



2026:AHC:211988-DB

AFR
Reserved on 28.09.2026
Delivered on 09.10.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1081 of 2017

Smt. Madhu

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Madan Singh, Mohd. Kamar Shah Alam, Pushpendra Singh, Sanjay Singh, Shreesh Srivastava, Siddharth Agrawal, Vishnu Kumar
Counsel for Respondent(s)	: G.A.

Court No. - 44

HON'BLE MANOJ BAJAJ, J.
HON'BLE HARVIR SINGH, J.

1. Appellant namely, Smt. Madhu is aggrieved against the judgment of conviction and order of sentence dated 26.08.2015 passed by the Additional Sessions Judge, Court No. 3, Moradabad in Sessions Trial No. 1268 of 2012, titled *State vs. Smt. Madhu*, arising out of Case Crime No. 653 of 2012, registered at Police Station-Civil Lines, District-Moradabad, whereby she has been convicted under Sections 302 and 328 I.P.C. and sentenced to seven years simple imprisonment under Section 328 I.P.C. alongwith a fine of Rs. 5,000/- and life imprisonment under Section 302 I.P.C. alongwith a fine of Rs. 25,000/-. In the event of default in payment of fine, she has been ordered to undergo further

imprisonment of three months and one year, respectively. The sentences have been ordered to run concurrently.

2. Briefly, the facts leading to the appeal are that a written complaint dated 22.09.2012 was given by complainant-Baburam, son of Sundar Lal to the Station House Officer, Civil Lines, Moradabad wherein he alleged that he was married with Madhu, daughter of Rameshwar Dayal approximately ten years back and from this wedlock three sons, namely, Abhishek (9 years), Guddu (7 years) and Sooraj (5 years) were born. His relations with wife ended five years back, because her character was allegedly bad from the beginning and she had illicit relations with many persons in Moradabad. Complainant's elder son, Abhishek informed him on phone that many visitors come to his mother, and she is willing to marry someone and when he objects, she gives beating to all the three brothers. Today, on 22.09.2012, I came to know that Madhu has murdered his three sons by administering intoxicated and poisonous substance, because his sons were hurdle in her re-marriage, therefore, she eliminated them. He requested for taking legal action. On these allegations, the FIR being Case Crime No. 653 of 2012, under Sections 302 and 328 I.P.C. was registered at Police Station-Civil Lines, District-Moradabad.

3. The investigation in the case was conducted by Investigating Officer namely, Satish Kumar, Station House Officer, Police Station-Civil Lines, Moradabad, who prepared the check FIR on the basis of the written complaint submitted by complainant-Baburam and recorded the statements of witnesses, namely, Harish Kumar (P.W.-2), Pawan Kumar (brother of accused-appellant) and other material witnesses and collected the documentary evidence like inquest report, postmortem report. During the course of investigation, the place of occurrence was inspected and recoveries of incriminating material were effected and the site plan was also prepared. After completion of investigation, the charge sheet was filed against the accused-Madhu under Section 173(2) Cr.P.C. on

18.11.2012, thereby sending her to face prosecution for commission of offences punishable under Sections 302 and 328 I.P.C.

4. Thereafter, the case was committed to the Court of Additional Sessions Judge, Moradabad on 13.12.2012 and vide order dated 18.04.2013 the charges against the accused were framed for alleged commission of offences punishable under Sections 302 and 328 I.P.C. The appellant-accused pleaded not guilty and claimed trial.

5. In order to prove the guilt of the accused, the prosecution had examined seven witnesses namely, Baburam (P.W.-1/complainant), Harish Kumar (P.W.-2), Dr. Shiv Singh (P.W.-3), Head Moharrir Chanchal Sirohi (P.W.-4), Prateek Rastogi (P.W.-5), Inspector Adarsh Tyagi (P.W.-6) and Satish Kumar, SO (P.W.-7). Besides, the prosecution also adduced documentary evidence i.e. written complaint (Exb.Ka-1), postmortem report of deceased children (Exb.Ka-2 to Ka-4), check FIR (Exb.Ka-5), G.D. Entry (Exb. Ka-6), inquest reports of deceased (Exb.Ka-7 to Ka-9), documents for forwarding the dead bodies for postmortem (Exb. Ka-10, Ka-11, Ka-16, Ka-17, Ka-22 & Ka-23), photographs of deceased alongwith respective specimen seal and police reports (Exb. Ka-12 to Ka-27), charge sheet (Exb. Ka-28), site plan with index (Exb. Ka-29 & 30), recovery memo of empty plastic box (Exb. Ka-31), Call Detail Records of Madhu and Prateek Rastogi (Exb. Ka-32 & 33), forensic sciences laboratory reports (Exb. Ka-34 to 37), G.D. Entries (Exb. Ka-38 & 39) and police report (Exb. Ka-40).

