



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Criminal Appeal No. 1328/2016

Devendra Nagar S/o Shri Gopal Lal, R/o Haripura, Police Station
Bhawani Mandi, District Jhalawar, Rajasthan. At Present In
District Jail, Jhalawar.

-----Accused/Appellant

Versus

State Of Rajasthan Through PP

-----Respondent

For Appellant(s)	:	Mr. Susheel Pujari with Mr. Shyam Bihari Guatam
For Respondent(s)	:	Mr. Amit Kumar Punia, PP

**HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE BHUWAN GOYAL**

Judgment

28/04/2026

Date of Conclusion of Arguments : 28.04.2026
Date on which judgement is reserved : 28.04.2026

Whether the full judgment or only the

operative part is pronounced : Full Judgement

Date of pronouncement : 11.05.2026

Per Hon'ble MAHENDAR KUMAR GOYAL, J.

By way of this criminal appeal, the appellant-accused (for
brevity, 'appellant') has assailed the legality and validity of the
judgement dated 31.05.2016 passed by the learned Additional
Sessions Judge, Bhawani Mandi, District Jhalawar (for brevity,

'learned trial Court') in Sessions Case No.37/2014 whereby, he has been convicted and sentenced as under:-

Section 302 IPC:- Life imprisonment and fine of Rs.20,000/-; in default whereof, six months' additional simple imprisonment.

The relevant facts in nutshell are that the complainant-Kalulal (PW5) lodged a written report at about 10:00 am on 30.03.2014 with Police Station Bhawani Mandi wherein, it was averred that his daughter-Dhapu Bai was married about ten years ago to the appellant who used to beat her. It was stated that on that day, at about 7:00 am, her father-in-law-Gopal informed him telephonically that his daughter has died and when he went to Haripura, he found the mark of injuries on her head and neck. It was alleged that his daughter was either beaten to death by the appellant or by throttling. Based thereupon, an FIR No.128 dated 30.03.2014 was registered at Police Station Bhawani Mandi, District Jhalawar for the offence under Section 302/304B IPC. After investigation, the appellant was charge-sheeted under Section 302 IPC whereunder, charge was also framed against him. After trial, he has been convicted and sentenced, as stated hereinabove.

Assailing the impugned judgement, learned counsel for the appellant contended that the findings of the learned trial Court are based on conjectures and surmises and there was no legally admissible evidence available on record against him. He contended that although, the case is based on circumstantial

evidence but, the prosecution has miserably failed to establish the complete chain of circumstances leading to only conclusion of his guilt. Referring to and relying upon the testimony of Kalulal (PW5), Badrilal (PW7), Balram (PW8), Sita (PW9), Balchand (PW12) and Prem Bai (PW15)-father, mother and other relatives of the deceased, he would contend that the allegation against the appellant of beating the deceased could not be established therefrom. Inviting attention of this Court towards the postmortem report (Ex.P9) of the body of the deceased as also the testimony of Dr. Manoj Kumar Gupta (PW13) and Dr. Rohitashv (PW14), learned counsel submitted that even it was not proved that it was a case of homicidal death and a possibility of it being a suicidal death, could not be ruled out. He submitted that even otherwise, there was no evidence that the strangulation was either on account of throttling or by any other means. He, therefore, prayed that the appeal be allowed, the judgement impugned dated 31.05.2016 be quashed and set aside and he be acquitted of the charge framed against him. He, in support of his submissions, relied upon a judgement of the Hon'ble Supreme Court of India in the case of **Musheer Khan @ Badshah Khan and Another Vs. State of MP: MANU/SC/0065/2010.**

Per contra, learned Public Prosecutor, opposing the submissions, contended that findings of the learned trial Court are based on appreciation of cogent evidence available on record in its right perspective which warrant no interference. He further submitted that the prosecution was able to establish guilt of the appellant by establishing the complete chain of circumstances

leading to irresistible conclusion only of his guilt. He, therefore, prayed for dismissal of the appeal.

