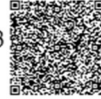


2025:PHHC:075024-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. **CRA-D-882-DB of 2017 (O&M)**
Date of Decision:26.05.2025
Jagjit KumarAppellant

Versus

State of Punjab Respondent

AND

2. **CRR No. 4349 of 2017 (O&M)**
Hans Raj Petitioner

Versus

State of Punjab and another Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Salil Dev Singh Bali, Advocate
with Ms. Simmy, Advocate
for the applicant-appellant (in CRA-D-882-DB of 2017).

Mr. K.B.Raheja, Advocate
for the complainant (in CRA-D-882-DB of 2017) and
for the petitioner (in CRR No. 4349 of 2017).

Mr. Dhruv Dayal, Addl.AG., Punjab.

LISA GILL, J.

1. This order shall dispose of CRA-D-882-DB-2017 and CRR-4349-2017 which were taken up for hearing and adjudication together at request and with consent of learned counsel for parties as both the above arise out of common judgment and order dated 10.08.2017 and 14.08.2017, respectively.

2. CRA-D-882-DB-2017 has been filed by appellant – Jagjit Kumar for setting aside judgment dated 10.08.2017 passed by learned Additional Sessions Judge, Fazilka whereby he has been convicted for the offences punishable under Section 302 of Indian Penal Code (for short – ‘IPC’) and order dated 14.08.2017, whereby he has been sentenced as under:-

Offence (U/S)	Sentence
302	Rigorous Imprisonment for life, besides, pay a fine of Rs.25,000/-. In default thereof, undergo further rigorous imprisonment for one year.

3. CRR-4349-2017 has been filed by Hans Raj son of Ranjha Ram i.e. father of deceased Ritu Bala seeking enhancement of sentence of life imprisonment imposed upon the convict from ‘life imprisonment’ to ‘life imprisonment till the last breath’.

4. Brief facts of the case as per prosecution version are that FIR No. 82 dated 04.05.2014 (Ex.PF) was registered on the statement of Darshan Ram son of Ranjha Ram (father of appellant - Jagjit Kumar). Darshan Ram stated that he was an Agriculturist having eight daughters and one son, all of whom were married. On 04.05.2014, his son Jagjit Kumar and wife Raj Rani (mother of Jagjit Kumar) had gone to village Banwala to attend *Chautha* ceremony and that he had gone to Radha Swami Satsang Ghar Ghubaya at about 9.00 a.m. He returned home at about 10.15 a.m. and starting resting on a cot lying in the verandha. At about 12 noon he woke up and called out his daughter-in-law Ritu Bala asking her to provide him food but when he received no reply, he entered the room of his daughter-in-law, Ritu Bala, and saw that she was lying on the bed with her legs hanging therefrom. He went near her when she did not respond to his call and it transpired that she had been strangled.

There were bluish marks with sharp edged instrument on neck and chin and that blood was oozing out and his daughter-in-law had passed away. He came out of the house and raised hue and cry, upon which his nephew Saru and some other people of the locality gathered on the spot. Darshan Ram further stated that he telephoned his son Jagjit Kumar and narrated the incident. Jagjit Kumar came to the spot after 45 minutes. Darshan Ram further stated that upon inquiry he came to know that after he had gone to Satsang Ghar Ghubaya, 4/5 persons had come in a white coloured car and remained at his residence for about 15/20 minutes. Almirah lying in their house was searched and sum of Rs.40,000/- lying in almirah was found missing. Earrings worn by his daughter-in-law were also found missing. Therefore, he suspected that in their absence assailants had committed theft of the cash amount and earrings of his daughter-in-law and committed her murder. Ruqa (Ex.PC) was sent and formal FIR (Ex.PF) was registered. SI Harinder Singh (PW2) alongwith police authority reached the spot and prepared inquest report (Ex.PC). Site Plan (Ex.PG) was prepared. Post mortem was conducted. As per Post Mortem Report (Ex. PA), cause of death was asphyxia as a result of strangulation. During investigation on 08.05.2014, Des Raj son of Ranjha Ram, paternal uncle of the deceased as well as Des Raj son of Daulat Ram were joined in investigation. They disclosed that murder of Ritu Bala was committed by none other but her husband -Jagjit Kumar son of Darshan Ram. As per call details of Mobile phone No. 9417053239 belonging to Jagjit Kumar, location of mobile on 04.05.2014 was found to be of highway Ghubaya. Jagjit Kumar was nominated as an accused in the FIR and arrested on 09.05.2014. It is further the case of prosecution that during interrogation, Jagjit Kumar admitted to having illicit relations with his sister-in-law, Poonam Rani for the

