



2025:AHC-LKO:76710-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW****CRIMINAL APPEAL No. - 1434 of 2016**

Raju Batham

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Petitioner(s)	: Anurag Singh Chauhan, Shameem Jahan
Counsel for Respondent(s)	: Govt. Advocate

Court No. -10**Reserved on 25.10.2025
Delivered on 24.11.2025****A.F.R.****HON'BLE RAJNISH KUMAR, J.
HON'BLE RAJEEV SINGH, J.****(Per : Rajnish Kumar, J.)**

- (1) The instant Criminal Appeal under Section 374(2) of Code of Criminal Procedure, 1973 (here-in-after referred as Cr.P.C.) has been filed by the appellant against the judgment and order dated 30.07.2016 passed by learned Additional Sessions Judge, Court No.9, Unnao in Sessions Trial No.330 of 2015 (State Vs. Raju Batham) arising out of Case Crime No.419 of 2015, under Section 302 of the Indian Penal Code, 1860 (herein after referred as I.P.C.), Police Station Ganga Ghat, District Unnao, by means of

which, the appellant has been convicted under Section 302 I.P.C. and sentenced to undergo life imprisonment and a fine of Rs.10,000/- and in default of payment of fine, to undergo six months additional imprisonment.

- (2) The complainant- Smt. Santosh Kumari Kashyap, wife of Raju Batham i.e. the appellant submitted a written complaint at Police Station Ganga Ghat, District Unnao with following averments:-

"मेरी लड़की शिवानी कश्यप उम्र करीब 17 वर्ष जो कक्षा 12 में पढ़ती है/ मोहल्ले के ही महेश निशाद से अक्सर बातचीत करती थी। इसके लिये मेरे पति ने शिवानी को काफी समझाया था। दि०-07.07.2015 को मेरी लड़की शिवानी महेश के साथ जाने व उसी के साथ रहने की जिद करने लगी जिस पर मेरे पति ने काफी समझाया। रात करीब 1 से 2 बजे के बीच मेरे पति राजू बाथम ने इसी जिद के कारण अन्दर कमरे में सो रही शिवानी का कपड़ा के नाड़े से गला घोट कर मार दिया। शिवानी की आवाज सुनकर मैं कमरे में गयी तो मैंने कमरे में अपने पति द्वारा लड़की शिवानी का गला घोटते हुए देख लिया। मैंने अपने पति को टोका तो वह मौके से भाग गये। तब मैं अपनी लड़की को जिला अस्पताल ले गयी जहाँ डाक्टर ने शिवानी को मृत घोषित कर दिया। शिवानी की लाश अस्पताल में है। सूचना को आयी हूँ। आवश्यक कार्यवाही करने की कृपा करें।"

- (3) On the basis of aforesaid written complaint of the complainant, F.I.R. vide Case Crime No.419 of 2015, under Section 302 I.P.C. was registered against the appellant on 08.07.2015 at 06:05 hours at Police Station Ganga Ghat, District Unnao. The matter was investigated and after investigation, Charge Sheet No.165 of 2015 dated 28.07.2015 was filed against the appellant under Section 302 I.P.C. On 13.08.2015, the case, being triable by Sessions, was committed to Sessions and the learned Sessions Judge framed the following charge against the appellant on 09.09.2015 :-

"यह कि दिनांक-07.07.2015 को समय रात्रि लगभग एक बजे से दो बजे के मध्य बहद स्थान चम्पा पुरवा थाना गंगाघाट जिला उन्नाव के अन्तर्गत अपने आवास में आपने अपनी एवं वादिनी श्रीमती सन्तोष कुमारी कश्यप की पुत्री शिवानी की नाड़े से गला घोटकर हत्या कर दी। इस प्रकार आपने भा० दं० सं० की धारा 302 के अन्तर्गत दण्डनीय अपराध कारित किया। जो इस न्यायालय के प्रसंज्ञान में है।

और एतद्द्वारा आपको निर्देश दिया जाता है कि उक्त आरोप में आपका परीक्षण इस न्यायालय द्वारा किया जाय।"

