2026:CGHC:22717-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved on 24-04-2026

Delivered on 14-05-2026

CRA No. 1548 of 2016

{*Arising out of judgment dated 29-11-2016 passed by the Additional Sessions Judge, Bhatapara, District Baloda Bazar (CG) in Sessions Trial No.H-22/15)*

- Sanjay Kumar Dhruv @ Bablu @ Sanju S/o Ghanshyam Prasad Dhruv Aged About 19 Years R/o Village Kuchi, Out Post Gidhpuri, Police Station Palari, District Baloda Bazar, Chhattisgarh., Chhattisgarh

... Appellant

versus

- State of Chhattisgarh Through Police Station Bhatapara Rural, District Baloda Bazar, Chattisgarh.

... Respondent

For appellant.	**:**	Mr. Adil Minhaj, Advocate
For Respondent/State	**:**	Mr. Rishiraj Pithwa, Dy. Govt. Advocate

Corrom: Hon'ble Shri Sanjay S. Agrawal &

Hon'ble Shri Narendra Kumar Vyas, JJ.

C A V Judgment

Per Narendra Kumar Vyas, J.

1. This criminal appeal is preferred by the appellant under Section 374(2) of the Cr.P.C. against the impugned judgment of conviction and order of sentence dated 29-11-2016 passed by the learned Additional Sessions Judge, Bhatapara, District Baloda Bazar, in Sessions Trial

No. H-22/15 by which the appellant has been convicted under Section 302 of the IPC and sentenced to undergo imprisonment for life & pay fine of ₹ 1,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for three months.

2. Case of the prosecution, in brief, is that as per information given by Anand Kumar Dhruv with Neelkamal Dhruv, Dehati Merg intimation under Section 174 (Ex.P/9) was recorded by the Police Station, Bhatapara (Rural), District Baloda Bazar on 2-6-2015 alleging that in the evening on the fateful day, the appellant Sanjay Kumar Dhruv came to village Tonataar and called the deceased Dushyant Kumar Dhruv over mobile phone informing that he had to discuss some matter with him and took him to Arjuni Khaar. It is also alleged that the deceased was accompanied by Neelkamal Dhruv and after sometime, the appellant Sanjay Kumar Dhruv started quarreling with him on the pretext that there is a love affair between the deceased Dhyushant Kumar Dhruv and his sister Seema Dhruv (PW/9), despite repeated warnings, he did not stop to talk to his sister over mobile phone which has caused dispute between the deceased and the appellant. Neelkamal Dhruv (PW/4) seeing their dispute came back and informed Anand Kumar Dhruv (PW/3) about on going dispute between them. It has also been alleged that when they reached the place of occurrence, Dushyant Kumar Dhruv was seen lying dead in the field and Sanjay Kumar Dhruv was seen crushing Dushyant Kumar's face by stone. It has also been alleged that the appellant seeing them got up and started running, but Neelkamal caught hold him. However, the appellant hit him on the head with a stone, injured, bit him and also cut

the index finger of his right hand with his teeth to escape himself, but he could not succeed in escaping. Upon arrival of other villagers and examining the body of the deceased Dushyant Kumar Dhruv in the light of a mobile phone, it was found that the accused Sanjay Kumar Dhruv had inflicted a deep cut on the front of his neck with a blade, inflicted deep scratches on his face, stomach with a screwdriver and crushed his neck with a stone due to which Dushyant Kumar Dhruv died at the spot around 8:00 pm. It is also alleged that near the dead body, blood stains, blade, iron screw driver and punch cutter were found. On the basis of Dehati Merg Intimation, dehati nalsi was registered (Ex.P/10) and on the basis of dehati nalsi, FIR bearing Crime No. 135/2015 (Ex.P/35) was registered before the Police Station- Bhatapara (Rural) District Baloda Bazar for commission of offence under Section 302 of IPC.

