



2026:CGHC:907-DB

<b>The date when the judgment is reserved</b>	<b>The date when the judgment is pronounced</b>	<b>The date when the judgment is uploaded on the website</b>	
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14.10.2025	07.01.2026	--	07.01.2026

**AFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1103 of 2014****Judgment Reserved on : 14.10.2025****Judgment Delivered on : 07.01.2026**

**1** - Tarun Kumar S/o Late Sitaram Thakur, Aged About 32 Years, R/o Village Dhamki, PS Kawardha, Civil And Revenue District Kabirdham Kawardha C.G.

**2** - Mithla Devi W/o Late Sitaram Thakur, Aged About 55 Years, R/o Village Dhamki, PS Kawardha, Civil And Revenue District Kabirdham Kawardha C.G.

**3** - Ku. Neelu @ Vinamrata D/o Late Sitaram Thakur, Aged About 25 Years, R/o Village Dhamki, PS Kawardha, Civil And Revenue District Kabirdham Kawardha C.G.

**... Appellants****versus**

**1** - State Of Chhattisgarh Through District Magistrate, Kabirdham, Distt. Kabirdham (Kawardha) C.G.

**... Respondent**

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For Appellants : Mrs. Indira Tripathi, Advocate  
 For Respondent : Mr. Ankur Kashyap, Dy. Govt. Advocate

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**Hon'ble Smt. Justice Rajani Dubey &**  
**Hon'ble Shri Justice Amitendra Kishore Prasad**

**(C A V Judgment)**

**Per Rajani Dubey, J**

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 16.10.2014 passed by learned Fast Track Court of Additional Session Judge, Kabirdham (Kawardha), C.G., in S.T. No.09/2014 whereby and whereunder appellants have been held guilty for commission of offence and sentenced as described below :-

<b><u>CONVICTION</u></b>	<b><u>SENTENCE</u></b>
Under Section 302/34 IPC	Imprisonment for life with fine of Rs.5,000/- each, in default of payment of fine amount to undergo additional R.I. for 01 year.
Under Section 201/34 IPC	R.I. for 07 years with fine of Rs.6,000/- each and in default of payment of fine amount, to undergo additional R.I. for 01 year.  Both the sentences were directed to run concurrently.

2. The prosecution story, leading to conviction of the

accused/appellants is that complainant Bhan Singh Thakur's daughter, Pinky Thakur, was married to accused No. 01 - Tarun Thakur, on 14.07.2013. After the marriage, the deceased was allegedly subjected to taunts and harassment by the accused persons on the allegation that she had brought insufficient dowry. It was further alleged that accused Tarun Thakur (A-1), who used to speak with the deceased daily on her mobile phone prior to the marriage and after the engagement, discontinued regular communication after the marriage and thereafter maintained only formal interaction with her. It was also alleged that accused Tarun Thakur (A-1) demanded a sum of Rs.70,000/- from the deceased on the pretext that he had purchased land/plot at Raipur. He was also doubting chastity of the deceased and repeatedly threatened that her photographs would be circulated in Kawardha and that her mobile call details would be obtained, whereby her entire history would be revealed. According to the prosecution, whenever the deceased visited her parental home at Kawardha on festivals and family occasions, she disclosed that the accused persons were harassing and pressurizing her in connection with the demand of Rs.70,000/-. It was

alleged that in this manner the accused persons subjected the deceased to continuous physical and mental cruelty and ultimately caused her death by setting her on fire. It was further alleged that thereafter the accused persons attempted to conceal the incident by cleaning and tampering the place of occurrence and, thereby causing disappearance of evidence. On the information of accused/appellant Tarun (A-1), merg No.46/2013 was registered vide Ex.P-14. Inquest on the body of deceased was prepared vide Ex.P-2 and dead body was sent for postmortem examination to District Hospital, Kabirdham, where postmortem examination was conducted by Dr. Santosh Luniya (PW-8) and gave his report under Ex.P-13 noticing following injuries/symptoms :-

- (i) Body was supine in position, eyes were closed.
- (ii) Kerosene smell was coming from body.  
Tongue bite in between teeth.
- (iii) Extensive burn except sole (foot), more than 95%.
- (iv) Cloths and garments were burnt and adherent to the body.
- (v) Both the legs and hands were semi flexed,  
rigor mortis was present

(vi) Nasal froth was present. Skin was black in colour and peeled off.

(vii) Some parts of the body tissues were reddish in colour.

