

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK  
&  
HON'BLE SHRI JUSTICE HIRDESH

ON THE 14<sup>TH</sup> OF JULY, 2025

CRIMINAL APPEAL NO.11247 OF 2023

GUDIYA SIKARWAR

Vs.

THE STATE OF MADHYA PRADESH

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**APPEARANCE:**

*Shri R.K. Sharma Senior Counsel assisted by Ms. Deepa Chauhan and Ms. Bhavya Sharma- learned Counsel for the appellant.*

*Ms.(Dr.)Anjali Gyanani– learned Public Prosecutor for respondent/ State.*

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**JUDGMENT**

***Per:Justice Hirdesh:***

With the consent of learned Counsel for the parties, after withdrawal of suspension application which was listed today for hearing, the matter was finally heard at post-lunch session.

(2) The instant criminal Appeal under Section 374 (2) of Cr.P.C has been filed by appellant- Gudiya Sikarwar challenging the judgment of conviction and order of sentence dated 22.08.2023 passed by Second Additional Sessions Judge, Morena (MP) in Sessions Trial No.114 of 2021 whereby appellant has been convicted under Section 302 of IPC and sentenced to suffer Life Imprisonment with fine of Rs.10,000/-, in default of payment of fine, further undergo six months' additional rigorous imprisonment.

(3) According to the prosecution case, on 15-07-2020, Kuldeep Sikarwar brought his brother Ganga *alias* Gangu Sikarwar (husband of appellant) in dead condition to District Hospital, Morena, where Dr. Brijesh Katare gave

written information to Police Station *vide* Ex.P19. It was alleged by brother of deceased Sheru *alias* Shamsher Singh at PS Kotwali that his sister-in-law (present appellant) told him that on 15-07-2020, her husband Ganga assaulted her and went to sleep in her room. When appellant got opened the gate around 03:30 PM, gate was not opened. She called tenant and peeped through window of room and found her husband Ganga Singh Sikarwar hanging from the fan with a noose around his neck. On the basis of which, Merg No.38 of 2020 was recorded at PS Kotwali. Inquest was conducted by ASI Janardan Singh Tomar (PW-16).

(4) On 16-07-2020, ASI Janardan Singh Tomar (PW16) and Scientific Officer of FSL- Dr. Arpita Saxena (PW-6) visited spot and inspected the scene of crime. Blue bed-sheet, pillow cover, steam jug, broken wiper, yellow saree and other material were seized from the scene of crime in the presence of witnesses Sheru *alias* Shamsher Singh (PW3) and Bittu Tomar. Seizure *Panchnama* was prepared *vide* Ex.P8. Apart from this, Dr. Arpita Saxena prepared inspection report *vide* Ex.P13. The body of deceased was referred from District Hospital, Morena to Government College, Gwalior for postmortem. Thereafter, on 16-07-2020, postmortem of deceased was conducted by a team of Dr. Sarthak Juglan, Dr. Ashish Agarwal (PW-11) and Dr. Chandrashekar (PW-14) *vide* Ex.P24.

(5) During inquest proceedings, statements of informant brother of deceased Sheru *alias* Shamsher Singh Sikarwar, son of deceased Shivam *alias* Veerbhan *alias* Shivkumar and daughter of deceased Shivani as well as statements of accused-appellant Gudiya Sikarwar were recorded. After completion of inquest proceedings, on the basis of postmortem report, FIR *vide* Ex.P16 was registered at PS Kotwali against appellant Gudiya Sikarwar and other unknown persons. Matter was investigated by Sub-Inspector Ruby Singh Tomar (PW-13). During investigation, statements of police witnesses were recorded. Seized articles and viscera were sent to FSL for examination

and FSL report Ex.P25 was received.

(6) On 25-11-2020, appellant was arrested *vide* arrest memo Ex.P21 and on the same day, accused was interrogated by SHO- Shri Ajay Chanana (PW-15) . Memorandum of accused was recorded *vide* Ex.P22. According to search *Panchnama*, the alleged knife could not be recovered. Death of deceased was found to be homicidal in nature due to asphyxia as a result of strangulation. After completion of investigation, charge sheet was filed before the the Court of CJM, Morena and the case was committed to the Sessions Court for trial.