3. Statements of witnesses were recorded under Section 161 of the CrPC and after usual investigation, the appellant was charge-sheeted for offence punishable under Section 302 of the IPC and charge-sheet was submitted before the Chief Judicial Magistrate, Bhatapara who committal the trial to the learned Additional Sessions Judge, Bhatapara, for hearing and disposal of the case in accordance with law.

4. The prosecution, in order to prove the offence against the appellant, examined as many as 16 witnesses namely Shekhar Dhruv (PW/1), Vyasnarayan (PW/2), Anand Kumar Dhruv (PW/3), Neelkamal Dhruv (PW/4), Sewakram Dhruv (PW/5), Prashhant Kumar Dhruv (PW/6), Dr. Ajay Kumar Gupta (PW/7), Rukmani Bai (PW/8), Seema Dhruv

(PW/9), Dr. R.K. Maheshwari (PW/10), Santoshi Dhruv (PW/11), Yugal Kishore Verma, (PW/12), Ravi Shankar Kewart (PW/13), M.L. Tiwari (PW/14), P.L. Nautiyall (PW/15), Gangaram Yadav (PW/16) and exhibited documents (Ex.P/1 to P/35).

5. The accused pleads no guilty and false implication. The accused was examined under Section 313 of the Cr.P.C. wherein he has stated that on the date of incident, he had gone to Bhatapara to meet his relatives, when he was returning towards Arjuni Khar then 20 – 25 persons made attempt to stop his motor-cycle and when he tried to drive the motorcycle from corner of the road then the mob caught hold of him by his collar, then he fell down, thereafter the rider of the motor cycle fled away, some people assaulted him, handed over to Police Station and without any inquiry, he was arrested.

6. The trial Court after appreciating oral and documentary evidence on record, convicted the appellant for commission of offence under Section 302 of the IPC for the period as detailed above.

7. Being aggrieved with the aforesaid judgment, the appellant has preferred this appeal.

8. Mr. Adil Minhaj, learned counsel appearing for the appellant, while questioning the legality and propriety of the impugned judgment would submit that the alleged eye witnesses Anand Kumar Dhruv (PW/3) and Neelkamal Dhruv (PW/4) have not supported the case of the prosecution and the chain of circumstantial evidence is not completed, yet the trial Court has convicted the appellant for the alleged offence. He would further submitted that the prosecution has not seized any

weapon from possession of the appellant which has been used in commission of offence, there are contradictions and omissions in the statements of the witnesses, thus he would submit that the finding of the learned trial Court suffers from perversity or illegality. He would further submit that from the evidence tendered by the prosecution, the recovery of incriminating material or disclosure of any fact have not been proved, therefore, the conviction of the appellant for the alleged offence is improper and erroneous. He would next submit that the prosecution could not produce any credible witness or evidence against the appellant as required by law for convicting him for the offence under Section 302 of IPC. Thus, the impugned judgment suffers from material illegality and deserves to be set aside.

9. Per contra, Mr. Rishiraj Pithwa, learned Deputy Govt. Advocate appearing for the State/respondent supporting the impugned judgment would submit that the prosecution has been able to bring home the offence against the appellant beyond reasonable doubt. He would further submit that though the eye witnesses Anand Kumar Dhruw (PW/3) and Neelkamal Dhruv (PW/4) have turned hostile still their evidence cannot be wiped out and the prosecution witnesses have supported the case of the prosecution, the learned trial Court on appreciation of evidence and material on record has rightly convicted the accused. It has been further submitted that the learned trial Court has rightly recorded its finding that the accused has taken a defence that when he was returning from his relatives' house at Bhatapara, he was caught hold by people but he has not been able to prove the defence taken by him by credible evidence as he has not examined

any witness to substantiate this defence. He would further submit that the learned trial Court has rightly recorded the finding at paragraph 45 that the accused was caught hold at the place of occurrence but the accused failed to explain that in what circumstances he was found in the place of occurrence though this fact was within his knowledge and burden of proving fact which is within specific knowledge of the accused. He would further submit that the learned trial Court has recorded its finding that there was blood stain on the body and cloth of the accused but no explanation has been given. Similarly blood stain was found in the shirt, shoes, towel of the accused which is normally is not possible unless the accused is involved in the commission of the offence. Thus, the finding recorded by the learned trial Court does not suffer from any perversity or illegality warranting any interference by this Court, therefore, the appeal deserves to be dismissed.

