

(A.F.R)

Reserved on 07.09.2022

Delivered on 23.09.2022

**Court No. -2**

**Case :- CRIMINAL APPEAL No. - 1984 of 1984**

**Appellant :-** Manni Singh Alias Mannu Lal

**Respondent :-** State of U.P.

**Counsel for Appellant :-** G.S. Chaturvedi, Anurag Shukla, Mewa Lal Shukla

**Counsel for Respondent :-** A.G.A.

**Hon'ble Arvind Kumar Mishra-I,J.**

**Hon'ble Mayank Kumar Jain,J.**

**(Per : Hon'ble Mayank Kumar Jain, J)**

1. This Criminal Appeal has been preferred against the judgment and order dated 19.07.1984 passed by the Learned 1st Additional Sessions Judge, Jhansi in Sessions Trial No.107 of 1983 (State Vs. Manni Singh @ Mannu Lal), arising out of Case Crime No.68 of 1983, under Sections 302/201 of IPC, Police Station Navabad, District Jhansi, whereby the accused-appellant Manni Singh @ Mannu Lal was convicted under section 302 of IPC and sentenced to undergo life imprisonment. He was also convicted under Section 201 of IPC and sentenced to undergo three years of rigorous imprisonment. Both the sentences were directed to run concurrently.

2. Facts giving rise to the prosecution case are that Sri Krishna Dutt Mishra, Sub-Inspector received information on 20.02.1983 at 6.30 p.m. from constable Shrawan Kumar that a dead body of a female is lying in the well situated in the University Campus. He along with constable Matole Rajak and constable Shivcharan Sharma reached the place of occurrence and with the assistance of some villagers, the dead body of the deceased was taken out from the well. Since the source of light was not available, inquest could not be made. On inquiring, it came to the knowledge that the dead body so recovered is of Smt. Lad Kunwar, w/o

Mannu Kumhar, chaukidar of the University Quarter. The inquest report of the dead body was prepared the next day and the dead body was handed over to constable Rananjay Singh and Constable Mahesh Prasad for post-mortem examination.

3. After lodging of First Information Report, S.I. Krishna Dutt Mishra started the investigation and it was revealed that the husband of the deceased, Mannu Kumhar had killed his wife as both of them quarrelled. The accused-appellant Mannu Kumhar had caused injuries on the body of his wife and after her death, he threw the body in the nearby well to conceal the evidence. Based on this, the first information report of this case was registered as Case Crime No. 68 of 1983 under Sections 302, 201 IPC against the accused-appellant Manni Singh alias Mannu Lal, which was entered in the G.D. of the police station concerned. One Taveez, one chain of Gilat, and one chain of brass were recovered from the body of the deceased and were taken into possession by the Investigating Officer. A recovery memo was prepared which was exhibited as Exhibit Ka-2. During the investigation, the Investigating Officer prepared the recovery memo of a torch through which PW-2 Laxman Singh, the guard of the University Campus, had seen the accused-appellant near the well on the fateful night. This recovery memo was exhibited as Exhibit Ka -12. On 22.02.1983, the Investigating Officer, in the presence of witnesses Khushal and Hariram, reached the place of occurrence, i.e. the quarter of the accused-appellant, and recovered one bloodstained coat, a piece of the plaster from the wall on which blood was present, bloodstained 'baan' (rope used to knit the cot), few broken pieces of bangles, one earring made of steel and one 'Bichhiya'. Apart from these, one *bent* (danda) with blood stains over it was also recovered. The recovery memo was exhibited as Exhibit Ka-9. Recovered articles were sent for examination to the Forensic Science Laboratory and a report was obtained from there, which is available on record. After the conclusion of the investigation, the charge sheet was submitted by the Investigating

Officer under Sections 302/201 of IPC against the accused-appellant, which was exhibited as Exhibit Ka-11. Thereafter, the case was committed to the Court of Sessions, and charges under Section 302/201 of IPC were framed against the accused-appellant Manni Singh alias Mannu Lal. The accused-appellant pleaded not guilty and claimed to be tried.

4. To prove its case, the prosecution produced nine witnesses. PW-1-Roop Singh, PW-2-Laxman Singh, PW-3-Masalti, PW-4 Ramesh, PW-5 Bhagwan Das (brother of the deceased,) PW-6 Khushali, PW-7 S.I. Krishna Dutt Mishra, First Investigating Officer, who prepared the inquest report of the dead body, PW-8 Jai Pal Singh, second Investigating Officer, and PW-9 Dr. R.N. Sharma, who conducted the post-mortem examination of the deceased Lad Kunwar.

