

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE JUSTICE SHRI ANAND PATHAK &
HON'BLE SHRI JUSTICE SHRI HIRDESH**

ON THE 23RD OF JULY, 2025

CRIMINAL APPEAL NO. 342 OF 2014

SHANTI BAI

Vs.

THE STATE OF MADHYA PRADESH

And

CRIMINAL APPEAL NO. 317 of 2014

NAIM KHAN AND ANOTHER

Vs.

THE STATE OF MADHYA PRADESH

Appearance:

Ms. Monica Mishra- learned Counsel for appellant- Shanti Bai from Legal Aid in Criminal Appeal No.342 of 2014.

Shri Sameer Kumar Shrivastava- learned Counsel for appellants- Naim Khan and Rajan alias Rajendra in Criminal Appeal No 317 of 2014.

Ms. (Dr.) Anjali Gyanani- learned Counsel for State.

JUDGMENT

Per Justice Hirdesh:

This judgment shall also govern disposal of Criminal Appeal No.317 of 2014 filed by appellants- Naim Khan and Rajan alias Rajendra challenging the common judgment of conviction and order of sentence dated 24-01-2014

passed by Additional Judge to the Court of Additional Sessions Judge, Sironj, District Vidisha (MP) in Sessions Trial No. 249 of 2012.

(2) Being dissatisfied with common judgment of conviction and order of sentence, Criminal Appeal No.342 of 2014 has been preferred by appellant-Shanti Bai from jail whereas, Criminal Appeal No.317 of 2014 has been preferred by appellants- Naim Khan and Rajan alias Rajendra under Section 374(2) of CrPC, whereby appellants have been convicted under Section 302 read with Section 34 of IPC and sentenced to undergo for Life Imprisonment with fine of Rs.5,000/- and in default of payment of fine, they have to undergo further two years' rigorous imprisonment and under Section 201 of IPC, sentenced to undergo for three years' Rigorous Imprisonment with fine of Rs.2,000/- and in default of payment of fine, they have to undergo further eight months' Rigorous Imprisonment respectively.

(3) In brief, case of prosecution case is that on 08-04-2012, complainant Abhay Singh (PW-1), son of Sardar Singh Dhakad, gave an information to Police Station regarding missing of his father- Sardar Singh Dhakad to the effect that his father Sardar Singh Dhakad left home on 28th of March, 2012 at 07:00 in the morning, saying that he was going to Bhopal for treatment and has not returned till date. He inquired his father at the hospitals in Bhopal but his father could not be found. Then, he contacted with Mobile No. 9754075377 of his father but there was no response. On 6th of April, 2012 some unknown person picked up phone and said hello and then, switched it off. Because of untraceable of his father, a missing person's report No.05 of 2012 vide *Ex.P1* was lodged by him on 8th of April, 2012. During investigation, Head Constable Premrao (PW-7) found that Sardar Singh Dhakad was murdered by Shanti Bai (appellant- accused) and Arjun by means of axe, fed up with beatings being done by Sardar Singh Dhakad, by giving Rs.50,000 to accused Naim Khan, Rs.20,000/- to accused Rajendra and

