

Court No. - 44

**Case :-** CRIMINAL APPEAL No. - 2207 of 2016

**Appellant :-** Guddu Verma

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

**Counsel for Appellant :-** Ramesh Chandra Mishra, Dinesh Kumar Pandey, Manu Sharma, Prem Sagar Gupta

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

Hon'ble Dr. Kaushal Jayendra Thaker, J.

Hon'ble Shiv Shanker Prasad, J.

Per-Hon. Shiv Shanker Prasad, J.)

1. This criminal appeal is directed against the impugned judgment dated 14.04.2016 passed by Additional Sessions Judge, Court No.1, Maharajganj in Sessions Trial No. 26 of 1998 (State Vs. Guddu Verma), arising out of Case Crime No. 112 of 1998, under Sections 302/34, 201 I.P.C., Police Station Paniyara, District Maharajganj, whereby accused-appellant Guddu Verma has been convicted of offence under Section 302/34 I.P.C. and has been sentenced to rigorous life imprisonment alongwith Rs.20,000/- fine for commissioning of offence under Section 302/34 I.P.C.; in default of payment in fine to further undergo one year additional imprisonment and three years rigorous imprisonment along with fine of Rs.3000/-, under Section 201 I.P.C.; in default of payment in fine to further undergo three months additional imprisonment.

2. Brief facts of the case are that on 13.04.1998 complainant/P.W.1, namely, Janardan son of Adhare, resident of Village Barvafahim, P.S. Kotwali, District Maharajganj had filed a written report alleging therein that he solemnized the marriage of his daughter Sangita with the accused-appellant Guddu son of Kedar about seven years ago, his daughter committed suicide tonight by hanging herself. It is further alleged that there was no fault of her in-laws in suicide of his daughter. He was informing to take necessary action. He also requested to give him the dead body of his daughter for the last rites. On the aforesaid written complaint of the complainant, a case was registered being Case

Crime No. 112 of 1998, under Sections 302, 201 I.P.C., Police Station Paniyara, District Maharajganj.

3. When the Investigating Officer collected the evidence during investigation, it came to light from the evidence of the witnesses that the accused Mrs. Partapi and Guddu Verma falsely making allegation of Sangeeta's character, grabbed her face and got her back side head hit to the wall forcefully due to which she sustained injuries and died on the spot. To hide the crime both the accused tied her neck with rope and hanged the dead body on a bamboo stick near the ceiling so that the onlookers might be considered the said crime of murder as suicide.

4. After lodging of the FIR on the written report of the informant/P.W.-1, Sub-Inspector Brij Mohan Singh (P.W.-10) reached the place of occurrence and got the inquest of the deceased prepared (Exhibit-ka/3) in the presence of inquest witnesses appointed by him. After getting the dead body sealed and completing all necessary formalities P.W.10 got the dead body sent to the Mortuary. No definite opinion has been given by the inquest witnesses. Each of the inquest witnesses has given different opinion as to the death of the deceased.

5. The post mortem of the body of the deceased Sangeeta was conducted on 14.4.1998 at 5:00 p.m. by Dr. Noor Ahmed (P.W.-7) and in the autopsy report (Ex.Ka-1), P.W.-7 has opined that the cause of death of the deceased is due to coma as a result of ante mortem injuries:

*"1. Mark of ligature present on left side neck-it is post murder.*

*2. Contusion 6 cm x 4 cm on right side face.*

*3. Contused swelling 6 cm x 4 cm on back part of head. On opening-occipital bone broken- haematoma present."*

6. The investigation was conducted by the Inspector Arun Kumar Singh (P.W.-11). He has recorded the statements of witnesses and prepared the site plan. He has also collected the rope and prepared the recovery memo. He has also arrested the accused Partapi and Guddu and recorded their statements in the Case Diary. After conclusions of the

statutory investigation under Chapter XII Cr.P.C.. P.W.-11 has submitted the charge-sheet against the accused-appellants under Sections 302/34 and 201 I.P.C.

7. On submission of charge-sheet, the concerned Magistrate took cognizance in the matter and committed the case to the Court of Sessions by whom the case was to be tried on 10<sup>th</sup> June, 1998. On 24<sup>th</sup> September, 1998, the concerned Court framed charges under Sections 302/34 and 201 I.P.C. against the accused Partapi and Guddu. The charges were read out and explained to the accused-appellant, who denied the accusation and demanded trial.

8. During trial co-accused Smt. Partapi had died and the case of co-accused Smt. Partapi was abated by the order of the Session Court dated 12.03.2003. Thus in this case the trial of only accused-appellant Guddu Verma was completed.