5. After the conclusion of the prosecution evidence, the statement of the accused-appellant under Section 313 of Cr.P.C. was recorded, in which the accused denied that he has committed the crime and stated that the witnesses have given false evidence against him and deposed based on doubt only. He further stated that witness Masalti is the cousin of his brother-in-law (sadhu), witness Laxman Singh is the friend of witness Khushali, and witness Ramesh is the pocket witness of the police and has given false evidence against the accused. The accused-appellant also stated that he had gone to his village on 19.02.1983 and returned on the third day, thereafter he came to know that he has been implicated in this case.

6. Hearing both sides and after vetting the evidence, facts and circumstances of the case, the trial Judge recorded conviction and passed sentence against the Appellant as aforesaid.

7. Being aggrieved by the impugned judgment and order, the accused-appellant has preferred the present criminal appeal.

8. We have heard Shri Mewa Lal Shukla, learned counsel for the accused-appellant, Shri Sunil Kumar Tripathi, learned Additional Government Advocate for the State, and perused the record.

9. On the basis of the evidence available on record, it has to be determined as to whether on the intervening night of 19.02.1983 the accused-appellant committed the murder of his wife Lad Kunwar and with the intention to cause disappearance of the evidence threw away her dead body in the well.

10. Learned counsel for the appellant argued that there is no direct evidence that the appellant has committed the murder of his wife Lad Kunwar. The appellant has falsely been implicated due to village enmity and the appellant was not even present in the village at the time of occurrence since he had gone to his village on 19<sup>th</sup> morning and when he returned after 2-3 days, he came to know that a case has been registered against him. Further, it is submitted that the witnesses examined by the prosecution are inimical with the appellant and have, therefore, given false evidence against him. The oral evidence is not in consonance with the medical report since incised wounds were also mentioned in the medical report and the prosecution has not stated how these injuries were inflicted upon the deceased by the appellant. It is also submitted that the alleged recovery made from the house of the appellant is concocted and false and no such recovery was made. To make his submission good, the learned counsel for the appellant argued that no motive has been assigned by the prosecution against the appellant, and hence, the prosecution has utterly failed to prove the charges against the appellant. The appellant is liable to be acquitted and the appeal deserves to be allowed.

11. Per contra, learned AGA argued that the case of the prosecution rests upon circumstantial evidence. The appellant was last seen together with the deceased by the witnesses who witnessed that the appellant was mercilessly beating his wife Lad Kunwar and these witnesses suggested to

the appellant that he should consult the doctor since she was bleeding profusely. On being asked why the appellant was beating his wife, they were told that she was always abusing him. Deceased Lad Kunwar was not seen alive by anyone after these witnesses saw her with the appellant till her body was recovered from the well. It is apparent that deceased Lad Kunwar suffered nineteen injuries on her body and the cause of the death was ascertained as a result of ante-mortem injuries. After throwing the dead body of his wife in the well, the appellant was seen by the Chowkidar of the village at around 1 AM and he identified the appellant under the torch light.

12. Further, it is submitted that since the appellant was absconding, his house was searched by the investigating officer, and incriminating articles such as blood-stained 'dhurrie', broken pieces of bangles, and one *bent*, which was used by the appellant to beat the deceased, were recovered. Apart from these, the investigating officer also took the piece of the floor on which blood was found. All these articles were sent to Forensic Laboratory and as per the report of this laboratory, human blood was found on these articles. The prosecution witnesses have stated that the appellant used to frequently quarrel with his wife Lad Kunwar. The deceased Lad Kunwar told her brother Bhagwan Das (PW-5) that the appellant beats her and she apprehended that he would kill her.

13. To buttress his arguments, the learned AGA further submitted that being the husband it was the duty of the appellant to know about the whereabouts of his wife while he only stated in his statement under Section 313 Cr.P.C. that after returning from his village he came to know that a case has been registered against him. The appellant did not utter even a word about his wife. The presumption under section 106 of the Evidence Act is to be drawn against the Appellant. These circumstances indicate that the Appellant is only and the only author of the crime and he has rightly been convicted and sentenced by the trial Court. Judgment and

order of the trial Court are based upon the material available on record. Thus, the appeal of the appellant is liable to be dismissed.