Rs.5,000/- to accused Kailash on 27-03-2012 at around 11:00- 12:00 pm and thereafter, put his dead body in a sack on motorcycle and destroyed it. Shanti Bai cleaned blood spilled at the place of murder and burnt bed and axe as there was blood on them and hid head of axe. On the basis of letter Ex.P16, dead body of Sardar Singh was found outside pit on the top of Beelwali Hill in Village Jhukarjogi, which was identified as deceased by Abhay Singh (PW-1) & *Panch* witnesses Than Singh (PW-3) and Kailash (PW-6). Identification memo of deceased was prepared vide Ex.P2. On the basis of *merg* intimation Ex.P3 vide No.0/12, *Naksha Panchnama* was prepared vide Ex.P4. Map of incident regarding spot of jungle was prepared on the basis of memorandum Ex.P5. Investigating Officer Dharmdnra Singh Thakur (PW-10) interrogated accused- appellant Shanti Bai in the presence of witnesses Bhagwat Singh (PW-5) and Premnarayan (PW-8) and recorded memorandum under Section 27 of the Evidence Act vide Ex.P8 in relation to information given by her and in the presence of the said witnesses from house of accused Shanti Bai in Village Gopitalai, blood-stained soil, plain soil, wooden pieces which had blood on them, a plank of cot which had blood stains and splatters, mattress and trouser of deceased which had been burnt were seized. A seizure *Panchnama* was prepared vide Ex.P9. On the basis of information given by accused Shanti Bai two axe heads were seized from her house and a seizure *Panchnama* was prepared vide Ex.P10. Memorandum Ex.P5 of accused Kailash was recorded by police after interrogating him in front of witnesses in Village Jhukarjogi. Memorandum Ex.P6 of accused Naim Khan was recorded after interrogating him. *Vide* seizure memo Ex.P11 based on his information, a Pulsar motorcycle and a Nokia mobile phone were seized. Memorandum of accused Rajan alias Rajendra Kevat was recorded after interrogating him vide Ex.P7. Dead body of deceased was sent for postmortem. As per *merg* Intimation No.8/12, a map of scene of incident was prepared vide Ex.P21.

FIR *vide* Crime No.60 of 2012 (Ex.P19) was registered. As per postmortem of deceased Sardar Singh conducted by Dr.Harsh Kumar Chavare (PW-9), deceased Sardar Singh had antemortem injury and bone fracture in his skull which was so serious and it was the deceased, who died 13 to 14 days prior to postmortem.

(4) Besides this, skin of skull, lower jaw and small bones of hand of deceased were sealed and handed over the same to Constable for examination in order to identify the age of deceased. The Investigating Officer Dharmendra Singh Thakur (PW-10) sent seized materials (Ex.P9 and Ex.P10) from the scene of incident and the same were preserved by doctor for DNA finger printing and blood samples of deceased's son Narbir and brother Than Singh *vide* documents Ex.P23 to Ex.P25 were collected. DNA profile obtained from the source of unknown deceased gave a conclusive opinion that Narbir and Than Singh, being the biological relatives of deceased and in the FSL report Ex.P26, it has been found that there is human blood on the pieces of wood, cot and axes. The blood-stained soil etc. was seized from spot as per seizure memo Ex.P9. Postmortem of deceased was conducted, report of which is Ex.P17. *Merg* intimation was recorded *vide* Ex.P18. Map of open courtyard spot was prepared *vide* Ex.P21. Accused Shanti Bai, Naim Khan, Rajendra Kewat and Kailash were arrested as per arrest memo Ex.P12 to Ex.P15. Memorandum of accused was taken under Section 27 of Evidence Act *vide* Ex.P5 to Ex.P8. Relevant seized materials were sent to FSL, Sagar *vide* Ex.P23 to Ex.P25 report of which, was prepared *vide* Ex.P6 to Ex.C-1.

(5) After completion of investigation, challan/ charge-sheet was filed in the Court of Judicial Magistrate First Class, Lateri from where case was committed to Sessions Court for trial.

(6) Charges were framed. Accused denied the crime and sought trial and when accused were examined under Section 313 of CrPC, they pleaded that

they were falsely implicated and got witness Halim Sher Khan alias Anwarmiyan examined in their defence. Prosecution, in order to prove its case, examined as many as ten witnesses.

(7) The trial Court, after marshalling and appreciating the entire evidence available on record, found appellant- accused Shanti Bai guilty of committing a heinous crime by killing her own husband Sardar Singh Dhakad in collusion with accused Naim and Rajan alias Rajendra and then, burning the dead body and throwing it in an isolated place. The trial Court acquitted co-accused Kailash, by convicting and sentencing present appellants for alleged offence, as state above.

