

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
JUSTICE SUJOY PAUL  
&  
JUSTICE PRAKASH CHANDRA GUPTA**

**ON THE 20<sup>th</sup> OF DECEMBER, 2022**

**CRIMINAL APPEAL No. 2862 of 2011**

**BETWEEN:-**

**RAMPRASAD @ RAMSEWAK YADAV  
S/O MIDIYA YADAV, AGED ABOUT 28  
YEARS, HARDUWA MEMRI PS.  
SHAHNAGAR (MADHYA PRADESH)**

**....APPELLANT**

***(BY SHRI R.S. PATEL – ADVOCATE FOR THE APPELLANT)***

**AND**

**THE STATE OF MADHYA PRADESH  
TH. PS. SHAHNAGAR DISTT. PANNA  
(MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI YOGESH DHANDE, GOVERNMENT ADVOCATE)***

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*This appeal coming on for hearing this day, JUSTICE SUJOY PAUL passed the following:*

**J U D G M E N T**

This is an appeal filed under Section 374 (2) of Criminal Procedure Code assailing the judgment dated 3.9.2011 passed in Sessions Case No.

82/2010 decided by learned Additional Sessions Judge, Pawai, District Panna whereby the appellant was held guilty for committing offence under Section 302 of IPC and directed to undergo sentence of Life Imprisonment with fine of Rs.1000/- with default stipulation.

2. In short, the story of prosecution is that on 24.3.2009 at around 7 PM, Ramkumar (PW-1) was returning back with his animals from his godown. Ram Kumar noticed that mother of appellant, Smt. Manukiya Bai (PW-2) is weeping. Ram Kumar after leaving the animals to his house, reached the house of Ram Prasad and after entering the house, found that wife of appellant, Beby Bai was assaulted by present appellant by means of an iron rod '*Sabbal*'.

3. Ram Kumar (PW-1) lodged report at P.S. Shahnagar, which was registered as Merg No.14/09 under Section 174 of Cr.P.C. The investigation in Crime No.29/09 started and during investigation, the statements of Ramesh Kumar, Brindawan, (PW-7), Pritam Singh, Mithailal, (PW-3), Balgovind and Chhote were recorded under Section 161 of Cr.P.C. Ramesh Kumar, Preetam Singh, Balgovind and Chhote were not examined during trial. A 'spot map' (Ex.P-3) was prepared. Dead body of Beby Bai was sent for post mortem through application (Ex. P-14). Dr. N.K. Jasuja (PW-5) conducted the autopsy and submitted the report (Ex. P-10).

4. As per the story of prosecution, on 25.3.2009 certain materials were seized from the scene of crime through (Ex. P-12). The statements of Ram Kumar Yadav (PW-1) were recorded on 25.3.2009. The appellant's memorandum under Section 27 of the Evidence Act was

prepared on 26.3.2009 (Ex.P-11). The 'Sabbal' was recovered on 26.3.2009 at around 10.30 AM through (Ex. P-13). The appellant was arrested on the same date at around 11 AM through arrest memo dated 26.3.2009.

5. The seized material were sent for examination to Forensic Science Laboratory (FSL). In turn, the report of FSL (Ex.P/18) was received. After completion of investigation, the challan was filed in the Court of concerned Magistrate and in turn, it was committed to the Court of Sessions.

6. The Sessions Court framed charge under Section 302 of IPC against the appellant. Appellant abjured the guilt and prayed for conducting the trial.

7. The Court below framed two issues for its determination. After recording evidence of the parties and hearing them, the impugned judgment is passed convicting the appellant for committing offence under Section 302 of IPC and sentence as mentioned above is imposed.

**Contention of the appellant**

8. Shri R.S. Patel, learned counsel for the appellant criticized the impugned judgment by contending that there are two eye -witnesses to the incident namely Ramkumar (PW-1) and Smt. Manukiya Bai (PW-2). Both eye witnesses did not support the prosecution story and, therefore, both of them were declared as hostile. It is submitted that since both the eye-witnesses turned hostile, there exists no eye-witness in the matter and conviction of appellant is solely based by the court below by taking aid of Section 106 of the Evidence Act.

9. Learned counsel for the appellant submits that the FSL report (Ex.P/18) is inconclusive. By placing reliance on the report, it is submitted that soil and *Sabbal* were recovered from the scene of crime. The FSL report shows that the blood found on the *sabbal* (Article-C) was insufficient, hence, in the said report (Ex.-P/18) no conclusive opinion is given by the FSL regarding existence of any human blood on the weapon. So far Article-A is concerned, although human blood was found, the said article is the soil collected from the room where dead body was found. Thus it must be the blood of deceased herself. Thus FSL report cannot be used against the appellant and Court below in Para-36 of the judgment has rightly opined that said FSL report does not help the prosecution in any manner.

10. So far 'spot map' is concerned, learned counsel for the appellant submits that this 'spot map' also does not support the case of prosecution. The mother of appellant Smt. Manukiya bai (PW-2) deposed that when she reached her house, the appellant was standing in front of her house. She found his daughter-in-law in dead condition in the house. Thus, Shri R.S. Patel, learned counsel for the appellant submits that there is no legal evidence in this matter which may connect the appellant with commission of crime. In support of his submission, he placed reliance on the judgment in the case reported in **AIR 1993 SC 110 (Anant Bhujangrao Kulkarni Vs. State of Maharashtra)** and urged that the present case is quite similar to the said case decided by the Supreme Court.

