CRIMINAL APPEAL (DB) NO. 1348 OF 2017

AGAINST THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 25TH MAY 2017 PASSED BY THE ADDITIONAL SESSIONS JUDGE VII, DHANBAD IN SESSIONS TRIAL NO.451 OF 2009.

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1. Satya Narayan Bhagat son of Late Ramadhari Bhagat
2. Satyendra Bhagat son of Satya Narayan Bhagat
3. Laljhari Devi wife of Satya Narayan Bhagat

All residents of Area No.4, Maithan, P.S. Chirkunda, Maithan, PO Maithan, District Dhanbad.

… … Appellants

-versus-

The State of Jharkhand **… … Respondent**

For the Appellant : Mr. Akhouri Avinash Kumar, Advocate
For the Respondent : Mr. Vineet Kumar Vashistha, A.P.P.

PRESENT: SRI ANANDA SEN, J.
SRI PRADEEP KUMAR SRIVASTAVA, J.

J U D G M E N T

Dated, 30th September, 2026

By Court Appellants have preferred this appeal against the judgment of conviction and order of sentence dated 25th May, 2017 passed by the Additional Sessions Judge VII, Dhanbad in Sessions Trial No.451 of 2009, arising out of Chirkunda Police Station Case No.09 of 2009 (G.R. No.67 of 2009), whereby and whereunder, the appellants have been convicted for offences under Sections 498A/302/201/34 of the Indian Penal Code and have been sentenced to undergo (i) imprisonment for 3 years and fine of Rs.2,000/- (Rupees Two Thousand) each for offence under Section 498A of the Indian Penal Code and in default of payment of fine to further undergo simple imprisonment for 3 (three) months; (ii) imprisonment for life along with fine of Rs.5,000/- (Rupees Five Thousand) each for the offence under Sections 302/34 of the Indian Penal Code and in case of default of payment of fine to further undergo rigorous imprisonment for one year; and (iii) imprisonment for 3 years with fine of Rs.2,000/- (Rupees Two Thousand) each for the offence under Sections 201/34 of the Indian Penal Code and in default of payment of fine to undergo simple imprisonment for 3 (three) months. All the sentences have been ordered to run concurrently.

2. Prosecution case is based on the written report of the informant Inderdeo Bhagat, wherein he has alleged that after few days of marriage of his

daughter Pinki Kumari, appellant Satyendra Bhagat (son-in-law), Satyanarayan Bhagat (samdhi) and their family members started demanding one motorcycle and Rs.10,000/- (Rupees Ten Thousand), out of which he had fulfilled the demand of Rs.10,000/- (Rupees Ten Thousand), however, despite the same, they were adament on the demand of motorcycle. Due to non-fulfilment of the said demand, Satyendra Bhagat (son-in-law), Sheshnag Bhagat (bhasur), Satyanarayan Bhagat (samdhi), wife of Satyanarayan Bhagat (samdhin), they all started assaulting and torturing his daughter, which she regularly used to inform him. As the daughter of the informant had no issue, accused persons used to threaten to kill her and solemnise second marriage. Misc. Case No.1369 of 2008 was also instituted in this regard. On 05.01.2009, the informant got to learn through relations that informant's daughter has been killed and her deadbody has been burnt.

3. On the basis of the above written report of the informant, Chirkunda (Maithan) Police Station Case No.09 of 2009 was registered for offences under Sections 304(B), 201/34 of the Indian Penal Code.

Police, after completion of investigation, submitted charge sheet against the appellants. Thereafter cognizance of the offence was taken and the case was committed for trial. Charges for offences under Sections 498A and Sections 302/201/34 of the Indian Penal Code were framed against the appellants, which were read over and explained to the appellants. Since the appellants pleaded not guilty, they were put to trial.

4. To bring home the charges against the appellants, the prosecution had examined as many as 5 (five) witnesses during trial.

P.W.1 Suresh Bhagat is the brother of the deceased and son of the informant.

P.W.2 Ganesh Bhagat is also a brother of the deceased and son of the informant.

P.W.3 Lalmati Devi is the mother of the deceased.

P.W.4 Indradeo Bhagat is the informant in this case and he is the father of the deceased.

P.W.5 Sonu Choudhary is the investigation officer of this case.