14. Admittedly, the case of the prosecution rests upon circumstantial evidence.

15. The Hon'ble Apex Court while discussing the case of circumstantial evidence in **Mohd. Mannan Alias Abdul Mannan Vs. State of Bihar, (2011) 2 Supreme Court Cases (Cri) 626** held that:-

*"In our opinion to bring home the guilt on the basis of circumstantial evidence the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. In a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else. It has to be considered within all human probability and not in a fanciful manner. In order to sustain conviction circumstantial evidence must be complete and must point towards the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard and fast rule can be laid down to say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case."*

16. In **Md. Younus Ali Tarafdar v. State of West Bengal A.I.R. 2020 Supreme Court 1057: A.I.R. Online 2020 SC Page-238** the Hon'ble Supreme Court laid out the factors to be considered while adjudicating the case of circumstantial evidence observed that:-

*" There is no direct evidence regarding the involvement of the Appellant in the crime. The case of the prosecution is on basis of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence as laid down by this Court are :*

*Admittedly, this is a case of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence laid down by this Court are :-*

*(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."*

17. In **Pattu Rajan V. State of Tamil Nadu (2019) 4 SCC 771**, the Apex Court observed the nature of evidence in the case of circumstantial evidence and held that:-

*"30. Before we undertake a consideration of the evidence supporting such circumstances, we would like to note that the law relating to circumstantial evidence is well settled. The Judge while deciding matters resting on circumstantial evidence should always tread cautiously so as to not allow conjectures or suspicion, however strong, to take the place of proof. If the alleged circumstances are conclusively proved before the Court by leading cogent and reliable evidence, the Court need look any further before affirming the guilt of the accused. Moreover, human agency may be faulty in expressing the picturisation of the actual incident, but circumstances cannot fail or be ignored. As aptly put in this oft-quoted phrase: "Men may lie, but circumstances do not".*

*31. As mentioned supra, the circumstances relied upon by the prosecution should be of a conclusive nature and they should be such as to exclude every other hypothesis except the one to be proved by the prosecution regarding the guilt of the accused. There must be a chain of evidence proving the circumstances so complete so as to not leave any reasonable ground for a conclusion of innocence of the accused. Although it is not necessary for this Court to refer to decisions concerning this legal proposition, we prefer to*

quote the following observations made in *Sharad Birdhichand Sarda V. State of Maharashtra*, (1984) 4 SCC 116 (SCC p. 185 para 153-154) : (AIR 1984 SC 1622, at p. 1655-56, paras 152-153):

*"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 Sahabroao Bobde V. State of Maharashtra* 1973 Cri L.J 1783 where the following observations were made:*

*Certainly, it is a primary principle that 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, as we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."*

18. The Hon'ble Supreme Court concerning the cases based on circumstantial evidence in **Ganpat Singh Vs. State of Madhya Pradesh (2018) 2 Supreme Court Cases (Criminal) 159**, held that:-

*"There are no eyewitnesses to the crime. In a case which rests on circumstantial evidence, the law postulates a twofold requirement. First, every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt. Second, all the circumstances must be consistent only with the guilt of the accused. The principle has been consistently formulated thus:*

*"The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;*

*that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence."*

19. The present case of the prosecution consisted of the following circumstances:-

- (i) Evidence of last seen of the deceased together with the appellant
- (ii) Motive of commission of the crime by the appellant
- (iii) Recovery of the incriminating articles from the place of occurrence
- (iv) Concealment of evidence by the appellant

**EVIDENCE OF LAST SEEN OF THE DECEASED TOGETHER WITH THE APPELLANT**

20. The investigation commenced on the basis of the information given by PW-1-Roop Singh, the Chaukidar of Bundelkhand University. PW-1 after receiving information that one dead body was lying in the well near the university quarter, visited the spot and informed the police telephonically. The police took out a dead body of a woman who was later identified as Lad Kunwar, wife of Mannu Lal.

21. PW-3-Masalti and PW-4 Ramesh are the witnesses of the fact that they saw Lad Kunwar alive for the last time in the company of the appellant on the day of occurrence around 10:00 pm inside the quarter of the appellant. Thereafter, her body was recovered, and she was not seen alive by anyone in the intervening period. PW-3-Masalti and PW-4 Ramesh have stated in their evidence that they were passing by the quarter

of the appellant when they heard and saw Lad Kunwar, wife of the appellant, weeping. Besides, they saw that Lad Kunwar was sitting on the floor and the appellant was mercilessly beating her with *bent*. Both the witnesses have stated that they have witnessed the incident and they suggested the appellant to take his wife to the hospital. No material contradiction occurred in the testimony of these two witnesses in their cross-examination that deceased Lad Kunwar was last seen alive by them and after the incident, her body was found in the well.