6. After completion of the prosecution evidence, the statement of accused-appellant was recorded under Section 313 Cr.P.C. on 21.07.2015, who denied the prosecution evidence and pleaded false implication. However, no defence evidence was adduced by the accused person.

7. Upon analyzing the prosecution case, evidence and other material on record, the trial court proceeded to convict the appellant-accused

under Sections 302 and 328 I.P.C. and awarded the substantive sentence of life imprisonment alongwith fine, as noticed above. Aggrieved against the judgment of conviction and order of sentence dated 26.08.2015, the appellant preferred this appeal.

8. Ms. Sameeksha Chadda, learned counsel for the appellant has argued that entire case of prosecution is founded upon circumstantial evidence and the alleged unnatural death of her three children came to the notice of the police on 18.09.2012, on an information given by appellant's brother, namely, Pawan Kumar, son of Ramesh and at that stage, no FIR was registered. Learned counsel has further argued that according to complainant himself, his relations with the appellant-wife had ended five years back and ever since then, they were residing in different cities, and the FIR was registered on the written complaint given by him, who alleged the commission of offence of murder by Madhu. Learned counsel submits that after separation, there is no litigation between the couple relating to the matrimonial dispute and the appellant had been bringing up all the three children single-handedly by doing labour work, who was residing in the house of her mother Kanta, where appellant's brother Pawan Kumar along with wife Manju was also residing.

9. Learned counsel for the appellant further submitted that on 23.09.2012, accused Madhu was arrested and on the basis of her disclosure statement, recovery of plastic box was effected, which allegedly contained the poison, and was administered to the children, but regarding plastic box, there is no scientific report on record to prove, that it contained poison. According to learned counsel, the other three items i.e., food (*roti* and *sabzi*), cooking oil and milk, recovered during investigation were sent to the Forensic Sciences Laboratory, Agra on 24.09.2012, and as per report (Exb. Ka-36) poison was detected in only item no. 1-food (*roti* and *sabzi*), therefore, the FSL reports are contrary to the postmortem reports of the children dated 18.09.2012 (Exb. Ka-2 to 4), which does not suggest, that the children had consumed food/dinner

on 17.09.2012 before their death. Learned counsel for the appellant argued that the evidence adduced by the prosecution is self-contradictory and the trial court ignored the same, while convicting the appellant through the impugned judgement.

10. Learned counsel for the appellant has drawn the attention of the Court to the testimony of P.W.-5 Prateek Rastogi and argued that, though, this witness claimed himself to be the friend of appellant with whom she had been roaming around, but except for his own statement, the version of P.W.-5 is not corroborated by any evidence much less the call detail records relied upon by the Investigating Officer, Satish Kumar (P.W.-7). She has referred to the statement/explanation of the accused recorded under Section 313 Cr.P.C. to argue that the accused specifically denied the prosecution evidence of her alleged acquaintance with Prateek Rastogi (P.W.-5), and specifically pleaded, that as her brother Pawan and his wife Manju carried bitterness in their heart against her, therefore, she was falsely implicated, but the same was wrongly brushed aside by trial court.

11. Learned counsel for the appellant has argued that the case of the prosecution is full of doubts and the charges against the appellant have not been established beyond doubt, therefore, the impugned judgement of conviction and order of sentence dated 26.08.2015, are not sustainable. She prays that the same be set aside and the appellant be acquitted of the charges.

12. On the other hand, Mr. Sanjay Singh, learned A.G.A.-I has opposed the prayer, and argued that the appellant had separated from her husband, complainant-Baburam, and she wanted to perform second marriage, therefore, she had the motive to commit the crime, as her three children were construed as an obstacle for the second marriage. He submits that the three dead bodies were found on the first floor of the house, where accused Madhu was residing, therefore, the facts of the case itself strongly suggest towards her involvement in commission of

crime. Learned State counsel has argued, that the testimony of Prateek Rastogi (P.W.-5), also strengthens the case of the prosecution, as according to this witness, Madhu was involved with him without divorcing her husband Baburam and elder son, Abhishek had also informed his father about the conduct of Madhu. Learned State counsel has argued that pursuant to the disclosure statement suffered by the accused, relevant recoveries were effected and the prosecution case is well supported by the scientific evidence, as well as the medical evidence.