(7) Charges were framed. Accused denied the allegation levelled against her and claimed innocence. The defence of appellant was that on the date of alleged incident, four-five unknown persons came to her house, beat her husband-deceased and killed him and then, hanged him. No evidence has been produced by appellant in her defence. Prosecution, in order to prove its case, examined as many as 17 witnesses.

(8) 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 her for alleged offence, as stated in Para 2 of this judgment.

(9) Challenging the impugned judgment and order of sentence, relying on the judgment of Hon'ble Apex Court in the case of ***Darshan Singh vs. State of Punjab (2024) 3 SCC 164***, it is contended on behalf of appellant that where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would be undoubtedly be upon the prosecution as well as on inmates of house. The key witnesses Shivani (PW-1) and Shiva *alias* Shivkumar (PW-2) did not support the prosecution story. Sheru *alias* Shamsher (PW-3), Kuldeep Singh (PW-4), Vikram Singh (PW-5) are hearsay witnesses. Placing reliance on the judgment of Hon'ble Apex Court in the case of ***Palvinder Kaur Vs. State of Punjab (1952) 2 SCC 177***, it contended that it is essential for the prosecution to prove that murder has been committed by

appellant and mere suspicion that murder has been committed by her is not sufficient. Further, relying on the judgment of Apex Court in the case of *Sadashiv Dhondiram Patil vs. State of Maharashtra (2025) 4 SCC 275*, it is submitted that where extra-judicial confession is surrounded by suspicion circumstances, its credibility becomes doubtful and would lose its importance. The trial Court in Para 34 of its judgment although concluded that prosecution has failed to prove motive of incident and the fact of seizure but in spite of that, just merely on the basis of circumstantial evidence, appellant has been wrongly convicted though chain of evidence is incomplete and, therefore, appellant cannot be convicted on the basis of mere fact that she was last seen with the deceased unless other circumstances are to be seen. Relying on the judgment of *Nandu Singh vs. State of MP (2022) 2 MPLJ(Cri) SC 194* and *Shivaji Chintappa Patil vs. State of Maharashtra (2021) 3 MPLJ (Cri) SC 382*, it is contended that merely because the deceased was last seen alive with accused, it cannot be presumed that appellant assaulted her husband and caused his murder.

(10) It is further contended that the onus/burden lies on prosecution to prove guilt of accused and Section 106 of Indian Evidence 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, she can prove without difficulty or inconvenience, therefore, provisions of Section 106 of Evidence Act shall not be applicable in the present case, because prosecution has failed to prove its case beyond reasonable doubt.

(11) The trial Court has lost sight on this aspect and erred in holding the appellant guilty by discarding her defence and while recording conviction against the appellant, the Trial Court has also overlooked the evidence on record and has not appreciated the evidence in proper perspective. Hence,

appellant deserves acquittal, by allowing the instant appeal.

(12) On the other hand, learned Counsel for the State supported the impugned judgment passed by the trial Court and submitted that if unknown persons had entered the house of appellant and assaulted her husband in front of appellant and her son and daughter, namely, Shivkumar (PW-2) and Shivani (PW-1), they would have definitely protested against it. Apart from this, if they stood in the gallery or courtyard of the house and made noise for rescue of deceased, then acquaintances living nearby would have come for rescue. Not only this, daughter of accused had a phone and appellant could have called the police or any acquaintance for rescue and accused did not do so. As per medical evidence, the deceased died due to obstruction of breathing as a result of strangulation and died immediately after crime committed by appellant. Deceased was the last seen alive with the appellant and death of deceased was a homicidal death. Therefore, under Section 106 of the Evidence Act, the burden of proof is on the appellant to explain the fact which was especially within her knowledge and clarify that how and under what circumstances her husband Ganga sustained injury and died. There is no such evidence on record either collected during investigation or defence shown by appellant is worth-doing. Learned Trial Court after evaluating the circumstantial evidence as well as documentary evidence and medical evidence, has rightly convicted the appellant and sentenced her. There is no infirmity or illegality in the impugned judgment. The findings arrived at by the Trial Court do not require any interference. Hence, prayed for dismissal of this appeal.

