IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
DB :- HON'BLE JUSTICE ANAND PATHAK &
HON'BLE JUSTICE HIRDESH, JJ

ON THIS OF 21st OF APRIL, 2025

CRIMINAL APPEAL NO. 25 OF 2018

SURAJ JATAV
VS.
STATE OF MADHYA PRADESH

***Appearance**:*
Shri Virendra Singh Pal- learned Counsel for appellant.
Shri Deependra Singh Kushwah- learned Additional Advocate General for respondent/ State.

JUDGMENT

Per Justice Hirdesh:-

The present criminal appeal under Section 374(2) of CrPC is filed against the judgment of conviction and order of sentence dated 30-10-2017 passed by 9th Additional Sessions Judge, Gwalior (MP) in Sessions Trial No.466 of 2015 whereby, appellant has been convicted under Section 302 of IPC and sentenced to suffer Life Imprisonment with fine of Rs.1,000/- with default stipulation.

(2) In nutshell, the case of prosecution is that on 02-09-2015, complainant Kedar Singh Jatav (PW-6) gave an Unnatural Death Intimation of his daughter Anita Jatav at Police Station Janankganj, on the basis of which, Merg No.36 of 2015 u/S 174 of CrPC *vide* Ex.P10 was recorded. During inquest proceedings, statements of complainant- Kedar Singh, witnesses Mahadevi and Akash were recorded. Witnesses were summoned through *Safina* form *vide* Ex.P6 and *Naksha Panchayatnama* was prepared *vide* Ex.P7. Spot map *vide* Ex.P8 was prepared. Photographs of deceased were taken and dead body was sent for postmortem examination. Postmortem report was received.

Articles received from hospital, viscera, clothes, salt packets, seal sample and neck bone were seized *vide seizure* memo Ex.P17. Dead body of deceased was handed over to Raja Jatav (son of deceased) *vide* Ex.P18. After completion of inquest proceedings, it was found that accused (appellant herein) was married to the deceased and she lived with accused along with her children and accused used to drink alcohol and harass the deceased. On 01-09-2015, deceased informed her uncle Laxminaryan (PW-3) that accused was harassing her a lot and was threatening to kill her and on 02-09-2015 accused beat her, strangled her and killed her and thereafter, fled away. The death of deceased Anita Jatav was caused by strangulation by accused with a *saafi* (scarf). FIR *vide* Crime No.586 of 2015 (Ex.P19) was registered against accused-appellant for offence punishable under Section 302 of IPC and case was taken into investigation.

(3) During investigation, statements of witnesses under Section 161 of CrPC as well as statements of witnesses Karan Jatav and Jaikishan were recorded under Section 164 of CrPC. Appellant Suraj was arrested *vide* arrest memo Ex.P11 and on the basis of memorandum of accused (Ex.P12), a white and green coloured *saafi* (scarf*)* was seized from the possession of accused *vide* seizure memo Ex.P13.Viscera and packet of salt solution of the deceased were sent to FSL, Gwalior through Superintendent of Police from where, a report was received for further investigation. Neck bone of deceased was sent to Medico-Legal Institute, Gandhi Medical College, Bhopal through Superintendent of Police from where, a report was also received *vide* Ex.C-1.

(4) After completion of investigation, charge-sheet was filed in the Court of concerned Magistrate from where, the case was committed to the Sessions Court, Gwalior. Charges were framed and read out & explained to the accused. Accused denied having committed the crime and went to trial.

(5) Prosecution, in order to prove its case, examined as many as 18 witnesses including Raja *alias* Jaikishan as PW-1, Ku. Chhaya Jatav as PW-2,

Laxminarayan as PW-3, Karan Jatav as PW-4, Akash Jatav as PW-5, Kedar Singh as PW-6, Smt. Mahadevi as PW-7, Smt. Munni as PW-8 and Manoj as PW-9. Statement of accused u/S 313 of CrPC was recorded in which, accused claimed himself to be innocent and has been falsely implicated in the alleged crime and pleaded that he was in Kanpur and was not present in home on the alleged date of incident. Accused, in order to lead evidence, did not examine any witness in his defence.