10. We have heard learned counsel for the parties, considered their rival submissions made herein-above and have also gone through the record with utmost circumspection.

11. From the submissions made by the parties, the Point emerged for determination by this Court is:-

> "Whether the conviction of the appellant for commission of the offence under Section 302 of the Cr.P.C. is sustainable or not?"

12. From the evidence brought on record, particularly postmortem report (Ex.P-12) and evidence of Dr. A.K. Gupta (PW/7), it is quite vivid that the death of the deceased was homicidal in nature as such the finding recorded by the trial Court regarding death of the deceased is

homicidal does not suffer from perversity or illegality warranting interference by this Court and accordingly, it is affirmed by this Court that the death of the deceased was homicidal in nature.

13. To appreciate the point emerged for determination by this Court, it is expedient for us to go through the evidence adduced by the prosecution meticulously particularly the testimony of Anand Kumar Dhruv (PW/3) and Neelkamal Dhruv (PW/4), who are eye witnesses to the incident and Vyas Narayan (PW/2) as the conviction of the appellant is primarily on the basis of these witnesses.

14. Vyas Narayan (PW/2) in his examination in chief has stated that Anand Dhruw (PW/3) and Neelkamal Dhruw (PW/4) have informed him that the appellant has murdered Dushyant Kumar but why he has murdered, the reason has not been told to him by them. The witness has also stated that which substance was found near the place of occurrence has not been seen by him due to dark. He has further stated that no proceeding for Naksha Panchayat was carried before him and also stated that before him on 03.06.2015, no seizure was made by the Police. The said witness was declared hostile by the prosecution and thereafter he was cross-examined by the prosecution wherein he has stated that Neelkamal and Anand told him that the appellant has killed the Dushyant as he was annoyed because of love affair between the deceased and his sister and also admitted that Anand and Neelkamal told him that the appellant has killed Dushyant by cutting in front of his neck through blade and screwdriver and also admitted that they have told about seeing the incident of killing by the appellant. He has also admitted that in the panchnama the Police have

not taken his signature at the place of occurrence. He also denied about the seizure of mobile phone or shirts and two pieces of stone which consists of blood stain, seizure of soil containing blood, without blood, steel blade and screwdriver containing blood stain by the Police but in paragraph 12, he has admitted about the seizure of full shirt containing blood stain, shoes containing blood stain and towel containing blood stain through the seizure memo (Ex. P/4). The said witness in the cross-examination has admitted that the deceased never informed him about the love affair with Seema (PW/9) and also admitted that at the place of occurrence where there is no arrangement of light, he has also admitted that at the place of occurrence Neelkamal and Anand Dhruv have not stated about the incident. He has also admitted that when they reached there, the Police were making doubt over the Neelkamal and Anand Dhruv for commission of such offence by them. He has also admitted that when he reached to Police Station then Police person told him that they are seizing the clothes of Sanjay Dhruw and asked him to put his signature then he has signed. He has also admitted that before the Police, the accused has not given his clothes shoes after removing it.