(8) Challenging the impugned judgment, Shri Sameer Kumar Shrivastava, learned Counsel appearing for appellants- Naim Khan and Rajan alias Rajendra, submits that the impugned judgment passed by the trial Court is manifestly arbitrary, illegal and is contrary to the provisions of law, facts and evidence. The trial Court while convicting and sentencing the present appellants has totally lost sight of provisions of Sections 25 to 27 of the Evidence Act. Admittedly, the only evidence against the present appellants is that accused Kailash made a confession to police that present appellants have committed murder of deceased Sardar Singh. The next evidence is the confession of present appellants themselves. These both confessions are not admissible in evidence and cannot be used to convict the present appellants. Any confession made before a police officer is not a piece of evidence on which, the conviction can be recorded. It is further submitted that the genesis of case is the confession made by co-accused Kailash against present appellants, therefore, confession of co-accused cannot be read as evidence against present appellants. It is further submitted that it was no case of evidence that present appellants had committed murder of Sardar Singh. There is no evidence of last seen of present appellants with the deceased. The

dead body of deceased was not recovered on the basis of memorandum of present appellants. Abhay Singh (PW-1) in his evidence nowhere stated that present appellants have committed murder of his father Sardar Singh. The only fact which this witness has narrated that appellants made confession before the police. Evidence of Jagannath (PW-2) and Than Sing (PW-3), the brothers of deceased- Sardar Singh is same to that of evidence of Abhay Singh (PW-1). So, the chain of circumstantial evidence is incomplete against present appellants. The trial Court has committed an error in holding present appellants guilty. Hence, present appellants deserves to be acquitted and the impugned judgment deserves to be set aside.

(9) Ms. Monica Mishra, learned Counsel appearing for appellant- Shanti Bai, submits that there is inconclusive circumstantial evidence and the prosecution is unable to establish any motive or *mens rea* against the present appellant. There is procedural irregularity in recording memorandum under Section 27 of the Evidence Act of the accused and there is deficiency in the investigation. Conviction of appellant recorded by the trial Court is based on information given by accused Shanti Bai and his son that the deceased Sardar Singh had gone to Bhopal for treatment. It was the duty of the prosecution to collect the evidence that the deceased had never gone to Bhopal for medical treatment. Prosecution has failed to establish that the blood found on cot and axe is matched with blood group of deceased. There is no evidence on record that blood-stains were of human in nature and particularly, belong to deceased. Therefore, present appellant cannot be directly implicated, only on the basis of suspicion. It is essential for prosecution to present clear, complete and conclusive evidence to establish present appellant guilty of alleged crime. There is neither direct or indirect evidence showing that accused Shanti Bai intentionally gave any false information or was involved in the murder of her own husband- deceased and mere allegations based on her information which

is unjustified. Forensic evidence is insufficient to link the axes with the deceased recovered at the instance of appellant. The trial Court has committed an error in convicting and sentencing the present appellant without going through relevant material available on record. Hence, prayed for set aside the impugned judgment.

(10) Learned Counsel for the State, on the other hand, vehemently opposed contentions of learned Counsel for appellants. It is submitted that prosecution has proved its case on the basis of evidence of prosecution witnesses and recovery of used axes in connection with alleged crime in which, human blood was found. It is further submitted that accused Shanti Bai is the wife of deceased and deceased lived with his wife before his death. So, it is the duty of accused Shanti Bai to explain as to how and in which manner, her husband Sardar Singh was killed. Prosecution has rightly established guilt of accused in commission of murder of deceased after appreciating entire evidence of prosecution witnesses and material available on record. There being no infirmity in the impugned judgment and the findings arrived at by the Trial Court do not require any interference by this Court. Hence, prayed for dismissal of both appeals.

(11) Heard counsel for parties at length and perused the record.

(12) *The first question comes before this Court is as to whether the death of deceased was homicidal or not and whether dead body recovered by police was that of body of deceased Sardar Singh or not ?*

(13) Abhay Singh (PW-1), son of deceased Sardar Singh, in his evidence, deposed that he had written a report regarding missing of his father deceased vide Ex.P1. After exhumation of body of deceased, the same was identified by him and the police had prepared *Panchnama* for identification vide Ex.P2.