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

(14) Before advertng into merits of the case, this Court thinks it apposite to go through the evidence of material witnesses.

(15) Daughter of deceased Shivani (PW-1) in Para 1 of her examination-in-chief deposed that on the date of incident i.e. 15-07-2020 her father came to

Morena from Bangalore. Her parents were talking to each other. After sometime, four-five unknown persons entered the house and started beating his father and during this time, voice of her father stopped coming out and the unknown persons hanged her father from the fan with a saree kept in the house and thereafter, they ran away. Her mother-appellant and brother Shiva shouted loudly, so that people of the locality gathered. When his father was taken down from the noose, he was already dead. This witness further in Para 2 deposed that her father and mother lived a good life and there was never any quarrel between them. Police did not question her nor did police take any statement from her. This witness in Para 5 of her cross-examination deposed that when she asked her mother-appellant, who were unknown person, her mother said that she did not know and further deposed that those four-five persons also hit her father with a wiper. This witness in Para 6 of her cross-examination deposed that after the incident, her mother did not go to the room due to fear. Her mother started shouting from the courtyard of the house. During conversation, it seemed that unknown persons knew her father and they had a fight with him on some issue.

(16) Son of deceased Shiva *alias* Shivkumar *alias* Veerbhan Singh (PW-2) in Para 2 and 3 of his examination-in-chief deposed that four-five unknown persons after committing *marpeet* with his father, climbed on the chest of his father and strangled him. He, his mother-appellant and his sister Shivani were present at the time of incident. The attackers had given a push due to which, his mother's bangles were torn. He saw the incident from the window of other room that said unknown attackers killed his father and tied around his neck by saree of his mother and hung from the fan. They had also shouted, but coolers and fans were running in their house due to which, no one is able to hear their voice at the time of incident and other people of the locality came after a long time. This witness denied that his mother had beaten his father due to which, he got injured. This witness in Para 5 of his cross-examination deposed that

after death of his father, there is no one else to take care of him except his mother and denied that appellant had beaten his father and he is deliberately not telling truth to save her mother from this crime for his upbringing. This witness in Para 6 of his cross-examination deposed that four-five unknown persons had also beaten his father with a wiper due to which, his father got injured and blood from the wiper got on the wall. When the unknown persons were beating his father, his mother tried to save him, but those people pushed his mother due to which, she fell in the room and her bangles got broken. This witness further in Para 07 of his cross-examination deposed that unknown persons hanged his father from the fan and ran away after closing the gate and his mother did not kill his father.

(17) Brother of deceased - Sheru *alias* Shamsher (PW-3), in Para 03 of his examination-in-chief deposed that on 15-07-2020 around 05:00-06:00 pm, his niece Shivani called him on mobile phone that four-five unknown persons had come to house who beat up her father and forcefully hanged him and fled away. After about one hour of receiving the information, he and his father Vikram Singh and other family members came to Sanjay Colony, Morena and saw that his brother Ganga Singh was lying on the floor of the room. They took Ganga Singh to District Hospital, Morena with police where he was declared dead by the Doctor. This witness in Para 08 of his cross-examination further deposed that four-five unknown persons killed his brother Ganga Singh and hanged him. Another brother of deceased Kuldeep Singh (PW-4) gave same evidence in Para 03 of his examination-in-chief as narrated by Sheru *alias* Shamsher (PW-3) and further in Para 7 of his cross-examination deposed that there was no dispute/quarrel between his brother Ganga Singh and appellant-accused. Father of deceased Vikram Singh (PW-5) also gave same evidence in Para 03 of his examination-in-chief as narrated by both Sheru *alias* Shamsher and Kuleep Singh and in Para 06 of his cross-examination, he deposed that on the date of incident, his granddaughter

narrated the incident to his son Sheru and he had also talked with appellant.