22. The Hon'ble Apex Court in **Ganpat Singh Vs. State of Madhya Pradesh (2018) 2 Supreme Court Cases (Criminal) 159** while observing the significance of last seen theory held that:-

*"Evidence that the accused was last seen in the company of the deceased assumes significance when the lapse of time between the point when the accused and the deceased were seen together and when the deceased is found dead is so minimal as to exclude the possibility of a supervening event involving the death at the hands of another. The settled formulation of law is as follows:*

*"The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."*

### **MOTIVE OF COMMISSION OF THE CRIME BY THE APPELLANT**

23. PW-1 Roop Singh has stated in his testimony that the appellant was residing adjacent to his quarter and very often the husband and the wife used to quarrel with each other. PW-3 Maslati and PW-4 Ramesh stated in their testimony that when they reached inside the quarter of the appellant, they witnessed that the appellant was mercilessly beating his wife with a *bent*. On being enquired about the reason for such action, the appellant told them that her wife, Lad Kunwar used to quarrel often and used abusive language against him. PW-5 Bhagwan Das, who is the brother of the deceased Lad Kunwar, has also stated in his testimony that approximately five days before the occurrence of the incident, he had heard about the fight between his sister and the appellant. After hearing this news, he went to his sister, the deceased, to bring her back along with him but the appellant did not permit him from doing so and asked him to go back. The deceased confided with PW-5 that the appellant used to beat her frequently and she feared for her life. She, thus, requested PW-5 to take her back along with him. Thus, this witness has also corroborated the version of PW-3 and PW-4 about the motive behind the commission of the crime by the appellant as the appellant frequently had quarrels with his wife and used to beat her often.

### **RECOVERY OF THE INCRIMINATING ARTICLES FROM THE PLACE OF OCCURRENCE**

24. PW-6 Khushali is the witness of recovery from the place of occurrence, i.e. the house (quarter) of the appellant. He has proved the recovery of a bloodstained dhurrie and a bloodstained *bent*. The police also took possession of a piece of the plaster from the wall on which blood was present along with bloodstained *baan* (rope used to knit the cot). Apart from these, one ear pin, few broken pieces of bangles, and one

Bichhiya (foot ring) were also recovered from the place of occurrence. PW-6 is the witness of the recovery memo (Ex Ka 9)

25. PW-8 Jai Pal Singh, SHO, who is the second investigating officer of the case, has proved the recovery memo as Ex Ka 9. This witness also stated in his evidence that in the presence of independent witnesses, the lock of the quarter of the appellant was broken and a bloodstained dhurrie, a bloodstained *bent*, piece of the plaster from the wall on which blood was present along with bloodstained *baan* (rope used to knit the cot), one ear pin, few broken pieces of bangles, and one Bichhiya (foot ring) were recovered from the place of occurrence. This witness proved the recovered article as Ex 12 to Ex 14. These articles were sent to Forensic Laboratory for chemical examination. The report of the Forensic Lab Ex Ka 15 concluded that human blood was found on these articles. Thus, the recovery of incriminating articles from the appellant's quarter indicates that the appellant mercilessly beat his wife at the place of occurrence, and owing to such beating, blood injuries were inflicted upon her, as evidenced by the blood stains on such recovered articles.

#### **CONCEALMENT OF EVIDENCE BY THE APPELLANT**

26. The body of the deceased Lad Kunwar was recovered from a well by PW-7 S.I. Krishna Dutt Mishra after receiving the information from Constable Shravan Kumar that a body of a woman is lying in the well situated in the campus of the University. The body was taken out which was identified as the body of Lad Kunwar, the wife of the appellant. PW-7 prepared the site plan of the place of recovery of the dead body (Ex Ka- 3). This witness had stated in his evidence that he prepared the inquest report of the dead body and prepared requisite documents for post-mortem.

27. PW-1 Roop Singh is the informant, gave information to the police (station) about the presence of a dead body inside the well and also

the witness of fact of the dead body being taken out from the well. He identified the dead body as that of Lad Kunwar-the wife of the appellant.