(14) Dharmendra Singh Thakur (PW-10) who had posted as SHO on 10-04-2012 at Police Station Ateri, in his evidence, deposed that he had prepared

identification memo Ex.P2 in the presence of Abhay Singh (PW-1) vide Ex.P2 and Abhay Singh, who is son of deceased, had identified the deceased as his father Sardar Singh. He had collected blood samples of brother and son of deceased Narbir and Than Singh and the same were sent for DNA testing.

(15) In DNA report (Ex.C-1), the DNA profile obtained from the source of unknown deceased gave a conclusive opinion that Narbir and Than Singh being the biological relatives and in the FSL report Ex.P26, it was found that there is human blood on the pieces of wood, cot and axes. So, it was proved by prosecution that body recovered was that of deceased Sardar Singh. It is needless to mention here that no one had raised dispute that the dead body was not that of Sardar Singh.

(16) Dhramendra Singh Thakur (PW-10) in his evidence further deposed that he had prepared *Panchayatnama* of body of deceased vide Ex.P4 and before preparing *Panchayatnama*, he had issued Safina form to witnesses for conduction of postmortem of the deceased in order to know the correct reason regarding his death.

(17) According to Dr. Harsha Kumar Chavare (PW-9) who was posted as Medical Officer in Community Health Centre, Lateri on 10th of April, 2012, he had conducted postmortem of deceased, all the body parts and as per his opinion, the blood were burnt or decomposed. There was an antemortem injury mark on the skull of deceased measuring 2x2 inch which is a vital organ due to which, parietal bone was fractured. According to this witness, death of deceased may have taken place 13 to 14 days prior to postmortem.

(18) From the above evidence, it is clear that presence of injury establishes mitigating circumstances that injury inflicted on vital organ i.e. head of deceased Sardar Singh before his death, was sufficient to cause death and death of deceased was homicidal in nature.

(19) Considering the aforesaid evidence produced by prosecution, it is

found that there is no direct evidence regarding alleged incident and case is based on circumstantial evidence.

(20) It is a trite law that to convict an accused on the basis of circumstantial evidence, the prosecution must prove beyond reasonable doubt each of the incriminating circumstances on which it proposes to rely; the circumstance(s) relied upon must be of a definite tendency unerringly pointing towards accused's guilt and must form a chain so far complete that there is no escape from the conclusion that within all human probability, it is the accused and no one else who had committed the crime and they (it) must exclude all other hypothesis inconsistent with his guilt and consistent with his innocence. **[See: *State of Punjab vs. Kewal Krishnan*, (2023) 13 SCC 695]**

(21) It is well-settled law that where the case rests entirely on circumstantial evidence, the chain of evidence must be so far complete, such that every hypothesis is excluded but the one proposed to be proved and such circumstances must show that the act has been done by the appellant-accused within all human probability **(See: *Hanumant vs. State of Madhya Pradesh*, (1952) 2 SCC 71).**

(22) In the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra*, (1984) 4 SCC 116**, the Hon'ble Apex Court outlined five essential principles, often referred to as five golden principles, which must be satisfied for circumstantial evidence to conclusively establish the guilt of appellant-accused:-

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

(23) It is well-settled proposition of law that in a case relying on circumstantial evidence, conviction of appellant cannot be based solely on suspicion or conjecture. The prosecution must establish a complete and unbroken chain of circumstances that points unequivocally to the accused's guilt, excluding any other reasonable hypothesis.

(24) *First of all, this Court thinks apposite to go through the evidence in regard to appellant- accused Shanti Bai.*