last 6/7 years and that he wanted to live with her in his house but during lifetime of Ritu Bala this was not possible. Due to this reason, he murdered Ritu Bala and carried out a farce of theft of an amount of Rs.40,000/- from almirah and earrings of Ritu Bala by unidentified persons. Disclosure statement is on record as Ex.PN. Screwdriver as well as towel used for commission of murder of Ritu Bala is stated to have been recovered from Jagjit Kumar on the basis of his disclosure statement. The same were taken in custody vide recovery memo (Ex.PN).

5. Upon completion of investigation final report/challan under Section 173 Cr.P.C., was presented against Jagjit Kumar and copies of documents supplied to him in terms of Section 207 Cr.P.C. Case was committed to the Court of Session on 17.07.2014. Charge was framed against Jagjit Kumar on 21.08.2014 to which he pleaded not guilty and claimed trial.

6. Prosecution examined nine witnesses to substantiate its case against accused. Photographs of deceased were tendered in evidence as Mark A to Mark H. Statement of accused under Section 313 Cr.P.C., was recorded on conclusion of prosecution evidence with entire incriminating evidence being put to him. He pleaded innocence and false implication. Appellant Jagjit Kumar in his statement under Section 313 Cr.P.C., stated that he had cordial relations with his wife and she was murdered by some unknown person(s) while she was alone in the house. She had a younger sister namely Poonam Rani, who was not getting a good match. After death of his wife, her parents immediately started insisting that he should marry Poonam Rani but he refused. Parents of his wife even demanded a share in his property. He further stated that he had purchased some property in the name of his deceased wife during her lifetime and that he was apprehended by the police immediately

after Bhog ceremony of deceased wife on 08.05.2014. It is further stated that police authorities in consultation and deliberation with his father-in-law Hans Raj, illegally introduced witnesses related to his father-in-law and falsely implicated him. He further stated that he remained in custody for a long time. Witnesses were deliberately not produced and he was yet again pressurized to marry Poonam Rani. When he still refused, witnesses were thereafter produced to depose against him. Entire evidence is false and fabricated. He also tendered certified copy of sale deed dated 05.06.2012 (Ex.DY) regarding purchase of a plot measuring 5 marlas at Kharar in the name of his wife Ritu Bala. Defence evidence was then closed.

7. Learned trial Court on considering the evidence on record, facts and circumstances concluded that prosecution had successfully proved its case against accused and had established his guilt beyond shadow of reasonable doubt. He was, thus, convicted for commission of the offences punishable under Section 302 IPC and sentenced as has been detailed in the foregoing paras. It was held by learned trial Court that accused had failed to explain the circumstances under which his wife turned into a corpse in the matrimonial home. Accused had suffered extra judicial confession before his father-in-law Hans Raj (PW3) immediately after Bhog ceremony and weapon of offence, i.e., screwdriver and towel were recovered from the field and electric motor room belonging to him, pursuant to his disclosure statement. A strong motive for commission of the murder of his wife was proved on record, therefore, appellant was held to be guilty of offence as charged. Aggrieved therefrom, above said appeal and Criminal Revision by the appellant and complainant, respectively, have been filed.