(18) Scientific Officer Arpita Saxena (PW6), who had inspected the dead body of deceased Ganga Singh on 16-07-2020, in her evidence deposed that she found a circular lacerated wound of about 2 cm length on the left side of forehead of the deceased from which another wound was found at distance of 1 cm. Further in Para 2, this witness deposed that minor injury mark was found on the ring finger of the deceased. Two ligature marks of 3 cm x 2cm width were found on the left side of neck of deceased. Further in Para 3, this witness deposed that semen discharge was found and 2 cm below the ligature mark, another mark of about 3 cm length was also found.

(19) So, considering the evidence of eye-witnesses of the incident i.e. Shivani (PW-1) and Shiva (PW-2) have not supported the prosecution version and turned hostile. The present case rests upon circumstantial evidence and only on the basis of Section 106 of the Evidence Act, the trial Court found the appellant guilty of alleged offence.

(20) Now, this Court thinks it appropriate to go through the settled proposition of law as to whether the accused can be convicted only on the basis of circumstantial evidence or the Court has to see the other evidence available on record while recording the conviction against the accused.

(21) 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 ]*

(22) 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*).

(23) 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.”

(24) 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.

(25) The pivotal question arises for determination of present appeal is whether appellant had committed murder of her husband or not ?

(26) From the evidence of daughter and son of deceased Shivani Sikarwar (PW-1) and Shiva *alias* Shivkumar *alias* Veerbhan Singh (PW-2), it transpires that they in the same breath, deposed that four-five unknown persons had beaten his father and his mother when tried to save his father-deceased, those unknown persons pushed his mother due to which, she fell in the room and her bangles got broken. Those unknown persons after strangling the neck of his father, hanged him from the fan and ran away after closing the gate and his mother did not kill his father. Not a single witness either son or daughter of deceased or any family member of the deceased has narrated in their evidence that there was any matrimonial/family dispute was going on prior to the incident or any quarrel was took place on the date of alleged incident. Similarly, brothers of deceased Sheru *alias* Shamsheer (PW-3), Kuldeep Singh (PW-4) and father of deceased Vikram Singh (PW-5) are hearsay witnesses, but they supported the evidence of son and daughter of deceased, therefore, their evidence cannot be said to be totally unreliable. Accordingly, the prosecution having failed to prove the basic facts as alleged against accused.

(27) 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 her husband- deceased?

(28) 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."

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."

(29) 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.”

(30) 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” .

(31) 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."

(32) 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."

(33) 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.

(34) 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.

(35) 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.

(36) 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.

(37) 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.”

(38) 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.

(39) 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.

(40) 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]*

(41) 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.

(42) If this Court see the factual matrix of the case from all the angles, it is found that the key witnesses, who were present at the time of incident in the house, i.e. son and daughter of deceased in the same breath deposed that four-unknown persons committed murder of deceased by strangulating him from a fan and their evidence remained intact by the appellant in his defence. If an offence took place inside the four walls of a house due to some strained marital relations or some other reasons and the crime is committed in complete secrecy inside the house, it is very difficult for the prosecution to lead any evidence. Not a single witness of parents of deceased deposed against the appellant as to whether any dispute or quarrel was going on between the appellant and the deceased and did come forward to depose against the appellant.

(43) 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 appellant- accused for the alleged crime, merely on the basis of evidence of circumstantial evidence.

(44) Resultantly, present appeal succeeds and is hereby **allowed**. The judgment of judgment of conviction and order of sentence dated 22.08.2023 passed by Second Additional Sessions Judge, Morena (MP) in Sessions Trial No.114 of 2021 is hereby **set aside**. Appellant is acquitted of charges levelled against her. Appellant is reported to be in jail. She shall be released forthwith, if not required in any offence.

(45) 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**