9. The trial started and the prosecution has examined seven witnesses, who are as follows:-

1	Janardan (complainant)	PW1
2	Chauthi	PW2
3	Smt. Bachchi	PW3
4	Rammilan	PW4
5	Santraj	PW5
6	Subhawati	PW6
7	Dr. Noor Ahmad	PW7
8	Shambhusharan Varma	PW8
9	Ramdavan	PW9
10	SI Brijmohan Singh	PW10

11	Arun Kumar Singh, Inspector	PW11
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10. The prosecution in order to establish the charges levelled against the accused-appellant has relied upon following documentary evidence, which were duly proved and consequently marked as Exhibits:

1	Written report dated 13.4.1998	Ex.Ka.-2
2	Recovery memo of Rope dated 13.4.1998	Ex.Ka.-8
3	Panchayatnama dated 13.4.1998	Ex. Ka.-3
4	Post mortem report dated 14.4.1998	Ex.Ka.-1
5	Site plan with index dated 17.4.1998	Ex.Ka.-9
6	Charge sheet mool dated 4.5.1998	Ex. Ka.-10

11. After completion of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. The accused-appellant denied the prosecution version and stated that the witnesses gave false evidence under the influence of some people. Two witnesses namely, Yogendra Kumar, DW-1 and Ramakant, DW-2 were examined by the accused in his defence.

12. On the basis of above evidence adduced during the course of trial, the court below after relying various case laws has recorded findings that the Hon'ble Supreme Court has expressed the view that the law does not cast an onus on the prosecution to produce that evidence which is impossible for the prosecution to produce. It is the duty of the prosecution to present evidence in such cases in relation to the facts and circumstances of which it can collect evidence. In the case in hand, the deceased Sangeeta died in the house of the accused Guddu and the allegation of causing the murder of the deceased has been made against the accused persons including the accused-appellant, therefore, the initial burden of proof lies on the accused to prove the cause of death of the deceased and that they have not committed the murder of

the deceased and if the fact is disclosed on behalf of the accused that the deceased has committed suicide, then the purpose of committing suicide and the aggravating circumstances in which the deceased was forced to commit suicide have to be naturally and satisfactorily explained by the accused. In the case in hand, the murder of the deceased has taken place in the house of the accused, and the accused were unable to disclose about the exact cause and manner in which the deceased could commit suicide and not saying anything about the same indicates that the deceased was killed by them only. The trial court has observed that the case laws cited in its judgment were applicable and opined that proper discharge of the burden of proof has been shifted on the accused, which they have failed to prove.

13. The trial court has further recorded that although no specific error in the investigation could be pointed out in the case and the prosecution statements cannot be doubted because of any minor error occurred therein. The arguments advanced by the defense have also no substance.

14. On the basis of the above exhaustive analysis of the evidence, the trial court has come to the definite conclusion that all the arguments advanced by the defence have no force. On the basis of the above evidence, it has been proved beyond reasonable doubt that at some unknown time on the night of 12/13.04.1998, the accused Smt. Partapi Devi (who died during the trial) and Guddu Verma in fulfilment of their common intention had killed Sangeeta, who was the wife of accused-appellant by causing injuries in their house and in order to avoid the crime of murder they tried to make the said murder, projected to be a case of suicide by getting a rope tied around her neck, which has been proved by the prosecution beyond reasonable doubt by its relevant cogent evidence, therefore the offence under Section 302 read with Section 34 and Section 201 of the Indian Penal Code against the accused Guddu Verma is proved beyond reasonable doubt, accordingly, it seems fully justified to convict him for the offence under the above sections. The trial court has accordingly convicted the accused-appellant

under Section 302 read with Section 34 and Section 201 of the Indian Penal Code and sentenced him life imprisonment with fine of Rs. 20,000/- for the offence under Sections 302/34 I.P.C. and three years rigorous imprisonment with fine of Rs.3,000/- for the offence under Section 201 I.P.C.

15. Being aggrieved with the impugned judgment and order of conviction passed by the trial court, the accused-appellant has preferred the present jail appeal.

16. The submission of the learned counsel for the accused-appellant is that there is no direct evidence connecting the accused with the commissioning of the crime; the motive is absolutely weak as admittedly the accused-appellant; the prosecution case rests on circumstantial evidence in which the accused-appellant has been implicated only on the basis of suspicion and no evidence exist to hold the accused-appellant guilty.