(6) After conclusion of trial, the Trial Court on the basis of prosecution evidence as well as exhibited material/documents available on record, found appellant guilty and accordingly, convicted and sentenced him for alleged offence, as stated in Para 1 of this judgment.

(7) It is contended on behalf of appellant that PW-3 Laxminarayan (uncle of deceased), PW-6 Kedar Singh (father of deceased), PW-7 Smt. Mahadevi (mother of deceased) and PW-9 Manoj (brother of deceased) are relatives of deceased and there are some improvements in their police diary and Court statements. There are also many contradictions and omissions in their evidence. Although the incident came to the knowledge of these witnesses by PW-2 Ku. Chhaya Jatav, who is daughter of deceased, but she did not support the prosecution version, therefore, evidence of relative witnesses of deceased are not reliable and the prosecution case appears to be doubtful. Akash Jatav (PW-5), brother of deceased including sons of deceased, namely, Raja *alias* Jaikishan Jatav(PW-1) and Karan Jatav (PW-4) are natural and close witnesses of deceased, also did not support prosecution version.

(8) It is further contended that the onus/burden lies on prosecution to prove guilt of accused and Section 106 of Indian Evidence Act (old Act) 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 prosecution to establish the facts which are especially within the knowledge of accused and which, he can prove without

difficulty or inconvenience, therefore, provisions of Section 106 of the Evidence Act shall not be applicable in the present case, because prosecution has failed to prove its case beyond reasonable doubt. It is further contended that one Ramprakash (PW-10) is the independent witness to the arrest memo as well as seizure memo and is the relative of deceased. Similarly, Umesh Kumar Baraiya (PW-15), who is the witness of documents collected by the investigating officer, is also a highly interested witnesses and is relative of the deceased. The Trial Court has committed an error in convicting and sentencing appellant without marshalling the evidence available on record in proper perspective. Hence, appellant deserves acquittal, by allowing the instant appeal.

(9) Learned Counsel for the State, on the other hand, supported the impugned judgment of conviction and order of sentence. It is submitted that after commission of crime, appellant fled away from the place of incident, which was duly supported by the evidence of son of deceased Karan Jatav (PW-4), who in Para 1 of his chief-examination has specifically deposed that on the date of incident, he was taking food with his grandparents on ground floor and his mother and father (appellant) were in first floor of the house. Thereafter, his father came down from the upper floor and fled away. He suspected that something is wrong. When he went to the upper floor of the house, he saw that his mother was lying unconscious and he called out to his grandparents and then, his grandparents took his mother to the hospital, where Doctor declared his mother dead.

(10) It is further submitted that accused did not give any explanation in his statement recorded under Section 313 of CrPC, therefore, according to the provisions of Section 106 of the Evidence Act, it was the onus/burden on appellant to explain/prove the fact which was especially within his knowledge. Learned Trial Court after evaluating the entire oral and documentary evidence as well as medical evidence, has rightly convicted

appellant and sentenced him. There is no infirmity or illegality in the impugned judgment. The findings arrived at by Trial Court do not require any interference. Hence, prayed for dismissal of this appeal.

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

(12) First question arises for determination of present appeal is whether the cause of death of deceased was homicidal or suicidal in nature ?

(13) R.P. Gautam (PW-17), who was posted on 04-09-2015 as Sub-Inspector, PS Janakganj, deposed that on the basis of unnatural death intimation given by Akash Jatav (brother of appellant), he reached the spot and prepared spot map *vide* Ex.P8. During merg enquiry, it was found that deceased had died by strangulation with a *saafi* (scarf) and thereafter, FIR was lodged *vide* Ex.P19.