The autopsy surgeon opined the cause of death of deceased to be shock due to extensive burn of body.

3. Police prepared spot map vide Ex.P-10. Some part of burnt skin, burnt wood, and empty box of kerosene were seized from the spot vide Ex.P-12. On 24.09.2013, complainant Bhan Singh Thakur (PW-1) filed written report vide Ex.P-1, based on which, after due investigation, an FIR (Ex.P-15) was registered against the accused persons for the offence punishable under Sections 304-B, 306, 201, 34 of IPC. On 18.12.2013, Patwari prepared spot map vide Ex.P-8. During the course of investigation, complainant moved an application (Ex.P-3) for submitting bills of purchased articles in the marriage. The diary of deceased was seized vide Ex.P-9.
4. After completing usual investigation, charge sheet was filed against the accused-appellants under Sections 302, 304-B, 306, 201, 34 of IPC, to which the accused-appellants

abjured their guilt and pleaded for trial.

5. After filing of the charge sheet, the learned Trial Court framed charges against the appellants under Sections 304-B/34 or 306/34, in alternate Sections 302/34 and 201/34 of the IPC.
6. So as to hold the accused-appellants guilty, the prosecution has examined as many as 12 witnesses. Statements of the accused-appellants were also recorded under Section 313 of the CrPC in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. No defence witness was examined in this case.
7. The learned trial Court after hearing counsel for the respective parties and considering the material available on record, has convicted and sentenced the accused-appellants as mentioned in para 1 of this judgment. Hence, this appeal.
8. Learned counsel for the appellants respectfully submits that the impugned judgment of conviction under Sections 302/34 and 201/34 of the IPC is contrary to the evidence on record and unsustainable in law. The undisputed facts establish

that the marriage of deceased Pinky Thakur was solemnized on 14.07.2013 and the unfortunate incident occurred on 19.09.2013 at about 9:00 a.m. The Marg intimation (Ex.P-14) was promptly given by appellant No.1 on the same day at 16:20 hours, clearly demonstrating his bonafide conduct. At the time of the Marg, the parents of the deceased were present, yet no allegation of cruelty, demand of dowry, abetment or homicide was raised. Learned counsel further submits that the prosecution case is entirely based on the statements of Bhan Singh Thakur (PW-1) and Kumari Bai (PW-2), father and mother of deceased respectively, who have admittedly made no complaint either at the time of Marg or immediately after the incident. The written report was lodged belatedly on 24.09.2013 and the FIR was registered only on 26.09.2013, without any plausible explanation for such delay. Learned counsel also submits that there is no eye-witness to the incident, no memorandum statement, and no incriminating recovery linking the appellants to the alleged offence of murder. Independent witnesses, including Dhiraja Bai (PW-4), neighbor, have not supported the prosecution case, while Ramesh Sharma (PW-6) and Raiwan Das (PW-9) clearly

stated that at the time of the incident the appellants were away for Ganesh emersion and none of them were present in the house. Learned counsel also submits that medical evidence completely rules out homicidal death. The postmortem report (Ex.P-13) and the testimony of Dr. Santosh Luniya (PW-8), unequivocally establish that the deceased sustained 95% burn injuries, there were no external or internal injuries suggestive of violence or struggle, soot particles were present in the trachea, and the death was due to shock caused by excessive burns, clearly indicating a suicidal act. The doctor has specifically opined that the nature of death was suicidal and not homicidal. Further, the personal diary of the deceased (Ex.P-5), duly proved through expert handwriting opinion (Ex.D-7), reveals her mental state and categorical dissatisfaction with residing in the village. Entries dated 18.09.2013, just one day prior to the incident, clearly reflect her unwillingness to stay at her matrimonial home in the village and her extreme emotional distress, including expressions that she would either leave or die. This documentary evidence strongly supports the defence case of suicide for personal reasons, unrelated to any cruelty or provocation by the appellants. It has been

also submitted that significantly the learned Trial Court itself acquitted the appellants of the charge under Section 304-B IPC, thereby negativing the allegation of dowry death. In the absence of any direct, circumstantial or medical evidence indicating murder, the conviction under Sections 302/34 and 201/34 of IPC is wholly perverse. There is no proof of causing death, no proof of destruction of evidence, and no material to establish that the appellants had any role whatsoever in the incident. Thus, In view of the above facts, the accused/appellant may be acquitted by allowing the appeal.