17. It is further submitted that there is no complaint regarding cruelty against the accused-appellant or any other family members including the co-accused Partapi (now deceased) made by the deceased before the incident in question and after the incident. The first informant/P.W.-1 has roped the accused-appellant and his mother (co-accused) in the present case, only in order to harass and torture them. The accused-appellant had performed his duties as husband satisfactorily with the deceased during her life after marriage. It is also submitted that in the night of 12<sup>th</sup> April, 1998 being the loose temper lady, the wife of the accused-appellant i.e. deceased committed suicide by hanging herself due to petty dispute between the husband and wife and the said fact has been established from the statements of the prosecution witnesses. It is also stated that number of prosecution witnesses declared hostile during the course of trial but the trial court merely on the basis of testimony of interested witnesses, convicted the accused-appellant. It is also submitted that the conviction and sentence passed by the trial court against the accused-appellant without considering the evidence

available on record is too severe. It is next submitted that the accused-appellant has no criminal antecedents to his credit except the present and he was on bail during the course of trial.

18. On the cumulative strength of the aforesaid, learned counsel appearing for the appellants submits that in view of the inconsistency in the statements of the prosecution witnesses; the prosecution has failed to establish the guilt of accused-appellant beyond reasonable doubt based on circumstantial evidence. As such the sentence is excessive and ought not be sustained and the order of sentence must be modified taking lenient view in the matter.

19. Per contra, Mr. N.K. Sharma, learned A.G.A. for the State, supporting the judgment and order of conviction, submits that the first information report has been lodged promptly naming the accused persons; there is clinching evidence to support the prosecution's case; the incident in which the deceased, who was wife of accused-appellant is alleged to have been murdered by the accused persons including the appellant occurred in the house of the accused persons and burden under Section 106 of the Evidence Act to discharge as to under which circumstances and how the deceased died is upon the accused-appellant which he has failed to discharge on his part. There is strong motive for the accused-persons, as the deceased had illicit relationship with her father-in-law i.e. father of the accused-appellant. It is no doubt true that the present case is based on circumstantial evidence in which chain of events has been completed by the prosecution. The prosecution case has also been supported by the medical evidence. The place of occurrence has not been disputed by the defence; and the accused-appellants have strong motive or intention and the same has also been explained by the evidence of prosecution. Therefore, the prosecution has proved the charge levelled against the accused-appellants beyond reasonable doubt.

On the cumulative strength of the aforesaid, learned A.G.A. urges that in the circumstances the conviction and sentence awarded to the accused-appellant, by the court below merits no interference.

20. We have examined the respective contentions urged by the learned counsel for the parties and have perused the records of the present appeal including the lower court records.

21. The only question requires to be addressed and determined in this appeal is whether the conclusion of guilt arrived at by the learned trial court and the sentence awarded is legal and sustainable in law and suffers from no infirmity and perversity.

22. Before entering into the merits of the case set up by the learned counsel for the accused-appellant and the learned A.G.A. qua impugned judgment and order of conviction passed by the trial court, it is desirable for us to briefly refer to the statements of the prosecution witnesses.

23. P.W.-1/informant, Janardan who happens to be the father of the deceased Sangeeta, has stated in his examination-in-chief that the mother-in-law and husband of his daughter, namely, Partapi and Guddi respectively used to quarrel with his daughter and that quarrel was being informed by her to her mother. Due to illicit relationship between the deceased and her father-in-law, her mother-in-law Partapi used to quarrel with her and her husband in collusion of his mother also used to quarrel with her. He has further stated that the information about the death of the deceased was received by him on Monday when he was cutting wheat crops on his field and the said information was given to him by one Ram Milan resident of Kamta not on his field but on the way that his daughter Sangeeta had died. After that he went to place of in-laws of his daughter at Kamta along with brother Shambhu and Ram Milan, where he saw the dead body of the deceased, which was kept in north-south direction and the preparation for cremation was going on. The dead body was lying outside the house and he saw the face of the deceased and he also saw mark on her neck.