(14) Kamalkishore Sharma (PW-13), who was posted as Head Constable in Police Station Janakganj on 03-09-2015, in his evidence deposed that in the presence of witnesses, *Naksha Panchayatnama* Ex.P7 was prepared by him and death of deceased appeared to be due to strangulation.

(15) Further, the Investigating Officer- R.K. Sharma (PW-18), who was posted as Station House Officer, PS Janakganj in his evidence deposed that on 08-09-2015, he had arrested the accused *vide* arrest memo Ex.P11 and on the basis of memorandum of accused, a white coloured *saafi* (scarf) kept in a box of house of the accused was recovered *vide* seizure memo Ex.P12. After completion of investigation, it was found that deceased Anita was murdered by accused- appellant by strangulating her.

(16) Dr.Ajay Gupta (PW-12), who was posted in Forensic Medicine Department, JA Hospital, Gwalior on 03-09-2015, in his evidence deposed that Constable Dev Singh of PS Janakganj produced dead body of deceased before him for postmortem examination. Dead body of deceased was identified by Raja *alias* Jaikishan Jatav, son of deceased. Upon postmortem examination, he found following antemortem injuries on the body of

deceased:-

> "Injury No.1- Reddish blue abrasion size of 5 cm below middle of chin to right side of neck, 5x3.5 cm size on the middle of the forehead below which there was a blood clot in the muscles. On the right side of this abrasion, there was a reddish-blue abrasion of 0.7 cm size at a distance of 0.1 cm.
>
> Injury No.2. A bluish contusion of 8x6 cm size on the right side of neck.
>
> Injury No.3 - A bluish contusion of 6x5 cm size on the upper and outer part of right collarbone.
>
> Injury No.4 -A bluish contusion of 8 x 5 cm size on the upper and outer part of left collarbone.
>
> Injury No.5- In the lower part of chest, there was a reddish-blue contusion measuring 3x 2cm on the right side.
>
> Injury No.6-On the upper part of right leg, there was a bluish contusion measuring 2x1cm.
>
> Injury No.7- There was a reddish abrasion 7 cm below the middle of larynx and 3x2 cm in size."

(17) *Vide* postmortem report Ex.P15, as per opinion of Dr. Gupta, death of deceased was due to asphyxia signs of compression of neck and aspiration of gastric contents evident. Antemortem head injury is also sufficient to cause of death in ordinary course of nature. Neck bone of deceased was preserved for confirmation regarding throttling. Dr. Gupta, further opined that injury to the back of head of deceased could have been caused by falling. Nature of death of deceased appears to be homicidal. Duration of death of deceased was within 6 to 24 hours since postmortem examination. Dr.Gupta in his cross-examination deposed that he cannot say that internal injuries on the body of deceased would have caused due to falling from the stairs. Medical opinion given by Doctor was not substantially rebutted by defence.

(18) From the medical evidence as well as *Naksha Panchayatnama* (Ex.P7) prepared in the presence of witnesses, it is apparent that cause of death of deceased was homicidal in nature.

(19) Next question arises for determination of present appeal is whether appellant had committed murder of deceased or not ?

(20) There are two sets of evidence of witnesses, one from the in-laws' side

and another from the maternal side of deceased.

(21) Raja *alias* Jaikishan Jatav (PW-1), who is the son of deceased as well as of appellant, in Para 1 of his chief deposed that at the time of incident, he was not present in the house and had gone for work in the shop of Rajesh Shrivastava situated at Maharaja Bada and further in Para 3 of his cross-examination, deposed that his father had gone to Kanpur for work for two days before his mother's death and there was no animosity or quarrel between his mother and his father. This witness did not support prosecution story and was declared hostile by prosecution.

(22) Ku.Chhaya Jatav (PW-2), who is daughter of deceased as well as of appellant, in Para 1 of her examination-in-chief, deposed that her mother-deceased died after falling from the stairs. On the date of incident, she had gone to the school. This witness in Para 2 further denied that her father Suraj (appellant) killed her mother by strangulating with a *saafi* and fled away from the house and her father used to harass her mother. This witness did not support the prosecution version and was declared hostile by prosecution.