Reliance has been placed on the decisions of Hon'ble Apex Court in the matter of **Nilesh Baburao Gitte Vs. State of Maharashtra** reported in **2025 INSC 1191 : 2025 Supreme (SC)1775.**

9. On the other hand, learned State counsel has supported the impugned judgment and submits that the prosecution has successfully proved its case against the appellants beyond reasonable doubt on the basis of a complete and unbroken chain of circumstantial evidence, as discussed by the Trial Court particularly from paragraph 32 of the judgment. The present case is admittedly based on circumstantial

evidence, and the law is well settled that where direct evidence is not available, conviction can be founded on circumstantial evidence provided the chain of circumstances is complete and points unerringly towards the guilt of the accused. In the present case, the Trial Court has correctly appreciated the evidence of PW-01 to PW-08 and PW-12, which cumulatively establish the necessary chain of circumstances. The place of occurrence is the matrimonial house of the deceased, which was in exclusive control and possession of the appellants. The incident occurred within the four walls of the house, and therefore, the appellants were under a special obligation to explain the circumstances under which the deceased sustained fatal burn injuries. The prosecution has successfully proved the place of incident through seizure memo Ex.P-12 and the testimonies of prosecution witnesses, which clearly establish that kerosene, burnt articles, and remnants of the incident were recovered from the house of the appellants. Further, the presence of the accused persons in the house and their proximity to the incident has been duly established through the statements of PW-01 to PW-08 and PW-12. These witnesses have consistently stated about the matrimonial

life of the deceased, her residence in the house of the appellants, and the circumstances immediately preceding and subsequent to the incident. The Trial Court has rightly relied upon their testimonies to conclude that the appellants were present and had the opportunity to commit the offence. It has been further submitted that the conduct of the accused after the incident is a relevant circumstance under Section 8 of the Evidence Act. The prosecution has brought on record material inconsistencies and unnatural conduct on the part of the appellants, which strengthens the prosecution case. The seizure of articles from the place of incident, including kerosene container and burnt materials, further corroborates the prosecution version. The Trial Court has also correctly applied the principle that when an unnatural death occurs in the matrimonial home, the burden shifts upon the accused to explain the circumstances under Section 106 of the Evidence Act. The appellants have failed to offer any cogent or satisfactory explanation as to how the deceased sustained fatal burn injuries inside their house. Such failure provides an additional link in the chain of circumstances against them. The cumulative effect of the circumstances proved by the prosecution particularly the

unnatural death of the deceased by burning, the occurrence inside the matrimonial house, the presence and conduct of the accused, the recovery of incriminating articles from the spot, and the consistent testimony of PW-01 to PW-08 and PW-12—forms a complete chain which leaves no reasonable hypothesis other than the guilt of the appellants. The learned Trial Court has minutely examined the oral and documentary evidence, assigned cogent reasons, and has rightly arrived at the conclusion of guilt. The findings recorded are based on proper appreciation of evidence and settled principles of law governing circumstantial evidence. No perversity, illegality or infirmity has been pointed out warranting interference by this Court. Thus, the impugned judgment of conviction and sentence is just, legal and well-reasoned, and deserves to be affirmed.

10. We have heard learned counsel for the parties and perused the material available on record.
11. It is apparent from the record of learned Trial Court that the learned Trial Court framed charges against the appellants under Sections 304-B/34 or 306/34, in alternate Sections 302/34 and 201/34 of the IPC & after after appreciation of oral and documentary evidence, the learned trial Court

convicted the appellants under Section 302/34 and 201/34 of IPC & sentenced them as described in para 01 of this judgment.

12. The first question which arises for consideration before this Court whether the death of deceased Pinky Thakur was homicidal or not.
13. It is an admitted position in this case that deceased Pinky Thakur got married to accused/appellant Tarun Kumar (A-1) on 14.07.2013 and she died on 19.09.2013. It is also not disputed that deceased Pinky Thakur died due to burn injuries.
14. With respect to homicidal death of deceased Pinky Thakur, we have examined the evidence of Raiwan Das (PW-9), Assistant Sub Inspector, Police Station – Kawardha. He has stated that on 19.09.2013, on the information given by informant accused/appellant Tarun Kumar (A-1), he recorded the merg intimation No.46/2013 vide Ex.P-14. Thereafter, he went to the place of occurrence and prepared nazri naksha vide Ex.P-10. He has also stated that on 19.09.2013, he had seized pieces of burnt skin, pieces of burnt wood and box of kerosene vide Ex.P-12. He has also stated that after merg inquiry, on 26.09.2013, he lodged an

FIR being Crime No.346/2013 against the accused persons for the offence under Sections 306, 304-B and 201/34 of IPC vide Ex.P-15.