24. This witness has further stated that he did not go to the Police Station for giving written report. His brother went to the place of Pradhan, where it was come to know that his daughter committed suicide, therefore, he did not go to Police Station for giving written report. In the cross-examination, this witness has further stated that after marriage when the deceased came to her parental house for the first time, she told her mother about the quarrel between her and her husband and mother-in-law and she did not tell him. His wife Subhawati (P.W.-6) informed the informant/P.W.-1 that the in-laws of the deceased used to torture her. This witness has further stated that his wife i.e. P.W.6 has also told him that in-laws of the deceased used to threat to leave her and on that very matter, he after convincing her, sent her and no panchayat was held regarding the said matter. When the deceased came back to her maternal home for the second time, she did not complain about her in-laws. This witness has further stated that his daughter (deceased) told him about illicit relationship between her and her father-in-law. This witness has further stated that after reaching the spot, no one from Kamta i.e. the place of in-laws of his daughter (deceased) did not tel him that his daughter was murdered due to illicit relationship between Sangeeta's father-in-law and herself and this fact has also not told by him to the Inspector. This witness has also stated that Ram Milan (P.W.-4) had told him about the murder. Chauthi (P.W.-2) had sent Ram Milan to go to the place of this witness and call him so that these people could not burn the dead body. Sister of this witness, namely, Bacchi (P.W.-3) is married to Chauthi (P.W.-2) and Ram Milan is brother Chauthi. Ram Milan did not tell him that Guddu accused-appellant and Partapi (now deceased) had come to his house on 14.4.98 saying that they had killed Sangeeta.

Perusal of the testimony of the informant/P.W.-1 will go to show that he is a hear-say and interested witness of the incident. The testimony of this witness is contradictory. He has admitted that as per the information given by the Pradhan of the village concerned, his daughter committed suicide, therefore, he did not go to Police Station for

giving written report. As per report given by him to the Police Station concerned, his daughter Sangeeta committed suicide and has alleged that there was no fault of her in-laws in suicide of his daughter. The illicit relationship in between his daughter Sangeeta and her father-in-law Kedar Verma has also not been proved by the testimony of this witness.

25. P.W.-2 Chauthi, who happens to be the parental uncle of the deceased (Phupha) and sister's husband of P.W.-1 has stated in examination-in-chief that the accused-appellant Guddu was married to Sangeeta i.e. the daughter of informant/P.W.1, and they were married ten years before the date of incident. Sangeeta died at her in-laws' place i.e. village Kamta. He could not know as to how Sangeeta died. After coming to know that Sangeeta died, he went and saw that the dead body was lying at the door. This witness has further stated that the informant/P.W.-1 is his brother-in-law and his wife is Bachi (P.W.-3), who is sister of informant. Kedar Verma is father of the accused-appellant and father-in-law of the deceased, who belongs to his village and same fraternity. His relations with Kedar Verma have deteriorated after the death of Sangeeta.

26. This witness has further stated that Sangeeta was about 20 years old at the time of her death. Kedar Verma used to run a shop on the banks of canal and street and used to sleep there as well. The accused-appellant Guddu and Paratapi used to live at home. He did not know that accused-appellant Guddu and Paratapi used to make allegation qua Sangeeta's character. He also did not know whether her father-in-law Kedar Verma had an illicit relationship with Sangeeta or not. Sangeeta did not die due to any disease.

27. This witness has denied that he did not go to see the dead body of the deceased Sangeeta because of her illicit relationship. He also could not tell whether Sangeeta died due to hanging or not. The accused-appellant Guddu and Paratapi did not go to his house on the date of incident nor did they apologize for their mistake in front of him.

From perusal of the aforesaid testimony of P.W.-2, it is crystal clear that neither he saw the incident with his own eyes nor did he know about the alleged illicit relationship between Sangeeta and her father-in-law Kedar, when as a matter of fact, he is also living in the same village and is Phupha of the deceased. He is a hear-say and interested witness.

28. P.W.-3 Bachchi wife of P.W.-2, who happens to be the parental aunt of the deceased (Bua) and sister of informant/P.W.1 has stated in her examination-in-chief that the accused-appellant Guddu and Sangeeta got married ten years ago in her village. She did not know as to how her niece Sangeeta died. After coming to know about Sangeeta's death, she went to see her dead body. Since this witness was pregnant so she fainted before reaching Sangeeta's house. Sangeeta's father-in-law Kedar Verma is not from her Pattidaari but belongs to same fraternity. After the death of Sangeeta, her relation with Kedar Verma was not good. After Sangeeta's death, her husband sent his brother Ram Milan to call Sangeeta's father Janardan Verma. This witness did not know how Sangeeta died even after the incident. The accused-appellant Guddu and Partapi did not tell her about the death of Sangeeta.

29. In the cross-examination, this witness has stated that she did not know whether the accused-appellant Guddu and Paratapi used to allege about Sangeeta's character and that Sangeeta had illicit relations with her father-in-law Kedar Verma or not. She also did not know as to whether Sangeeta died due to illness or someone murdered her. This witness has clearly denied that the accused-appellant Guddu and Paratapi after grabbing the face of her niece, pushed her head on the wall due to which she sustained injury and died. She has also denied that after the incident accused-appellant Guddu and Paratapi came to her house and told that they have killed Sangeeta. She has also stated that she did not give any statement to the Inspector.