15. Anand Kumar Dhruv (PW/3) is eye witness to the incident who has not supported the case of the prosecution as he states that when he reached the place of occurrence, he found his brother, Dushyant Kumar, lying there and a tall, broad-shouldered man whom he did not recognize; was standing nearby, upon seeing him, he immediately fled away. To catch hold of him, Neelkamal and himself ran away and came to the road and also stated that at the same time, two persons were

coming on a motorcycle from the direction of Bhatapara; and they caught hold of the person who was sitting in the back of driver of the vehicle as that very person had assaulted Dushyant and brought him back to the scene, kept him tied up there. He has also stated that Police seized blood stained soil, steel blade, iron screw driver, deceased Dushyant's clothes (shirt), slippers, a piece of stone, a Nokia mobile phone, another mobile phone (also of the Nokia brand) vide seizure memo (Exhibit P-4) and a third mobile phone belonging to the accused, a shirt, a pair of shoes, a Gamchha (towel/scarf) bearing stains resembling blood, a pair of full-length trousers vide Exhibit P-5 wherein he put his signature.

16. He has also stated that Constable Ravishankar of the Bhatapara Rural Police Station seized a sealed packet in his presence, which was stated to contain the deceased's underwear and clothes and he put his signature in the seizure memo (Exhibit P-6). This witness was not supporting the case of the prosecution fully, therefore, the prosecution has sought permission to cross examine and in the cross examination he has denied that he is aware of the fact that the accused and Dushyant were known to each other and also denied about his injury caused by the appellant and love affair between the deceased and Seema (PW/9). He has also denied about the information that the appellant has taken the deceased to Arjuni Khar or the appellant has informed the deceased about their meeting on telephone on 02.06.2015 in the evening hour, crushing Dushyant's face with a stone by the accused, the presence of the appellant at the place of occurrence. The prosecution has cross-examined the witness as he

was not supporting the case of the prosecution and in the cross-examination he has denied that through mobile light he saw that the accused was crushing the face of the deceased and the accused ran away as such he along with Neelkamal have caught hold of him in the place of occurrence.

17. This witness was also cross-examined by the defence wherein he has admitted that the person who has assaulted Dushyant was some tall and fatty person, he attempted to catch hold him but he ran away. He has also admitted that when they were searching the person who has assaulted the deceased then two persons were coming from Bhatapara by motor cycle and when they caught hold the person who was sitting behind the driver of the motor cycle, he felt down and sustained injury and that person is the appellant. He has also admitted that they have taken Sanjay Dhruw to the place of occurrence and also admitted about the assault done with the appellant by the villagers and fell down at the place of occurrence. He has also admitted that when he has gone to Bhatapara for postmortem of the deceased, the Police have asked him to sign on the document from Ex. P/1 to P/10.

18. Neelkamal Dhruv (PW/4) who is eye witness to the incident has not supported the case of the prosecution. He denied that the accused caught hold of the deceased and assaulted him, assaulting of deceased by the accused. He voluntarily stated that when he proceeded to place of occurrence, he saw two persons assaulting the deceased Dushyant. He has also denied that the accused was crushing the head of deceased Dushyant by stone and voluntarily stated that he saw that one person was running away from there and

denied that the said person is Sanjay Dhruv. He has also denied that they identified the place of occurrence and caught hold of the accused and the deceased was assaulted by the accused with stone. This witness has also denied seizure of blade, screw driver and stone at the place of incident.

19. Dr. Ajay Kumar Gupta (PW/7) who has conducted the postmortem and has given his report that on 03.06.2015 he examined male dead body whose face, eyes, nose, toes were brutally crushed. The doctor after conducting the postmortem has given his report that the death was caused due to obstruction in the airway and due to excessive bleeding and the death was homicidal in nature. The death might be caused before 8 to 24 hours of postmortem conducted by him.