13. Learned State counsel submits that no doubt, in the initial information given by Pawan Kumar, no suspicion against his sister Madhu, was expressed by him, but later his statement under Section 161 Cr.P.C. (case diary pg. no. 29A/14) was recorded, wherein he clearly mentioned that his sister committed the crime. However, it is fairly stated by learned State counsel that the said prosecution witness was not examined during trial, as he was not traceable. Learned State counsel has drawn the attention of the Court to the statement of C.W.-1 Constable 1451 Dharamveer Saxena, to point out that, Pawan Kumar had sold the property and had shifted somewhere else. Learned State counsel has argued that the trial court has carefully analyzed the prosecution evidence, while convicting the appellant and the judgment does not suffer from any illegality, therefore, he prays that appeal be dismissed.

14. We have heard Ms. Sameeksha Chadda, learned counsel for the appellant as well as Mr. Sanjay Singh, learned A.G.A.-I and with their assistance, case file and the trial court record has been perused carefully.

15. Three unfortunate minor brothers, namely, Abhishek (9 years), Guddu (7 years) and Sooraj (5 years), after separation of their parents had been living for the past five years away from their father-Baburam (P.W.-1), by taking shelter alongwith their mother (appellant) in her parental house. On 18.09.2012, the three brothers were found dead around 7:30 A.M. and information was given to the police at around 9:15

A.M. by Pawan Kumar, brother of the appellant. On the same day, the inquest proceedings were conducted and neither any apparent cause of death was disclosed nor any injury on any of the deceased was found. The respective inquest reports Exb. Ka-7 to Ka-9 were proved by P.W.-6 Inspector Adarsh Tyagi. As per the site plan (Exb. Ka 29) the dead bodies were found on a double bed in a room situated at the first floor. Thereafter, the postmortem of the dead bodies was conducted. As per the postmortem report of Abhishek dated 18.09.2012 (Exb. Ka-2), his stomach was empty and three ante mortem injuries in the form of abrasions were found on his body, which are extracted below:-

- “1. Abrasion 1 cm x 0.5 cm present on left side of nose.*
- 2. Abrasion 0.5 cm x 0.2 cm in size present on right side of nose.*
- 3. Abrasion 0.5 cm x 0.1 cm present on left cheek.”*

Similarly, the postmortem report of Guddu (Exb. Ka-3) reflects one ante mortem injury, which is as under:-

- “1. Contusion 4 cm x 2.5 cm in size present on right side of face, 1.5 cm below right lower eye lid.”*

The postmortem report of Sooraj (Exb. Ka-4) also reflects one ante mortem injury, which is as under:-

- “1. Abrasion 0.5 cm x 0.1 cm in size present on right side of neck, 1 cm below lobule of right ear.”*

The stomachs of Guddu and Sooraj contained 25 ml and 30 ml of white liquid material, respectively. The postmortem reports (Exb. Ka-2 to Ka-4) were proved by Dr. Shiv Singh (P.W.-3).

16. Formal FIR in the case bearing Case Crime No. 653 of 2012 under Sections 328 and 302 IPC was registered on 22.09.2012, on the basis of a written complaint by Baburam, father of the deceased-children, who alleged that he was married to Madhu ten years back and three children were born from this wedlock, but his relations with wife ended five years back, as she was not having good character, and had illicit relations with

many persons in Moradabad. The father claimed that his elder son Abhishek informed him telephonically that many person come to meet his mother and she is interested to perform second marriage with someone. He further alleged that Madhu murdered the three children, who were a hurdle in her proposed marriage.

17. On next day i.e. 23.09.2012, Madhu was arrested by police and on the basis of her disclosure statement (Exb. Ka-31), an empty plastic box kept behind the fridge on the first floor of the house of her mother, namely, Kanta, was recovered, and the accused stated that the poisonous powder was contained in it, which was administered to the children by mixing in food.

18. The prosecution has also relied upon the FSL reports (Exb. Ka-34 to 37) and as per these reports, three food samples i.e. (i) *roti and sabzi*; (ii) *wheatish liquid oil*; and (iii) *white colour liquid (milk)*, were sent for forensic analysis on 24.09.2012 and the report dated 06.02.2013 reveals that item no. (i) *roti and sabzi* contained poison, whereas no poison was found in the rest of the liquid materials. The other three FSL reports (Exb. Ka-35, 36, 37) confirmed presence of aluminum phosphide in the five parts of viscera.

19. We find that the entire case of the prosecution is founded on circumstantial evidence and though according to inquest report no apparent cause of death was noticed when the dead bodies of three brothers were found, but it is the specific stand of Investigating Officer (P.W.-7) that on 18.09.2012, three recoveries of food items were also made by Sub Inspector, Adarsh Tyagi in his presence, which were sent for forensic analysis. But strangely, no FIR was registered by police on 18.09.2012, despite police had suspected foul play in the unnatural death of three children. The FIR was registered on 23.09.2012 when a written complaint was given by the father of the deceased children, who is a resident of Bareilly.