28. PW-2 Laxman Singh stated that he was deputed as Chowkidar from 5 PM to 5 AM in the university campus. On the day of occurrence, at around 1 AM, he heard some sound and approached the well and found that the engine of the well was intact in its place. appellant Mannu Lal was returning from the well. On being asked, the appellant told that he came there to ease himself and he hit the stone with his leg which fell inside the well. This witness identified the appellant in the light of a torch that he had at that time. On the next day, he came to know that body of a woman was lying inside the well. He reached there and found that the dead body was of Lad Kunwar, wife of the Appellant. He handed over the torch to the investigating officer who prepared the recovery memo (Ex Ka-2) which bore his signature. PW-7 SI Krishna Dutt has proved the execution of Ex Ka 2. He also stated that after receiving the information about the discovery of a dead body inside the well, he along with other police personnel reached the site of the well and with assistance of the villagers, took out the body from the well. At the same time, he came to know that it was the body of the wife of the appellant.

29. On the basis of appreciation of the above evidence it is proved that the appellant after committing the murder of his wife Lad Kunwar, with the intention to cause disappearance of the evidence, threw her body inside the well which was recovered later on and identified by the witnesses as the wife of the appellant. The presence of the appellant as proved by PW-2 Laxman near the well at 1 AM on the night of occurrence indicates that the appellant was there to dispose off the body thus, causing disappearance of the evidence.

30. Apart from the appreciation of the evidence available on record, it is pertinent to mention here that PW-7 Krishna Dutt and PW-8 Jai Pal Singh, the first and second Investigating Officer respectively, have stated

in their evidence that they completed all the formalities during the course of the investigation. The inquest of the dead body was conducted, and it was sent for post-mortem. Formal documents were executed. A site plan of the place of occurrence and the place of recovery of the body was prepared. The torch through the light of which, witness Laxman saw the appellant on the night of the incident was also taken and is proved as exhibit.

31. PW-9 Dr. R.N. Sharma has conducted the post-mortem of the deceased Lad Kunwar and prepared his report. The following ante-mortem injuries were found on the body of the deceased:-

“1- दाई खोपडी पर उभरे भाग के सामने Horizontal  $1 - 1/2''$  x  $1/2''$  x हड्डी तक गहरा साफ कटा धाव है। हड्डी पर नीचे धाव का निशान था।

2- बाएं कन्धे से लेकर हाथ तक दोनों तरफ  $1/4''$  x  $1/4''$  से लेकर  $1/2''$  x  $1/2''$  की अनेक खराशें हैं।

3- बाई भुजा के निचले भाग में पीछे  $1/2''$  x  $1/4''$  x मांस तक गहरा साफ कटा धाव है।

4- बाई जांग के नीचे बाहरी ओर  $5''$  x  $1/2''$  की खराश है।

5- बाएं Cubital fossa के उपर  $3''$  x  $1/2''$  लाल नीला नीलगू निशान। नीचे काटने पर खून जमा है व humerus हड्डी टूटी है।

6- बाई जांग के निचले अन्दर के भाग में  $2''$  x  $1/4''$  की खराश।

7-बाई टांग के निचले सामने के भाग में व टखने के बाहरी भाग पर एक एक  $1/4''$  x  $1/4''$  की खराशें हैं।

8- बाएं अंगूठा व उंगलियों पर तलवे की तरफ लाल नीले नीलगू निशान हैं।

9- दाएं पंजे के अंगूठा व उंगलियों पर लाल नीले नीलगू निशान हैं।

10- दाई टांग के निचले पीछे के भाग पर  $1/4''$  x  $1/4''$  की खराश है।

11- दाई जांग के बीच में सामने पास पास दो क्रमशः 3" x 1/4" व 2" x 1/4" की खराशें हैं।

12- दाई जांग की बीच से लेकर उपर भाग तक फैला बाहरी ओर 5" x 1/2" का लाल नीला नीलगू निशान था। निशान के बीच (कागज फटा) जगह खाल सामान्य थी।

13- दाएं कूलहे पर 3" x 1/2" का लाल नीला नीलगू निशान

14- दाई अग्रबाहु के पीछे बीच में व अन्दर की तरफ बीच में एक एक 1" x 1/4" की खराशें हैं। हलकी पपड़ी जमी है।

15- दाएं कंधे पर 1" x 1" का लाल नीला नीलगू निशान।

16- बाएं स्तन पर 1" x 1/4" की खराश

17- बाएं कन्धे के पीछे 2" x 2" की खराश।

18- दाई आंख के उपरी व निचले पलकों पर 1/4" x 1/4" की एक एक खराश है।

19- बाएं कन्धे पर 1/4" x 1/4" की खराश है।

32. The doctor has opined that the death of the deceased was caused due to bleeding and shock and may be caused by *bent* and *danda*. The deceased died due to ante mortem injuries. Further, he stated that the injuries might have been caused during the intervening night of 19/20.02.1983.