(25) Abhay Singh (PW-1), who is son of deceased Sardar Singh, in Para 1 of his examination-in-chief, deposed that when he asked Arjun about his father Sardar Singh, Arjun said that his father has gone to Bhopal for treatment. Two days later, his uncle Jagannath asked him about his father that his father has not been seen for 7-8 days and is not available in village. So, he asked Arjun and his mother Shanti Bai once again where is his father, even then they said that his father has gone to Bhopal for treatment. After this, he went to Bhopal, inquired about his father in Hamidia Hospital and one or two other hospitals, but he could not find his father. Therefore, he lodged a missing person's report at Police Station *vide* Ex.P1. Abhay Singh in Para 6 of his cross-examination further stated that his father Sardar Singh married four times. First wife has two daughters, Roopa Bai and Puspa Bai. He is son of second wife. There was no children from third wife. Arjun and Narbir Singh are from the fourth wife. Appellant Shanti Bai is his father's fourth wife. His father Sardar Singh lived in Village with his fourth wife (Shanti Bai) and children. He has left village and live in Lateri. He used to go to village once

in a month or once in eight to fifteen days where his father used to live. He had not gone to Village for 20-25 days before murder of his father Sardar Singh.

(26) From the evidence of Abhay Singh (PW-1), it appears that there was no cross-examination of this witness that his father deceased Sardar Singh was not residing with appellant- accused Shanti Bai till his death. Therefore, considering the evidence of this witness, it is clearly proved that deceased Sardar Singh was lastly residing with his wife appellant-accused Shanti Bai in village Gopitalai, PS Lateri.

(27) On the basis of missing person's report (Ex.P1) given by son of deceased Abhay Singh (PW-1), police investigated the matter and found dead body of deceased Sardar Singh outside the pit on the top of Beelwali Hill in Village Jhukarjogi, which was identified as deceased Sardar Singh by his son Abhay Singh (PW-1) & Panch witnesses Than Singh (PW-3) and Kailash (PW-6). Identification memo of deceased was prepared *vide* Ex.P2.

(28) Investigating Officer - Dharmendra Singh Thakur, (PW-10) in his evidence deposed that on the same day i.e. 10-04-2012 he had taken appellant Shanti Bai into custody and interrogated her. During interrogation, appellant Shanti Bai told that she had got her husband Sardar Singh killed by means of axe in connivance with her son Arjun and accused Rajan @ Rajendra and Naim Khan and burnt axe and had kept axe hidden inside room and further told about giving five thousand rupees to accused Kailash for not telling anyone about murder of her husband and about giving axe in exchange. On the basis of which, memorandum of appellant Shanti Bai was recorded. Dharmendra Singh Thakur in Para 1 of his examination-in-chief also deposed that on the basis of memorandum of appellant- accused Shanti Bai, he had seized axe *vide* seizure memo Ex.P10 in the presence of witness Prem Narayan (PW-8) on which, the human blood was found.

(29) Prem Narayan (PW-08) in his examination-in-chief did not support seizure memo Ex.P10, but when prosecution for declaring this witness hostile, sought permission to ask leading question in order to know the true facts, this witness in Para 2 of his cross-examination, admitted that police had recovered two axes in which one axe with blood from house of accused Shanti Bai on the information given by appellant-accused Shanti Bai for which, police had prepared seizure memo Ex.P10.

(30) Bhagwat Singh (PW-05) also in his examination-in-chief did not support seizure memo Ex.P10, but when prosecution for declaring this witness hostile, sought permission to ask leading question in order to know the true facts, this witness in Para 3 of his cross-examination, also admitted that the police had recovered two axes from the house of appellant Shanti Bai on the basis of information (Ex.P8) given by appellant Shanti Bai, for which the police had prepared seizure memo Ex.P10.

(31) From the evidence of these witnesses Prema Narayan (PW-08) and Bhagwat Singh (PW-5), thus, it is clear that these witnesses have substantially supported memorandum of accused Ex.P8 and seizure memo Ex.P10 prepared by Investigating Officer Dharmendra Singh Thakur (PW-10). The evidence of Prem Narayan (PW-08), Bhagwat Singh (PW-05) and Investigating Officer Dharmendra Singh Thakur (PW-10) is substantially unrebutted in their cross-examination. Therefore, their evidence in this regard is reliable and was found proved that the use of axes used in the alleged crime were recovered at the instance of appellant-accused Shanti Bai. Thus, the axes are recovered from house of appellant- accused Shanti Bai which is not an open place. So, recovery of axes from house of appellant- accused Shanti Bai, on the contrary, was found proved.

