



2025:AHC:156047-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

Criminal Appeal No. - 2285 of 2013

Arvind Sharma @
Pinku

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Petitioners(s)	: Gulab Chandra,	Ravi
	Shanker Rawet	
Counsel for Respondent(s)	: Govt. Advocate	

Court No. - 47

Reserved On:-18.8.2025
Delivered On:-4.9.2025

HON'BLE SIDDHARTH,J.
HON'BLE SANTOSH RAI,J.

(Per: Hon'ble Santosh Rai,J.)

1. Heard Sri Pradeep Kumar, learned counsel for the appellant; learned AGA for State and perused the material on record.

2. This criminal appeal is preferred under Section 374(2) of Cr.P.C. by the accused appellant Arvind Sharma @ Pinku to set aside the judgment and order dated 22.4.2013, passed by the Special Judge (S.C./S.T. Act)/Additional Sessions Judge, Siddharth Nagar in Sessions Trial No.192 of

2011 (State of U.P. Vs. Arvind Sharma @ Pinku), arising out of Case Crime No.322 of 2011, under Sections 498-A, 304-B IPC and 3/4 D.P. Act, Police Station-Pathara Bazar, District-Siddharth Nagar, whereby the appellant has been sentenced to life imprisonment under Section 302 IPC along with fine of Rs.15,000/- and in default of payment of fine to undergo three months imprisonment.

3. Tersely, the prosecution case is that the informant, who is the father of the deceased gave a written tahrir (Ex.Ka-1) on 26.7.2011 stating that his daughter was got married to Arvind Sharma @ Pinku son of Ramdas Nai 2-3 years ago. Ever since the deceased was being harassed for demand of golden ring and motorcycle as dowry. On 25.7.2011, accused Arvind Sharma @ Pinku alongwith other accused persons caused dowry death by way of committing strangulation to the deceased Anita. On getting the information, informant alongwith family members reached matrimonial home of his deceased daughter.

4. In brief the grounds of appeal are that the trial court after recording the evidence arrived at conclusion that the marriage of deceased Anita was solemnized with the applicant Arvind Sharma without any dowry and the incident took place on 25.7.2011, hence alternative charge was framed under Section 302 I.P.C. on 4.4.2012. Further, in a murder case, the burden of proof lies upon the prosecution to establish culpability beyond the reasonable doubt that murder was committed with intention and motive, but the facts and evidence on record do not prove the case against the appellant. The appellant has been sentenced with punishment of life imprisonment and fine Rs.15000/- for offence punishable under Section 302 I.P.C. merely on the

basis of imagination and suspicion. No conviction can be recorded merely on the ground of suspicion and imagination. Although there is no evidence of committing murder against the appellant, even then the impugned punishment order has been recorded by the trial court in an arbitrary manner. The trial court has committed material illegality and irregularity in assessing the evidence on record. It has not properly appreciated evidence available on record. The trial court also omitted to record any finding as to how and under what circumstances and for what reason the murder of Anita Sharma could have been committed. It has also failed to consider that appellant has got no criminal history no motive/intention to commit the alleged offence.

5. The prosecution has produced Satya Prasad PW-1, Smt. Vedmati PW-2, Jagdeo PW-3, Mewa Lal PW-4, Dr. A.K. Jha PW-5, Brij Bihari Singh PW-6, Virendra Kumar Yadav PW-7 in support of its case.

6. In the First Information Report three accused persons namely, Arvind Sharma @ Pinku, Ram Das Sharma, Tara Devi are named. In the above report it has been stated that all the accused persons used to demand golden ring and motorcycle as dowry and due to non-fulfillment of above demand, they started to harass and thereafter committed dowry death of the deceased Anita Sharma. Learned counsel for the accused appellant submits that the trial court has not perused the material evidence available on record. Learned AGA vehemently opposed the above argument and submit that all the accused persons have committed dowry death, cruelty and demand of dowry in furtherance of common intention to all but the trial court has wrongly acquitted the two accused persons Ram Das Sharma, Tara Devi under

sections 498-A, 304-B IPC, Section 4 D.P. Act and alternative charge under section 302/34 IPC. He further submits that all the accused persons have committed the 'murder of the deceased'. The medical report supports the prosecution version. The cause of death is strangulation, which is clearly proved by the prosecution evidence.