Heard. Considered.

As per the prosecution case, the appellant and the deceased were married for about ten years, he used to beat her almost on daily basis and ultimately, murdered her in the night of 29.03.2014 either by beating or by strangulation.

Indisputably, there is no eye witness to the incident and the case hinges on circumstantial evidence. The prosecution story begins from the written report (Ex.P2) submitted by Shri Kalulal (PW5)-father of the deceased. In it as also in his examination-in-chief, Kalulal has alleged that soon after the marriage, the appellant started beating his daughter and she used to inform him so telephonically almost every other day; however, during his cross-examination, he could not reveal either his mobile number or of his daughter or any other mobile number being used by them. He has further admitted, during his cross-examination, that his daughter was living with the appellant for last about ten years without any complaint. It demolishes the allegation levelled by him in his deposition. Further, Smt. Sita (PW9)-mother of the deceased did not support the prosecution case and turned hostile. Although, upon cross-examination by the learned Additional Public Prosecutor, she has stated that her daughter died on account of beating by her husband and whenever she visited her maternal home, she used to complain of beating. But, during her cross-examination by the defence, she has stated that her daughter never informed her of beating by the appellant.

Thus, the testimony of neither father nor of mother of the deceased inspires confidence that the appellant used to beat the deceased after the marriage.

In this regard, the prosecution has also relied upon the testimony of Badrilal (PW7), Balram (PW8), Balchand (PW12) and Prem Bai (PW15) While, Badrilal happened to be uncle of the deceased but, he has levelled no allegation against the appellant rather, has stated that he was unaware who has murdered her. The testimony of another uncle of the deceased namely Balram is based on hearsay inasmuch as he has stated that her father had informed him that she was beaten by the appellant a day prior to her death. Her cousin-Balchand, although has stated, in his examination-in-chief, that whenever the deceased used to come, she complained of quarrel with the appellant but, during his cross-examination as PW12, he has admitted that whenever his sister used to visit their home, she always informed of everything being well and happy. Prem Bai-aunty of the deceased, has stated during her cross-examination that she was not aware as to what happened. Thus, the aforesaid deposition also does not lead to any conclusion, much less beyond reasonable doubt, that the appellant used to beat the deceased and had murdered her by doing so. However, the learned trial Court has recorded a finding that the appellant used to beat the deceased not only relying upon the aforesaid sketchy evidence but, also on premise that Sita (PW9)-mother of the deceased was not suggested by the defence that the deceased never informed either her husband or her son of

beating by the appellant. We do not countenance such approach being against all the settled canons of criminal jurisprudence.

It may also be worthy to mention here that there was not a whisper of allegation against the appellant of subjecting the deceased to beating either for demand of dowry or otherwise. As a matter of fact, the prosecution case is completely silent as to the reason or the motive for which the appellant used to beat the deceased which, even otherwise also, could not be established by the prosecution as observed hereinabove.

A perusal of the judgement impugned dated 31.05.2016 reflects that the learned trial Court has heavily relied upon the provisions of Section 106 of Evidence Act to draw an inference that since, the deceased was married to the appellant and had met an unnatural death in her *sasural* (in-laws' house), a heavy burden lay upon the appellant to explain the circumstances whereunder death took place in which not only he failed rather, offered false plea of alibi too. So far as the plea of alibi is concerned, we are in agreement with the learned trial Court that the same could not be proved by the appellant. However, it does not lessen the rigor of burden on the prosecution to prove the foundational facts necessary for applicability of Section 106 of Evidence Act.

Their Lordships of Supreme Court have, in the case of **Binay Kumar Singh and Others Vs. State of Bihar: MANU/SC/0088/1997**, while dealing with an identical issue, authoritatively held as under:-

"**23.** The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence take place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. **It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily** xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx"

(emphasis supplied)

Thus, in the aforesaid case, it was held that it is for the prosecution to establish that the accused was present at the scene of crime and has participated in it even if the accused has not been able to establish the defence of alibi or was unable to offer any defence.