Testimony of this witness also goes to show that she did not see the incident with her own eyes nor did she come to know about the alleged illicit relationship between Sangeeta and her father-in-law Kedar, even though she is also living in the same village with her husband i.e. Phupha of the deceased. She is a hear-say and an interested witness.

30. P.W.-4 Ram Milan, who happens to be the brother of P.W.-2 and brother-in-law of P.W.-3, has stated in his examination-in-chief that villagers asked him to go to the place of informant/P.W.-1 Janardan to inform about the death of Sangeeta on which he went to Janardan's house by bicycle and told him to see her daughter as she died. He has further stated that there was an uproar in the village that she had been killed. He has also stated that P.W.-2 Chauthi is his brother and his brother did not ask him to go to informant's place for informing him about the death of Sangeeta, whereas the villagers asked him to go. He has also stated that he did not see the dead body of the deceased before the incident or after the incident. This witness has further stated that though the villagers had asked him to go to informant's place for informing him that his daughter died but he did not tell the same to the informant instead he told that his daughter was not well. This witness has also stated that he did not give any statement to the Inspector. In his entire testimony, this witness has not stated any single word about the alleged illicit relationship of the deceased and her father-in-law Kedar Verma.

From the testimony of this witness, it is apparently clear that this witness has not seen the incident with his own eyes. He is only a hear-say and an interested witness.

31. In his examination-in-chief, Santraj P.W.-5, who happens to be resident of village of accused-appellant i.e. Kamta Bujurg has stated that the informant/P.W.-1 is resident of village Barwa Faheem and his marriage was solemnized with the daughter of real uncle of the informant in village Barwa Faheem. Since her father-in-law had no son except his wife, the entire property of his father-in-law was in the name

of his wife, therefore, he used to reside in his in-laws place. He occasionally went to village Kamta.

32. This witness has further stated that when Sangeeta died at her in-laws house at village Kamta, he was at village Barwa Faheem. On coming to know about the death of Sangeeta, he went to see her at village Kamta Bujurg, where he came to know that she committed suicide by hanging herself. This witness has further stated that he has not spoken to anyone about the incident even later. He did not try to find out as how Sangeeta died and in which manner.

33. This witness has stated in his cross-examination that the father of informant/P.W.-1 and his father-in-law are real brothers. He has also stated that he has not seen that the accused-appellant Guddu and Partapi killed Sangeeta. He heard that they had beaten her. On various occasions the quarrel took place between them. He has disclosed the said incident of quarrel for the first time before the trial court. He did not tell about the same to the informant/P.W.-1. The informant/P.W.-1 is his brother-in-law.

34. In the cross-examination, this witness has stated that on the asking of the Inspector he went to the Police Station after 4 to 5 days of the incident where he has not told as to whether the accused-appellant Guddu i.e. husband of the deceased and Pratapi killed Sangeeta or not. He has also stated that the character of Sangeeta was good and she did not had bad character.

35. Subhawati, wife of informant/P.W.1, who happens to be the mother of the deceased Sangeeta has been adduced as P.W.-6, who has stated in her examination-in-chief that her daughter Sangeeta was married to accused-appellant Guddu son of Kedar resident of village Kamta Bujurg. She has further stated that after five years of her marriage when her daughter Sangeeta went to her in-laws house after leaving her parental house, the accused Pratapi and accused-appellant Guddu used to accuse her daughter that she had an illicit relationship with her father-in-law Kedar. When her daughter Sangeeta came to her

parental house, she disclosed the same to her mother i.e. P.W.-6 that she had illicit relationship with her father-in-law and due to the said fact, her mother-in-law and husband used to torture and threat her to kill.

36. This witness has further stated that about about 8 to 9 years ago, her husband Guddu and mother-in-law Partapi together killed her girl and to hide their crime, accused Pratapi and Guddu hanged her by tying a rope around her neck. She has further stated that after killing her daughter, the accused Partapi and Guddu went to place of her sister and brother-in-laws, namely, Bachchi and Chauthi, where they apologized their crime and prayed to save them and then fled from there, whereas P.W.-2 Chauthi as well as P.W.-3 Bachchi have stated in their testimony that they did not know whether her father-in-law Kedar Verma had illicit relationship with the deceased Sangeeta or not. They have also stated that the accused-appellant Guddu and accused Partapi did not go to their house on the date of incident nor did they apologize for their mistake in front of them.