7. PW-1 and PW-2 are father and mother of the deceased Anita Sharma. They stated in their statement before the court that all the accused persons used to demand golden ring and motorcycle in dowry and due to non-fulfillment of their illegal demand, they committed dowry death. In cross-examination PW-1 and PW-2 admitted that marriage of the deceased was solemnized 'without any dowry'. Deceased Anita used to tell regarding demand of dowry and committing cruelty whenever she came to her matrimonial house. Thus PW-1 and PW-2 are not the eye-witnesses of the fact of the demand of dowry, cruelty or dowry death. Their statements regarding the cruelty and demand of dowry are based upon the statement of deceased Anita Sharma which comes within the preview of "hearsay evidence" hence not admissible in evidence as per the provisions of law. Learned trial court rightly acquitted the accused persons Ram Das Sharma and Tara Devi on the basis of evidence and the fact that they were not present at the spot at the time of occurrence. PW-3 Jagdeo and PW-4 Mewa Lal reached at the place of occurrence upon receiving the information from the village of in-laws of the deceased (Anita Sharma). As they reached on spot and found that there was a ligature mark around the neck, having blackish in colour of deceased. The accused persons informed that she died due

to 'vomiting and diarrhea' and thereafter they ran away from the spot.

8. The First Information Report was registered by the informant who is the father of the deceased Anita. He stated before the court that the information of the incident was not provided by Arvind Sharma @ Pinku, who is the husband of the deceased or any other two accused persons namely, Ram Das Sharma and Tara Devi. As per the prosecution evidence the time of occurrence is about 2:00 PM on 25.7.2011. The possible time of occurrence is also corroborated with the medical evidence/postmortem report, which has been conducted by PW-5 Dr. A.K. Jha.

9. It is admitted fact that the deceased Anita died within seven years of marriage in unnatural circumstances. For the purpose to be held guilty under section 304-B IPC, it requires to prove unnatural death within seven years of marriage, demand of dowry, cruelty and harassment committed soon before her death. The essential ingredients which has to be proved by the prosecution is demand of dowry and harassment 'soon before death'. There is no cogent or reliable material evidence regarding the fact of demand of dowry and harassment 'soon before her death' that is why learned trial court has rightly acquitted the accused persons under section 304-B IPC and Section 4 of D.P. Act. Since the deceased Anita died in unnatural circumstances inside the house of the accused appellant Arvind Sharma @ Pinku son of Ram Das. The place of occurrence shown by the Investigating Officer during the course of investigation is a 'room of the house' of the accused appellant. The fact that the death was occurred inside the room is not disputed anywhere. Thus if any

incident occurred inside the house in a secrecy, burden lies upon the accused to explain the circumstance in which death has occurred in unnatural circumstance.

10. Thus, it is pertinent to mention here the principles laid down by the Supreme court in the case of **Balvir Singh Vs. State of Uttarakhand (2023) 16 SCC 575** in the light of Section 106 of the Indian Evidence Act, 1872 which are extracted hereinafter:-

"34. Section 106 of the Evidence Act, 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.

35. 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".

39. In Trimukh Maroti Kirkan v. State of Maharashtra [Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80], this Court was considering a similar case of homicidal death in the confines of the house. The following observations are considered relevant in the facts of the present case : (SCC pp. 690-91 & 694, paras 14-15 & 22)

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as

noticed above, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions 1944 AC 315 (HL)) — quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh [State of Punjab v. Karnail Singh, (2003) 11 SCC 271 : 2004 SCC (Cri) 135] .) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:-

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

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a 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 an accused to offer any explanation.

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."

(emphasis supplied)

51. To explain what constitutes a prima facie case to make Section 106 of the Evidence Act applicable, we should refer to the decision of this Court in Mir Mohammad [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] , wherein this Court has observed in paras 36 and 37, respectively, as under : (SCC p. 393)

"36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

37. The section is not 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 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."