However, in the instant case, we find that the prosecution has not been able to discharge its primary burden by proving presence of the appellant at the scene of crime when the offence was allegedly committed. Indisputably, the deceased has died an unnatural death in her in-laws' house but, unless the prosecution was able to establish presence of the appellant in the house, along with the deceased, at the time of her death, in our considered

view, this fact alone was not sufficient to invite applicability of Section 106 of Evidence Act and to cast a burden upon the appellant to establish the circumstances whereunder, the death took place.

The Hon'ble Supreme Court of India has, in the case of **Satye Singh and Another Vs. State of Uttarakhand: Criminal Appeal No.2374/2014 decided on 15.02.2022**, held as under:-

"15. Applying the said principles to the facts of the present case, the Court is of the opinion that the prosecution had miserably failed to prove the entire chain of circumstances which would unerringly conclude that alleged act was committed by the accused only and none else. Reliance placed by learned advocate Mr. Mishra for the State on Section 106 of the Evidence Act is also misplaced, inasmuch as Section 106 is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused. In **Shambu Nath Mehra vs. State of Ajmer**, AIR (1956) SC 404, this court had aptly explained the scope of Section 106 of the Evidence Act in criminal trial. It was held in para 9:

"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 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. Emperor [AIR 1936 PC 169] and Seneviratne v. R. [(1936) 3 All ER 36, 49]”

16. In the case on hand, the prosecution having failed to prove the basic facts as alleged against the accused, the burden could not be shifted on the accused by pressing into service the provisions contained in section 106 of the Evidence Act. There being no cogent evidence adduced by the prosecution to prove the entire chain of circumstances which may compel the court to arrive at the conclusion that the accused only had committed the alleged crime, the court has no hesitation in holding that the Trial Court and the High Court had committed gross error of law in convicting the accused for the alleged crime, merely on the basis of the suspicion, conjectures and surmises.”

In the case of **Smt. Gargi vs. State of Haryana: Criminal Appeal No.1046/2010 decided on 19.09.2019**, the Hon’ble Supreme Court held as under:-

“28. The prosecution has relied upon another circumstance that the deceased was lastly in the

company of the appellant and she had failed to explain his whereabouts as also the circumstances leading to his death.

28.1. Insofar as the 'last seen theory' is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The Trial Court and the High Court have proceeded on the assumption that Section 106 of the Indian Evidence Act directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Indian Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in *Sawal Das (supra)* in the following:

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

28.2XX

[illegible]

28.3. In the given set of circumstances, the last seen theory cannot be operated against the appellant only because she was the wife of the deceased and was living with him. The gap between the point of time when the appellant and deceased were last seen together and when the deceased was found dead had not been that small that possibility of any other person being the author of the crime is rendered totally improbable. In *SK. Yusuf (supra)*, this Court has said:

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

The learned trial Court has held that since, the deceased was wife of the appellant and has died behind closed doors in a room in her *sasural* during night, heavy burden lay upon the appellant to explain the suspicious circumstances but, in absence of any evidence to demonstrate that they were together in the night in the same room or under the same roof, in the backdrop of authoritative pronouncement of the Hon’ble Supreme Court in the cases of **Satye Singh and Another** (supra) and **Smt. Gargi** (supra), we are not persuaded to approve the approach of the learned trial Court and are of the view that the prosecution could not prove the foundational facts necessary to invite applicability of Section 106 of Evidence Act.