15. Dr. Santosh Luniya (PW-8) has conducted postmortem on the body of deceased and gave his report under Ex.P-13 opining the cause of death of deceased to be to be shock due to extensive burn of body. In cross-examination, the autopsy surgeon admitted that during examination of body, he did not find any external or internal injuries over the body of deceased as also any symptoms of pressing the neck of deceased and mark of struggling. Further, in para 10, he has admitted that he cannot tell that the death of deceased is suicidal, homicidal or accidental. It is clear from the testimony of autopsy surgeon that he did not opine about the nature of death whether it is suicidal, homicidal or accidental, as such, the statements of other prosecution witness are significant for proper adjudication of the case.
16. In this context, we have examined the evidence of Bhansingh Thakur (PW-1), father of deceased, who has stated that on 14.07.2013, the marriage of his deceased daughter was solemnized with accused/appellant Tarun (A-1) according to Hindu customs. After marriage, when his

deceased daughter went to her in-laws' house, from the 2<sup>nd</sup> day of marriage, accused/appellant Tarun stopped talking with them and after staying for 02 day in village Dhamti, he went to Raipur and his deceased daughter was in her in-laws' house. He has also stated that accused persons demanded dowry from him and tortured his deceased daughter physically and mentally.

17. Kumari Bai (PW-2) and Chandrika (PW-3), mother and sister of deceased respectively, have also made similar statement as has been made by father of deceased PW-1 that the accused persons demanded dowry and tortured the deceased physically and mentally, but the learned Trial Court, after evaluation of evidence, finds that offence under Section 304-B or 306 of IPC has not been proved against the accused/appellants.
18. In such circumstances, the foremost question which remains for consideration by this Court is whether the death of deceased was homicidal or not, and whether it is the accused/appellants who have committed murder of deceased Pinky Thakur.
19. Dhirja Bai (PW-4) is the neighbour of accused/appellants. She has stated that the wife of accused/appellant Tarun (A-

1) died due to burn on the day of emersion of lord Ganesh. She has also stated that she does not know that how the deceased died or how she was burned. In cross-examination, this witness has admitted that on the date of incident, emersion of lord Ganesh was going on and all the persons were going to see the emersion. This witness had denied her police statement (Ex.D-5) on 'A to A' part that : -

***"On 19.09.2015 at around 9-10 pm, she was in her house and after hearing the cries of mother-in-law of deceased that the fire broke out, she went to her house and saw that deceased was lying in burnt condition in courtyard and she was died."***

20. Ramesh Sharma (PW-6) has stated that on the date of incident, the emersion process of Ganesh was going on and he was going for emersion/visarjan, at the relevant time, there was commotion that fire broke out in the house of deceased. He has also stated that after hearing the commotion, he went to the house of deceased and saw that the deceased was burning with fire and seeing this he went to call the relatives of family members of deceased who resides nearby and called the ambulance dialing 108. In cross-examination, this witness has admitted this

suggestion of defence that when he reached the place of occurrence, the accused persons were not present there. He has also admitted that accused Mithla Devi (A-2) walks solely as she was fat and was coming with 3-4 women and he reached the place of incident first. This witness has also admitted this suggestion that the PW-1 father of deceased had told that he did not want postmortem of his daughter and prepare for the cremation. This witness has admitted that accused Tarun (A-1) was frequently saying that let him (A-1) file the report and on this very issue, it took two and half hours. This witness, in para 10 of his cross-examination, has admitted that prior to the incident, accused Tarun (A-1), his mother (A-2) and sister (A-3) were watching emersion of lord Ganesh in main road with them and other women were also present with them. He has also admitted that accused Tarun (A-1) and his sister (A-3) were ahead for watching emersion and thereafter the incident of fire took place.

21. Motiram Sahu (PW-7) is the witness to the inquest memo. He has admitted his signature on inquest memo (Ex.P-2), spot map (Ex.P-11) and seizure memo (Ex.P-12). The prosecution has declared this witness hostile and cross-

examined him then he admitted this suggestion of prosecution that the father of deceased was present at the time of inquest proceeding and he did not tell about harassment by the accused persons for demand of dowry. This witness has also admitted this suggestion of defence that the father of deceased wanted to have last ritual of his deceased daughter without postmortem examination.