37. Dr. Noor Ahmad, who conducted the autopsy of the deceased has been adduced as P.W.-7. He has stated in his examination-in-chief that during the examination he found the following facts on analysis of the dead body of deceased Sangeeta:

*“1. The age of the deceased was about 18 years. The body was folded, the eyes and mouth were open and closed. The tongue had protruded a little. The stage of Rigor Mortis had passed. There was a mark of hanging on left side of her neck.*

*2. Swelling on right side of face 6 cm x 4 cm was present.*

*3. Swelling 6 X 4 cm was present on the back side of head of the deceased. When the head was opened the occipital bone was found to be broken and the blood clot was present.*

*Head - blood clot swollen membranes*

*Chest-lungs were swollen*

*The heart chamber was full.*

*Stomach- there was gas in the small intestine and the large intestine was full.*

*Liver- the liver was two pounds full.*

*Childbirth- there was a dead child of full stage. The death was about a day old. Death was due to injuries inflicted before death.”*

38. In the cross-examination, this witness has stated as under:

*“Injury no. 1 is on the neck of the deceased.*

*Injury no. 2 is on the face.*

*Injury no. 3 is on the back of the head. Injury no. 2 was contusion mark, whereas injury no.3 was contusion with swelling.*

*Injury nos. 1 and 2 are simple in nature nature. “*

39. This witness has opined that injury no.3 could come, if a person falls on the back of head on a hard object. The death of the deceased happened only after coming into coma. He has further opined that if injury no.3 had been properly treated, she would not have died. A difference of two to four hours is possible in the period of death.

40. Shambhu Sharan Verma, who happens to be the brother of the informant/P.W.-1 and uncle of the deceased, has been adduced as P.W.-8. He has stated in his examination-in-chief that Sangeeta told them that her husband and mother-in-law used to demand a transistor and for not fulfilling the said demand, they used to torture her on which they including this witness sent Sangeeta to her in-laws' place with transistor (radio). After two to four days, on calling of Sangeeta, this witness went to her in-laws' place where she told him that her husband and mother-in-law were troubling her in different ways. Sangeeta told him that Sangeeta's husband falsely accused her of having illicit relationship with his father. She told that her mother-in-law also made such false allegations against her. Sangeeta was pregnant at that time. Sangeeta also told that her husband and mother-in-law were threatening to kill her. This witness came to his house and disclosed the entire fact to his elder brother i.e. informant/P.W.-1. On the next day his sister's brother-in-law Rammilan informed him at his house that Sangeeta was dead. After getting the information, his elder brother i.e. informant/P.W.-1, his wife and two to four people of the village went to Sangeeta's in-laws' house.

As soon as he went out to go to Paniyara Police Station, accused-appellant Guddu and his mother caught hold of her leg and started crying saying that he in his boyhood had committed the crime by mistaken. They also prayed not to lodge the FIR against them for the said crime. He has further stated that when they reached Sangeeta's in-laws house, accused-appellant Guddu and his family members were present and they told that Sangeeta had died by hanging herself.

41. In the cross-examination, this witness has stated that when he asked the villagers about Sangeeta's death, he came to know that accused-appellant and his mother killed Sangeeta and to hide the crime, they coloured the said murder as suicide. He has further stated that when the accused felt that the post-mortem would reveal the exact cause of death of Sangeeta, they went to the place of his sister (P.W.-8) and brother-in-law (Behnoi) and said that the incident was true and accepted their crime.

42. In the cross-examination this witness has admitted that in the report which has been given by the informant/P.W.-1 to the Police, he has stated that the deceased had committed suicide by hanging herself and the in-laws of his daughter were not responsible for the same.

Though this witness has also claimed that he was informed by the deceased that the accused-appellant Guddu and his mother used to torture her making allegation of her having illicit relationship with her father-in-law and because of the same they killed her, but he has not seen the incident with his own eyes. He is also a hear-say and an interested witness.

43. Ramdawan has been adduced as P.W.-9 and is a inquest witness and has proved the same in the Court. Sub-Inspector Brij Mohan Singh has been adduced as P.W.10, who got prepared the inquest of the deceased and after necessary formalities he sent the dead body of the deceased to Mortuary. This witness has clearly stated that neither in the report which has been given to Police nor at the time of preparation of the inquest, the informant/P.W.-1 has disclosed that the accused-appellant and his family members had killed the deceased. Mr. Arun Kumar Singh Inspector has been adduced as P.W.-11. This witness has



investigated the case and after preparing site plan, recording statements of witnesses and completing necessary formalities, he has submitted the charge-sheet against the accused.

44. Kedar Verma, father-in-law of the deceased Sangeeta on whom allegation of illicit relationship with the deceased, were alleged to have been made by the accused-appellant Guddu and his mother Partapi, as per the version of the prosecution witnesses i.e P.W.-1, P.W.-6 and P.W.-8, has not been produced neither by the prosecution nor by the defence.