Further, although, the complainant has, neither in the written report (Ex.P2) nor, in his examination-in-chief stated that he saw the appellant at the scene of crime in the morning but, during his

cross-examination as PW5, he has stated that he did not see him there and has, in the same breath, stated that he was there. Although, Badrilal (PW7), Balchand (PW12) and Prem Bai (PW15) have accompanied the parents of the deceased to the scene of crime after receiving telephonic information but, did not depose of seeing the appellant there at that time. However, Balram (PW8) has stated, during his cross-examination, that when they again reached the scene of crime, the appellant was present; but, he has also stated that the appellant was arrested from the scene of crime however, as per the arrest memo (Ex.P10), the appellant was arrested on 01.04.2014 and Shri Revat Singh (PW16)-the Investigating Officer has categorically stated that he did not find the appellant at the scene of crime. Although, it could be canvassed that there was a time lag of almost two hours in between when the family members of the deceased had reached the scene of crime and when they again reached there along with the police but, it was not the prosecution case that the appellant fled in the meanwhile. In view thereof, we are convinced that the prosecution could not establish presence of the appellant at the scene of crime. We also find that although, the appellant has, as DW1, admitted that he was present at home till 4:00 pm on 29.03.2014 but, neither it was proved that the deceased was murdered before that nor, that she was not seen alive thereafter.

As per the autopsy report (Ex.P9), there were abrasions and bruises on the left and right side of the neck with an abrasion below chin towards left side. Cricoid cartilage was found to be damaged and moved downwards with fracture of hyoid bone.

Trachea was also damaged and moved downwards which stood corroborated from the testimony of Dr. Manoj Kumar Gupta (PW13) and Dr. Rohitashv Kumar (PW14)-the Members of the Medical Board which conducted the postmortem. Cause of death was found to be asphyxia on account of strangulation. Both the medical experts have admitted during their cross-examination that it could be a case of suicide as well. Although, cause of death was opined to be strangulation but, the prosecution led no evidence to establish the means allegedly employed by the appellant to cause it; either by throttling or by strangulation by any other means such as tourniquet. Further, in the site plan (Ex.P5), the scene of crime is shown to be the room belonging to the appellant but, it reflects that no sign of worth recovery/mention was found by the Investigating Officer. Even it is not mentioned therein as to whether the strangulation happened on a cot/bed or mattress or on bare floor. It is also not revealed as to how the room was found to be the scene of crime in absence of any sign as, indisputably, when the family members of the deceased reached, the body was lying in the veranda. There is no evidence available on record at all to demonstrate as to who and in what manner brought the dead body from the room to the veranda. Therefore, we have reasons to doubt that the incident occurred inside the room or that it was behind the closed doors or that it was during night or even, that it was homicidal or suicidal especially, in view of the testimony of the Members of the Medical Board.

Moreover, the judgement impugned dated 31.05.2016 reflects self-contradictory findings recorded by the learned trial

Court as to cause of death of Smt. Dhapu Bai. On page 34 of the judgement, the learned trial Court has held that it was firmly established that the appellant committed murder by beating/throttling. On page 36, the learned trial Court recorded a finding that it was very well established **prima facie** that the appellant inflicted injuries and she died either on account of beating or on account of throttling. However, in the concluding paragraph, it was held that Dhapu was murdered either by beating or by throttling.

While dealing with a case of circumstantial evidence, Their Lordships have, in the case of **Musheer Khan @ Badshah Khan and Another** (supra), held as under:-

“**46.** In a case of circumstantial evidence, one must look for complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence.

47. This Court finds that this case is entirely based on circumstantial evidence. While appreciating circumstantial evidence, the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances.

48. Chief Justice Fletcher Moulton once observed that "proof does not mean rigid mathematical" formula since "that is impossible". However, proof must mean such evidence as would induce a reasonable man to come to a definite conclusion. Circumstantial evidence, on the other hand, has been compared by Lord Coleridge "like a gossamer thread, light and as unsubstantial as the air itself and may

vanish with the merest of touches". The learned Judge also observed that such evidence may be strong in parts but it may also leave great gaps and rents through which the accused may escape. Therefore, certain rules have been judicially evolved for appreciation of circumstantial evidence.