8. Learned counsel for appellant – Jagjit Kumar vehemently argued that entire prosecution case rests on circumstantial evidence which is not sufficient to convict present appellant. A completely false and concocted version had been cooked up by prosecution to the effect that extra judicial confession was made by appellant before PW3, Hans Raj on 08.05.2014 in the presence of PW4, Hukam and Amir Chand, who was incidentally not examined as a witness. Such confession is stated to have made by appellant on 08.05.2014 after Bhog ceremony of deceased Ritu Bala. As per evidence on record, Hans Raj informed the police regarding extra judicial confession only on 09.05.2014 upon which appellant is stated to have been arrested though it has clearly come in the statement of witnesses that Jagjit Kumar was taken away by the police on 08.05.2014 itself, after the Bhog ceremony. None of the witnesses at that time were stated to have given any information regarding extra judicial confession so made. Hans Raj (PW3) is father of deceased and PW4 Hukam Chand is maternal uncle (mama) of deceased, hence are interested witnesses, thus no reliance can be placed on their testimony. Amir Chand, who is an independent witness was not examined for reasons best known to prosecution. Furthermore, reliance by prosecution upon alleged recovery of weapon of offence is clearly misplaced. First and foremost recovery itself is suspect. Moreover, neither screwdriver or towel with which deceased is stated to have been strangled were blood stained. They were never sent for any FSL examination. Reference was made by learned counsel for appellant to testimony of Dr. N.K. Sethi, Medical Officer, Civil Hospital, Ferozepur (PW1), to submit that possibility of strangulation by using screw driver, putting the same on the neck and applying pressure thereon with towel was never mentioned by him in the Post Mortem Report, Ex.PA and neither

was any such opinion sought from him during investigation of the case. It is for the first time in Court that such opinion was given by him. Furthermore, appellant even as per disclosure statement, Ex.PM never revealed that he was having a love affair with his sister-in-law. PW2 - SI Harinder Singh on his own has stated regarding motive being disclosed by appellant in disclosure statement, Ex.PM, which is opposed to the record.

9. Learned counsel for appellant further argued that deceased and appellant were admittedly married for the last ten years and no complaint whatsoever from the deceased or her family members was ever forthcoming. Cordial and harmonious relations between appellant and his wife are also reflected from Ex.DY which is a copy of sale deed dated 05.06.2012 of a plot measuring five marlas at Kharar, which was purchased by appellant in the name of his wife. Learned counsel for appellant further submitted that rigours of Section 106 of Indian Evidence Act are not applicable in the given facts and circumstances and has been wrongly pressed in service by learned trial Court to convict the appellant. Defence of appellant to the extent that appellant was being forced to marry younger brother of Ritu Bala and it is upon his refusal that he has been implicated in this case is probable. Younger sister of deceased Poonam was never examined for reasons best known to prosecution. It is, thus, prayed that this appeal be allowed and impugned judgment and order dated 10.08.2017 and 14.08.2017

10. Learned counsel for State and complainant, per contra, refuted the arguments as raised while submitting that learned trial Court has correctly convicted appellant – Jagjit Kumar for the offences as charged. Evidence on record is sufficient to sustain conviction of appellant. Dismissal of appeal is sought.

11. Learned counsel for father of deceased submits that punishment imposed upon appellant should be enhanced keeping in view the heinous and depraved offence committed by appellant.

12. We heard learned counsel for parties and have perused the file and record carefully.

13. Present is admittedly a case based entirely upon circumstantial evidence. It is a settled position that in a matter hinging upon circumstantial evidence, it is incumbent upon the prosecution to prove that chain of evidence is so complete that the only conclusion points to the guilt of accused and does not leave any reasonable ground for a conclusion consistent with innocence of the accused. Doubtlessly, conviction can be based solely on circumstantial evidence, but the chain of evidence so proved must be consistent with no other hypothesis except guilt of the accused. Gainful reference in this respect can be made to judgments of Hon'ble the Supreme Court in **Sharad Birdhi Chand Sarda Vs. State of Maharashtra, 1984 AIR 1622, Padman Bibhar Vs. State of Odisha, 2024 INSC 751** and **Ramkirat Munilal Goud Vs. The State of Maharashtra etc, 2025 INSC 702.**