5. The prosecution had also produced following documentary evidence, which were marked exhibits:-

Exhibit 1	Signature of P.W.1 Suresh Bhagat on the written report
Exhibit 1/1	Signature of P.W.2 Ganesh Bhagat on the written report

Exhibit 2	Written report
Exhibit 2/1	Forwarding Endorsement of Ramyesh Prasad Officer-in-charge of Maithan O.P. for registering a case to the Officer-in-charge of Chirkunda Police Station
Exhibit 2/2	Endorsement regarding the registration of Chirkunda (Maithan) Police Station Case No.09 of 2009 dated 06.01.2009 against the accused persons for the offence punishable under Sections 304(B)/301/34 of the Indian Penal Code
Exhibit 3	Signature of Sri Deo Upadhyay, Officer-in-Charge of Chirkunda Police Station on the formal FIR

6. Appellants in their defence had also produced the following three witnesses:-

D.W.1 Ashok Kumar Prasad

D.W.2 Malti Devi

D.W.3 Md. Altamas Hayat Khan

Appellants had also produced documentary evidence, produced by D.W.3 Md. Altamas Hayat Khan, staff of B.P. Neogi Hospital, Maithon, which were marked as A to A/10 for identification.

7. The statements of the appellants were also recorded under Section 313 Cr.P.C wherein they claimed to be innocent.

8. After hearing both the parties, the Trial Court by judgment of conviction and order of sentence dated 25th May, 2017 passed in Sessions Trial No.451 of 2009 has convicted the appellants for offences under Sections 498A/ 302/201/34 of the Indian Penal Code and appellants have been sentenced in manner as stated above.

9. Learned counsel appearing for the appellants submits that the Trial Court has convicted the appellants for committing offences under Sections 498A/302/201/34 of the Indian Penal Code. It is his contention that all the witnesses are related witnesses and there is no eye witness to the occurrence. He further contended that the prosecution has miserably failed to prove the charge under Section 498A or the Indian Penal Code or the offence under Sections 302/201 of the Indian Penal Code, inasmuch as the prosecution has not been able to produce either any direct evidence or even circumstantial evidence worth proving those charges against the appellants. Learned counsel contends that the prosecution has miserably failed to prove the charges against the appellants beyond all reasonable doubts. Learned counsel contends that

the prosecution has failed to prove that the death was homicidal and caused by the appellants. Learned counsel submits that the learned Trial Court failed to appreciate that the deceased had died due to ailments, which was very well on record through the evidence of Defence Witnesses, statement of the appellants recorded under Section 313 of the Code of Criminal Procedure supported by documentary evidence. Learned counsel submits that in absence of any evidence either direct or circumstantial, learned Trial Court ought to have acquitted the appellants from all the charges against them. Hence, it is a fit case where the appellants deserve to be acquitted by allowing this criminal appeal.

10. Learned counsel appearing for the State submits that learned Trial Court has rightly convicted and sentenced the appellants after weighing the evidence available on record through which the prosecution has been able to bring home the charges against the appellants beyond all reasonable doubt. He submits that there are sufficient materials to substantiate that there was demand of Rs.10,000/- and one motorcycle by the appellants and there is also evidence of cruelty and harassment subjected to the deceased due to non-fulfilment of demand. There is also evidence that after the death of the deceased information regarding the same was not given by the appellants to the parents of the deceased or her family members.

11. After hearing both the parties and going through the record, we find that there is no eye-witness to the occurrence. The prosecution witnesses are either siblings or parents of the deceased. No independent witness has been examined in this case. The case of the prosecution is based on evidence of related witnesses. The law is well settled so far as related witnesses is concerned. Merely because the witnesses are interested and related witnesses, it cannot be a ground to disbelieve their testimony. However, the testimony of such witnesses has to be scrutinised with due care and caution. Upon scrutiny of the evidence of such witnesses, if the Court is satisfied that the evidence is creditworthy, then there is no bar on the Court in relying on such evidence.

12. From the evidence of the related witnesses in this case, we find that they all got information of death of the deceased in the evening when even the dead body was cremated. We find that there are contradictions in the statements of these related witnesses. P.W.1, who is brother of the deceased, stated that after some time of marriage, there was demand of Rs.10,000/- and a motorcycle. However, P.W.2, in his cross examination, has stated that the demand was Rs.50,000/-. Even P.W.3, in her deposition, has stated that there

was demand of Rs.1,00,000/- or papers of a land.

13. Further, with regard to cruelty and harassment, we find that they have stated that due to non-fulfilment of demand, the deceased was subjected to cruelty and harassment, but when we go through the depositions of D.W.1 and D.W.2, who are cousin (brother) of the deceased, we find that they have not stated anything about the same. D.W.1, who used to visit the matrimonial home of the deceased, has stated in his deposition that Pinki Kumari never complained to him in this regard and the relationship between the husband and wife was normal. He stated that Pinki Kumari always remained ill and the in-laws used to get her treated. Further, from the statement of D.W.2, we find that he stated that the deceased got heart disease due to which she died. He stated that her in-laws used to take her to Maithon for treatment. He stated that when the deceased came to her parent's house, she never told him about any cruelty or harassment for dowry. He stated that the relationship between her and her husband and his family members was normal. Further, we find that P.W.3, in her cross-examination, at paragraph 18 has admitted that the accused persons always used to ask for favours because of illness of the deceased. Thus, we find that there is contradiction in the deposition of the related witnesses and even with the defence witnesses, who are none, but the cousin (brothers) of the deceased. Further, we find that the informant in the fardbeyan has stated about a Miscellaneous Case, which he had instituted in 2008 for the aforesaid. However, what is the fate of that case has not been mentioned either in the deposition or in the deposition of the witnesses also.

14. Thus, after scrutinising the evidence of such witnesses, we are of the opinion that there are many discrepancies in the evidence of the related witnesses. Thus, it is not proper to convict the appellants only on the basis of evidence of these related witnesses.

15. This is a case of circumstantial evidence and the burden is upon the prosecution to prove the charges levelled against the appellants. It is the case of the prosecution that when the demands of the appellants were not fulfilled, they have committed murder of the deceased and after committing the murder, they have cremated the body of the deceased. However, as there is no eye-witness and as the body was cremated, it is impossible to say as to whether the deceased died a natural death or the death is homicidal. The prosecution has not produced any evidence in this regard. To bring home the charge u/s 302 of the IPC homicidal death must be proved by the prosecution. In this case the prosecution has not done so. Not giving information to the

paternal family members of the deceased, before cremation, by itself cannot be said to be proof of homicidal death. In this type of situation, prosecution can take recourse to Section 106 of the Evidence Act. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. However, the Court is bound to apply Section 106 of the Evidence in criminal cases with care and caution. Section 106 of the Evidence Act would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be draw regarding guilt of the accused. Further, until a prima facie case is established by such evidence, the onus does not shift to the accused.

16. The Hon'ble Supreme Court in the case of ***Anees versus State Govt. of NCT*** reported in ***2024 SCC OnLine SC 757*** has mentioned how Section 106 of the Evidence Act has to be applied. At paragraphs 43, 44 and 50 of the said judgment, the Hon'ble Supreme Court has observed as under: -

> ***"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.***
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> ***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.***
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> ***50. Section 106 of the Evidence Act would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding guilt of the accused."***

17. It is the case of the defence that there was healthy relationship between husband and wife. The deceased always remained ill and she died of her illness. To prove their case, the defence has also examined three defence witnesses. D.W.1 and D.W.2 have stated in their deposition that the deceased always remained ill and her in-laws used to take her to Maithon for treatment. Further, the defence has also examined D.W.3, who produced some documents of B.P. Neogi Hospital relating to illness of the deceased, which were marked A to A/10. Thus, the defence has given a probable and possible explanation about how the deceased died in their house. This evidence of defence witnesses cannot be brushed aside lightly.

17. In view of what has been held and discussed above, we find that this is a fit case for acquittal of the appellants. This criminal appeal, accordingly, stands allowed. The judgment of conviction and order of sentence dated 25th May, 2017 passed by the Additional Sessions Judge VII, Dhanbad in Sessions Trial No.451 of 2009 are set aside. It appears that the appellant Nos.1 and 3 have already been granted bail by this Court vide order dated 02.02.2022 in I.A. No. 2940 of 2021, thus, they are discharged from the liabilities of their bail bonds. The appellant No.2, abovenamed, is directed to be released forthwith from custody, if not wanted in connection with any other case. Pending interlocutory applications, if any, stand disposed of.

18. Let the Trial Court Records be sent back to the Court concerned forthwith along with a copy of this judgment.

(Ananda Sen, J.)

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi
Dated, the 30th September, 2026
AFR/Kumar/Cp-03

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