45. On deeper scrutiny of the testimony of the prosecution witnesses specially P.W.-1, P.W.-6 and P.W.-8, this Court finds that P.W.-6 and P.W.-8 was informed by the deceased and P.W.-1 was informed by his wife P.W.6 that the accused-appellant Guddu and his mother Partapi used to make allegation against the deceased of having illicit relationship with her father-in-law and because of said allegation, they used to torture her and ultimately killed her and to hide the said murder, they hanged her on a bamboo stick by tying a rope around her neck but the said fact has not been proved by other witnesses i.e. P.W.2, P.W.-3 and P.W.4, who are none other than the brother-in-law, sister and sister's brother-in-law respectively of the informant/P.W.-1 and are also resident of same village, where in-laws of his daughter resides including the accused-appellant. P.W.-2, P.W.-3 and P.W.-4 have completely denied the said fact of illicit relationship of the deceased with her father-in-law. It is impossible to believe that the persons, who are residing at the same place and are also relatives, do not know about the illicit relationship of the deceased with her father-in-law, whereas the persons who reside in other village i.e. P.W.-1, P.W.6 and P.W.8 had knowledge about the same but they never made any complaint before the Police or any other authority including the Panchayat and their relatives, who are residents of the same village. The said fact has also not been proved by another witnesses of the said village.

46. We are, therefore, of the considered view that this is a case of circumstantial evidence and not direct evidence as all the prosecution

witnesses are hear-say witnesses, no one has seen the incident with his/her own eyes. In the chain of circumstantial evidence, the motive, which is the strongest link of prosecution evidence in this case rendered weak and unreliable. The motive as alleged by the prosecution cannot be relied upon on the basis of evidence led by the prosecution during the course of trial. Apart from the alleged motive no other circumstance has been proved against the accused persons including the appellant. We otherwise find that chain of events in a case of circumstantial evidence which is required to be completed by the prosecution is left incomplete.

47. Since this is a case of circumstantial evidence and the law on the point is well settled that the prosecution must prove the complete chain of events which points exclusively to the hypothesis of guilt attributed to the accused appellant. It is also the requirement of law that the prosecution must show that alternative hypothesis does not exist on facts.

48. In **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in (1984) 4 SCC 116, the Apex Court evolved five tests to be established by the prosecution in order to prove the guilt of accused based on circumstantial evidence. Five golden principles have been enumerated in paragraph nos. 152 to 154, which are reproduced hereinafter:

*"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hunumant vs. The State of Madhya Pradesh. This case has been uniformly followed and applied by this Court in a large number of later decisions upto date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh and Ramgopal v. Stat of Maharashtra. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (supra):*

*"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of 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 far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."*

*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 & Anr. V. State of Maharashtra, 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."*

49. Judgment of the Supreme Court in the case of **Sharad Birdhichand Sarda (Supra)** has consistently been followed and reiterated recently by the Court in the case of **Ram Niwas Vs. State of Haryana** reported in *2022 SCC On Line SC 1007*.

50. When we analyse the evidence on record on the above touchstone, we have no hesitation in arriving at the conclusion that the prosecution has failed to prove the guilt of the accused appellant beyond reasonable doubt. It has not been proved by the prosecution that chain of events in the present case leads only to the hypothesis of guilt on part of the accused appellant and an alternative hypothesis cannot be ruled out.

51. There is also a considerable delay between the time when the informant gave a report to the Police stating therein that his daughter has committed suicide by hanging herself and the family members of her in-laws were not involved or responsible in occurring of the said death and the time when the Police has recorded their statements under Section 161 Cr.P.C. during the course of investigation stating therein that the accused-appellant Guddu and his mother Partapi had killed the

deceased and to hide the crime, they hanged her by tying a rope around her neck as they suspected that she had illicit relationship with her father-in-law. An alternative hypothesis supporting the innocence of the accused-appellant, therefore, cannot be ruled out.

52. We also cannot lose sight of the fact that as per the statement of the Autopsy Surgeon Dr. Noor Ahmad (P.W.-7) and the autopsy report, it is crystal clear that the death of the deceased is homicidal, as she was caused injuries on her head and face and due to injuries sustained by her on her head, she has done to death. However, in the said homicidal death of the deceased, the accused-appellant cannot be convicted only on the basis of testimony of interested and hearsay witnesses and also on the basis of chain of circumstantial evidence, which has not been completed as held above, even otherwise, no one has seen that the accused-appellant and his mother (died) had killed the deceased and to hide the crime, they hanged her on a bamboo stick by tying rope around her neck. It was the duty of the Investigating Agency to find out the culprit who has committed the offence of murder of the deceased.