14. Present case was registered on the statement of Darshan Ram i.e., father-in-law of the deceased. It was stated that appellant and his mother had gone for Bhog Ceremony at village Banwala and he had gone to Radha Soami Satsang House at about 9.00 a.m., on 04.05.2014. He returned home at about 10.00.a.m. and lay down on the cot in the courtyard and at about 12 noon called out to his daughter-in-law to give him food. When she did not respond, he went inside to inquire and saw that she had been murdered by someone, upon which he called his son, who came back after 45 minutes. It was stated that he later found out that a white coloured car with four persons came to

their house, stayed there for 15-20 minutes and decamped with a sum of Rs.40,000/-, earrings and rings which his daughter-in-law was wearing. This version upon investigation is stated to have been found false, with the appellant, in-fact being guilty of murder of his own wife. Details as have been mentioned in the foregoing paras are not repeated for the sake of brevity.

15. Learned trial Court convicted the appellant in view of the cumulative effect of the following circumstances as detailed in para 36 of impugned judgment dated 14.0.2017 :

- “i) Deceased Ritu Bala was the wife of Jagjit Kumar accused and she has been found dead in his house in mysterious circumstances.
- ii) The accused has failed to explain the circumstances as to how his wife turned into corpse.
- iii) The theory of robbery and committing murder by unknown persons was found false by the investigating officer/agency and during the trial of the case, the accused had also failed to examine a single witness of his neighbourhood to substantiate his plea that robbery and murder has been committed by un- known persons.
- iv) The plea of alibi that he had gone to attend the chautha ceremony of his relative at village Banwala has been proved to be false by the evidence of PW-4 Hukam Chand & PW-3 Hans Raj.
- v) The accused had suffered extra judicial confession before his father-in- law i.e. PW-3 Hans Raj immediately after the bhog ceremony which seems to be quite natural & voluntary.
- vi) The recovery of weapon of offence i.e. screw driver and the towel from the fields as well as electric motor room which belongs to the accused.
- vii) There was a strong motive with the accused for commission of the murder of his wife.

viii) Immediately after the occurrence, the accused has been found to be very nervous by PW-6 Des Raj.”

16. Homicidal nature of death of Ritu Bala is confirmed from the medical evidence on record. As per the postmortem report duly proved by PW-1 Dr. N.K.Sethi, Medical Officer, Civil Hospital, Ferozepur, following injuries were found on the person of the deceased:-

“1. An abrasion measuring 7 cm x 3 cm was present on the front of neck on lower part on its right side there was present a lacerated punctured wound measuring 1.5 x 1.0 cm. On dissection of the neck, the wound was skin deep. Underlying soft tissue and muscle spaces were filled with blood which was clotted. Larynx showed congestion of the mucosa and fracture of the thyroid cartilages on both sides. Trachea contained froth along with lumen of larynx.

2. Five contusions of variable sizes were present on the submandibular and submental area of the jaw. All the organs (Brain, lungs, heart, liver, spleen and kidneys were congested). Stomach was healthy and contained semi digested food. Bladder was healthy and empty. Uterus was healthy and empty. There was equinus deformity of feet on both sides.”

17. Cause of death is opined to be asphyxia as a result of strangulation which was sufficient to cause death in the ordinary course of nature. Possibility of strangulation by using a screwdriver and putting the same on the neck and putting pressure thereon, it is stated cannot be ruled out. It is pertinent to note that PW-1 Dr. N.K.Sethi in his cross-examination stated that this opinion regarding possibility of strangulation by screw-driver and towel is not mentioned in the postmortem report or at any later stage but was given for the first time in Court.

18. PW-3-Hans Raj, father of the deceased, for the first time recorded his statement under Section 161 Cr.P.C., on 10.05.2014 to the effect that his

daughter had been murdered in her father-in-law's house and he already had a doubt regarding his daughter's murder, but on 10.05.2014 he met Amir Chand resident of Village Arianwala and his relative Karam Chand after Bhog Ceremony of his daughter, where his son-in-law i.e., present appellant confessed that he had committed a blunder by himself murdering Ritu Bala and asked him to save the accused. Hukam Chand i.e., brother-in-law of Hans Raj also stated on 10.05.2014 before the Police Authorities that after the Bhog Ceremony of Ritu Bala on 08.05.2014, appellant confessed to have murdered Ritu Bala and that he had illicit relations with another girl and as he could not keep her in his house because of Ritu Bala, she was killed.