11. Sounding a contra note, Shri Yogesh Dhande, learned Government Advocate supported the impugned judgment. He submits that the Court

below has not committed any error in recording conviction based on Section 106 of the Evidence Act. Since the dead body of the wife of appellant was found inside the house/bed room of the appellant, appellant was under an obligation to give plausible explanation for the same. A flat denial in the statement recorded under Section 313 of Cr.P.C. will not serve the purpose. He placed reliance on **2013 (2) M.P.L.J. (Cri.) 397 (Mohammad Hussain Ansari Vs. State of M.P.)** and **2016 (3) M.P.L.J. (Cri.) (S.C.) 694 (Gajanan Dashrath Kharate Vs. State of Maharashtra)**.

12. No other point is pressed by the learned counsel for the parties.

13. We have heard the parties at length and perused the record.

14. A plain reading of the impugned judgment shows that learned counsel for the parties have rightly argued that conviction of appellant is founded upon Section 106 of the Evidence Act. Section 106 of Evidence Act reads 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.”

**(Emphasis supplied)**

15. As noticed, Shri R. S. Patel, learned counsel for the appellant urged that in absence of support of prosecution story by any eye-witness, the appellant cannot be held guilty. During the course of argument, he argued that appellant used to live in the house in question with his wife and mother. There is no material to show that appellant alone was available in the house at the time of incident. We do not find any merit in this

contention. The statement of Ram Kumar (PW-1) shows that when he reached the house of appellant, he found that appellant was present in the house and dead body of Baby Bai, wife of appellant, was lying in one room. In clear terms, he deposed that appellant was present in the house. Although this witness was declared as hostile, his aforesaid portion of statement is indeed admissible. It is well settled that the evidence of a prosecution witness cannot be rejected *in toto* merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof. (See: *Bhagwan Singh Vs. State of Haryana*, AIR 1976 SC 202; *Rabinder Kumar Dey Vs. State of Orissa*, AIR 1977 SC 170; *Syed Akbar Vs. State of Karnataka*, AIR 1979 SC 1848 and *Khujji @ Surendra Tiwari Vs. State of Madhya Pradesh*, AIR 1991 SC 1853).

**16.** The Supreme Court in **(2007) 13 SCC 25 Swami Prasad vs. State** held that :-

“A court in a given situation even may rely on the statements of the witnesses who have been declared hostile by the prosecution.”

**(Emphasis supplied)**

**17.** Interestingly, the mother of appellant Manukiya Bai (PW-2) also deposed that when she reached her house, she found that appellant was standing in front of house and dead body of his daughter-in-law was lying in the room. A conjoint reading of both the statement of Ram Kumar (PW-1) and Manukiya bai (PW-2) makes it clear that at the time

of incident, appellant alone was present in the house. The possibility of availability of appellant's mother in the house is totally ruled out. Thus, appellant was alone present in the house at the time of incident.

**18.** In this backdrop, we find substance in the argument of Shri Yogesh Dhande, learned Government Advocate that Court below has rightly based its judgment on Section 106 of Evidence Act. The Apex Court in **Gajanan Dashrath Kharate (Supra)** opined as under :-

“12. As seen from the evidence, appellant-Gajanan and his father-Dashrath and mother-Mankarnabai were living together. On 7-4-2002, mother of the appellant-accused had gone to another village-Dahigaon. Prosecution has proved presence of the appellant at his home on the night of 7-4-2002. Therefore, the appellant is duty bound to explain as to how the death of his father was caused. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer. On the date of occurrence, when accused and his father Dashrath were in the house and when the father of the accused was found dead, it was for the accused to offer an explanation as to how his father sustained death of his father, it is a strong circumstance against the accused that he is responsible for the commission of the crime.”

**(Emphasis supplied)**

19. The Apex Court in **(2006) 10 SCC 681 Trimukh Maroti Kirkan vs. State of Maharashtra** held as under :-

“22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of H.P.* [(1972) 2 SCC 80 : 1972 SCC (Cri) 635 : AIR 1972 SC 2077] it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with “khukhri” and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* [(1992) 3 SCC 106 : 1993 SCC (Cri) 435] the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife.”

**(Emphasis supplied)**

20. The *ratio decidendi* of this judgment was again followed by the Supreme Court in **State of Rajasthan vs. Parthu (2007) 12 SCC 754**. The said principle is followed by a Division Bench of this Court in **Mohammad Hussain Ansari (supra)** .



21. The principle flowing from these judgments is that when as per the evidence on record it is established that accused alone was present in the house where incident of murder had taken place, heavy burden lies on his shoulders to give a plausible explanation about the nature and reason of incident. In the instant case, the appellant has merely denied the factum of crime in his statement by saying '*nahi malum*'. In the light of aforesaid judgments, such explanation is not sufficient and mere denial will not cut any ice. Since appellant has miserably failed to show the reason of death of his wife which had taken place inside the house and her bedroom, the Court below in our considered judgment has rightly held appellant as guilty by taking aid of Section 106 of Evidence Act.

22. So far judgment of Supreme Court in the case of **Anant Bhujangrao Kulkarni (supra)** is concerned, suffice is to say that in the factual backdrop of said case, the dead body was not found inside the house of the accused. The accused in the said case was held guilty on the basis of 'last seen theory'. Thus, said judgment cannot be pressed into service in the peculiar factual backdrop of this matter.

23. In view of foregoing analysis, we do not find any infirmity and illegality in the impugned judgment. The Court below has evaluated the evidence and considered the law on permissible parameters. Since, a plausible view is taken by the Court below, interference is declined.

24. Resultantly, the appeal is **dismissed**.

(SUJOY PAUL)  
JUDGE

(PRAKASH CHANDRA GUPTA)  
JUDGE