33. The medical evidence is in consonance with the oral evidence of PW-3 Masalti and PW-4 Ramesh who are the witnesses of the fact that they saw the appellant beating his wife using a *bent* mercilessly and she was bleeding profusely. The nature of injuries caused to the deceased indicates that the appellant caused severe injuries to his wife Lad Kunwar and she succumbed to such injuries.

34. Appellant in his statement recorded under Section 313 Cr.P.C. pleaded not guilty and stated that he has falsely been implicated. He was not present in the village on the day of occurrence, and he had

gone to his village on 19<sup>th</sup> morning and came back after 2-3 days. Thereafter, he came to know a case has been registered against him.

35. Section 106 of the Evidence Act, 1872 reads thus:-

**“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.”*

36. The appellant in his statement under section 313 Cr.P.C. did not utter even a single word as to ever finding his wife missing or else making any effort to find her thereafter. Being husband, the appellant failed to offer any acceptable explanation for this ignorance.

37. In the case of **Pattu Rajan Vs. State of Tamil Nadu, (2019) 4 SCC 771 (2019) 2 SCC (Criminal) 354**, the Hon'ble Supreme Court held:

*“The doctrine of last seen, if proved, shifts the burden of proof onto accused, placing on him the onus to explain how the incident occurred and what happened to victim who was last seen with him. Failure on the part of accused to furnish any explanation in his regard, as in the case in hand, or furnishing false explanation would give rise to a strong presumption against him, and in favour of his guilt, and would provide an additional link in the chain of circumstances.”*

38. In **Sudru v. State of Chhattisgarh, (2019) 8 SCC 333**, the Hon'ble Court observed:-

*“In this view of the matter, after the prosecution has established the aforesaid fact, the burden would shift upon the appellant under Section 106 of the Evidence Act. Once the prosecution proves, that it is the deceased and the appellant, who were alone in that room and on the next day morning the dead body of the deceased was found, the onus shifts on the*

*appellant to explain, as to what has happened in that night and as to how the death of the deceased has occurred.*

*9. In this respect reference can be made to the following observation of this Court in Trimukh Maroti Kirkan v. State of Maharashtra [Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] : (SCC p. 694, para 21)*

*“21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.”*

39. In view of the above factual and legal matrix, it transpires that the appellant has failed to discharge his burden as cast upon him under section 106 of the Evidence Act, 1872 to prove the whereabouts of his wife after she was found to be missing. The appellant only stated that after returning to his village he came to know that a criminal case was registered against him. However, he did not say anything about the status of the whereabouts of his wife. In these circumstances, it was the liability of the appellant to offer any explanation about his missing wife.

40. On the basis of the above discussion, we have concluded that the circumstances clearly indicate that the appellant committed murder of his wife Lad Kunwar, causing severe injuries on her body. The incident was witnessed by the eye-witnesses namely PW-3 Masalti and PW-4 Ramesh. The motive of the incident is also proved by the prosecution with the evidence of PW-1 Roop Singh, PW-2 Laxman Singh, PW-3 Masalti, PW-4 Ramesh, and PW-5 Bhagwan Das. The recovery of incriminating articles in the presence of PW-6 Khushali and the recovery memo

prepared by PW-7 Krishna Dutt as exhibited as EX Ka 2 also indicate the circumstances leading to the murder of Lad Kunwar by the appellant. The presence of the appellant on the intervening night at around 1 AM near the well where later dead body was found, also indicates the conduct of the appellant to try to cause disappearance of the evidence. Further, the appellant failed to discharge his burden as cast upon him under section 106 of the Evidence Act, 1872. All this evidence indicates that appellant Manni Lal is the author of the crime and he committed the murder of his wife Lad Kunwar. The prosecution has succeeded to bring home the charges against the appellant under section 302/201 IPC beyond reasonable doubt. The trial court has rightly convicted and sentenced the appellant Manni Lal. Therefore, the impugned judgment and order of the trial court do not require any interference and are liable to be confirmed.

41. The criminal appeal is accordingly dismissed.

42. In this case, the Appellant is on bail, his personal bond and surety bonds are cancelled. He be taken into custody forthwith and be sent to jail to serve out the remaining part of his sentence.

43. Let the certified copy of this order be transmitted to the trial court for ensuring compliance.

**Dated:** 23.09.2022

Mohit

(Mayank Kumar Jain, J) (Arvind Kumar Mishra-I, J)