(32) As per the FSL report (Ex.P26), it has been found that there is human blood on the pieces of wood, cot and axes which were recovered at the

instance of appellant- Shanti Bai.

(33) Learned Counsel appearing for appellant- Shanti Bai while advancing her arguments, submits that human blood found on axes is not matched with blood group of deceased and submits that it is the burden on prosecution to prove that blood on axe was that of blood group of deceased.

(34) It is true that prosecution has not produced any evidence on this point but recovery of axes from appellant-accused Shanti Bai were duly proved by evidence of Investigating Officer as well as independent witnesses in which human blood-stains were found, so burden lies upon accused Shanti Bai to explain as to how and why human blood was present on axe which was recovered from possession of appellant Shanti Bai. Accordingly, appellant Shanti Bai utterly failed to prove as to why human blood was found on axe which was recovered from her house.

(35) Further, learned Counsel appearing for appellant- Shanti Bai submitted that it is the duty of prosecution to prove its case beyond reasonable doubt. Burden cannot shift upon accused.

(36) *Now, the question arises in this appeal as to whether appellant accused Shanti Bai is unable to prove in any manner as to what happened actually with her husband deceased Sardar Singh.*

(37) Burden of proof is defined in Section 101 of the Evidence Act which reads as under:-

"Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

(38) On whom burden of proof lies is defined in Section 102, which reads as under:-

"The burden of proof in a suit or proceeding lies on that person who

would fail if no evidence at all were given on either side."

(39) It would be apposite for this Court to refer to Section 106 of the Evidence Act, which states as under:

"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.

Illustration:

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

(40) Section 106 of the Evidence Act referred to above, provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".

(41) The Hon'ble Apex Court in the matter of *Nagendra Sah vs. State of Bihar (2021) 10 SCC 725* has held as under:-

"22. Thus, Section 106 of the Evidence Act will apply to those cases

where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in 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 which is 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, falsity of the defence is no ground to convict the accused."

(42) Regarding applicability of Section 106 of the Evidence Act, the Hon'ble Apex Court in the case of ***Ram Gulam Chaudhary & Ors. v. State of Bihar (2001) 8 SCC 311*** in Para 24 has held as under:-

"**24.**When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death."

(43) Further, in the case of ***State of W.B. vs. Mir Mohammad Omar (2000) 8 SCC 382***, the Hon'ble Apex Court in Para 37 has observed that the section is not intended to relive the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a

different inference.

(44) From the aforesaid decisions of the Hon'ble Apex Court, it is clear that Section 106 would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding guilt of accused. The presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. The Court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.

(45) Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This Section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.

(46) Section 106 obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge which would render the evidence of the prosecution nugatory. If in such a situation, the

accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him.

(47) In the language of *Prof. Glanville Williams* “All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into account the silence of the accused or the absence of satisfactory explanation appearing from his evidence.”

(48) Section 106 has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only to the accused but also to others, if they happened to be present when it took place.

(49) The intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived. Therefore, if the prosecution has established that the character and circumstance of an act suggest that it was done with a particular intention, then under illustration (a) to this section, it may be assumed that he had that intention, unless he proves the contrary.

(50) A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with countervailing evidence, if

he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise therefrom. Although not legally required to produce evidence on his own behalf, the accused may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution *[See: Balvir Singh v. State of Uttarakhand reported in 2023 SCC OnLine SC 1261, Anees v. State Govt. of NCT reported in 2024 INSC 368 and State of Madhya Pradesh Vs. Balveer Singh 2025 SCC OnLine SC 390]*.

