. We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle to be laid down is that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others."

Web Copy
High Court of Chhattisgarh
Bilaspur

23. The principle of law laid down in **Sucha Singh** (supra) was followed with approval by the Supreme Court in the matter of **Sunder alias Sundararajan v. State by Inspector of Police**[8] and it has been held that once it is duly established that the deceased has been kidnapped by the accused, the burden lies on him to explain release of the victim from his custody. It was observed as under:-

"36. Since in the facts and circumstances of this case, it has been duly established that Suresh had been kidnapped by the accused-appellant; the accused-appellant has not been able to produce any material on the record of this case to show the release of Suresh from his custody. Section 106 of the Indian Evidence Act, 1872 places the onus on him. In the absence of any such material produced by the accused-appellant, it has to be

7 (2000) 8 SCC 382
8 (2013) 3 SCC 215

accepted that the custody of Suresh had remained with the accused- appellant, till he was murdered. The motive/reason for the accused-appellant for taking the extreme step was, that ransom as demanded by him had not been paid. We are therefore satisfied that in the facts and circumstances of the present case, there is sufficient evidence on the record of this case on the basis whereof even the factum of murder of Suresh at the hands of the accused-appellant stands established.

37. We may now refer to some further material on the record of the case to substantiate our aforesaid conclusion. In this behalf, it would be relevant to mention that when the appellant-accused was detained on 30-7-2009, he had made a confessional statement in the presence of Kasinathan (PW13) stating that he had strangulated Suresh to death, whereupon his body was put into a gunny bag and thrown into Meerankulam tank. It was thereafter on the pointing out of the appellant-accused that the body of Suresh was recovered from Meerankulam tank. It was found in a gunny bag, as stated by the appellant-accused. Dr. Kathirvel (PW12) concluded after holding the post-mortem examination of the dead body of Suresh that Suresh had died on account of suffocation prior to his having been drowned. The instant evidence clearly nails the appellant-accused as the perpetrator of the murder of Suresh. Moreover, the statement of Kasinathan (PW13) further reveals that the school bag, books and slate of Suresh were recovered from the residence of the appellant-accused. These articles were confirmed by Maheshwari (PW1) as belonging to Suresh. In view of the factual and legal position dealt with hereinabove, we have no doubt in our mind, that the prosecution had produced sufficient material to establish not only the kidnapping of Suresh, but also his murder at the hands of the appellant-accused."

Web Copy
High Court of Chhattisgarh
Bilaspur

24. Similarly, in the matter of **Suresh and another v. State of Haryana**[9], their Lordships have held as under:-

"8. The learned counsel for the State opposed the above statement and pointed out that the dead bodies were recovered at the instance of the appellants, apart from the recovery of car and personal belongings of the deceased. SI Rajender Singh (PW14) and Inspector Randhir Singh (PW17) had overheard the conversation of the accused making demand of ransom on telephone at the STD Booth. The accused refused to give their voice sample as

9 (2015) 2 SCC 227

recorded in the order dated 1-1-2001 passed by the Additional Chief Judicial Magistrate, Gurgaon on application (Ext. PF). Pooja Chopra (PW12) deposed that the deceased Devender Chopra had a talk with her mother on 18-12-2000 that the deceased had been kidnapped for ransom which was followed up by further conversation with the kidnappers. Raman Anand (PW2) also had talks with the kidnappers from the mobile phone of his friend Neeraj. According to the post-mortem reports, the death of Devender Chopra was on account of strangulation and cutting of throat by sharp weapon. Death of Abhishek Chopra was on account of stab injuries in chest and abdomen and the head injury caused by blunt force impact.

9. Apart from the above, this is a case where Section 106 of the Evidence Act is clearly attracted which requires the accused to explain the facts in their exclusive knowledge. No doubt, the burden of proof is on the prosecution and Section 106 is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused. Recovery of dead bodies from covered gutters and personal belongings of the deceased from other places disclosed by the accused stood fully established. It casts a duty on the accused as to how they alone had the information leading to recoveries which was admissible under Section 27 of the Evidence Act. Failure of the accused to give an explanation or giving of false explanation is an additional circumstance against the accused as held in number of judgments, including State of Rajasthan v. Jaggu Ram[10]."