19. At this stage, it is gainful to reproduce Section 106 of Evidence Act, 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.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

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

20. It is pertinent to note that for applying the rigours of Section 106 of the Evidence Act, 1872 (for short 'Evidence Act'), it is necessary for prosecution to prove foundational facts at the first instance. It is a settled position that Section 106 of the Evidence Act cannot be invoked to make up the inability of prosecution to produce evidence. Hon'ble the Supreme Court in **Nagendra Sah Vs. State of Bihar (2021) 10 SCC 725** has held as under:-

“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.”

21. Hon’ble the Supreme Court in **Anees Vs. The State Govt. of NCT, 2024(2) RCR (Criminal) 856**, while considering various earlier judgments held that:

“43. Thus, from the aforesaid decisions of this Court, it is evident that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.

44. Section 106 of the Evidence Act cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to

establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.

45. Section 106 of the Evidence Act obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge, which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But, if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. In the language of Prof. Glanville Williams:

"All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into account the silence of the accused or the absence of satisfactory explanation appearing from his evidence."

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48. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the

prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with counter-vailing evidence, if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise therefrom. Although not legally required to produce evidence on his own behalf, the accused may, therefore, as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution [See: Balvir Singh v. State of Uttarakhand, 2023 SCC OnLine 1261].”

22. In the present case, it is to be determined whether foundational facts had been established by the prosecution. At this stage, it is relevant to refer to some of the discrepancies in evidence which show that foundational facts in this case have in-fact, not been proved by the prosecution. PW-3-Hans Raj, in his statement before learned trial Court reiterated that on 08.05.2014, appellant after the Bhog Ceremony of Ritu Bala confessed to have murdered Ritu Bala since he was having illicit relations with a girl.

23. It is a matter of record that at the first instance in his statement recorded on 10.05.2014, Ex.DA, Hans Raj stated that his daughter Ritu Bala had been murdered in the house of her father-in-law. He already had a doubt about his daughter's murder, but on 10.05.2014 he met Amit Chand resident of Arianwala and relative Karam Chand after Bhog ceremony of his daughter,

where his son-in-law Jagjit Kumar confessed that he had made a huge mistake as it was he who murdered Ritu Bala. It is to be noticed that there was no mention of illicit relations with any girl in the statement suffered by Hans Raj before the Police Authorities.

24. In his cross-examination, PW-3-Hans Raj admitted that appellant i.e., his son-in-law had 09 sisters and he is the youngest of all. Two of appellant's sisters are married at village Banwala. He further confirmed that two children i.e., a daughter aged 10 years and a son aged 05 years were born out of the wedlock of deceased and appellant. He at one instance stated that deceased was tortured by her in-laws, but again said that they did not beat her and he had never filed any application or representation before the Police Authorities in this regard.

25. PW-3-Hans Raj in his cross-examination further stated that it was he who disclosed the factum of appellant-Jagjit Kumar being responsible for the death of his daughter and that police was not aware about the same prior thereto.

26. PW-4-Hukam Chand, maternal uncle of deceased, in his cross-examination stated to the contrary that he had come to know on 04/05.05.2014 itself that appellant was involved in the occurrence and same was disclosed to the police authorities. It is relevant to note that PW-4-Hukam Chand in his statement recorded on 10.05.2014, Ex.DB stated that he had gone to village Banwala on the chauth ceremony of Bhagwan Dass (father-in-law) of Ritu Bala's sister-in-law (Nanad). Jagjit Kumar's mother had come present, but Jagjit Kumar was not there. He further stated that on 08.05.2014, Jagjit Kumar confessed before him, Hans Raj and Amir Chand that he himself had murdered Ritu Bala as he had illegal relation with another girl who could not

be kept with him because of Ritu Bala. He implored that he should be saved otherwise future of his children would be spoiled. Relevant portion of cross-examination of PW-4 reads as under:-