20. The witness-Anand Kumar Dhruv was examined by Dr. Ajay Kumar Gupta (PW/7) vide Ex. P/14 wherein he found small abrasion on the forehead and two abrasions on the middle finger of right hand and swelling in the upper part of the hand which are simple in nature. He has also examined the accused and given his report (Ex. P/15) stating that in the left as well as right eye there was readiness with pain and swelling. He has also examined the seized articles and given his report (Ex. P/16) wherein he has stated that there was blood stain in all the seize articles and also advised for forensic analysis. The doctor has also examined the printed shirt, shoes, towel, jeans pant wherein blood stain was found and advised for forensic analysis of these items vide its report (Ex. P/17). The said witness was cross-examined by the accused wherein he has admitted that airway can be ruptured due to collusion by hard and blunt object. The witness has also admitted that

no fingerprint marks or similar traces indicative of strangulation were found on the neck of the deceased. He also admitted that if a person is riding a motorcycle and is forcibly pulled off or thrown from the moving vehicle, he could sustain injuries similar to those observed on the accused, Sanjay Dhruv. The injuries seen on the body of the accused are possible if a person is forcibly fell down, pulled off or thrown from the moving motor cycle.

21. The appellant was also examined by doctor R.K. Maheshwari (PW/10) on 02.06.2015 and given his report (Ex. P/19) stating that there was crushed wound size 2 x 0.5 cm., swelling in the back and near shoulder size 10 x 0.5 cm. as well as in the right and left hand to measuring 2 x 1 cm. and 4 x 2 cm. and in the face, there was abrasion 2 x 1 cm. The injuries were simple in nature and according to him it was inflicted before 4 hours of his examination.

22. Rukmani Bai (PW/8) who is aunt of Seema Dhruv has denied about love affair between deceased Dushyant and Seema Dhruv.

23. Seema Dhruv (PW/9) who is sister of the accused Sanjay Kumar Dhruv has denied the love affair with deceased, mobile number of the deceased, about physical relation with the deceased and also denied that they were ready to marry.

24. M.L. Tiwari (PW/14), Investigating Officer has admitted that he has not conducted any enquiry to ascertain as to whom mobile phone No.8103324829 was issued by the Reliance Company but admitted that he has intimated about issuance of mobile phone No.8103324829 in the name of Narrottam Dhruv, R/o House No.23/145, Shankar

Nagar, Mova, Raipur still no enquiry with Narrottam Dhruv was conducted by him. He has also admitted that he has not submitted any certificate under Section 64 (B) of the Evidence Act. He has also admitted that he has not examined any person of the mobile company to give evidence regarding call details.

25. The prosecution has sent the seized articles which consists of blood stain vide seizure memo Ex. P/4, P/5 & P/6 for forensic examination Ex. P/33 and it was found that in the shirt, stones, shirt of the accused, shoes of the accused, towel, jeans pant of deceased and the accused, under garment of the deceased, blood stain was found but no matching of the blood was found. In the report, it has also been mentioned that the blood group of the deceased was “B” as found in the shirt of the deceased.

26. From the evidence brought on record by the prosecution, it is quite vivid that the seizure witness namely Vyas Narayan (PW-2), has not supported the case of prosecution as he has denied the seizure of articles namely mobile phone or shirts and two pieces of stone which consists of blood stain, seizure of mud containing blood, without blood, steel blade and screwdriver containing blood stain from the place of occurrence as well as his signature in the seizure memo at the place of occurrence as he has signed the seizure memo in the police station and also admitted that cloths of the accused were seized in the police station. Thus, the legality and propriety of the seizure memo (Ex. P/4 & P/5) become doubtful and cannot be used against the accused as per Section 27 of the Indian Evidence Act, 1872.

27. Now this Court is examining whether seizure memo (Ex. P/4 & P/5) fulfills the essential ingredients to attract Section 27 of the Act of 1872 or not, thus, it is expedient for this Court to extract Section 27 of the Act, 1872 which reads as under:-

> "27. How much of information received from accused may be proved.— Provided that, when any fact is deposed to as discovered inconsequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

28. From perusal of Section 27 of the Act, 1872, it is quite vivid that the essential ingredients of Section 27 of the Act, 1872 are threefold which are as under:-

> "i. The information given by the accused must led to the discovery of the fact which is the direct outcome of such information.
>
> ii. Only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused.
>
> iii. The discovery of the facts must relate to the commission of such offence."

29. Section 27 of the Act of 1872 is always subject matter of examination before the Hon'ble Supreme Court and various Courts. The Hon'ble Supreme Court in the latest judgment has examined the provisions of Section 27 of the Act of 1872 in case of **Nilu @ Nilesh Koshti vs. State of Madhya Pradesh** reported in **2026 INSC 173** and in paragraphs 21 & 22 has held as under:

> "The scope and ambit of Section 27 have been examined by this Court in Delhi Administration vs. Bal Krishan and Others.
>
> 21. Elucidating on what constitutes "discovery of fact" under Section 27 of the Evidence Act, this Court in Udai Bhan vs. State of Uttar Pradesh observed as follows :

> “11. Thus it appears that Section 27 does not nullify the ban imposed by Section 26 in regard to confessions made by persons in police custody but because there is the added guarantee of truthfulness from the fact discovered the statement whether confessional or not is allowed to be given in evidence but only that portion which distinctly relates to the discovery of the fact. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence. ….” (Emphasis supplied)
>
> 22. The aforesaid legal position was comprehensively reiterated and elaborated upon by this Court in Bodhraj Alias Bodha and Others vs. State of Jammu and Kashmir4, wherein the question of whether evidence relating to recovery is sufficient to fasten guilt on the accused was examined at length. This Court held that for evidence under Section 27 to be admissible, the information must emanate from an accused who is in police custody. The Court elucidated that the basic idea embedded in Section 27 is the doctrine of confirmation by subsequent events - when a fact is discovered on the strength of information obtained from a prisoner, such discovery serves as a guarantee of the truthfulness of the information supplied. The Court further observed that whether the information is confessional or non-inculpatory in nature, if it results in the discovery of a fact, it becomes reliable information. Significantly, it was held that the mere recovery of an object does not constitute the discovery of fact envisaged in the section. Relying on the Privy Council's decision in Pulukuri Kottayya and Others vs. King Emperor, the Court held that the "fact discovered" embraces not merely the object recovered, but the place from which the object was produced and the knowledge of the accused as to its existence, and that the information given must relate distinctly to that effect.”

30. Thus, from the evidence of seizure witnesses Vyas Narayan Dhruv (PW/2) who turned hostile, it is quite vivid that there are contradictions in the testimonies of the witnesses to (i) both Section 27 memorandums and (ii) seizure memos. The prosecution has cited Anand Kumar Dhruv (PW/3) and Neelkamal Dhruv (PW/4) as witness to the statement under Section 27 of the Act of 1872 made by the accused and suspicion had fallen upon him as they have admitted in the evidence that they put their signature in the Police Station on this statement and also admitted that materials were seized in the Police

Station.

31. In view of above, it is evident that these witnesses not only turned hostile but also not supported the case of the prosecution on any material particulars in relation to the recoveries except admitting their signature on the memorandum and seizure memos. From the record of the case, it is apparent that the accused continuously remained in judicial custody during the trial, therefore, the said hostility and non-corroboration can also not be attributed to any influence or tampering on his part. The recovery circumstance, therefore, remains legally tenuous. As such, the conviction of the appellant on the basis of alleged proved recovery by the trial Court, is erroneous and based upon perverse finding, therefore, his conviction deserves to be set aside.

32. From the evidence brought on record by the prosecution, it is quite vivid that the prosecution star witnesses PW/3 Anand Kumar Dhruv and PW/4 Neelkamal Dhruv who were eye witnesses to the incident and turned hostile have not supported the case of the prosecution as witness (PW/3) has admitted that the person who has assaulted Dushyant was some tall and fatty person, he attempted to catch hold him but he ran away and when they were searching the person who has assaulted the deceased then two persons were coming from Bhatapara by motor cycle and they caught hold the person who was sitting behind the driver of the motor cycle, he felt down and sustained injury and that person is the appellant and also admitted that they have taken Sanjay Dhruw to the place of occurrence and also supported the defence taken by the accused in his statement recorded under Section

313 of the Cr.P.C. Similarly the witness (PW/4) has also not supported the case of the prosecution as this witness has denied seizure of blade, screw driver and stone at the place of incident. As such, from the evidence adduced by the prosecution, it is quite vivid that the prosecution is unable to prove the involvement of the appellant in the commission of offence beyond reasonable doubt. Thus, the finding of the learned trial Court from at paragraph 42 that the evidence of hostile witness to prove the innocence of the accused, is not sustainable, is incorrect and against the provisions of law.

33. Similarly, the finding of the trial Court at paragraph 43 that if the appellant is not the original accused, therefore, recording of the Dehati Nalsi (Ex. P/10) and the named FIR could have not been recorded by the hostile witness also suffers from surmises and conjuncture and cannot be taken plea of prove against the appellant. Similarly recording of finding by the trial Court at paragraph 44 that the accused was caught hold at the place of occurrence relying upon the testimony of Vyas Narayan (PW/2) and Prashant Kumar Dhruv (PW/6) who are the hearsay witnesses, is not sustainable and deserves to be rejected.

34. The finding of the trial Court in paragraph 45 that in the shirt, shoes, towel of the accused, contained blood stain and the defence taken by by the accused that he fell down at the place of occurrence when he was taken by the people, as such blood stain found in the clothes of the accused, is not acceptable and same is erroneous and on the basis of this finding, the learned trial Court has recorded that the involvement of the appellant in the commission of offence cannot be ruled out, suffers from illegality as there was no blood matching found from the

blood of deceased and the accused is unable to explain under what circumstances he was found at the place of occurrence, is against the provisions of Section 106 of the Act, 1872 as this Section is applicable only when accused only after the prosecution succeeds in establishing the basic 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 a proper explanation about the existence of the said other facts, the Court can draw an appropriate inference against the accused. In cases based on circumstantial evidence, the accused's failure to provide a reasonable explanation as required under Section 106 of the Evidence Act can serve as an additional link in the chain of circumstantial evidence but only if the prosecution has already established other essential ingredients sufficient to shift the onus on the accused. However, if the prosecution fails to establish a complete chain of circumstances in the first place, then the accused's failure to discharge the burden under Section 106 of the Evidence Act becomes irrelevant.

35. Section 106 of the Act, 1872 has recently come up for consideration before Hon'ble the Supreme Court in case of **Nusrat Parween Vs. State of Jharkhand [2024 SCC OnLine SC 3683]** wherein it has been held in paragraphs 17, 18, 19, 20, 21 as under:-

> "17. It is a cardinal principle of criminal jurisprudence that Section 106 of the Evidence Act shall apply and the onus to explain would shift on to the accused only after the prosecution succeeds in establishing the basic 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 a proper explanation about the existence of the said other facts, the Court can draw an

appropriate inference against the accused. In cases based on circumstantial evidence, the accused's failure to provide a reasonable explanation as required under Section 106 of the Evidence Act can serve as an additional link in the chain of circumstantial evidence - but only if the prosecution has already established other essential ingredients sufficient to shift the onus on to the accused. However, if the prosecution fails to establish a complete chain of circumstances in the first place, then the accused's failure to discharge the burden under Section 106 of the Evidence Act becomes irrelevant.

18. The law concerning the invocation of shifting of onus under Section 106 of the Evidence Act has been explained by this Court in the case of Shambu Nath Mehra v. State of Ajmer28, wherein it was held as follows:

“8. Section 106 is an exception to section 101. Section 101 lays down the general rule about the burden of proof.

"Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist".

Illustration (a) says- AIR 1956 SC 404.

"A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime".

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 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. Emperor and Seneviratne v. R.

11. We recognize that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be "especially" within the knowledge of the accused. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section 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." (emphasis supplied)

19. Further, in Tulshiram Sahadu Suryawanshi and Anr. v. State of Maharashtra29, this Court observed as under:

"23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. (emphasis supplied)

20. A similar observation is found in Nagendra Sah v. State of Bihar30, wherein the Court held that: -

"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 (2012) 10 SCC 373. (2021) 10 SCC 725. 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."

21. Recently, this Court in the case of Anees v. The State Govt. of NCT31, held in the following terms:

"40. Section 106 of the Evidence Act cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused." 2024 INSC 368."

36. As such, there is no credible evidence on record of the case to establish the exclusive presence of the accused-appellant at the place of occurrence justifying the shifting of the burden of proof to the accused-appellant by invocation of Section 106 of the Evidence Act.

37. The finding of the learned trial Court in paragraph 45 that there was no direct evidence regarding love affair between the deceased and appellant's sister, as such still conviction of the appellant suffers from

illegality as the prosecution is unable to establish the motive of commission of offence by the appellant which was essential for the prosecution. Learned trial Court has further erred in disbelieving the prosecution evidence by recording its finding that Dr. Ajay Kumar Gupta (PW/7) in its report Ex. P/13 has given explanation about the injuries caused to the finger of the witness Anand Kumar Dhruv (PW/3) ignoring the oral evidence of eye witness without any foundation led by the prosecution, as such the finding recorded by the learned trial Court, suffers from perversity and illegality.

38. From appreciation of the evidence, it is quite vivid that the presence of the appellant at the place of occurrence is itself doubtful as the eye witnesses of the case have denied the presence of the appellant at the place of occurrence and from candid consideration of all the evidence in a fair and reasonable manner, it is found that the prosecution is not able to prove the involvement of the appellant in commission of offence for which he was charged though the prosecution has to prove their case beyond reasonable doubt which means that such doubt must be free from suppositional speculation and the doubt must be actual and substantial not merely vague detailing as held by Hon'ble Supreme Court in the matter of **Goverdhan Vs. State of Chhattisgarh, [2025 (3) SCC 378]** wherein it has been held in paragraph 27 as under:-

> "27. Thus, the requirement of law in criminal trials is not to prove the case beyond all doubt but beyond reasonable doubt and such doubt cannot be imaginary, fanciful, trivial or merely a possible doubt but a fair doubt based on reason and common sense. Hence, in the present case, if the allegations against the appellants are held proved beyond reasonable doubt, certainly conviction cannot be said to be illegal."

39. After meticulously scrutinizing the facts and circumstances of the present case and keeping in mind the proposition of law as observed by Hon'ble the Supreme Court in case of **Goverdhan** (supra), we are of the considered opinion that there are not only actual but substantial doubts as to the guilt of the appellant herein. We are, therefore, unable to find any evidence as to how and by whom the deceased was killed. The unfortunate man succumbed to injuries but the substantial doubts, mentioned above, confer a right upon the accused to be held not guilty.

40. In view of the aforesaid analysis, we are of the considered opinion that it would be unsafe to affirm the conviction of the appellant recorded by the trial Court and accordingly, we set aside the conviction and sentence imposed upon him under Section 302 of the IPC. He is acquitted of the said charge.

41. The appellant is reported to be on bail. His bail bonds shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C./Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

42. The appeal succeeds and it is allowed.

43. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned for necessary information.

Sd/-

(Sanjay S. Agrawal)
Judge

Sd/-

(Narendra Kumar Vyas)
Judge

Raju

Head Note

"Unless the prosecution establishes other essential ingredients sufficient to shift the onus on the accused, it cannot take benefit of Section 106 of the Indian Evidence Act, 1872"

" जब तक अभियोजन अभियुक्त के उपर दायित्व स्थांतरित करने के सभी आवश्यक तत्व स्थापित नहीं कर लेता, तब तक भारतीय साक्ष्य अधिनियम की धारा 106 के अंतर्गत इसको कोई लाभ प्राप्त नहीं होगा। "