20. After arrest of Madhu only, an empty plastic box was recovered and the same was not sent for forensic analysis, because according to the disclosure statement of Madhu, the said box was washed by her. Though, as per the deposition of Investigation Officer (P.W.-7) on 18.09.2012 after completion of inquest proceedings Sub Inspector, Adarsh Tyagi also collected samples of *roti* and *sabzi*, liquid oil and milk, but there is no such recovery memo prepared by police on the said date. The GD entry 26 dated 18.09.2012, only refers to the deposit of these three food items in the police station and then forwarding the same to the FSL, Agra.

21. Thus, the prosecution evidence is absolutely silent to reveal that, from where and on whose disclosure or statement, these food articles were recovered by Adarsh Tyagi (P.W.-6). Likewise, prosecution evidence has not established that the same food mixed with poison was administered to the brothers in the house, where they were found dead. Further, the nature of the vegetable collected is without any particulars, and also, there is no explanation for sending these samples for scientific analysis on 24.09.2012 after a gap of six days from alleged recovery.

22. We have already noticed that, there is no recovery of poison and the sole evidence of recovery of empty box is not enough to prove that the accused mixed the poison in *roti* and *sabzi* to administer to her children, as even her presence in the house is not proved by the prosecution. Most importantly, the deposition of SI Adarsh Tyagi (P.W.-6) does not mention at all about the recovery of food articles and place of recovery. Therefore, this is a serious lapse in the prosecution case, as it is not proved convincingly that the three food items were recovered from the house of the accused and administered to the children.

23. As per the FSL report (Exb. Ka-34) dated 06.02.2013 poison was detected only in *roti* and *sabzi*, whereas the other two items i.e. oil and milk were found poison free, but the postmortem reports of all the three deceased-children clearly show, that no food was found in the stomach

of the three children, and only white liquid material was detected in the stomach of Guddu and Sooraj. Consequently, even if, it is assumed that it was milk, the FSL report (Exb. Ka-34), would not prove the administration of poison to the children through milk.

24. Now, upon examining the testimony of complainant (P.W.-1), we find that, there is nothing on record much less in the form of evidence, that after the separation of complainant and his wife, they were in contact with each other in any manner, as concededly, no litigation of any kind relating to their matrimonial dispute ever commenced between them. The suspicion expressed by the father-complainant that his wife was a lady of easy virtue is a bald allegation and no admissible evidence in this regard has been adduced by the prosecution or complainant (P.W.-1). Similar is the statement of Harish Kumar (P.W.-2), brother of P.W.-1. The stand of the complainant, that his elder son, Abhishek, used to tell him on telephone about her mother, is not worth acceptance, particularly when the complainant was neither in touch with the children, nor ever maintained them or his wife. The eldest child Abhishek was 9 years when he died, therefore, at the time of separation he was only 4 years old. Thus, in the absence of any admissible evidence the statement of P.W.-1 and P.W.-2 are not sufficient to prove the alleged character of the accused.

25. Although, the prosecution has also heavily relied upon the evidence of P.W.-5, Prateek Rastogi, who appeared before the trial court to depose, that he had close relations with Madhu, however, for lack of corroboration, we find that his testimony also does not inspire confidence. As per this witness, he came to learn that Madhu has relations with others as well, but later she had assured him that she would not have relations with anyone except him, and he was also not aware of her marital status and three children. P.W.-5 claimed that on 17.09.2012, he and Madhu went to Sambhal for fun, and after return, they went to their houses and lastly, he spoke with her around 12:30 midnight. According to P.W.-5, he could not contact Madhu on

18.09.2012 and 19.09.2012, who telephonically informed him, that three children were of her sister, but on his visit to the street, where Madhu resided, he came to know from the neighbours that, she was mother of three deceased children. According to this witness, she was a lady of bad character, who killed her children, only to claim herself as a single and unmarried lady.

26. A careful analysis of the testimony of P.W.-5 would show that the witness has not mentioned that, since when he was in contact with Madhu, and he, in cross-examination conceded that he never visited her house, therefore, is unaware about her other family members. If we examine the statement of P.W.-5 in the context of motive narrated by her husband-complainant, Baburam, it would suggest that, if, she wanted to perform second marriage, the witness Prateek Rastogi (P.W.-5), ought to have been associated in investigation to explore his role as an accomplice, but that was never done by the Investigating Officer. Most importantly, the alleged mobile conversation claimed by Prateek Rastogi with Madhu is not at all proved by prosecution in any manner, much less by producing the record of their respective mobile phones. On the contrary, P.W.-7-Investigating Officer in his cross-examination admitted, that he did not recover any love letter or any other witness of their affair. The Investigating Officer (P.W.-7) further admitted that he did not collect any evidence, that the alleged respective mobile phones used by P.W.-5 and Madhu, were in their names, as the said mobile phones were registered in the name of some other persons.

