



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.276/2025 IN
CRIMINAL APPEAL NO. 147/2025

Ramdinesh Ramlachhan Mishra (In Jail) .vs. State of Maharashtra thr. PSO P.S.
Ambajhari , Nagpur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. S. Das, Advocate for applicant.
Mr. K. R. Lule, A.P.P. for non applicant – State.

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.

DATE : NOVEMBER 3, 2025

Sessions Court, Nagpur, vide judgment dated 24.03.2023 has convicted appellant-original accused, for the offence punishable under Section 302 of the Indian Penal Code, 1860 and sentenced him to undergo life imprisonment. Being aggrieved, the appellant has preferred the appeal and is seeking suspension of sentence.

2. The appellant carries a blame of eliminating his own wife. He suspected her character and even lodged report with police on 09.12.2017 saying that she is having illicit relations with his younger brother.

3. The offence was committed on 17.05.2018 i.e. within five months of lodging the report.

4. The appellant and his wife were residing on first floor in the building namely, 'Yadav Bhavan'. The building is situated at Pandhrabodi, Nagpur. The premises was owned by one Mr. Sadhu Patel. The appellant and his wife were residing as tenant. On 17.05.2018, the appellant's neighbour lodged report with Police Station, stating that the appellant committed murder of his wife on suspicion of her character. The police visited the premises. They found that the body was lying in pool of blood in the premises. The

police prepared spot cum seizure panchanama thereby making seizure of two sharp knives, bed-sheet having blood stains, blood soaked mud, mud, pieces of flooring tiles.

5. The case of prosecution is based on circumstantial evidence. The Trial Court, by referring to evidence of PW4, opined that the appellant and his wife were residing on the first floor of the building owned by PW4 and that this fact has been not impeached in the cross-examination. In fact, the said fact appears to be not disputed by the appellant. The Trial Court further held that it is not even the defence of the appellant that he was, at the relevant time, not available in the aforesaid house.

6. The Trial Court then considered the entire evidence and noted following circumstances to render a finding that the chain of evidence has been completed.

“a) The accused and deceased being husband and wife are residing on the relevant day and time of incident in the tenanted residential house at first floor at Sidhu Patel's house at Yadav Bhavan, Sanjaynagar, Pandhrabodi, Nagpur which is the spot of incident.

b) The body of deceased was found in blood pool in the house which is spot of incident.

c) Two knives were found having human blood stains on the spot.

d) Articles I.e. cloth piece bed-sheet were stained with human blood which are seized from the spot of incident.

e) Spot of incident is within the house of accused where he was residing with deceased.

f) Clothes of accused seized from him are found stained with human blood of blood group-B which is the blood group of deceased.

g) CA reports which reflected blood of human origin on two knives and blood stains of blood group-B on the clothes of accused,

h) Purchase of two knives by accused from the Guptaji Kadhai Jharewala shop which are used as weapon of crime,

- i) Postmortem report and deposition of doctor proving 19 injuries which consists of incised wound and chopped wounds mentioned in column No.17 alongwith internal injuries mentioned in column No.20, 21 and 22 found on the vital organs of deceased and are sufficient in ordinary course of nature to cause death and also proving cause of death as injuries to vital organs of deceased.*
- j) Opinion of doctor on weapon query stating that injuries found on the person of deceased can be possible by the weapons recovered from the house of accused,*
- k) Strain relations due to suspicion on character of deceased between accused and deceased and due to this reason ill-treatment, harassment of deceased by accused by making quarrel, giving abuses and assault on her prior to incident of crime and due to suspicion on character lodging of complaint by accused against deceased and his younger brother prior to incident which clearly pointing towards the intention on the part of accused to commit crime and towards motive of crime.*
- l) Failure on the part of accused to offer any explanation muchless plausible, cogent explanation regarding the body of deceased found in blood pool in the house of deceased and about the incident, his absence from the spot at the time of incident and two knives and blood stained articles seized from the house of accused.*
- m) Unnatural and homicidal death of deceased in the house where accused was residing,*
- n) Failure on the part of accused to offer any explanation in view of Section 106 of Indian Evidence Act after discharging the initial burden provides additional, vital link as prosecution discharges their initial burden.”*