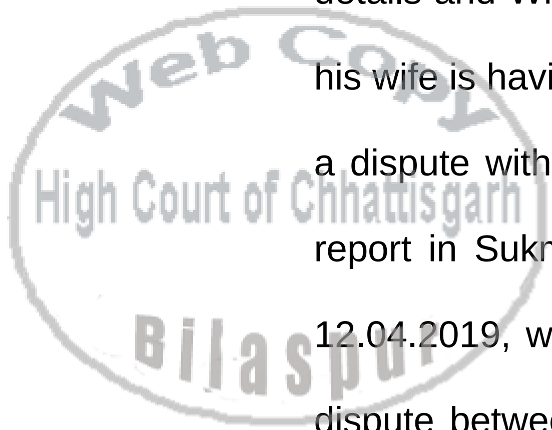
Web Copy
High Court of Chhattisgarh
Bilaspur

25. Now, the question is, whether extra-judicial confession made by the appellant to Dushyant Kumar Bhaskar (PW-1), Manoj Poya (PW-3) and Maneshwar Jurri (PW-4) is admissible in evidence in view of proviso to Section 162(1) of the CrPC.

26. Dushyant Kumar Bhaskar (PW-1) in para 3 of his evidence has stated that on 12.04.2019 at around 9.45 in the morning, he got a call form his sister-in-law, the accused Dinesh Taram, saying that his sister Sadhna is having an affair with another person, that is why he

10 (2008) 12 SCC 51

had killed her with a pick axe, then the witness do not believe in the said thing and called the accused again and asked what he was taking about, then the accused again said that he had killed his sister, on hearing these words, he immediately became unconscious. Manoj Poya (PW-3) in para 3 of his evidence has stated that when he along with his friend Maneshwar Jurri (PW-4) went to police station, where accused told them that 08 years earlier he had a love marriage with Sadhna Bhaskar. But after one year, there was a change in her behavior and his wife always kept her mobile hidden and on asking for her mobile, she used to delete her mobile's call details and Whatapp messages, after that he started suspecting that his wife is having affair with somebody else and he also used to have a dispute with his wife deceased Sadhana and his wife had filed a report in Sukma police station to divorce him. On the morning of 12.04.2019, when his wife was preparing to take bath, there was a dispute between them, his wife Sadhna said that since he doubted her character, it is better that she divorce me, then he got angry and stated that if she cannot be his then she cannot be of anyone else and saying that he hit her three times on the head with a pick axe lying in the courtyard due to which his wife Sadhna fell down on the ground and died. After that, he hid the pick axe in the bushes behind the house after that came to Sukma with both the children and from there he informed his brother-in-law Dushyant about the incident. After that the police asked him about the pick axe, then he showed the pick axe and a memorandum was prepared by the police in which he had signed. Exactly similar version has been stated by


Web Copy
High Court of Chhattisgarh
Bilaspur

Muneshwar Jurri (PW-4) that the accused has also made extra judicial confession before him that he himself had murdered his wife by hitting her three times on the head with a pick axe lying in the courtyard due to which his wife Sadhna fell down on the ground and died on account of suspicion that she was having affair with some one. As such, a plea of extra-judicial judicial confession set up by the prosecution and found proved by the learned trial Court is sustainable in law and alleged extra-judicial confession can be used as an incriminating evidence against the accused / appellant.

27. The Supreme Court in the matter of **State of Rajasthan v. Raja Ram**[11] has held that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. It was observed as under:-

Web Copy
High Court of Chhattisgarh
Bilaspur

> "19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the

11 (2003) 8 SCC 180

> touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

28. Considering the aforesaid facts and circumstances of the case, material available on record, also considering the evidence of Dr. Praveen Teli (PW-10), Dushyant Kumar Bhaskar (PW-1), Maojn Poya (PW-3) and Maneshwar Jurri (PW-4) and documentary evidence *i.e.* Postmortem report (Ex.P-5), FSL report (Ex.P-25) and circumstantial evidence proved by the prosecution against the appellant and also considering the fact that death of deceased Sadhna Bhaskar, who was the wife of the appellant and was living along with his husband, the accused, in the same house, was within the knowledge of the appellant, however, there was no any explanation given by the appellant in his statement under Section 313 of the CrPC, we are of the considered opinion that the trial Court has rightly convicted and sentenced the appellant for offence under Section 302 IPC.

29. For the foregoing reasons, the criminal appeal filed on behalf of appellant- Dinesh Taram is **dismissed**. He is in jail, he shall serve out the sentence as ordered by the concerned trial Court.

30. The trial Court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Web Copy
High Court of Chhattisgarh
Bilaspur

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Chandra

Head-Note

In case the accused fails to explain or establish the facts of case within his personal knowledge an adverse inference can be drawn against him under the garb of Section 106 of the Indian Evidence Act.

यदि अभियुक्त अपनी व्यक्तिगत जानकारी में मामले के तथ्यों को समझाने या स्थापित करने में विफल रहता है तो भारतीय साक्ष्य अधिनियम की धारा 106 के तहत उसके खिलाफ प्रतिकूल निष्कर्ष निकाला जा सकता है।