49. To my mind, the first rule is that the facts alleged as the basis of any legal inference from circumstantial evidence must be clearly proved beyond any reasonable doubt. If conviction rests solely on circumstantial evidence, it must create a network from which there is no escape for the accused. The facts evolving out of such circumstantial evidence must be such as not to admit of any inference except that of guilt of the accused. {See **Raghav Prapanna Tripathi and Ors. v. State of U.P.** MANU/SC/0127/1962 : AIR 1963 SC 74}.

50. The second principle is that all the links in the chain of evidence must be proved beyond reasonable doubt and they must exclude the evidence of guilt of any other person than the accused.

{See: **State of UP v. Ravindra Prakash Mittal** MANU/SC/0402/1992 :1992 CrL.L.J 3693(SC) - (Para 20)}

51. While appreciating circumstantial evidence, we must remember the principle laid down in **Ashraf Ali v. Emperor** 43 Indian Cases 241 at para 14 that when in a criminal case there is conflict between presumption of innocence and any other presumption, the former must prevail.

52. The next principle is that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and is incapable of explanation upon any other reasonable hypothesis except his guilt.

53. When a murder charge is to be proved solely on circumstantial evidence, as in this case, presumption of innocence of the accused must have a dominant role. In **Nibaran Chandra Roy v. King Emperor** MANU/WB/0164/1907 : 11 CWN 1085 it was held the fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. It seems, therefore, to follow that whatever force a presumption arising under Section 106 of the Indian Evidence Act may have in civil or in less serious criminal cases, in a trial for murder it is extremely weak in comparison with the dominant presumption of innocence.

54. Same principles have been followed by the Constitution Bench of this Court in **Govinda Reddy v. State of Mysore** MANU/SC/0160/1958 : AIR 1960 SC 29 where the learned Judges quoted the principles laid down in **Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh** MANU/SC/0037/1952: AIR 1952 SC 343. The ratio in **Govind** (supra) quoted In paragraph 5, page 30 of the reports in **Govinda Reddy** (supra) are:

In cases where the evidence of a circumstantial nature, the circumstances which lead to the conclusion of guilt should be in the first instance fully established, and all the facts so established should be consistent only with the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words there must be a chain of evidence so complete as not to leave any reasonable doubt for a conclusion consistent with the innocence of the accused

and it must be shown that within all human probability the act must have been committed by the accused.

55. The same principle has also been followed by this Court in **Mohan Lal Pangasa v. State of U.P.** MANU/SC/0425/1974: AIR 1974 SC 1144."

In the celebrated judgement of **Sharad Birdhichand Sarda Vs. State of Maharashtra: (1984) 4 Supreme Court Cases 116**, the Hon'ble Apex Court has laid following golden principles to be kept in mind while considering a case of circumstantial evidence:-

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra MANU/SC/0167/1973: 1973 CriLJ 1783 where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

If the prosecution evidence is tested on the touchstone of the aforesaid principles laid down by the Hon’ble Supreme Court of India, we find that the prosecution has not been able to establish any link in the chain of circumstantial evidence much less the complete chain, leading to the irresistible conclusion only of guilt of the appellant. In view thereof, findings recorded by the learned trial Court are not found to be sustainable in the eye of law and the appeal deserves to be allowed.

Resultantly, the appeal is allowed. The judgement impugned dated 31.05.2016 passed by the learned Additional Sessions Judge, Bhawani Mandi, District Jhalawar is quashed and set aside. The appellant is acquitted of the charge framed against him. He be set at liberty forthwith if not required to be detained in any other case.

In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellant namely **Devendra Nagar S/o Shri Gopal Lal** is directed to furnish a

personal bond in the sum of Rs.25,000/- and a surety in the like amount within four weeks before the Registrar (Judl.) of this Court which shall be effective for a period of six months with the stipulation that in the event of Special Leave Petition being filed against the judgement or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

(BHUWAN GOYAL),J

(MAHENDAR KUMAR GOYAL),J

PRAGATI/34