“Jagjit Kumar remained present in his house from 04.05.2014 onwards and he never absconded. From 04.05.2014 to 08.05.2014 I kept on meeting with Hans Raj son of Ranjha Ram, other friends and relatives of Hans Raj also used to be collected during this period. On 04.05.2014 and 05.05.2014 I had come to know that Jagjit Kumar was involved in the occurrence and when on 04.05.2014 and 05.05.2014 we disclosed this fact to the police, the police told us that they will not take away Jagjit Kumar to implicate him in the case. So many meetings took place between our relations including Hans Raj that some action should be taken against Jagjit Kumar. Even higher police officers visited the spot after 04.05.2014. On 08.05.2014 when the bhog ceremony of deceased was going on, some police officials were also present there. After the bhog ceremony on 08.05.2014 got finished, SHO came there and he took away Jagjit Kumar with them but I do not remember the time however it was day time.

27. PW-4-Hukam Chand further stated that Bhagwan Dass, father-in-law of Jagjit Kumar's sister had passed away at village Banwala. He did not visit at the time of cremation ceremony. When he had gone to village Banwala, tent had been installed opposite to house of Bhagwan Dass with public sitting there. He further stated that he too went to the place but he did not know what ceremony was performed whether Satsang or Kirtan was there, whatever had been performed was prior to his reaching village Banwala. He further stated that he did not enquire about the Bhog ceremony of Bhagwan Dass which may have been on the next day.

28. PW-6-Des Raj son of Ranjha Ram, paternal uncle of deceased stated in his cross-examination as under:-

“At about 12/12:30 Noon on 08.05.2014 the Bhog ceremony of Ritu Bala had concluded. Immediately on conclusion of Bhogh Ceremony on 08.05.2014 police had met me in the Pandal where bhog ceremony was held. The entire arrangement for bhog ceremony of deceased was arranged by Jagjit Kumar. When police party on 08.05.2014 as stated by me above, Jagjit Kumar was also present in the Pandal. It is correct that on 08.05.2014 after conclusion of the bhog ceremony, police had taken Jagjit Kumar along-with them in my presence.”

29. PW-2-SI Harinder Singh, the Investigating Officer (IO) stated that on 08.05.2014 when he was present at village Sukhera Bodla, Des Raj son of Daulat Ram and Ranjha Ram met him and recorded their statements under Section 161 Cr.P.C. indicting appellant as an accused. Appellant-Jagjit Singh was produced before him on 09.05.2014 by Harbhajan Lal, Sarpanch. As per memo of arrest, Ex.PJ, appellant was arrested on 09.05.2014. PW-2 in his cross-examination further stated as under:-

“On 10.5.2014 accused was taken out from police lockup in presence of HC Gurdeep Singh and Jagjit Singh disclosed on my interrogation that "I was having love affair with my sister in law so I killed my wife with the help of Screw driver and a towel and hidden the same in my fields in which there are Gauva plantation near motorpump. On the basis of which disclosure statement under Section 27 of Evidence Act of accused Ex.P.M was recorded, which was signed by accused and witnessed by HC Gurdeep Singh. Thereafter accused led the police party to that place, which was disclosed by him, where Des Raj met us. He was joined into police party. Accused got recovered Screw Driver near the Gauva plant after removing the earth.

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The screw driver is not blood stained and there is no stains of blood on the towel. Such like towels and screw driver are easily available in the market and are normally there in a house.”

30. PW-2 further stated that Des Raj son of Ranjha was present at the time of preparation of inquest report on 04.05.2014 but he did not suffer any statement regarding participation of accused in the murder of his wife. It is further revealed by PW-2 SI Harinder Singh that the house of accused/his father is not exclusively owned by appellant, but his father and other relations either lived in this house or in the adjoining houses. Father of appellant and other relations admittedly used this house. No finger-print or foot-prints were lifted from the spot. He further stated that he never went to village Banwala to investigate whether there was a Bhog ceremony of relations of appellant. Entire investigation, it is sated had been carried out by him without any verification thereof by any Gazetted Officer like Deputy Superintendent of Police or Superintendent of Police. PW-2 while admitting that a telephone call had been received by him giving information regarding murder of Ritu Bala on the day of occurrence, but he never made any efforts to trace the person from whom the call had been made and that he had prepared the challan in this matter within 20 days. He denied the suggestion that only in order to wriggle out of tracing the culprits and for obliging the complainant party, he falsely implicated the appellant in this matter.

31. It is pertinent to note that there are material discrepancies in the statements of star witnesses of the prosecution. PW-3 and P-4 categorically stated that appellant was taken in custody on 08.05.2014 itself by police authorities from his house after the Bhog ceremony. PW-3 Hans Raj has stated that it is he who for the first time informed the police authorities about involvement of appellant in murder of his daughter. This statement was recorded on 10.05.2014. Police personnel is stated to be present at the house of appellant at the time of Bhog Ceremony. There arose no occasion for police

personnel to be present at the Bhog in case no suspicion had been raised earlier. A perusal of the so-called disclosure statement, Ex.PM reveals that there is no narration about appellant having any illicit relationship with any girl, leave alone his sister-in-law. Translation of Ex.PM, disclosure statement of appellant-Jagjit Kumar reads as under:-

“In the presence of witnesses written below accused Jagjit Kumar Son of Darshan Ram above said stated that the screw-driver he used to injure his wife Ritu Bala is squashed near guava's plant besides his farm's motor and the towel with he pressed her (Ritu Bala) mouth is placed at room built at his farm's motor, about which only he knows and could recovered by leading the police party.”

It is thus apparent that a serious dent is caused on the prosecution version by these material discrepancies. So called extra-judicial confession before the witnesses as above does not inspire confidence.

32. Another extremely relevant fact to be noted is that marriage of deceased with appellant had admittedly been solemnized a decade prior to the unfortunate incident i.e., in the year 2004-05. It is admitted by material witnesses that no complaint whatsoever had earlier ever been lodged in respect to cruelty or harassment which may have been meted out to the deceased in the long years of her marriage. Furthermore, it is again a matter of record that deceased and appellant had two children i.e., a daughter aged 10 years and a son aged 05 years. There is indeed no evidence on record to indicate any kind of torture or ill-treatment of deceased at the hands of appellant in all these long years. This fact is crystal clear from the testimonies of PW-3, PW-4 and PW-6. There is also no evidence on indicate that any objection had been raised or panchayat convened for resolving the matter of accused having an affair with his sister-in-law as alleged. Elder child was 10

years old and was a natural witness to have deposed regarding any acrimony between the appellant and deceased. Neither the daughter or any other witness has been examined by prosecution in this respect, for reasons best known to it.

33. It is further to be noted that it is duly admitted by PW-3-Hans Raj that appellant had purchased a plot at Kharar (Mohali) in the name of deceased-Ritu Bala in the year 2012. Copy of sale deed, Ex.DY in respect to this land is on record. It does not appeal to logic that an estranged husband would purchase a plot in favour of his wife, in case, he was interested in her younger sister. It is further to be noted that there is no evidence on record to indicate a motive to appellant much less any evidence to prove the same.

34. Reliance by learned trial Court on the extra-judicial confession and so-called disclosure statement of appellant is of no avail to the prosecution. First and foremost, it is to be noted that there is no revelation about any love affair of appellant with his sister-in-law in disclosure statement Ex.PM. PW-2-SI Harinder Singh has imputed the motive of appellant having a love affair with his sister-in-law without any basis or concrete evidence. Moreover, recovery of a screwdriver and a towel which were admittedly not bloodstained and never sent for Forensic Examination, cannot be relied upon to hold the disclosure statement to be admissible in evidence. It is highly improbable that in the event of an injury by a screwdriver being caused and towel being wound around the neck of the deceased, there would be no bloodstains. Opinion of the doctor in this regard had never been taken in this regard by the prosecution and it is admittedly for the first time before learned trial Court that PW-1 gave his opinion in this regard. Insofar as extra-judicial confession is concerned, it is admittedly a weak type of evidence. Testimony

of Hans Raj and Hukam Chand does not inspire much confidence in view of material unexplained discrepancies. It is a settled position that suspicion however strong can never take the place of proof.

35. It is a matter of record that deceased, wife of appellant was found dead in his house in mysterious circumstances but this fact by itself cannot be a ground to indict him of her murder. In our considered opinion, learned trial Court has erred in shifting the burden upon the appellant to prove his innocence while applying the principles of Section 106 of Evidence Act without the foundational facts being proved by the prosecution. Trite it is, that in a given factual matrix the accused may be convicted with the aid of Section 106 of the Evidence Act. However, in the present factual matrix, prosecution had failed to discharge its duty of proving the foundational facts before seeking the aid of Section 106 of the Evidence Act.

36. In this view of the matter, to hold that appellant was unable to prove his plea of alibi cannot be made the basis of his conviction. Moreover, testimony of Hukam Chand, does not inspire much confidence. In his cross-examination PW-4, stated that he had a double relationship with Hans Raj son of Ranjha Ram as he was his brother-in-law (Sala) and also the husband of his sister (Jija). He stated that he had also gone to village Banwala to the house of Bhagwan Dass, but he did not know what was the ceremony being performed there and whatever had to be performed, whether Satsang or Kirtan, had been carried out prior to his reaching there. He was duly confronted with his statement Ex.DB before the Police Officials. Though, it is denied by PW-4 and PW-3 that they had pressurized appellant to marry younger sister of the deceased and that Jagjit Singh had refused to their proposal, PW-3-Hans Raj admitted that as per the custom prevailing in

Kamboj Biradiri, if husband of any women expires, then with consent of the widow she is married with brother of the deceased by way of kareva ceremony. In case, a married women passes away, marriage of younger sister of the deceased with the person with whom the deceased was married, can be performed. This fact in itself probablizes the defence set up by the accused. In case of any illicit relations of accused with sister of the deceased, it is opposed to all probabilities that this fact would not have been known earlier to the family members. Thus, arises the question as to why no action was taken from the date of death of Ritu Bala on 04.05.2014 till 09.05.2014. Therefore, the reasons as culled out by learned trial Court for convicting the appellant do not stand the test of scrutiny when tested on the basis of evidence on record. Prosecution in this case has in-fact failed to prove the foundational facts indicating guilt of accused in this matter to invoke application of Section 106 of Evidence Act. Merely, because the deceased was found murdered in the matrimonial home by itself, is not sufficient to convict the accused for her murder in the given factual matrix.

37. It is a matter of record and as revealed by PW-2 SI Harinder Singh that appellant along with his wife and children were not living alone in the house where she was found murdered. Appellant's father and other relatives were living along with and in the adjoining houses. Residence of appellant is surrounded by other houses. It is pertinent to note that appellant and deceased had two children with the daughter aged 10 years. There is indeed no evidence on record to indicate strained relationship between the deceased and appellant. It is reiterated that Section 106 of the Evidence Act could not be pressed in service in this matter because prosecution has failed

to prove the foundational facts which are essential for inviting application of this provision.

38. No other argument was raised.

39. Keeping in view the facts and circumstances as above, in our considered opinion, judgment and order dated 14.08.2017 are not sustainable. They are hence set aside and conviction of appellant under Section 302 IPC and order of sentence thereunder are set aside. He is acquitted of the charges against him. Appeal is accordingly allowed.

40. Appellant, if not involved in any other criminal case, be released forthwith. In view of the above, criminal revision i.e., CRR No. 4349 of 2017 does not survive and is accordingly dismissed. Pending application(s), if any stand (s), disposed of accordingly.

(LISA GILL)
JUDGE

(ALOK JAIN)
JUDGE

May 26, 2025.

s.khan

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.