22. Sachin Dev Shukla (PW-10) is the S.D.O.P. This witness has admitted this suggestion of defence that there is no mention in the case about investigation on the point of abatement of suicide and he self stated that witnesses had told about cleaning the place of incident. He has stated that he had inspected the place of occurrence but he cannot tell that how many rooms were there in the house.
23. In the instant case, the deceased used to writ down his feeling and emotion in diary, which was seized by police vide Ex.P-5, P-05(1) to 05(10) and 06. A bare perusal of the contents of the seized diary clearly established the fact that the deceased was not happy with her marriage and she did not want to reside in village.
24. In view of the testimonies of aforesaid prosecution witnesses, it is clear that there is no evidence on record

regarding the abatement of suicide and the learned Trial Court also recorded its finding that the prosecution has not been able to prove the offence under Sections 304-B and 306 of IPC against the accused persons. Further, as per the postmortem report (Ex.P-13) and the testimony of doctor (PW-8) as also other witnesses, the homicidal death of deceased has not been proved by the prosecution. The autopsy surgeon (PW-8) has admitted that he did not mention the nature of death in postmortem report (Ex.P-13) whether it was suicidal or homicidal or accidental.

25. In the matter of ***Nilesh (supra)***, the Hon'ble Apex Court held in para 34, 35, 39 and 56 as under :-

*“34. We are constrained to hold that, based on the deposition of Dr. PW-6 examined by the prosecution, a serious doubt arises as to whether at all the deceased died a homicidal death. The candid admission of PW-6 that in the absence of ligature mark on the back side of the neck hanging cannot be ruled out and the further reinforcement that in strangulation ligature mark should be present all around the neck lead us to conclude that this is not a case where we can safely opine that the death was by homicide. There is no definite medical opinion and in view of the considerable ambiguity in the evidence of*

*PW-6, death by suicide, cannot be said to be completely ruled out. We are also reinforced in our view by Modi's Medical Jurisprudence and Toxicology (Twenty Third Edition) which states that normally in case of strangulation, ligature marks are horizontal or traverse continuous.*

*"Round the neck low down in the neck below the thyroid..."*

35. Added to this is the fact that PW-9, after procuring the certificate from Vivekanand Hospital, Latur has not only not exhibited it but has simply stated that the investigation did not reveal that the deceased suffered from schizophrenia. What is that investigation, is not forthcoming. A document produced by the prosecution as part of the chargesheet pursuant to the investigation though not exhibited can be relied upon by the defence. In Ramaiah alias Rama v. State of Karnataka<sup>2</sup> this Court held thus :-

*"14. .... Strangely, the High Court has discarded the mahazar drawn by PW 8 by giving a specious reason viz. it was not an exhibited document before the court, little realizing that this was the document produced by the prosecution itself and even without formal proof thereto by the prosecution, it was always open for the defence to seek reliance on such an*

evidence to falsify the prosecution version....”

36. ....

39. In **Trimukh Maroti Kirkan** (supra) this Court was dealing with corresponding burden on the inmates of the house to give cogent explanation. The following is what this Court has stated :-

“15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

40. ....

56. The Courts below have fallen into a serious error in convicting the appellant on the basis of the evidence on record. Not only the tests laid down in **Sharad Birdhichand Sarda** (*supra*) have not been satisfied, recording the conviction based on the material on record would be disregarding the warning of Baron Alderson, J. in *Hodge, In re* (1838) 2 Lewin 227 as reiterated in **Hanumant vs. State of Madhya Pradesh**, (1952) 2 SCC 71 about the caution to be exercised in cases based on circumstantial evidence :-

*“The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.”*

26. While dealing with the question where homicidal death is not proved by the prosecution, the Hon'ble Apex Court in the matter of **Chandrapal Vs. State of Chhattisgarh** reported

in 2022 SCC Online SC 705 held in paras 15 to 19 as under:-

*“15. In this regard, it would be also relevant to regurgitate the law laid down by this Court with regard to the theory of “Last seen together”.*

*16. In case of Bodhraj Vs. State of Jammu and Kashmir; ( 2002) 8 SCC 45, this Court held in para 31 that:*

*“31. 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 accused being the author of the crime becomes impossible....”*

*17. In Jaswant Gir v. State of Punjab; (2005) 12 SCC 438, this Court held that in absence of any other links in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of “Last seen together”, even if version of the prosecution witness in this regard is believed.*

*18. In Arjun Marik v. State of Bihar; 1994 Supp (2) SCC 372, it was observed that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused, and therefore no conviction on that basis alone can be founded.*