27. At this stage, we deem it appropriate to notice the conduct of Pawan Kumar, brother of Madhu, who informed the police on 18.09.2012 about the mysterious death of three children in his house, but at that stage, he never suspected anything against his own sister, and only during investigation his another statement under Section 161 Cr.P.C. was recorded through GD entry no. 29A/40, wherein he also doubted about the character of his sister. However, during trial, he did not appear as a prosecution witness, and instead C.W.-1 Constable

Dharamveer Saxena was examined, who stated that after selling the house whereabouts of Pawan Kumar are not known.

28. Of course, Section 106 Indian Evidence Act, 1872 contemplates that if any fact is especially within the knowledge of any person, the burden of proving that fact is upon the said person, but this provision would not absolve the prosecution from discharging the initial onus to establish the charges against the accused by proving the relevant facts indicating involvement of the accused in commission of crime. Here, it would be useful to refer to the decision of Supreme Court in ***Tulsiram Sahadu Suryawanshi and Anr. vs. State of Maharashtra***¹, wherein the Supreme Court observed as under:-

“23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Courts shall have regard to the common course of natural events, human conduct etc in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. We make it clear that this Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it 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)

29. Again, the Hon’ble Supreme Court in the case of ***Anees vs. The State Govt. of NCT***², held as under:-

“40. 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

1 (2012) 10 SCC 373.

2 2024 INSC 368.

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.”

30. At this juncture, we deem it appropriate to note the explanation of the accused recorded under Section 313 Cr.P.C., wherein she denied the prosecution evidence and pleaded false implication. She further explained that her brother, Pawan and his wife, Manju had performed love marriage, who were carrying bitterness against her. The accused further stated that the couple after the incident, absconded and never appeared for recording the statement in trial. We are mindful, that the prosecution has not disputed the separation of accused with her husband five years back and ever since then the lady with her three children came to reside with her brother and his wife, therefore, considering the background of the case particularly the conduct of appellant's brother, the explanation of the accused cannot be rejected as improbable.

31. Concededly, it is the case of the prosecution that the house, where the dead bodies of siblings were found was not in exclusive possession of the accused alone, as her mother alongwith son and daughter-in-law were already residing therein, when the accused alongwith her three children came to reside with them after leaving the company of complainant. Apparently, there are vaccums in the prosecution case resulting in failure to discharge the initial onus of proving the guilt of the accused, therefore, it would be improper to seek explanation from the accused by shifting the burden upon her under Section 106 Indian Evidence Act, 1872, as in other words, it would amount to asking the accused to prove her innocence.

32. Thus, in view of the above discussion, we conclude that the prosecution evidence has left loose ends in the case and serious doubts erupt from the prosecution evidence itself. By now, it is well settled law that, where the prosecution case is based on circumstantial evidence, it is the duty of the prosecution to lead cogent, trustworthy and credible

evidence to complete the chain of events to connect the accused with the crime. The prosecution evidence not only should be consistent to the guilt of the accused, but if, examined conversely, it should be inconsistent to the innocence of the accused as well. In case, these two essentials are missing, the entire case of the prosecution becomes doubtful.

33. We, on perusal of the impugned judgment of conviction and order of sentence dated 26.08.2015 find that the trial court has failed to appreciate the prosecution evidence in a proper manner by ignoring the serious discrepancies and contradictions in the prosecution case, therefore, it would be unsafe to maintain the conviction of the appellant. As a result, in the facts, circumstances and evidence on record, we have no hesitation in holding that the prosecution evidence falls short of the required standards of proving guilt of the accused beyond doubt, therefore, we are compelled to extend the benefit of doubt to the accused-appellant.

34. Resultantly, the appeal succeeds and the impugned judgment of conviction and order of sentence dated 26.08.2015 are hereby set aside, and the appellant-Smt. Madhu is acquitted of all the charges. The accused-appellant is in jail since her arrest on 23.09.2012, who shall be set free immediately, if, not required in any other offence/case.

35. The appeal is allowed. Record and proceedings be remitted back to the trial court forthwith.

(Harvir Singh,J.) (Manoj Bajaj,J.)

October 9, 2026

Kirti