(51) In view of law laid down above, looking to the evidence available on record, it is not in dispute that that appellant Shanti Bai and deceased lived together in Village Gopitalai, PS Lateri till death of deceased. According to appellant, her husband- deceased had gone for medical treatment to Bhopal. Therefore, burden lies on appellant-accused Shanti Bai to show that her husband- deceased had gone for medical treatment to Bhopal but she never tried to explain this fact either in her defence nor in her statement recorded by police. Abhay Singh (PW-1), son of deceased & appellant Shanti Bai, brothers of deceased Jagannath (PW-2) and Than Singh (PW-3) clearly in their evidence deposed that deceased and appellant Shanti Bai were living together till death of deceased. So, in the considered opinion of this Court, the burden lies upon appellant- accused Shanti Bai to explain anyway in her evidence but she has utterly failed to explain this. Therefore, axes recovered on the basis of her information in which human blood was found and she was

also unable to explain as to how and why human blood was found on the axe which was recovered on the basis of her information.

(52) Considering the above facts and circumstances of the case as well as arguments advanced by learned Counsel for parties and in view of prosecution evidence as well as medical evidence including DNA and FSL report available on record, it was found that chain of circumstantial evidence is complete against appellant- Shanti Bai on the following grounds:-

- "(i) Deceased was husband of appellant- accused Shanti Bai.
- (ii) Appellant- accused Shanti Bai and deceased Sardar Singh lived together in Village Gopitalai, PS Lateri till death of deceased.
- (iii) Appellant- accused Shanti Bai was unable to explain that deceased went for medical treatment to Bhopal
- (iv) No information was given by appellant-accused Shanti Bai for a period of 7 -8 days either to police to anybody by concealing the real facts.
- (v) Blood-stained axe was recovered on the basis of information by appellant- accused Shanti Bai."

(53) After taking into consideration all the grounds mentioned above and looking to the facts that the chain of circumstances is complete against appellant- accused Shanti Bai and she was unable to rebut evidence adduced against her. So, this Court is of the considered opinion that only and only appellant Shanti Bai is guilty. So, on the basis of forgoing discussion, it is clear that learned Trial Court has properly assessed the evidence available on record and has rightly convicted and sentenced appellant- accused Shanti Bai under the Indian Penal Code. The learned trial Court has not committed any error in convicting appellant- Shanti Bai for the alleged offences. Hence, conviction and sentence deserve to be maintained. Resultantly, Criminal Appeal No.342 of 2014 filed by appellant Shanti Bai from jail is **dismissed**.

She is directed to serve remaining jail sentence awarded by trial Court. The impugned judgment of conviction and order of sentence dated 24-01-2014 passed by Additional Judge to the Court of Additional Sessions Judge, Sironj, District Vidisha (MP) in Sessions Trial No. 249 of 2012 so far as relates to appellant Shanti Bai stands affirmed. Resultantly, **Criminal Appeal No.342 of 2014 fails and is hereby dismissed.**

(54) Learned Counsel for appellants- Naim Khan and Rajan alias Rajendra submitted that body of deceased was recovered on 10-04-2012 around 10:20 am and it was identified by PW-1 Abhay Singh (son of deceased). Appellants Naim Khan and Rajan alias Rajendra have been convicted by the Trial Court on the basis of confession of co-accused. No dead body was recovered on the information given by appellants- Naim Khan and Rajan alias Rajendra.

(55) Sections 25, 26 and 27 of the Evidence Act read as under:-

"25. Confession to police officer not to be proved- No confession made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused in custody of police not to be proved against him- No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate shall be proved as against such person.

27. How much of information received from accused may be proved- Provided that , when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

(56) In the case of *Bheru Singh Vs. State of Rajasthan (1994) 2 SCC 467*, the Hon'ble Apex Court in Paragraph 16 has held that confession given to police officer is inadmissible in view of Section 25 of the Evidence Act.

(57) Further, in the case of *Rajesh Vs.State of Madhya Pradesh AIR 2023 SC 4759*, the Hon'ble Apex Court in Paragraphs 22 and 23 has held that

confession of an accused in police custody is inadmissible and further any other statement made by the accused prior to his arrest will not amount to any disclosure statement under Section 27 of the Evidence Act and therefore, any statement prior to custody of police and any fact discovered upon such information cannot be said to be an information under Section 27 of the Evidence Act.