7. As could be seen, the prosecution has established that the appellant and his wife were residing in the tenanted house. The body of appellant's wife was found in pool of blood in the tenanted house. Two knives with human blood have been recovered from the spot. Clothes of appellant were stained with blood having blood group 'B', which is blood group of his wife. The blood group of the blood found on the weapon was also of group 'B'. Most importantly, the prosecution established that the appellant had purchased these two knives just prior to the incident. The motive behind crime was strained relations between the appellant and his wife because of

suspicion of his wife indulging into a relationship with his brother. The Trial Court, after having noted the aforesaid chain of circumstances, placed reliance upon judgment of the Supreme Court on Trimukh Maroti Kirkan Vs. State of Maharashtra [2006 SAR (Cri) 914], wherein, while considering the scope of Section 106 of the Indian Evidence Act, where offence took place in the dwelling home and were appellant therein did not offer any explanation, as in the present case, as to how the deceased received injuries, the Court held thus:

"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 - quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh.) 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.”

8. The Court thus held that where the offence is committed inside the privacy of a house, it will be difficult for the prosecution to lead evidence to establish the guilt of accused, if the strict principle of circumstantial evidence is insisted upon by the courts. The Court further held that in such cases, the burden would be of comparatively lighter character and, therefore, there will be corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. Most importantly, the Court held that the inmates of a 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 any explanation.

9. Prima facie, we find that the prosecution has led evidence, which it was capable of. The complete silence of appellant to offer any explanation will only substantiate the prosecution's version that the appellant is the one who has committed murder.

10. Mr. S. S. Das, learned counsel for the appellant, submits that to attract Section 106 of the Indian Evidence Act, 1872, the prosecution has to first establish that the appellant was in the house at the relevant time. He further submits that apart from the appellant, his daughter was also residing in the house. The prosecution has

neither made her as accused nor is she cited as witness. He placed reliance on judgment of the Supreme Court in **Nagendra Sah vs. State of Bihar [AIROnline 2021 SC 710]**, to submit that in cases based on circumstantial evidence, chain of circumstances is required to be established by the prosecution and if it is not established, failure of accused to discharge the burden under Section 106 of the Evidence Act is not relevant.

11. The aforesaid principle of law is well settled. Here, the Trial Court noted that the appellant's daughter was married and was residing in her matrimonial house. The Trial Court further noted that the defence failed to bring on record through cross-examination or otherwise that at the relevant time she was residing with appellant and his wife. Counsel for appellant could not show to us any evidence to take a contrary view in this regard.

12. So far as burden of prosecution is concerned, in our view and having gone through the evidence, the circumstance noted by the Trial Court in paragraph 50 of its judgment appears to us to be an evidence which is sufficient to shift burden upon the appellant in terms of Section 106 of the Evidence Act. He remained completely silent. Such a silence will become additional link in the chain of circumstances to make it complete. In the circumstance, we find it difficult to suspend the sentence.

13. Further, on the point of suspension of sentence, we may refer to the judgment of the Supreme Court in the case of **Om Prakash Sahni Vs. Jai Shankar Chaudhary and anr. [2023 (6) SCC 123]**, wherein the Court, after taking note of the settled principles of law, held thus:

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in

which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 Cr.PC. and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

14. Thus, the Court is under obligation to see whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which ultimately the convict stands for a fair chance of acquittal. If the answer is in the affirmative, the sentence should be suspended.

15. In the present case, for the reasons stated above, we do not, prima facie, find that there are fair chances of acquittal. Nonetheless, since the case is based on the circumstantial evidence, we deem it appropriate to expedite hearing of the appeal. Registry shall prepare paper book at the earliest and list the appeal for final hearing in accordance with rules. The appellant may also file private paper book.

16. The application is accordingly rejected.

(JUDGE)

(JUDGE)