(emphasis supplied)

11. When any act is especially within the knowledge of a person, the burden of proving that fact is upon him. Section 106 of the Indian Evidence Act, 1872 applies only to the parties to a suit or proceeding. Section 106 Indian Evidence Act, 1872 is an exception to Section 101 of the Indian Evidence Act, 1872. It is designed to meet certain exceptional cases in which it would be impossible or very difficult for the prosecution to establish facts which are especially in the knowledge of the accused. **In Anees Vs. State of Govt. of NCT 2024 SCC OnLine SC 757**, the Supreme Court held as under:-

"37. In Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404, this Court while considering the word "especially" employed in Section 106 of the Evidence Act speaking through Vivian Bose, J., observed as under:-

"11. ... The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.

It is evident that cannot be the intention & the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. The King, AIR 1936 PC 169 (AIR V 23) (A) and Seneviratne v. R. [1936] 3 All ER 36 AT P. 49 (B)."

38. The aforesaid decision of Shambhu Nath (supra) has been referred to and relied upon in Nagendra Sah v. State of Bihar, (2021) 10 SCC 725, wherein this Court observed 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."

(Emphasis supplied)

43. Thus, from the aforesaid decisions of this Court, it is evident that 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.

44. Section 106 of the Evidence Act 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.

45. Section 106 of the Evidence Act 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. 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."

(Emphasis supplied)

12. In this case, as per the medical report/post mortem report, following injury has been found on the body of the deceased:-

‘Only one injury of legature mark encircling the whole neck was found. **The cause of death was asphyxia due to antemortem strangulation.**’

13. PW-5 Dr. A.K. Jha, examined before the trial court, he opined that most of the vital parts were congested and the ligature mark ‘around the neck’ was found having bluish in colour which is about 6 centimetre from the mandible having the length of 35 centimetre. He further opined that the cause of death was asphyxia due to antemortem strangulation. PW-5 Dr. Jha has not opined that the death of the deceased Anita may be accidental or suicidal only. The length and the nature of the ligature mark proved the fact that the strangulation on the neck was caused due to use of external force by someone.

14. In **Ponusamy v. State of Tamil Nadu AIR 2008 SC 2110**, no fractured hyoid bone was noticed. So it was evident that the deceased did not die of strangulation which was the positive case of the prosecution. Absence of fracture on the hyoid bone itself would not lead to the conclusion that the deceased did not die of strangulation, as medical jurisprudence suggests that only in a fraction of such cases, a fracture of hvoid bone is found. While the amount of force in manual strangulation would often appear to be greatly in excess of that required to cause of such force, as injuries, make it unusual to find fractures of the hyoid bone in a person under the age of 40 years.

15. In the Journal of Forensic Sciences Volume 41 under the Title - Fracture of the Hyoid Bone in Strangulation:

Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated:-

The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, post-mortem detection of hyoid fracture is relevant to the diagnosis of strangulation. However, since many cases lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument (ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone.

16. In Narendra vs. State of Karnataka, AIR 2009 SC 1881 the judgment of a Division Bench of the Karnataka High Court setting aside the judgment of acquittal of the accused appellant by the trial court holding accused liable under Sections 498A and 302 IPC. The trial court had held that the evidence of 6 to 8 prosecution witnesses regarding pressing mark on the neck and injuries on the fore arms of the deceased are not corroborated by the medical opinion. This is factually incorrect. The doctor had categorically stated that he was of the opinion that death was due to result of compression of the neck, and that post-mortem report was accordingly issued. The falsity of alibi is an additional link.

17. In Trimukh Maroti Kirkan v State of Maharashtra (2006) 10 SCC 681, in which it has been noted that:

"The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the Courts where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against other family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonise a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it

does not mean that a crime committed in secrecy or inside the house should go unpunished."