(58) The Hon'ble Apex Court further in the case of *Vijendra Vs. State of Delhi (1997) 6 SCC 171* in Paragraph 17 has held that under Section 27 of the Evidence Act, if the information given by accused leads to discovery of fact which is an outcome of disclosure such information then only it would be evidence but when the fact has already been discovered, evidence cannot be led in respect thereof.

(59) On perusal of record, it is found that identification memo Ex.P2 was prepared by police on 10-04-2012 at 10:20 am and body of deceased was identified by PW-1 Abhay Singh (son of deceased) and merger intimation Ex.P3 was recorded on 10-04-2012 at 10:30 am. Memorandum of accused Naim Khan was recorded by police on 10-04-2012 at 16:40 pm. So, it is clear that memorandum of accused- Naim Khan was recorded after recovery of body of deceased. Memorandum of accused Rajan alias Rajendra was recorded by police on 10-04-2012 at 16:40 pm. So, it is clear that memorandum of accused Rajan alias Rajendra was taken after recovery of body of deceased. Therefore, it is clear that the body of deceased was not recovered on the basis of information given by appellants- accused Naim Khan and Rajan alias Rajendra. In the present case, it appears that the dead body was already discovered by police, therefore, once the dead body was known to the police, there was no question of recovery of dead body at the statements of accused.

(60) Relying on the decision of the Hon'ble Apex Court in the case of *Chandran vs. State of Tamil Nadu (1978) 4 SCC 90*, Shri Shrivastava,

learned Counsel further submits that the only recovery which was made by prosecution is from accused Naim Khan *vide* seizure memo Ex.P11 in which one motorcycle and mobile phone. The said motorcycle is registered in the name of Raja Khan, who is brother of accused Naim Khan and is not of accused Naim Khan. The registration document was not seized by police. Similarly, the mobile phone which was recovered is stated to be of deceased Sardar Singh, however, no TIP was conducted at the instance of prosecution for the purpose of identification of recovered mobile mobile phone and they were planted to make out a case against appellant. Therefore, evidence of recovery of incriminating article in the absence of statement cannot be relied upon. It is only recording of statement of accused leading to recovery which is admissible and, therefore, in the absence of recording of memo, the recovery is not having any significance.

(61) On perusal of record, it appears that although mobile was recovered at the instance of accused Naim Khan *vide* seizure memo Ex.P11 but this mobile was not identified by by any person and no call details were produced by prosecution before the Trial Court. Therefore, the articles seized at the instance of appellant Naim Khan have no relevance with the prosecution case. So far as seizure of motorcycle from possession of appellant Naim Khan is concerned, the same is registered on the name of Raja Khan (brother of appellant Naim Khan) and it was also not linked with the alleged crime. No incriminating article was recovered at the instance of appellant Rajan alias Rajendra.

(62) We are conscious that the crime has been committed but when there is no satisfactory proof of the guilt of appellants Naim Khan and Rajan alias Rajendra, we have no other option but to give the benefit of doubt to them and we are constrained to do so in the case.

(63) In view of forgoing discussion, Criminal Appeal No. 317 of 2014 filed

by appellants Naim Khan and Rajan alias Rajendra deserves succeed and is **hereby allowed**. The impugned judgment of conviction and order of sentence sentence dated 24-01-2014 passed by Additional Judge to the Court of Additional Sessions Judge, Sironj, District Vidisha (MP) in Sessions Trial No. 249 of 2012 so far as appellants Naim Khan and Rajan alias Rajendra stands set aside. Appellants Naim Khan and Rajan alias Rajendra are reported to be on bail and their jail sentence has already been suspended by a coordinate Bench of this Court vide orders dated 24-04-2014 and 07-05-2014. Their bail bonds and surety bonds shall stand discharged. They are acquitted of the charges levelled against them.

(64) Let a copy of this judgment be sent to trial Court concerned along with record and let a copy of this judgment be also sent to concerned jail authority regarding outcome of criminal appeal filed by appellant- accused Shanti Bai.

(65) Let a copy of this judgment be placed in connected Criminal Appeal No. 317 of 2014.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE