CGHC010320492017 2026:CGHC:45312-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1702 of 2017

Smt. Jaymati Dhimar, W/o. (wrongly writen as D/o) Dayaram Dhimar, Aged About 48 Years R/o Ward No. 15, Village Ramhepur, P. S. Lormi, District Mungeli Chhattisgarh.

--- **Appellant**

versus

State Of Chhattisgarh Through P. S. Lormi, District Mungeli Chhattisgarh.

--- **Respondent**

CRA No. 6 of 2018

1 - Dayaram Dhimar S/o Baisakhu Dhimar Aged About 52 Years

2 - Rohit Dhimar S/o Dayaram Dhimar Aged About 30 Years
Both are R/o Ward No. 15, Village Ramhepur P. S. Lormi, District Mungeli Chhattisgarh.

---Appellants

Versus

1 - State Of Chhattisgarh Through P. S. Lormi, District Mungeli Chhattisgarh, Chhattisgarh

--- **Respondent**

For Appellants	:	Mr. Rajesh Jain, Appellant-in-person
For Respondent/State	:	Mr. Sumit Singh, Additional A.G.

BALRAM PRASAD DEWANGAN
Digitally signed by BALRAM PRASAD DEWANGAN

Division Bench

Hon'ble Shri Parth Prateem Sahu, Judge

Hon'ble Smt. Sushma Sawant, Judge

Judgment On Board

(27.10.2026)

Per **Parth Prateem Sahu, J**

1. Both the appeals are heard and decided together by this common order, as they arise out of the same judgment.

2. Appellants have preferred these appeals challenging the judgment of conviction and order of sentence dated 25.10.2017, passed in Sessions Trial No. 58 of 2016, whereby the learned Additional Sessions Judge, Mungeli has convicted and sentence the appellants as under :-

Appellant (Smt. Jaymati Dhimar) in Criminal Appeal No. 1702 of 2017		
U/s. 201 of I.P.C.	:	R.I. for 5 years and to pay fine of Rs.500/-. In default of payment of fine, further undergo R.I. for 3 months.
Appellants (Dayaram & Rohit Dhimar) in Criminal Appeal No. 6 of 2018		
U/s. 302 R/w. Section 34 of I.P.C.	:	Imprisonment for life and to pay fine of Rs.1000/-. In default of payment of fine, further undergo R.I. for 9 months
U/s. 201 of I.P.C.	:	R.I. for 5 years and to pay fine of Rs.500/-. In default of payment of fine, further undergo R.I. for 3 months.

3. Case of the prosecution, in brief, is that on 15.07.2016, on the basis of information given by Ishwar Prasad Gandharva, Morgue No. 46/2016 was registered at Police Station Lormi. During the morgue inquiry, it was found that Dayaram Dhimar, husband of deceased Premabai, and her son Rohit Dhimar, doubted her character and often quarreled with her. On 14.07.2016, when Premabai returned home at night after selling fish in the market, her husband and son allegedly took her into their room and strangulated her. They also hit her on her left temporal region with an *Gatasi*/iron rod, resulting in her death. To hide the evidence of blood stains, appellant- Jayamati wiped the floor of the room with cow dung. The next morning, appellants without informing and showing the dead body to anyone, they simply said that Premabai

had died, covered her body, and took it to the cremation ground for cremation. The morgue intimation No. 46/2016 is marked as (Ex. P-25).

4. During the inquest, it was found that accused Dayaram Dhimar and his son, Rohit Kumar Dhimar strangulated her and hit her on the temporal region with an iron rod/Gatasi because they suspected her character and on this basis FIR (Ex. P-25) was registered. During investigation, a panchnama (Ex.P-10) of spot map and a spot map (Ex. P-2) were prepared. Bloodstained soil, plain soil, a silver-coloured metal anklet, and broken blue and red glass bangles were seized from the place of occurrence vide seizure memo (Ex. P-7). Accused Dayaram Dhimar and Rohit Kumar Dhimar were interrogated and their memorandum statements (Ex. P-5 and Ex. P-6, respectively) were recorded. On production by accused Dayaram Dhimar, a white towel with prints and several blood-like stains was seized vide seizure memo (Ex. P-8). On production by accused Rohit Kumar Dhimar, iron Gatasi with a bamboo stick attached to it was seized vide seizure memo (Ex. P-9). A blue coloure blouse of deceased, stained with blood which was brought from the hospital by the constable, was seized as per seizure memo Ex.P.26. Accused persons were arrested as per arrest memo Ex.P.12 to Ex.P.14. Dead body of the deceased was sent for postmortem examination. Postmortem of the dead body was conducted. In the postmortem report (Ex.P-22) the doctor opined the cause of death of the deceased was due to asphyxia and death of deceased was homicidal in nature. After the inquest, First Information Report (Ex.P.25) was registered against the accused. Application (Ex.P.23A) was made to get the seized iron rod/Gadasi examined and

examination report (Ex.P.23) was received. Seized articles were sent to Forensic Science Laboratory, Raipur for examination (Ex.P.27). Statements of witnesses were recorded. After complete investigation, charge sheet was filed.

5. Learned trial Court framed charges under Section 302, 201 and 120-B of the Indian Penal Code against the appellants, which they denied. During course of trial, prosecution examined as many as 11 witnesses namely (P.W.-1) Ishwar Prasad, Kotwar (P.W.-2) Mohan Dhimar, (P.W.-3) Santosh Kumar brother of deceased, (P.W.-4) Johan Dhimar brother of deceased, (P.W.-5) Salik Ram Banjare, (P.W.-6) Lakhanlal Dhimar father of deceased, (P.W.-7) Bhanu Pratap Sai Patwari, (P.W.-8) Santosh Dhimar, (P.W.-9) Dr. Rupesh Sahu, (P.W.-10) L.P. Patel, Investigating Officer and (P.W.-11) Smt. Rambha Bai. Appellants were examined under Section 313 of Cr.P.C. and they denied all the incriminating evidence appearing against them and pleaded innocence and false implication. No witness was examined in defence. After conclusion of trial, the learned trial Court upon appreciation of document and oral evidence brought on record by the prosecution, convicted and sentenced the appellants as mentioned here-in-above.

6. Learned counsel for appellants submits that the impugned judgment of conviction and order of sentence is bad in law and erroneous. The allegation levelled against appellant is absolutely false and baseless. He submits that the present case is admittedly based entirely on circumstantial evidence, as there is no eyewitness to the alleged incident, and the settled principle of law is that every incriminating circumstance must be proved beyond reasonable doubt and the chain

of circumstances must be so complete as to unerringly point only towards the guilt of the accused persons while excluding every other hypothesis consistent with innocence. He submits that the chain of circumstances relied upon by the prosecution, even if taken into consideration, do not conclusively establish the guilt of the appellants. According to the learned counsel, the prosecution has failed to establish such a complete chain of circumstances and, therefore, the conviction cannot be sustained. The material witnesses examined on behalf of the prosecution turned hostile and have not supported the case of the prosecution. He further submits that the alleged seizure of the iron rod/Gatasi, which was allegedly used in the commission of the offence, has not been proved by the prosecution witnesses. He also submits that there is no material to suggest any prior preparation or premeditation of the accused persons to commit murder of deceased Prema Bai. There are several omissions and contradictions between statements of the prosecution witnesses recorded by the police during the investigation and their statements made before the Court during the trial. He further submits that these omissions and contradictions affect the credibility of the prosecution witnesses and create serious doubt about the truthfulness of their statements. He submits that appellant Dayaram Dhimar had divorced the deceased and she was living in separate home. He further submits that despite examining as many as 11 prosecution witnesses, the prosecution has failed to establish any motive on the part of the appellants to commit the murder of deceased Prema Bai. The learned Trial Court also erred in convicting appellant Jaymati Dhimar under Section 201 of the IPC, as there is no reliable evidence to prove that she caused the

disappearance of evidence with the intention of saving the culprits. He submits that the findings recorded by learned Trial Court are based on an improper appreciation of evidence on record and are not sustainable in law. Therefore, the impugned judgment of conviction warrants interference by this Court.

7. Learned State counsel opposes the submission made by learned counsel for appellants and supports the impugned judgment of conviction. He submits that the deceased died inside the home where the appellants were present, and therefore, appellants are required to explain the circumstances leading to the death of the deceased, however, the appellants failed to explain the same. He further submits that, as per the postmortem report, the cause of death was asphyxia, due to strangulation and the death of the deceased was homicidal in nature. Therefore, in the facts and circumstances of the present case, the burden lies upon the appellants to explain the circumstances in which the deceased met her death, particularly when the incident occurred inside the room and the appellants were in a position to have special knowledge of the events that took place therein. He submits that the findings recorded by the trial Court are based on a proper appreciation of the evidence on record and do not suffer from any perversity or illegality warranting interference by this Court. Accordingly, it was prayed that the appeal, being devoid of merit, deserves to be dismissed and the conviction and sentence awarded to the appellants be affirmed.

8. We have heard learned counsel for the parties and considered their rival submissions, perused the original records of the learned trial Court with utmost circumspection

9. Appellant Dayaram is the husband of deceased Prema Bai, appellant Rohit is her son, and appellant Jaymati Dhimar is the second wife of appellant Dayaram. Deceased was residing in the separate room in the same house, where appellants were residing. Prosecution alleges that Dayaram and Rohit suspected Prema Bai's character and, because of this suspicion, they dragged her into a room, strangled her, and hit her on the left temporal with an iron rod/Gatasi, resulting in her death on 15.06.2017. The case of the prosecution is based on circumstantial evidence.

10. Since the prosecution case rests entirely on circumstantial evidence, the questions that arise for consideration before this Court are whether the death of the deceased was homicidal in nature and whether the chain of circumstances established by the prosecution is complete and conclusively points towards the guilt of the appellants

11. Prosecution has examined Ishwar Prasad (P.W..-1), the village Kotwar, who in his evidence has stated that he knew the accused persons and deceased Premabai. On 15.07.2016, he received a phone call that the police had called him to the cremation ground of village Ramhepur. On reaching there, he saw the dead body of Premabai, with blood near her right eye and a black mark on her neck. Thereafter, he accompanied the police to the house of deceased. He admitted his signatures on the inquest report (Ex. P-1), spot map (Ex. P-2), notice (Ex. P-3), seizure memos (Ex. P-4 and Ex. P-9), and memorandum

statements (Ex. P-6 and Ex. P-7). He further stated that the Patwari had prepared the spot map (Ex. P-10) in his presence. However, he denied that accused persons have given memorandum statement in his presence or any seizure had been made.

12. Investigating Officer L.P. Patel (P.W..-10) has stated in his evidence that based on the information given by Ishwar Prasad Gandharva, Kotwar of village, he recorded the mourge intimation No. 46/16 (Ex.P-1) on 15.07.2016 at Police Station Lormi, regarding death of deceased Premabai and prepared spot map (Ex.P-2) of the incident. He has given notice of postmortem (Ex.P-3A) and prepared Naksha Panchayatnama of the dead body vide Ex.P-4 and made application for postmortem (Ex. P-22A). Thereafter registered FIR Ex.P. 25 against the accused persons.

13. Dr. Rupesh Sahu (PW-9), who examined the body of deceased Premabai, has deposed that on 15.07.2016, when he examined the dead body and started postmortem, found the dead body cold, there was stiffness in the body and decomposition had started. The eyes and mouth of dead body were was closed and tongue was inside the mouth. Blood was coming out from the left side of the mouth, which had dried up and blood was also coming out from the nose and both ears. There was blurriness in the eyes of the deceased, blood was seen leaking from the white part of the pupil of both the eyes, there was a scratch of 5 x 2 cm on the left temporal region of the head of the deceased, one scratch each was on the protruding part of both the scapula, whose size was 2 x 1.5 cm, one abrasion each on the back of both the elbows. There were small bushes in front of the neck which

were semi-circular in shape. There was 4-5 bushes on left the side and 15-20 bushes in the right side of neck. There was black colour grease on the medial side of the right palm of the dead body, the details of the injuries on the dead body have been given in page no. 3 of the PM report. He further stated that he found the skull, cranium and vertebrae with fracture in hyoid bone and tympanic membrane, ribs, coccyx, lungs, groin and trachea, right and left lungs, periosteum percussion were all found congested, heart and large vessels were congested, no peculiarities were found in the intestinal membrane, blood was found in the mouth, esophagus and pharynx, stomach was empty, small intestine contained digested food, large intestine contained faecal matter, liver, spleen and kidney were congested, urinary bladder was empty, uterus was empty, internal and external genitals were healthy. According to this witness the death of deceased was due to asphyxia within within 12 to 24 hours of conducting his post mortem and nature of death of deceased was homicidal. The said witness Dr. Rupesh Sahu (PW-9) also examined the iron Gatasi allegedly seized from accused Rohit. In his query report (Ex. P-23), he opined that the injuries near the left eye and temporal of deceased Premabai could have been caused by the said iron Gatasi. Nothing substantial has been elicited in his cross-examination to discredit his medical opinion. Thus, considering the nature and extent of the antemortem injuries found on the body of deceased Premabai, the medical evidence on record, and the statements of the witnesses discussed above, it is clear that the injuries sustained by the deceased were not natural and prosecution has successfully established that the deceased died a homicidal death. The learned trial Court based on the evidence

available on record has rightly recorded a finding that the death of deceased Prema Bai was homicidal in nature.

14. So far as the involvement of appellants in the offence is concerned, the case of the prosecution is based on circumstantial evidence. Admittedly, the deceased Prema Bai was wife of appellant No.1 and mother of appellant No.2. Appellant No.3 is second wife of appellant No.1. Deceased Prema Bai was residing in separate room of the same house of roof.

15. The deceased died under suspicious circumstances during the night of the incident in the house where appellants were also residing. The dead body of deceased was taken to the cremation ground without showing the dead body and informing the neighbour or any other person. Appellants merely stated that the deceased had died. No information was given to police even when the bleeding from nose, ear, mouth coming out of the deceased.

16. Ishwar Prasad Gandharwa (P.W.-1), Kotwar of village though he denied to lodged morgue (Ex.P-1), however, admits his signature on the same. He stated in his evidence that he saw the dead body of deceased in the cremation ground and saw blood was coming from near right eye of deceased and there was black mark on her neck. Admittedly, PW-1 turned hostile. It is a trite law that evidence of a hostile witness cannot be discarded as a whole, and relevant part thereof, which are admissible in law, can be used by prosecution or the defence. Therefore, his statement that he saw the dead body of deceased in the cremation ground and saw blood was coming from near right eye of deceased and there was black mark on her neck, is

corroborated by the medical evidence of Dr. Rupesh Sahu (P.W.-9) and can safely be relied upon."

17. L.P. Patel (A.S.-10), Investigating Officer, has stated in his evidence that on 15/07/2016, on information given by informant Ishwar Prasad Kotwar regarding the death of deceased Premabai, he had registered inquest (Ex.P-1) and went to the spot and prepared spot map (Ex.P-2). After giving notice (Ex.P-3A) to the witnesses, he prepared Naksha Panchayanama (Ex.P-4) of the dead body of deceased and sent dead body for postmortem vide application (Ex. P-24) and he had prepared first information report (Ex P-25) against the accused. From the room of deceased Premabai where she was strangulated to death, seized blood stained soil and plain soil from the said spot, a sack containing a silver like metal anklet lying in the courtyard, broken bangles of yellow and red colour vide seizure memo (Ex. P-7). He recorded the statements of witnesses Santosh Kumar Dhimar, Mohan Dhimar, Johan Dhimar as told by them. On finding the accused persons committing the crime, he arrested them vide arrest memo (Ex.P.-12, 13 and 14). This witness further stated that he recorded their memorandum statement vide (Ex.P.-5, and Ex.P-6). Seized white flower printed cotton towel with blood from accused Dayaram Dhimar, on the basis of memorandum statement of accused Dayaram Dhimar vide (Ex.P-8) and iron rod/Gatasi from accused Rohit vide seizure memo (Ex.P-9). He sent the said iron rod/gatasi to Medical Officer, CHC Lormi vide (Ex.P.-23A) for examination. He prepared the Patwari map of the incident site and letter was written to Tehsildar Lormi vide (Ex.P.-21). He stated that seized property from Annexure A to F was sent to the Superintendent of Police in sealed packet to FSL vide

(Ex.P.-27). The the test report of Regional Forensic Science Laboratory Bilaspur is Ex.P.-28, human blood was found in iron rod/gatasi (Ex.F) and blood stains in Ex. A, D & E were found to be of human species.

18. Mohan Dheemar (P.W.-2), Santosh Dheemar (P.W.-3), Johan Dheemar (P.W.-4), Salik Ram Banjare (P.W.-5) Lakhanlal Dheemar (P.W.-6), Santosh Dheemar (P.W.-8) and Smt. Rambha Bai (P.W.-11) have turned hostile and they have not supported the case of the prosecution. However, Salik Ram Banjare (P.W.-5) admits his signature on the document spot map (Ex.P-3 and Ex.P-4), memorandum (Ex.P-5 and P-6) and seizure memo (Ex.P-7, Ex.P-8 & Ex.P-9)). Bhanupratap Sai (P.W.-7) is Patwari, who prepared spot map and Panchanama (Ex.P-10).

19. The learned trial Court, upon appreciation of the oral and documentary evidence on record, convicted the appellants for the offences mentioned above, observing that the prosecution case rested on circumstantial evidence and that the appellants had failed to explain the circumstances leading to the death of the deceased, despite residing in the same house.

20. In a case where the offence is alleged to have been committed inside a house, the initial burden of proving the charge remains on the prosecution. However, where the prosecution establishes the foundational facts and the circumstances indicate that the accused persons had special knowledge of the facts relating to the incident, Section 106 of the Evidence Act may be attracted. In such

circumstances, the accused persons are expected to offer a plausible explanation regarding the circumstances in which the deceased died.

21. Section 106 of Evidence Act, 1872 is relevant, which 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."

22. Perusal of Section 106 of the Evidence Act, would show that there will be a corresponding burden on the inmates of the house to give cogent explanation as to how deceased died. The inmates of the house cannot keep away themselves by simply sitting quite and offering no explanation on the supposed premises 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.

23. Though the appellants, in their statement under Section 313 of Cr.P.C, denied the prosecution's allegations and claimed false implication, they did not furnish any explanation as to how deceased suffered homicidal death inside the house, nor they examined any defence evidence to probabilise any alternative version.

24. In a case where the murder is committed inside the house, heavy burden is on the shoulders of the accused to explain as to under what circumstances the deceased died, but here is no such explanation in their statements recorded under Section 313 of Cr.P.C. nor did they take any defence to this effect by adducing any evidence. While dealing with the matter involving the murder inside the house, the Hon'ble Supreme Court in case of **Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681** has held as under :-

"**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 : (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in *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.
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> **21.** In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See *State of T.N.* v. *Rajendran* [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] (SCC para 6); *State of U.P.* v. *Dr. Ravindra Prakash Mittal* [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : AIR 1992 SC 2045] (SCC para 39 : AIR para 40); *State of Maharashtra* v. *Suresh* [(2000) 1 SCC 471 : 2000 SCC (Cri) 263] (SCC para 27); *Ganesh Lal* v. *State of Rajasthan* [(2002) 1 SCC 731 : 2002 SCC (Cri) 247] (SCC para 15) and *Gulab Chand* v. *State of M.P.* [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] (SCC para 4).]”

25. Very recently in the matter of **Chetan Dashrath Gade vs The State of Maharashtra reported in 2026 INSC 522**, the facts were such that the victim was residing at her in laws place, and her death was in

suspicious circumstance and this fact was within the knowledge of the the accused and they utterly failed to provide a justifiable explanation so as to the discharge the burden. The court while considering all the attending circumstances including the failure to discharge the burden under section 106 Indian Evidence Act, 1872 confirmed the conviction.

26. Reverting to the facts and circumstances of the present case, it is an admitted position that the accused persons were residing in the same house wherein the deceased resided and have utterly failed to explain the circumstances leading to her death. It is trite law that the prosecution is not required to discharge its burden only by adducing evidence of eyewitnesses, and a conviction can also be based on circumstantial evidence if the chain of circumstances is complete and establishes the guilt of the accused beyond reasonable doubt. In the present case, if the circumstances establish that the deceased died a homicidal death in her matrimonial house, where she was residing with the accused persons, and the statement of the Investigating Officer also confirms that the deceased was residing with them, the failure of the accused persons to offer any satisfactory explanation regarding the circumstances in which she met her unnatural death becomes a relevant consideration under Section 106 of the Evidence Act.

27. Further, the recovery of the *gatasi* and the act of smearing the floor with cow dung, apparently to conceal or destroy evidence, also furnish additional incriminating circumstances against the accused persons and give rise to an adverse inference against them. True that, panch witnesses have turned hostile. Be that as it may, it is a settled position that even if the panch witnesses turned hostile, which happens in

criminal trial, the evidence of the person who effected the recovery would not stand vitiated. The Hon'ble Supreme Court in catena of decisions has held that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant case, it is not the case of defence that the testimony of the investigating officer suffers from any infirmity or doubt. In the present case, the testimony of the Investigating Officer inspires confidence and no material infirmity or contradiction has been elicited in his cross-examination, the recovery cannot be rejected solely on account of the hostility of the panch witnesses.

28. Section 8 of the Indian Evidence Act, 1872, which along with relevant illustration (i), relevant in the case in hand are extracted herein below:-

> **"8. Motive, preparation and previous or subsequent conduct.-** Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.
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> Illustration (i) A is accused of a crime. The facts that, after commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant."

29. In view of above, the conduct of an accused, previous or subsequent to the committing of crime is also relevant for considering his complicity in the crime because it is commonly seen that the conduct

of an accused speaks of itself. The Hon'ble Supreme Court, in the case of **State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru**; reported in **(2005) 11 SCC 600**, has held that the conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. The relevant paragraphs 205 and 206 are extracted below:-

> 205. Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either a previous or subsequent conduct. There are two Explanations to the section, which explain the ambit of the word “conduct”. They are: “Explanation 1.—The word ‘conduct’ in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act. Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.” The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute “conduct” unless those statements “accompany and explain acts other than statements”. Such statements accompanying the acts are considered to be evidence of res gestae. Two illustrations appended to Section 8 deserve special mention: “(f) The question is, whether A robbed B. The facts that, after B was robbed, C said in A's presence — ‘the police are coming to look for the man who robbed B’, and that immediately afterwards A ran away, are relevant.

(i) A is accused of a crime. The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds [Page No.38 of 48] of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

206. We have already noticed the distinction highlighted in Prakash Chand case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 CrPC. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as "conduct" under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in Prakash Chand case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . In Om Prakash case [H.P. Admn. v. Om Prakash, (1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975] this Court held that: (SCC p. 262, para 14) "[E]ven apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the panchas that the accused had taken them to PW 11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW 11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused.

30. The Hon'ble Supreme Court, in the case of **V. Prabhakara Vs. Basavaraj K. (Dead) by legal representatives and another**; reported in **(2022) 1 SCC 115**, has held that conduct of a party would

be construed as a fact under Section 8 and such a conduct may either be a previous or subsequent one. It is the product of a motive or a preparation. The relevant portion of para 14 is extracted here-inbelow:-

> "14. Section 3 of the Evidence Act defines “a fact”. Conduct of a party would be construed as a fact under Section 8. Such a conduct may either be a previous or subsequent one. It is the product of a motive or a preparation. When evidence is given on the conduct of a party and if it is proved to the satisfaction of the court particularly when it involves an admission, adequate weightage is required to be given. Such a conduct would include a silence emanating from a party who is expected to speak and express.....”

31. Therefore, the unnatural conduct of the appellants itself is indicative of their complicity in the offence. They neither informed their neighbours nor any of their relatives about the death of the deceased, Prema Bai, but instead took her dead body directly to the cremation ground and proceeded to cremate it, merely stating that the deceased had died. Such conduct of the appellants, being subsequent to the death of the deceased, constitutes a relevant circumstance under Section 8 of the Evidence Act.

32. The learned trial Court after appreciating the oral and documentary evidence available on record has convicted the appellants as mentioned above by coming to the conclusion that the accused has been unable to explain, either through cross-examination of the witness or through their statement recorded under Section 313 of Cr.P.C. There is no explanation, leave aside any satisfactory explanation in respect of the material evidence against the appellant.

33. For the foregoing discussions, we find no error in the impugned judgment. Accordingly, the conviction and sentence awarded to appellants in Cr.A. No.6 of 2018 is affirmed. **Accordingly, the Cr.A. No. 6 of 2018 is dismissed.**

34. The appellants in Cr.A. No.6 of 2018 are reported to be on bail. Their bail bonds stands cancelled. They are directed to surrender forthwith before the Court below concerned to serve out the remaining jail sentence imposed upon them.

35. The conviction of appellant **Jayamati Dhimar in Cr.A. No. 1702 of 2017** for the offence punishable under Section 201 of the IPC is also affirmed. However, having regard to the fact that maximum sentences prescribed under Section 201 of I.P.C. is 7 years and further considering that she remained in jail from 16.07.2016 to 25.10.2017, i.e., for 1 year, 3 months and 9 days during the trial, and thereafter from 25.10.2017 to 14.12.2017, i.e., for 1 month and 19 days during appellate stage, pursuant to her conviction, she has undergone a total period of imprisonment of approximately 1 year, 4 months and 28 days. She has also deposited the fine amount of Rs.500/- imposed by the trial Court, this Court is of the opinion that the ends of justice will be served if the sentence imposed upon appellant- Jayamati Dhimar is reduced to the period already undergone by her. **Accordingly, the sentence awarded to appellant – Jayamati Dhimar is reduced to the period already undergone by her.**

36. Accordingly, CRA No. 1702 of 2017 is allowed in part. Appellant Jayamati Dhimar is reported to be on bail. Her bail bonds and sureties stand discharged.

37. Registry is directed to send a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sushma Sawant)
Judge

Balram