18. Thus, on the basis of medical evidence/PMR it proves that death of the deceased Anita was not accidental or suicidal but homicidal though the hyoid bone was not fractured. When the offence like murder is committed inside the house by the family members, the conduct and behaviour of the family members/accused persons becomes very relevant. The fact has been proved by the prosecution that the appellant Arvind Sharma @ Pinku, who is the husband of the deceased and present on the spot had moral and legal responsibility to protect his wife deceased Anita.

19. The accused appellant did not inform the incident to the father, mother or family members of the deceased. The information of the incident was given by someone unknown from the village of the accused appellant. Accused appellant Arvind informed the father, mother and other relatives of the deceased, when they reached on the spot after hearing the incident that the deceased died due to 'vomiting and diarrhea' which was false information. When the relatives of the deceased knew the fact regarding nature of injury of ligature mark on the neck, accused Arvind Sharma @ Pinku ran away from the spot. As per the statement of the investigating officer before the court, he was arrested during course of investigation at a different place from the residence. The accused person or any other family member of the accused is not the witness of the inquest. All these facts prove that the conduct of accused appellant was also not bonafide, which is relevant under section 8 of the Indian Evidence Act, 1872.

20. Thus, from the aforesaid observations and the principles laid down by the Supreme Court in this regard, it is evident that the courts should apply the principle under section 106 of the Indian Evidence Act, 1872 with care and caution. It cannot be invoked to make up the inability of the prosecution to produce evidence of circumstance pointing to the guilty of the accused. This section cannot be used to support the conviction, unless prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from duty of providing that a crime was committed, even though it is beyond the material especially within the knowledge of the accused and it cannot throw the burden on the accused to show that no crime was committed to prove the guilty of the accused from absence of reasonable explanation where the other circumstances are not by themselves enough to call for explanation is to the prosecution on its legitimate burden. In this case, we find that the offences took place inside the house, particularly in a 'room'. The accused appellant was living alongwith the deceased, no 'plea of alibi' or separate living has been pleaded. There is no any reliable evidence of 'plea of alibi' of appellant. The deceased Anita died within seven years of marriage in an unnatural circumstance. The conduct and behaviour of the accused appellant is 'wholly' doubtful. The accused appellant has not informed the family members or parents about the real cause of death of deceased and provided the false information about the cause of death as vomiting and diarrhea. The dubious conduct of the accused alongwith fleeing away from the home leaving behind his wife creates a doubt upon the conduct of the accused appellant. The

accused appellant Arvind Sharma @ Pinku has not duly explained the circumstance at the time of examination under section 313 Cr.P.C. before the trial court but he generally denied the questions in a very casual and simple manner. The accused appellant maintained complete silence on the part of root cause of death which occurred unnaturally inside his house.

21. Thus, considering all the facts and circumstances and the evidence available on record, the trial court has rightly held the accused Arvind Sharma @ Pinku guilty under section 302 IPC and acquitted the other accused persons Arvind Sharma, Ram Das and Tara Devi under sections 498-A, 304-B IPC and alternative charge 302 IPC and Section 4 D.P. Act.

22. Thus, the trial court has meticulously appreciated the entire evidence and applied the settled principle of law before recording the finding of guilt. We find ourselves in full agreement with the reasoning and conclusion arrived at by the trial court. No material contradictions or circumstance has been brought on record by the appellant to cast a reasonable doubt on the prosecution version. The trial court's appreciation of evidence is sound and its conclusion is well supported by laws and facts. Consequently, we find no illegality or perversity in the judgment under appeal warranting interference by this Court.

23. Accordingly, the appeal is dismissed, and the judgment of conviction and sentence dated 22.4.2013 passed by the Special Judge (S.C./S.T. Act)/Additional Sessions Judge, Siddharth Nagar in Sessions Trial No.192 of 2011 (State of U.P. Vs. Arvind Sharma @ Pinku), arising out of Case Crime No.322 of 2011 is confirmed.

24. The appellant, if on bail, his bail bonds stands cancelled. He shall surrender to custody forthwith to serve the remaining part of the sentence, as per law.

(Santosh Rai,J.) (Siddharth,J.)

September 4, 2025
RA