



2026:AHC:201636-DB

Reserved on 24.08.2026

Delivered on 24.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3972 of 2019

Chhotu Verma

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Vimlendu Tripathi (ac), Mahadeo Singh Chandel
Counsel for Respondent(s)	:	G.A.

Court No. - 45

**HON'BLE SALIL KUMAR RAI, J.
HON'BLE PADAM NARAIN MISHRA, J.**

(Delivered by Hon'ble Padam Narain Mishra, J.)

1. Heard Sri Vimlendu Tripathi, the Amicus Curiae appointed for the appellant and Ms. Archana Singh, Additional Government Advocate for the State/ prosecution and perused the record of the learned trial court.

2. The present criminal appeal has been preferred by the appellant Chhotu Verma against the judgment and order dated 2 April, 2019 passed by the learned District & Sessions Judge, Fast Track Court, Banda in Sessions Trial No. 113 of 2016, whereby the appellant has been convicted under Section 302 IPC and sentenced to imprisonment for life along with fine of Rs. 10,000/-. By the same judgment, the co-accused Keskali has been acquitted of the charges levelled against her.

3. The prosecution case as disclosed from the First Information Report, is that deceased Chandan was the eldest son of the informant PW-1 Lallu Verma. He was married to Keskali about five years prior to the occurrence. It was alleged that after marriage, Keskali developed illicit relations with the appellant Chhotu Verma, who was the younger brother of the deceased Chandan and on account of the aforesaid, the relations between Chandan and Chhotu were strained. About one week prior to the occurrence, there were arguments between Chandan and Keskali. Thereafter Chandan called his father-in-law and sent Keskali to her parental home. According to the prosecution, on 27th July, 2016 at about 3.00 A.M. the appellant, in a planned manner, murdered Chandan by assaulting him with an axe. Keskali was also alleged to have participated in the conspiracy. The FIR is stated to have been lodged on the same day at about 9:30 A.M.

4. After registration of the case, investigating officer commenced the investigation and recorded the statement of witnesses, conducted the inquest proceeding, collected the plain soil, blood-stained soil and blood-stained piece of mattresses, obtained the postmortem report and FSL report and thereafter submitted the charge sheet against the appellant Chhotu and Keskali under Section 302 read with Section 34 IPC. On which magistrate took cognizance, committed the matter to the Sessions Court.

5. The trial court framed charges against the appellants- Chhotu Verma and co-accused Keskali under Section 302 read with Section 34 IPC. During trial, prosecution examined seven persons as prosecution witnesses and two persons as court witnesses. Out of which PW-1, Lallu Verma, who is the father of the deceased, PW2 Kallu Verma, uncle of the deceased and PW-3, Mithun is the younger brother of the deceased, as a witness of

fact and defence examined one person, Ashok Kumar Shrivastava as a defence witness. Significantly, all the three witnesses of fact did not support the prosecution case during the trial and were declared hostile. The learned trial court also examined Kalka Prasad and Inspector Jagmejay Sachan, as court witness and defence examined one Ashok Kumar Shrivastava as a defence witness. The learned trial court, notwithstanding the hostility of the principal witnesses convicted the appellant Chhotu Verma for offence under Section 302 IPC while acquitting co-accused Keskali.

Submissions on behalf of the appellant

6. Learned counsel for the appellant submits that the conviction is wholly unsustainable as all the material witnesses of fact have turned hostile and there is no other substantive ocular evidence on record to connect the appellant with the murder. It is further submitted that the alleged illicit relationship between the appellant and Keskali, which constitutes the principal motive alleged by the prosecution, has not been proved. Learned counsel for the appellant submits that the contents of the FIR itself were not proved as PW-1, Lallu Verma the alleged informant specifically stated in his statement that his thumb impression was obtained on blank paper. CW-1 Kalka Prasad stated in his testimony that the *tehrir* was written by him on the dictation of *daroga ji* therefore, the FIR cannot be treated as substantive evidence of the facts contained therein. He further submits that the alleged axe was not recovered at the instance of the appellant. The evidence of CW-2 was the Inspector Jagmejay Sachan, who is produced as CW2, I.O. of the case, does not establish that any disclosure statement was made by Chhotu Verma leading to discovery of the axe. Consequently, recovery does not fall within the ambit of Section 27 of Evidence Act. Learned counsel further submits that the trial

court has wrongly invoked Section 106 of Evidence Act, as other family members were admittedly present in the house at the time of incident. Therefore, the circumstances of the occurrence were not exclusively within the knowledge of the appellant. Learned counsel for the appellant lastly submits that the materials of circumstances relied upon by the trial court were not specifically put to the appellant in his examination under Section 313 Cr.P.C. In particular, the alleged motive, the alleged recovery at his instance and the adverse inference under Section 106 were not fairly brought to his notice. Therefore, present appeal is liable to be allowed.

Submissions on behalf of the State

7. The Learned A.G.A. has opposed the appeal and submits that the occurrence took place inside the house and the dead body was found therein. The circumstances were therefore, specifically within the knowledge of appellant. Therefore, burden lies on appellant to explain the circumstances. It is further submitted that the appellant was named in the FIR and the FIR was promptly lodged by the father of the appellant and the alleged weapons was recovered from the house. Human blood was also found on the axe. According to the learned A.G.A. the material witnesses had been won over by the appellant and their hostility cannot demolish the prosecution case. Learned A.G.A. therefore, submits that the judgment of the learned trial court is based upon the proper appreciation of evidence and does not warrant interference.

Analysis

8. We have considered the matter and proceed to decide the present appeal. The following questions arise for consideration:

I. Whether the FIR can be treated as substantive evidence of the prosecution case in the facts and circumstances of the present case?

II. Whether the alleged recovery of the axe is admissible in evidence against the appellant under Section 27 of the Indian Evidence Act?

III. Whether Section 106 of the Indian Evidence Act could be invoked against the appellant when other family members were also present in the house?

IV. What is the effect of the failure to put the material incriminating circumstances to the appellant under Section 313 of the Code of Criminal Procedure?

V. Whether the prosecution has established the motive and proved a complete chain of circumstances sufficient to sustain the appellant's conviction under Section 302 of the Indian Penal Code?

9. Before considering the other circumstances, it would be appropriate to deal with the challenge to the FIR. PW-1 Lallu Varma, who is produced as the informant, has stated before the trial court that his thumb impression was obtained on a blank paper. CW-1 Kalka Prasad has further stated that *tehrir* was written by him on the dictation of *Daroga ji*. The aforesaid statement creates doubts regarding the manner in which the written report came into existence. However, it is necessary to bear in mind that FIR is not substantive evidence of the truth of the facts narrated therein. It can ordinarily be used for corroborating or contradicting its maker, subject to the provisions of Evidence Act. An FIR is not a substantive piece of evidence and can be used only for the limited purpose recognized by law. Consequently, merely because the appellant was named in the FIR, such naming cannot, by itself, constitute substantive proof of

his participation in the murder. In the present case the evidentiary value of the FIR becomes weaker because PW-1, allegedly the maker of FIR, did not support its contents during trial and specifically stated that his thumb impression had been obtained on blank paper.

10. The next circumstance relied upon by the prosecution is the alleged recovery of the *axe* at the instance of the appellant. Section 27 of the Indian Evidence Act, 1872, engrafts a limited exception to the general rule that a confession made by an accused person while in police custody is inadmissible in evidence. The provision renders admissible only so much of the information furnished by an accused in police custody as distinctly relates to the fact thereby discovered. The admissibility, therefore, is not of the entire statement made by the accused, but is confined strictly to that portion which has a direct and proximate nexus with the fact discovered in consequence thereof.

11. The initial requirement for the application of Section 27 of the Indian Evidence Act is that the information must emanate from the accused and that the discovery must be the direct consequence of such information. Thus, the prosecution was required to establish, first, that the appellant was in police custody; second, that he furnished information to the Investigating Officer; third, that such information distinctly related to the fact thereby discovered; and fourth, that, in consequence of such information, the axe was actually discovered. In the present case, the prosecution has failed to establish these essential requirements. The evidence of CW-2, Jagmejay Sachan, the Investigating Officer, does not establish that the axe was recovered pursuant to any information furnished by the appellant, Chhotu Verma. On the contrary, the evidence on record indicates that the alleged recovery was not made either at the pointing out

of the appellant or pursuant to any disclosure statement made by him. The statement of CW-2, who was the Investigating Officer of the case, further discloses that the alleged axe was produced by PW-3, Mithun. Thus, there is no evidence demonstrating that the recovery of the axe was the direct consequence of any information furnished by the appellant while in police custody. The fundamental requirement for invoking Section 27 of the Indian Evidence Act is, therefore, absent. The mere fact that an axe was recovered from the house cannot, by itself, convert such seizure into a discovery within the meaning of Section 27 of the Evidence Act. For Section 27 to apply, the prosecution must establish a clear and proximate nexus between the information furnished by the accused and the fact discovered in consequence thereof. In the absence of such a nexus, the ordinary seizure or recovery of an article cannot acquire the character of a discovery contemplated by Section 27. Likewise, the alleged presence of human blood on the axe does not cure the fundamental defect in the prosecution case. Even assuming that human blood was detected on the axe, such circumstance cannot dispense with the statutory requirement that the article must have been discovered in consequence of information furnished by the accused. The question whether the axe contained human blood is distinct from the question whether its recovery is admissible under Section 27. The former cannot, by itself, satisfy the latter. We, therefore, find that the alleged recovery of the axe has not been proved to be a discovery pursuant to information furnished by the appellant and, consequently, cannot be relied upon as an incriminating circumstance against him under Section 27 of the Indian Evidence Act.

12. The most important circumstance that arises for consideration in the present case is whether the learned Trial Court was justified in invoking Section 106 of the Indian Evidence

Act and placing the burden upon the appellant to explain the circumstances relating to the occurrence.

13. Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact lies upon him. The provision, however, is not intended to relieve the prosecution of its primary and fundamental obligation to establish the guilt of the accused beyond reasonable doubt. Section 106 is a rule of evidence which operates in cases where a particular fact is especially within the knowledge of the accused, but it cannot be invoked to fill the gaps or deficiencies in the prosecution case. The prosecution must first establish, by reliable and cogent evidence, the foundational facts constituting the offence. Only when such foundational facts have been duly established, and the circumstances are such that a particular fact is especially within the knowledge of the accused, can the burden under Section 106 be invoked. The provision cannot be used to shift the entire burden of proof upon the accused or to require him to prove his innocence merely because the prosecution has failed to establish its own case.

14. The Supreme Court, in ***Sadasiv Dhodhi Ram Patil v. State of Maharashtra, (2025) INSC 93***, has authoritatively reiterated this principle. The Court held that, although in a case where a murder is alleged to have been committed within the four walls of a house, the accused may be expected to offer an explanation regarding the circumstances of the occurrence, the prosecution must first establish the foundational facts before invoking Section 106 of the Indian Evidence Act. If the prosecution has failed to establish such foundational facts, it cannot straightaway invoke Section 106 of the Indian Evidence Act and thereby shift the entire burden upon the accused to establish his innocence.

15. The aforesaid principle is squarely applicable to the facts of the present case. The prosecution has sought to rely upon the circumstance that the deceased was in the house at the time the crime was allegedly committed. However, the prosecution's own material indicates that other family members were also present in the house at the relevant time. In this regard, CW-1 and CW-2 have referred to the presence of other family members in the house. More importantly, Sarita, the younger sister of the deceased, is stated to have disclosed in her statement under Section 161 of the Cr.P.C. that, at about 4:00 a.m., she saw someone enter the house and assault Chandan with an axe. She further stated that, when the person was putting out the lamp, she saw him in its light and identified him as her brother, Chhotu. She thereafter informed the others that Chhotu had killed Chandan. We are conscious of the fact that the statement of Sarita recorded under Section 161 of the Cr.P.C. is not substantive evidence and cannot, by itself, be relied upon to prove the truth of its contents. Nevertheless, the statement is relevant for examining the prosecution's own case regarding the presence of several family members in the house and, consequently, whether the circumstances surrounding the occurrence can be said to have been exclusively within the knowledge of the appellant.

16. The prosecution's own case, thus, indicates the presence of other family members in the house. Section 106 of the Indian Evidence Act applies to a fact which is especially within the knowledge of a particular person. It does not authorise the Court to select one person from among several persons present in the house and cast upon him the entire burden of proving his innocence. The distinction between the prosecution's primary burden of proof and the evidentiary burden contemplated under Section 106 must be maintained. Section 106 may require an

accused to explain a circumstance which is especially within his knowledge, but such burden can arise only after the prosecution has established the foundational facts giving rise to such inference. The provision does not create a presumption of guilt, nor does it reverse the fundamental principle of presumption of innocence.

17. We now proceed to consider another circumstance, namely, the examination of the appellant under Section 313 of the Cr.P.C. Section 313 embodies an important safeguard of a fair trial. It requires that the accused be afforded an opportunity to explain the incriminating circumstances appearing against him in the prosecution evidence. This requirement is not an empty formality. The Supreme Court has, in a catena of judgments, reiterated that the Court must put each material incriminating circumstance specifically, distinctly and separately to the accused so as to afford him a fair and effective opportunity to explain the same. A circumstance which has not been put to the accused in his examination under Section 313 of the Cr.P.C. ordinarily cannot be relied upon against him, particularly where such omission has caused prejudice to the accused. The questions put to the accused must be framed in a manner that clearly communicates the material circumstances sought to be relied upon against him. A vague, general or mechanical questioning under Section 313, which fails to bring the specific incriminating circumstances to the notice of the accused, does not satisfy the statutory requirement and the fundamental principles of fair trial. On a perusal of the record, it appears that these material circumstances were not specifically, distinctly and fairly put to the appellant during his examination under Section 313 of the Cr.P.C. Consequently, the appellant was not afforded an effective opportunity to explain these circumstances or to offer his defence in relation thereto.

18. More importantly, the prosecution cannot seek to draw an adverse inference from the appellant's alleged failure to explain a circumstance which was itself not put to him during his examination under Section 313 of the Cr.P.C. The purpose of Section 313 of the Cr.P.C. is to enable the accused to furnish an explanation with respect to the incriminating circumstances appearing against him in the prosecution evidence. It would, therefore, be contrary to the statutory safeguard embodied in the provision to first rely upon an incriminating circumstance for recording a conviction and thereafter contend that the accused ought to have explained it. The accused must be confronted with the material circumstance before the Court can legitimately expect an explanation from him in respect thereof. In the present case, the defect assumes greater significance because there is no reliable direct evidence and the conviction rests substantially upon circumstances. The circumstances which were not specifically put to the appellant cannot be converted into additional links in the chain of circumstantial evidence.

19. Another circumstance which requires consideration by this Court is whether the circumstances relied upon by the prosecution form a complete and cogent chain pointing towards the guilt of the accused. The present case is one based on circumstantial evidence. The settled principle is that each circumstance relied upon by the prosecution must be firmly established by reliable evidence. The circumstances so established must form a complete chain, and their cumulative effect must be such as to point unerringly towards the guilt of the accused and to exclude every reasonable hypothesis consistent with his innocence.

In the present case, the prosecution seeks to rely upon the following circumstances:

- the alleged illicit relationship;

- the alleged motive arising from such relationship;
- the alleged recovery of the axe;
- the presence of the dead body inside the house;
- the alleged presence of the appellant at the place of occurrence; and
- the alleged failure of the appellant to explain the occurrence.

On careful examination, none of these circumstances, either individually or cumulatively, form a complete and reliable chain pointing unerringly towards the guilt of the appellant.

20. The prosecution alleged that the appellant was in illicit relationship with Keskali wife of the deceased and this relationship furnished the motive of murder. Motive may not always be indispensable where direct evidence is available and reliable. But in a case resting upon a circumstantial evidence when motive is specifically put-forward a link in the chain, the prosecution must establish it through reliable evidence. In the present case, the alleged illicit relationship has not been proved by any reliable substantive evidence. PW-1, PW-2 and PW-3, who were material witnesses, have not supported the prosecution case. The trial court, therefore, was not justifying in treating the alleged illicit relationship as an established fact, merely on the basis of allegations contained in the FIR. Once the alleged motive remains unproved, the court cannot proceed on the assumption that the appellant alone had a reason to commit the murder and thereafter use Section 106 of the Indian Evidence Act compelling him to establish his innocence. The absence of proof of motive assumes significance in the present case because the prosecution is otherwise based entirely upon the substantial evidence.

21. In the present case, the prosecution has failed to establish the foundational circumstances of connecting the appellant with the murder. The alleged illicit relationship between the appellant and

Keskali has not been proved. Secondly, the alleged motive arising from such relationship has not been established. The alleged illicit relationship has not been established by reliable evidence and, consequently, the motive founded upon such relationship also remains unproved. Thirdly, the alleged recovery of the axe has not been proved to the pursuant to the information supplied by the appellant. Fourthly, the principal witnesses of fact, have turned hostile. Thus, the mere fact that the dead body was found inside the house cannot by itself establish the guilt of the appellant.

22. Likewise, to the extent that the prosecution seeks to rely upon any incriminating circumstance which was not specifically, distinctly and fairly put to the appellant in his examination under Section 313 of the Cr.P.C., such circumstance cannot ordinarily be used against him, particularly where the omission has caused prejudice by depriving him of an effective opportunity to explain the same. Thus, the circumstances relied upon by the prosecution, when examined individually as well as cumulatively, do not form a complete chain of evidence from which the guilt of the appellant can be inferred beyond reasonable doubt.

23. The FIR itself cannot be treated as substantive evidence of the facts narrated herein, particularly, when the informant has not supported its contents and has stated that his thumb impression was obtained on blank paper. Cumulative effect of these circumstances is that the prosecution has failed to establish an unbroken chain pointing only towards the guilt of the appellant.

24. Having carefully examined the entire evidence, we are of the considered opinion that the learned trial court has placed undue reliance upon circumstances which were either not proved in accordance with law or were insufficient to establish the guilt of the appellant. The prosecution has thus, failed to establish the guilt of the appellant beyond reasonable doubt. The appellant is consequently, entitled to the benefit of doubt.

25. Accordingly, the appeal is *allowed*.

26. The judgment and order dated 02.04.2019 passed by the learned trial court is hereby set aside. The appellant is acquitted of all the charges levelled against him under Section 302 IPC. His bail bonds and sureties are discharged.

27. The appellant is in jail and if he is not wanted in any other criminal case, he shall be released forthwith, subject to compliance of Section 437A Cr.P.C (Section 481 of BNSS).

28. Trial court record, along with the copy of the judgment, shall be transmitted, forthwith.

29. The learned Registrar General is directed to pay an honorarium of Rs. 15,000/- to the learned Amicus Curiae, Sri Vimlendu Tripathi for his valuable assistance and arguments advanced in the present appeal.

(Padam Narain Mishra, J.) (Salil Kumar Rai, J.)

September 24, 2026
Ramakant