(23) Karan Jatav (PW-4), who is son of deceased as well as of appellant in Para 1 of his examination-in-chief deposed that on the date incident, he had gone to the school. When he returned from school around 5 in the evening, he came to know that his mother had fallen from the stairs and was unconscious. His mother was taken to hospital, where the doctor declared his mother dead. This witness did not support the prosecution and was declared hostile by prosecution.

(24) Akash Jatav (PW-5), who is brother-in-law of deceased as well as brother of appellant, in Para 1 of his chief deposed that on the date of incident, he had gone for work and when he returned home, he came to know that deceased had fallen from the stairs and his younger brother Jitendra had taken her to JA Hospital, Gwalior. On receiving information, he reached hospital, where the Doctor declared her dead. This witness did not support the

prosecution case and was declared hostile by prosecution.

(25) Kashiram Jatav (PW-11), who is father-in-law of deceased in Para 1 of of his chief deposed that due to fall from the stairs, deceased died. In Para 2, this witness further deposed that on the date of incident, he was in home and her daughter-in-law was alone in house. Further, this witness deposed that his grandson Karan and granddaughter Chhaya were also present in home. This witness did not support the prosecution case and was declared hostile by prosecution.

(26) Uncle of the deceased Laxminarayan (PW3) in Paras 1 and 2 of his chief deposed that on 01-09-2015 in the evening, he had called deceased Anita from mobile and then made his wife talk to deceased Anita. Anita told his wife that accused is saying to deceased that he will suck her blood and had snatched the mobile of her. This witness further deposed that on 02-09-2015, he had gone to work and around 04:00 in the afternoon, his wife called him and told that deceased Anita is no more. When he along his brother-in-law Kedar and other persons reached in-laws house of deceased Anita, they saw that there were marks of strangulation on the neck of Anita. Daughter of deceased- Ku.Chhaya Jatav (PW-2) was saying that her father Suraj (appellant) and mother had a fight and her father had strangled her mother with a *saafi* (scarf). This witness in Paras 4 and 5 of his cross-examination deposed that if the above fact is not written in his police diary statement Ex.D1, he cannot give the reason. This witness in Para 6 of his cross-examination denied that deceased Anita hanged herself with a scarf in her room and when the noose opened due to her weight, she got scared and ran down from the room and slipped on the stairs and got injured on her head and other parts of body due to which, she died and further, denied that appellant had gone to Kanpur for work for two days before the incident. Similar evidence was given by wife of this witness Smt. Munni (PW-8)

(27) Father of deceased Kedar Singh (PW-6) in Paras 1 and 2 of his chief

deposed that appellant-accused used to drink alcohol, gambling and harass his daughter deceased. When he along with others reached in-laws house of deceased, they saw the dead body on the roof of the house and neck of deceased was hanged with a scarf. His younger granddaughter Ku. Chhaya Jatav was telling him that accused- Suraj killed her mother and fled away. This witness in Para 7 of his cross-examination denied that deceased Anita hanged herself with a scarf in her room and when the noose opened due to her weight, she got scared and ran down from the room and slipped on the stairs and got injured her head and other parts of body due to which, she died. Similar statement was given by brother of deceased Manoj (PW-9).

(28) Mother of deceased Smt. Mahadevi (PW-7) although in Para 3 of her chief deposed that when she asked her granddaughter Chhaya what had happened, her granddaughter Chhaya told her accused had killed deceased and fled away. There were so many improvements and inconsistencies found in her statement, therefore, this witness was also declared hostile by prosecution.