*19. As stated hereinabove, in order to convict an accused under Section 302 IPC the first and foremost aspect to be proved by prosecution is the factum of homicidal death. If the evidence of prosecution falls short of proof of homicidal death of the deceased, and if the possibility of suicidal death could not be ruled out, in the opinion of this Court, the appellant-accused could not have been convicted merely on the basis of theory of "Last seen together"*

27. In the instant case, upon careful appreciation of entire oral and documentary evidence, it is clear that the prosecution has failed to establish the foundational requirement of a homicidal death of deceased Pinky Thakur. It is undisputed that the deceased died due to burn injuries; however, mere proof of death by burns does not ipso facto lead to an inference of murder. The postmortem report (Ex.P-13) and the testimony of Dr. Santosh Luniya (PW-8) unequivocally reveal that there were no external or internal injuries suggestive of violence, struggle or forcible administration of burns. Significantly, the autopsy surgeon did not opine that the death was homicidal and candidly admitted that he could not say whether the death was suicidal, homicidal or accidental. Thus, the medical evidence does not support the

prosecution case of murder and, on the contrary, leaves open the possibility of suicide, which has not been ruled out.

28. Further, the prosecution evidence, including that of independent witnesses namely Dhirja Bai (PW-4) and Ramesh Sharma (PW-6), clearly indicates that at the time of the incident emersion of lord Ganesh was in progress and the accused persons were not present inside the house. PW-6 has specifically admitted in his cross-examination that the accused persons were away watching the immersion procession and were not present at the spot when the incident occurred. The conduct of accused/appellant Tarun (A-1) in promptly lodging the marg intimation (Ex.P-14) on the very same day further fortifies the defence version and negates any inference of guilt or attempt to screen evidence. No incriminating recovery, no memorandum statement and no circumstance linking the accused persons to the act of setting the deceased on fire have been brought on record. Equally important is the fact that the learned Trial Court itself disbelieved the prosecution story relating to dowry demand and abetment of suicide and acquitted the accused/appellants of the charges under Sections 304-B and 306 IPC. Once cruelty, dowry death and abetment

stand negated, the testimonies of PW-1, PW-2 and PW-3, being interested witnesses, do not inspire confidence for sustaining a conviction for murder, particularly when their allegations were conspicuously absent at the time of margin and surfaced only after an unexplained and inordinate delay in lodging the FIR. The diary of the deceased (Ex.P-5, P-5(1) to P-5(10) and P-06), duly proved, clearly reflects her mental distress and unwillingness to reside in the village, lending substantial support to the defence plea of suicide for personal reasons.

29. The law is now well settled by the Hon'ble Apex Court in *Chandrapal (supra)* and *Nilesh (supra)* that the first and foremost requirement for sustaining a conviction under Section 302 IPC is proof of homicidal death. If the prosecution evidence falls short of establishing homicidal death and the possibility of suicide is not completely ruled out, conviction cannot be founded merely on circumstantial evidence or on the theory of "last seen together". Section 106 of the Evidence Act does not relieve the prosecution of its primary burden to prove homicidal death beyond reasonable doubt.
30. In the present case, the chain of circumstances relied upon

by the prosecution is neither complete nor consistent only with the hypothesis of the guilt of the accused. The evidence on record, taken cumulatively, does not unerringly point towards the accused/appellants and is wholly insufficient to sustain their conviction under Sections 302/34 and 201/34 IPC. Consequently, this Court holds that the prosecution has miserably failed to prove its case beyond reasonable doubt. The accused/appellants - the husband (A-1), mother-in-law (A-2) and sister-in-law (A-3) of the deceased, are therefore entitled to the benefit of doubt.

31. In the result, the appeal is **allowed**. The impugned judgment of conviction and order of sentence dated 16.10.2014 passed by the Fast Track Court of Additional Sessions Judge, Kabirdham (Kawardha) (C.G.) in Sessions Trial No. 09/2014 is hereby set aside and the accused/appellants are acquitted of the charges levelled against them by extending them benefit of doubts.
32. The accused/appellants are on bail. Keeping in view the provisions of Section 437-A Cr.P.C. (481 of the B.N.S.S.), the appellants are directed to forthwith furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure of sum of Rs.25,000/- each with one

surety in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

33. The Lower Court records along with copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

**(Rajani Dubey)**  
**Judge**

Sd/-

**(Amitendra Kishore Prasad)**  
**Judge**

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