- (4) The charge was denied by the appellant and he prayed for trial. Consequently, the trial was commenced.
- (5) In order to prove its case, the prosecution produced Smt. Santosh Kumari Kashyap (complainant) as P.W.-1, H.M./S.I. R.P. Singh as P.W.-2 (scriber of G.D. Kaimi), Rohit Singh as P.W.-3 (scriber of tehrir), Shivam Kashyap as P.W.-4 (witness of fact and son of complainant and appellant), Sikha Kashyap as P.W.-5 (witness of fact and daughter-in-law of complainant and appellant), S.I. Mohd. Ashraf as P.W.-6 (Investigating Officer), Dr. Sharad Kumar Pandey as P.W.-7 (who conducted post mortem of the deceased), S.I. Mohd. Javed Khan as P.W.-8 (scriber of Panchayatnama), Constable Sharif Ahmed as P.W.-9 (police companion) and Constable Amit Kumar as P.W.-10 (scriber of F.I.R.).
- (6) The prosecution also placed on record and proved Nakal Rapat as Ex. Ka-1, tehrir as Ex. Ka-2 (written report), site plan of place of incident as Ex. Ka-3, site plan of recovery of weapon of assault as Ex. Ka-4, Arrest Memo as Ex. Ka-5, post mortem report as Ex. Ka-6, Panchayatnama as Ex. Ka-7, Police Form No.13 as Ex. Ka-8, Police

Form No.379 as Ex. Ka-9, Namuna Mohar as Ex. Ka-10, Letter to Inspector as Ex. Ka-11, Letter to C.M.O. as Ex. Ka-12, F.I.R. as Ex. Ka-13, Recovery Memo as Ex. ka-13 and Charge Sheet as Ex. Ka-14 in documentary evidence.

- (7) Thereafter, statement of the appellant under Section 313 Cr.P.C. was recorded on 20.06.2016, wherein he denied the incident and stated that witnesses have given their evidence under the seduction. He also showed his ignorance for the incident but he admitted that on the date of incident he was sleeping at home, however, he does not know as to how her daughter had died. He further stated that his wife has wrongly stated that he has killed his daughter, whereas he has not killed. He further stated that when the police came and wake him up, only then he came to know that his daughter has died and he remained at home and not ran away. He also stated that the police arrested him from the house. He further stated that he had not got the cloth string (*nada*) recovered nor he had accepted his guilt before the police. He also stated that he has no enmity with local police and he can not say as to why the police gave the evidence against him. He further stated that he could not properly talk to his wife till date and he could not tell as to why his wife has given the written complaint against him. He also admitted that he was not sleeping under the influence of any medicine or liquor on the date of incident. He also stated that he does not know as to how his daughter died and a false case has been made against him. He also stated that he does not know as to what evidence he would give.

- (8) In defence, the appellant examined Rekha Gupta, wife of Neeraj Gupta as D.W.-1.
- (9) The learned trial Court, after conclusion of evidence, heard learned Government Advocate and learned counsel for the defence and considered the arguments, evidence and material on record and passed the impugned judgment and order of conviction and sentenced the appellant under Section 302 I.P.C. Hence this appeal has been filed.
- (10) Heard Sri Anurag Singh Chauhan, learned counsel for the appellant and Sri Rajdeep Singh, learned A.G.A. for the State.
- (11) Learned counsel for the appellant submitted that the impugned judgment and order has been passed in an illegal manner without considering the evidence and material on record and without dealing it appropriately. He further submitted that the prosecution witnesses turned hostile but without considering the same and on the basis of surmises and conjectures and recording perverse findings, the appellant has been convicted and sentenced by the learned trial Court. He further submitted that the learned trial Court has completely ignored the irregularities committed by the prosecution and the major contradiction in the evidence of the witnesses. He further submitted that the learned trial Court has also discarded the testimony of D.W.-1 wrongly and illegally. He further submitted that there was no motive for the appellant to kill his minor daughter. He further submitted that without

proving the prosecution story by the prosecution beyond reasonable doubt, the appellant could not have been convicted taking aid of Section 106 of the Indian Evidence Act, 1872. Thus, learned counsel for the appellant submitted that the impugned judgment and order is not sustainable in the eyes of law, therefore, the same is liable to be set aside and the appellant is liable to be acquitted.

- (12) Learned counsel for the appellant relied on **Boby Vs. State of Kerala; (2023) 15 SCC 760, Pulukuri Kottaya Vs. King-Emperor; 1946 SCC OnLine PC 47, Nusrat Parween Vs. The State of Jharkhand; 2024 SCC OnLine SC 3683, Sur Singh Sidhu Vs. The State of Jharkhand; 2024 SCC OnLineJhar 657 and Dr. (Smt.) Nupur Talwar Vs. State of U.P. and Anr.; 2017 SCC Online All 2222.**

- (13) Per contra, learned A.G.A. vehemently opposed the submissions of learned counsel for the appellant. He submitted that though the prosecution's witnesses of fact, who were family members of the appellant, turned hostile but the learned trial Court, after considering the evidence and material on record in its totality and dealing it appropriately, rightly and in accordance with law came to the conclusion that all the circumstances refer only towards the guilt of the appellant and convicted him. He further submitted that the deceased had died in the house and, admittedly, the appellant was sleeping in the house and he was not under the influence of any medicine or liquor and since the prosecution has been able to prove that all the circumstantial

evidence and material on record refer only towards the guilt of the appellant, therefore, he had to explain as to how his daughter had died under Section 106 of the Indian Evidence Act, 1872, which he has failed to do, therefore, the impugned judgment and order has rightly been passed in accordance with law, which does not suffer from any illegality or error, which may call for any interference by this Court.

- (14) We have heard learned counsel for the parties and perused the records.
- (15) The complainant - Santosh Kumari Kashyap, wife of the appellant, had given a written complaint at Police Station Ganga Ghat, District Unnao on 08.07.2015 stating therein that her daughter, Shivani Kashyap, aged about 17 years, who was studying in Class 12, used to talk with one Mahesh Nishad, who was resident of her locality and her daughter Shivani was pressing for going with Mahesh and living with her, in regard to which, her husband (appellant herein) had admonished her daughter, Shivani on 07.07.2015. Thereafter, in the intervening night around 01:00 AM to 02:00 AM, her husband Raju Batham had killed her daughter Shivani by gagging her neck with cloth string. Upon hearing the noise of her daughter, Shivani, she went into the room and found that her husband is gagging her neck, therefore, she asked her husband to leave her, then he ran away from the spot. Thereafter, the complainant took her daughter to District Hospital, where doctor declared her daughter; Shivani dead. It was also stated in the complaint that the dead body of her daughter; Shivani was lying in the hospital

and the complainant went to police station for giving information and necessary action.

(16) Upon the aforesaid written complaint, the F.I.R. under Section 302 I.P.C. was lodged at 06:05 hours on 08.07.2015 and investigation was started, in which the Investigating Officer recorded the statements of witnesses, prepared the site plan, arrested the appellant and recovered cloth string on his pointing and prepared the memo of arrest and recovery, which have been signed by the appellant also. The inquest of the deceased was conducted on 08.07.2015 in the District Hospital Mortuary, Unnao at 10:30 AM. It is mentioned in the inquest report (Ex. Ka-7) that upon information of the incident given by the complainant-Smt. Santosh Kumari Kashyap W/o Raju Batham i.e. mother of the deceased that her daughter has been killed by her husband and her dead body has been kept in the Mortuary in the District Hospital Unnao, the S.I. Mohd. Javed alongwith S.I. Ravinder Singh, Constable Gulab Singh and M/C 750 Suman Singh reached to the Mortuary of the District Hospital Unnao and prepared the inquest report in presence of five witnesses of the inquest. As per the opinion of the witnesses of the inquest, the deceased Shivani had died on account of gagging of her neck, even then, to ascertain correct reason of her death, the post mortem of Shivani may be got done.

(17) The post mortem of the deceased was done on the same day i.e. 08.07.2015 at 05:15 PM, in which eyes and mouth of the deceased

were found partially open, nails were cynosed and face and lips were cynosed. It has also been recorded that rigor mortise was passing from upper limb, present over lower limbs and PM staining present over back and buttocks. The cause of death has been shown as Asphyxia due to ante mortem strangulation. The ante mortem injury has been shown as ligature mark 30.0 cm X 1.0 Cm in front of neck horizontal continuous below, thyroid base of mark is reddish soft sub cutaneous tissue under ligature mark ecchymosed, mark in 10 cm below chin Rt. ear & left ear. Thus, as per the post mortem report, the death was on account of Asphyxia due to ante mortem strangulation.

- (18) Dr. Sharad Kumar Pandey, District Hospital, Unnao, who had conducted the post mortem, appeared as P.W.-7. He proved the post mortem report. He stated that the time of death was probably half day and the cause of death was Asphyxia due to ante mortem strangulation. He also stated that the death of the deceased was possible on account of gagging of her neck by cloth string. He also stated that the incident is possible of 7/8-7-2015 at around 01:00 AM to 02:00 AM. In cross-examination by the defence, he stated that the loop in the neck could not have been put on her own, however, if it would have been accidental, he can not tell. Thus, the death of the deceased on account of gagging the neck has been proved. It has also been proved that it was not possible to have been done on her own.

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- (19) The complainant appeared as P.W.-1. She stated that she does not know as to how her daughter Shivani died. She was declared hostile and she was cross-examined by the prosecution. She stated that she had not made any complaint to the police. She denied her signature over the paper No.4Ka/5 i.e. the written complaint given by her. She also stated that she does not know Rohit Singh and she has also not got any complaint written from Rohit Singh and handed over the same to any police personnel. She also stated that the police had enquired from her as to how her daughter had died but she does not know about it and had also not told to the police. The police had taken away the dead body of her daughter from her house. She does not know as to any written papers were prepared because she was unconscious. However, she admitted that she was present at the time of post mortem of her daughter but her husband, Raju Batham was not present. She admitted that on the date of incident, she was sleeping alongwith her husband and daughter in the house. In regard to the information about the death of her daughter, she stated that on being told by the police, she came to know about it and at that time her husband was present at home. She also stated that after post mortem, the dead body was handed over to her and her husband was not present at the time of cremation because the police had taken away him. She also denied statement given under Section 161 Cr.P.C. She stated that Mahesh is residing about 7-8 house away from her house but she does not know his age. Thus, the informant had denied the lodging of F.I.R., whereas the F.I.R. was

lodged on the written complaint given by the complainant after getting the same written from Rohit Singh, who appeared as P.W.-3. Rohit Singh stated that he had written the complaint on asking of a lady on 08.07.2015 and made a signature on it. He also stated that he had written the complaint as told by the lady as she had told it to report. He proved the written complaint dated 08.07.2015 i.e. paper no.4Ka/5. He also admitted that after writing the complaint, he had read over to the said lady and thereafter she had signed the same. He also admitted that the written complaint is in his writing and the signature were made by the said lady as Santosh Kumari Kashyap. Thus, he proved the written complaint as Ex. Ka-2 and signatures of Santosh Kumari Kashyap on it.

(20) In view of above, the written complaint given by the complainant at the Police Station in regard to the incident has been proved by the person, who had written the complaint. He also proved that Santosh Kumari Kashyap had signed before him after hearing the complaint written by him. The learned trial Court, after considering the written complaint, has recorded a finding that "हस्ताक्षर वादिनी के नाम के है, जो वही है जो इसके साक्ष्यांकन प्रपत्र में है।" Thus, the written complaint submitted by the complainant at the Police Station, on the basis of which the F.I.R. of the incident was lodged, has been proved.

(21) The P.W.-10, Amit Kumar, the scribe of F.I.R., has proved the written complaint given by the complainant - Santosh Kumari Kashyap and the

F.I.R. lodged accordingly by her. In cross-examination, he stated that at the time of lodging of report, Station House Officer Mohd. Ashraf and Diwan Mishri Lal Chaudhary were present and only Santosh Kumari Kashyap W/o Raju Batham was present for lodging of the report. Thus, the contents of the written complaint, on the basis of which the F.I.R. was lodged, have been proved and the learned trial Court has also recorded a finding that the signatures, on the written complaint of the complainant are also proved. The learned trial Court has also recorded a finding that the signature on the written complaint are the same, which has been made by her on her evidence.

(22) The complainant i.e. P.W.-1 stated that in the night of incident, she alongwith her husband and children were sleeping at home and on information given by the police, she came to know about the death of her daughter. She also stated that at that time, her husband was at home and if police would not have come, she would not have come to know about the death of her daughter. She also stated that the police had taken away the dead body of her daughter from house, whereas in the written complaint given by her, on the basis of which F.I.R. was lodged, she had stated that her husband has killed her daughter and she took her daughter to the District Hospital Unnao, where the doctor declared her dead and her dead body was kept in hospital.

(23) In the inquest report, the time and place, where the investigation was started, has been mentioned as 08.07.2015 at 06:05 AM and District

Hospital Mortuary. The name of the person, who has given the information of the dead body at Police Station has been mentioned as Santosh Kumari Kashyap W/o Raju Batham. The cause of death has been shown gagging of neck by cloth string. It is also mentioned that the dead body was taken to the Mortuary of District Hospital from Champa Purwa, which is the place of residence of the complainant. The opinion of the witnesses of the inquest is also mentioned as gagging of neck. Thus, the inquest report is in consonance with the version of the F.I.R. in regard to the place of incident, manner of death and place of dead body as informed by the complainant and found. The learned trial Court considered it and recorded a finding that the complainant has given a false evidence, which is proved and she had also not fallen unconscious and she had taken her daughter to the District Hospital after the incident.

- (24) The complainant has admitted that her husband was not present at the time of inquest and post mortem of the deceased with her. It is because as per version of the F.I.R., he had ran away from the place of incident, when she asked him to leave her daughter, while he was gagging her neck by a cloth string and he was arrested at 10:40 Am on 08.07.2015, therefore, if he was with the complainant after the incident and had not run away, he would have been present at the time of inquest and she has not stated that her husband was arrested, when the police had come home in night and informed her about her daughter's death and took

away her dead body. The appellant has also not given correct reply in regard to the death of his daughter in statement under Section 313 Cr.P.C. as he stated that he was present at home, when the police had come, who wake him up and informed that his daughter has died. If he was present at home, then who had informed the police about the death of daughter, has not been clarified because the police had not come home and it was the complainant who had reported the incident to police as discussed above. Thus, his absence except post mortem creates doubt about the veracity of the evidence of the complainant, her son and daughter-in-law and statement under Section 313 Cr.P.C. of the appellant and proves that they are giving false evidence/statement.

(25) P.W.-4 i.e. the son of the appellant and P.W.-5 i.e. daughter-in-law of the appellant have stated that they were in Ahmedabad and after information of the death of the deceased, they had come, whereas the investigating officer/P.W.-6 has stated that he had recorded statement of daughter-in-law in the morning of 08.07.2015. They were declared hostile. P.W.-5 was cross-examined in regard to her statement regarding statement given under Section 161 Cr.P.C., in which she had stated that she alongwith her mother-in-law took the deceased to the hospital, where the deceased was declared dead. She denied that she had given any such statement.

(26) The cloth string, by which the deceased was killed by gagging her neck, was recovered on the pointing out of the appellant by the police

after his arrest, which is also signed by the appellant and accordingly the site plans were prepared, which have been proved by the investigating officer, who appeared as P.W.-6.

(27) In view of above, though it was a case of direct evidence because the F.I.R. was lodged by the complainant, who was a witness to the incident but she, her son and daughter-in-law turned hostile and denied to have seen the incident and as to how the deceased died, therefore, it is to be seen on the basis of circumstantial evidence as to whether the prosecution has been able to prove its case beyond reasonable doubt and if it has been able to prove the prosecution case, whether the burden will shift upon the appellant for proving as to how her daughter died under Section 106 of the Indian Evidence Act, 1872 because he and the complainant, who is his wife, have admitted that he was at home and sleeping together at the time of incident.

(28) Section 106 of the Indian Evidence Act, 1872 provides burden of proving fact especially within knowledge, which is extracted here-in-below:-

"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."

(29) Section 27 of the Indian Evidence Act, 1872 provides as to how much of information received from the accused may be proved, which is extracted here-in-below:-

"27. How much of information received from accused may be proved-Provided that, when any fact is deposed to

as discovered in consequence 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."

- (30) The Hon'ble Supreme Court, in the case of **Boby Vs. State of Kerala (Supra)**, held that if it is said by the Investigating Officer that the accused while in custody, on his own free will and volition made a statement that he would lead to the place, where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the Investigating Officer should have done was to call for two independent witnesses at the police station itself, once the two independent witnesses would arrive at the police station, thereafter, in their presence, the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place, where he is said to have hidden the weapon of offence etc. and the same may be proved under Section 27 of the Indian Evidence Act, 1872. It has further been observed that two essential requirements for the application of Section 27 of the Indian Evidence Act, 1872 are that (1) the person giving information must be an accused of any offence and (2) he must also be in police custody and held that the provision of Section 27 of the Indian Evidence Act, 1872 are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence.

- (31) The Hon'ble Supreme Court has further held in the aforesaid report that law relating to conviction based on circumstantial evidence is well settled and it hardly requires a detailed discussion on this aspect and in a case of murder, in which the evidence i.e. available is only circumstantial in nature, then, in that event, the facts and circumstances, from which the conclusion of guilt is required to be drawn by the prosecution, must be fully established beyond all reasonable doubt and the facts and circumstances so established should not only be consistent with the guilt of the accused but they also must entirely be incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence.
- (32) The Privy Council, in the case of **Pulukuri Kottaya vs. King-Emperor (Supra)**, has observed in regard to Section 27 of the Indian Evidence Act, 1872 that the Section seems to be based on the view, if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information of the information admissible must depend on the exact nature of the fact discovered, to which such information is required to be relate.
- (33) Similar view, in regard to the circumstantial evidence, has been taken by the Hon'ble Supreme Court, in the case of **Nusrat Parween Vs. The**

State of Jharkhand (Supra), and in regard to Section 106 of the Indian Evidence Act, 1872, it has been held that it is a cardinal principle of criminal jurisprudence that Section 106 of the Indian Evidence Act, 1872 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, 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 Indian Evidence Act, 1872 becomes irrelevant. The relevant paragraph No.17 is extracted herein below:-

"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, 1872 becomes irrelevant."

- (34) The Jharkhand High Court, in the case of **Sur Singh Sidhu Vs. The State of Jharkhand (Supra)**, has held that in case of the circumstantial evidence, no one link should be missing. From the chain of the

circumstantial evidence, there should be only one conclusion in regard to commission of crime by the accused persons.

- (35) A Division Bench of this Court, in the case of **Dr. (Smt.) Nupur Talwar Vs. State of U.P. and Anr. (Supra)**, has held that Section 106 of the Indian Evidence Act, 1872 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 the prosecution 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. The Court further relied on the judgment of the Hon'ble Supreme Court, in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra; (1984) 4 SCC 116**, in which it has been held that graver the crime, greater should be the standard of proof and accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof and when on the evidence, two possibilities are available or open, one of which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt and this principle has special relevance, where the guilt of the accused is sought to be established by circumstantial evidence.

(36) The Hon'ble Supreme Court, in the leading case on circumstantial evidence i.e. **Sharad Birdhichand Sarda Vs. State of Maharashtra (Supra)**, has held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent, in the words of this Court before conviction could be based on circumstantial evidence, must be fully established. The conditions as enumerated by the Hon'ble Supreme Court are as follows:-

"(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."

(37) The Hon'ble Supreme Court, in the case of **State of Madhya Pradesh Vs. Balveer Singh; (2025) 8 SCC 545**, has held that it is settled principle of law that an accused can be punished, if he is found guilty even in cases of circumstantial evidence, provided, the prosecution is able to prove beyond reasonable doubt the complete chain of events and circumstances, which definitely points towards the involvement of guilt of the accused. The accused will not be entitled to acquittal merely because there is no eyewitness in the case. It is also equally true that an

accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the expected principles in that regard. The Hon'ble Supreme Court further held that Section 106 of the Indian Evidence Act, 1872 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. So until a *prima facie* case is established by such evidence, the onus does not shift to the accused. Section 106 of the Indian Evidence Act, 1872 would apply to cases, where the prosecution could be said to have succeeded in proving facts, from which a reasonable inference can be drawn regarding the guilt of the accused. The Hon'ble Supreme Court has taken note of the incriminating circumstances, which are identical to the instant case, the relevant of which are extracted herein below:-

"74. We take note of the following circumstances emerging from evidence on record: -

74.1. The failure on the part of the respondent accused in not explaining in any manner as to what had actually happened to his wife i.e., the deceased or how she died on the fateful night of the incident, more particularly when he did not dispute that he was in the company of his wife at the relevant point of time. Though the respondent accused in his statement under Section 313 of the Cr.P.C. admitted that at the time of the incident everyone was sleeping in the house, yet, surprisingly, he maintained a complete silence in regards to the cause of death of the deceased.....: -"

- (38) Coming back to the facts of the present case, it is to be seen as to whether the chain of circumstances lead to the only inference that the appellant is accused of murder of his daughter, who had died in the incident. The written complaint, on the basis of which F.I.R. was lodged, has been proved to have been got written by the complainant by dictating to one Rohit Singh, who proved the contents of the

complaint, on the basis of which the F.I.R. was lodged and the said written complaint was signed by the complainant and scribe of the complaint, who appeared as P.W.-3 and proved the version written in the complaint, his signature thereon and the signature of the lady, on whose dictation, he had written the complaint. The signature thereon have been found to be of the complainant by the learned trial Court also. Thus, the version in the F.I.R. is of the complainant. As per F.I.R., after the deceased i.e. her daughter was killed by the cloth string by the husband of the complainant and on her asking to leave her, he ran away from the spot, then she took her daughter to the District Hospital, where the Doctor declared her dead and the dead body was kept in the hospital. The inquest report indicates that the inquest was made on the information as given by the complainant, who had lodged the F.I.R., in the Mortuary of the District Hospital, where she had informed that the dead body is kept, after she was declared dead. The appellant was not present either at the time of lodging of F.I.R. because it has been proved by the P.W.-10, who had entered the F.I.R. in the computer, that only the complainant was present at that time or at the time of inquest. The appellant was arrested at 10:40 AM on 08.07.2015. Arrest memo is signed by him also. The cloth string was recovered on the pointing of the appellant from the heap of garbage near his house. Recovery memo is also signed by the appellant. The site plans prepared by the Investigating Officer also indicate that the room, in which the deceased was killed, was inside the house and the complainant was sleeping

outside the room and as per the version of the F.I.R., upon hearing the voice of her daughter; Shivani, the complainant went inside the room, where her husband was killing her daughter by gagging her neck from cloth string and the heap of garbage from where the cloth string was recovered. These documentary evidences have been proved by the investigating officer as P.W.-6 and nothing could be extracted from him in cross-examination, which may create any doubt about his testimony. Thus, the recovery stands proved under Section 27 of Evidence Act. The inquest and the post mortem and injuries have been proved by the concerned witnesses. Thus, all the relevant facts showing killing of the daughter of the appellant by him are proved and, admittedly, he was in the house at the time of death of his daughter, therefore, the burden under Section 106 of the Indian Evidence Act, 1872 was on him to prove as to how his daughter had died, which he has failed to prove. The post mortem report, which has been proved by the doctor, who had conducted the post mortem, and the injuries shown therein also prove as to how the deceased was killed.

- (39) In view of above and considering over all facts and circumstances of the case, this Court is of the view that the learned trial Court has rightly and in accordance with law has held that the prosecution has proved the offence of Section 302 I.P.C. against the accused i.e. the appellant beyond reasonable doubt and convicted him and after affording opportunity of hearing, sentenced him with life imprisonment and fine.

This Court is in agreement with the findings recorded by the learned trial Court as well as the conclusions drawn and nothing could be pointed before this Court, on the basis of which, any other view was possible in the facts and circumstances of the case. This appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

(40) The appeal is, accordingly, **dismissed**, upholding the impugned judgment and order passed by the learned trial Court. The conviction of the appellant for the offence punishable under Section 302 I.P.C. is upheld and the sentence awarded to him under Section 302 I.P.C. is confirmed.

(41) Let a copy of this judgment and the original record be transmitted to the Court concerned forthwith for necessary information and compliance.

(Rajeev Singh,J.)

(Rajnish Kumar,J.)

Order Date :- 24th November, 2025

Saurabh/Ajit/-