(29) From the above, it transpires that witnesses from in-laws side of deceased in the same breath, deposed that cause of death of deceased was due to fall from stairs and all of them turned hostile by the prosecution. Although the witnesses from the parental side of deceased in their evidence deposed that from the daughter of appellant as well as of deceased, Ku. Chhaya (PW-2), they heard that appellant-accused killed deceased Anita and fled away, but Ku. Chhaya denied this fact in Para 2 of her evidence and therefore, did not support the prosecution version and turned hostile. There are so many improvements and inconsistencies found in the police diary statements and Court statements. Therefore, their evidence cannot be said to be worthy-reliance and is unreliable. The prosecution having failed to prove the basic facts as alleged against the accused.

(30) The next question arises for determination of present appeal is whether the appellant- accused is unable to explain/prove in any manner as to what had

happened actually with his wife-deceased?

(31) 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 assets, 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."

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."

(32) 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."

(33) 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” .

(34) 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."

(35) 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."

(36) 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.

(37) 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 regading 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.

(38) 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.

(39) 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.

(40) 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."

(41) 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.

(42) 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.

(43) 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]***

(44) It is settled principle of law that the prosecution has to substantially prove from the stages it alleges against the accused. Prosecution cannot take advantage of weakness of defence. The Court, on its own cannot make out a new case for prosecution and convict the accused on that basis.

(45) If this Court see the factual matrix of the case from all the angles, it is found that all the close relatives of deceased in their evidence deposed that cause of death of deceased was due to fall from the stairs and thereafter, the

deceased became unconscious whereby she was taken to the hospital, where Doctor declared the deceased dead and appellant had gone to Kanpur for work for two days before the death of deceased. In the statement of accused recorded u/S 313 of CrPC, appellant pleaded that he was in Kanpur and was not present in home on the date of alleged incident. The parents of deceased in their evidence deposed that when they reached in-laws house of deceased, they found marks of strangulation on the neck of the deceased. Some improvements as well as contradictions and omissions were found in their police diary and Court statements. Even otherwise, the mother of deceased Smt. Mahadevi (PW-7) was declared hostile by the prosecution because of the fact that major inconsistencies were found in her evidence also. If an offence took place inside the four walls of a house due to some strained marital relations or some other reasons and crime is committed in complete secrecy inside the house, it is very difficult for the prosecution to lead any evidence. Not a single witness from the side of in-laws of the deceased in the case at hand, did not come forward to depose against the appellant-accused. As per postmortem report of deceased, Dr. Ajay Gupta (PW-12) although opined that the nature of death of deceased was homicidal and antemortem injuries were found on the person of deceased are also sufficient to cause death in ordinary course of nature, but opined that injury to the back of the head of deceased could have been caused by falling and further, deposed that he cannot say that the internal injuries on the body of the deceased would have caused due to fall from the stairs.

(46) In the case at hand, prosecution has miserably failed to prove the entire chain of circumstances, which would unerringly conclude that the alleged act was committed by the accused only with intention and none else. The prosecution having failed to prove the basic facts as alleged against the accused, the burden could not be shifted on the accused by pressing into service the provisions contained in Section 106 of the Evidence Act. There

being no cogent evidence adduced by the prosecution to prove the entire chain of circumstances which may compel the Court to arrive at a conclusion that the appellant-accused only had committed the alleged crime, the Court has no hesitation in holding that the Trial Court had committed an error in convicting the accused for the alleged crime, merely on the basis of evidence of parents of the deceased.

(47) Resultantly, present appeal succeeds and is hereby **allowed.** The judgment of conviction and order of sentence dated 30-10-2017 passed by 9th Additional Sessions Judge, Gwalior (MP) in Sessions Trial No.466 of 2015 is hereby **set aside**. Appellant is acquitted of offence punishable under Section 302 of IPC. Appellant is reported to be in jail. He shall be released forthwith, if not required in any offence.

(48) A copy of this judgment be sent to the Jail Authority concerned as well as a copy of this judgment along with record be sent to trial Court concerned for information and compliance.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

MKB