53. On analysing the evidence led by the prosecution in the context of above deliberation and discussions, we find that the court below has not examined the evidence of prosecution in correct perspective and the findings returned by it that the prosecution has succeeded in proving its case beyond reasonable doubt cannot be sustained. The statements of P.W.-1, P.W.2, P.W.3, P.W.4, P.W.-5, P.W.-6 and P.W-8 .have not been properly analysed. The statements of P.W.1, P.W.-6 and P.W.-8 have not been supported by P.W.2, P.W.-3 and P.W.-4, who are none other than their relatives and reside in the same village where in-laws of the deceased reside. Even otherwise, in the testimony of P.W.1, P.W.-6 and P.W.-8, there are major variations and contradictions, which cannot be relied upon. The prosecution has therefore failed to establish the guilt of the accused-appellant on the basis of evidence led at the stage of trial. The conviction and sentence of accused-appellant is consequently reversed while granting him benefit of doubt. It has also been reported

to us that the accused-appellant was on bail during the course of trial and has no criminal antecedents to his credit except the present one.

54. So far as the inference drawn by the trial court while passing the impugned judgment of conviction that since the death of the deceased has occurred in the house of the accused-appellant, which is homicidal, the burden of proof under Section 106 of the Indian Evidence Act lies upon him and he had to discharge his burden as to under which circumstances and what manner the deceased has done to death, which he has failed to discharge the same, is concerned, it is settled law that Section 106 of the Indian Evidence Act cannot be attracted unless the initial burden of establishing the guilt of the accused is prima facie discharged by the prosecution. We therefore, hold that provisions of Section 106 of the Indian Evidence Act has no application to the facts of the instant case because initial burden of proving the facts that accused-appellant had committed the murder of his wife is not discharged by the prosecution. The prosecution has completely failed to discharge its initial burden in proving the guilt of the accused-appellant beyond reasonable doubt.

55. In the case of **Nagendra Sah Vs. the State of Bihar** reported in (2021) 10 SCC 725 in the Apex Court has held that when a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in the discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances that are required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, the falsity of the defense is no ground to convict the accused, a Division Bench of Justices **Ajay Rastogi** and **Abhay S Oka** held. The relevant portion whereof reads as follows:

*“.....Under Section 101 of the Evidence Act, whoever desires any Court to give a judgment as to a liability dependent on the existence of facts, he must prove that*

*those facts exist. Therefore, the burden is always on the prosecution to bring home the guilt of the accused beyond a reasonable doubt. Thus, Section 106 constitutes an exception to Section 101.*

.....

*We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be "especially" within the knowledge of the accused. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, **the burden is on the prosecution and never shifts.**" (emphasis added)"*

56. In the recent judgment of the Apex Court in the case of **Sabitri Samantaray Vs. State of Odisha** reported in *AIR 2022 SC 2591*, it has been observed as follows:

*"18. Section 106 of the Evidence Act postulates that the burden of proving things which are within the special knowledge of an individual is on that individual. Although the Section in no way exonerates the prosecution from discharging its burden of proof beyond reasonable doubt, it merely prescribes that when an individual has done an act, with an intention other than that which the circumstances indicate, the onus of proving that specific intention falls onto the individual and not on the prosecution. If the accused had a different intention than the facts are specially within his knowledge which he must prove.*

*19. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events. [See *Trimukh Maroti Kirkan Vs. State of Maharashtra*, (2006) 10 SCC 681]"*

57. In view of the discussions and deliberations held above, the present jail appeal succeeds and is allowed. The judgment and order dated 14.04.2016 passed by Additional Sessions Judge, Court No.1, Maharajganj in Sessions Trial No. 26 of 1998 (State Vs. Guddu Verma), arising out of Case Crime No. 112 of 1998, under Sections 302/34, 201 I.P.C., Police Station Paniyara, District Maharajganj, against the accused appellant, is hereby set aside.

58. The accused appellant-Guddu Verma, who is in jail from 13<sup>th</sup> April, 2016 shall be released forthwith, unless he is wanted in any other case on compliance of Section 437-A Cr.P.C.

59. Let a copy of this judgment be sent to the Chief Judicial Magistrate, Maharajganj henceforth, for necessary compliance.

(Shiv Shanker Prasad, J.) (Dr. Kaushal Jayendra Thaker,J)

**Order Date :- 29.05.2022**  
Abhishek Singh/Sushil