IN THE HIGH COURT OFJHARKH AND AT RANCHI

Cr. Appeal (D.B.) No. 1531 of 2017

[Against the judgment and order of conviction and sentence dated 06.02.2017/25.02.2017 respectively passed in S.T. No.25 of 2014 by learned Additional Sessions Judge, Simdega]

Amrus Dang, S/o-Cyril Dang, R/o-village-Banki, Pahantoli, P.O. and P.S.-Bano, Dist.-Simdega ……Appellant

Versus

The State of Jharkhand …. Respondent

For the Appellant : Ms. Amrita Banerjee, Advocate
For the Resp.-State : Mr. Pankaj Kumar, P.P.

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

CAV On 06/10/2026 **Pronounced On 06 /11/2026**

Per- Pradeep Kumar Srivastava, J.

1. Heard Ms. Amrita Banerjee, learned counsel for the appellant and learned P.P.

2. The appellant has preferred this appeal challenging his conviction and sentence for the offence under sections 302/201 of IPC passed by learned Additional Sessions Judge, Simdega in S.T. No.25 of 2014 dated 06.02.2017/25.02.2017 respectively whereby and whereunder the appellant has been held guilty and sentenced for the offence under sections 302/201 of IPC and directed to undergo life imprisonment along with fine of Rs.10,000/- for the offence under section 302 of IPC and R.I. for 5 years along with fine of Rs.5,000/- for the offence under

section 201 of IPC with default stipulation. Both the sentences were directed to run concurrently.

Factual Matrix:-

3. Factual matrix giving rise to this appeal is that the informant, Agatha Dang village *Chaukidar* 4/5 in Bano Police station got information through rumor on 23.07.2013 that one Amrus Dang of village Banki Pahan Toli was working in Delhi where he got marriage with a lady and brought to his house about two years ago and started residing with her but in the night of 17.07.2013, he killed the said lady and buried her in his own house. The informant verified the above facts from the mother of the accused, Amrus Dang, who also confirmed the said news to be true and admitted that her son has committed murder of his own wife and the dead body has been buried in a room of the house. She also shown burial place in her house and also disclosed that her son Amrus Dang after committing murder has fled away to Delhi.
4. On the basis of above information, Bano P.S. Case No.42 of 2013 dated 23.07.2011 was registered for the offence under sections 302/201 of IPC.
5. The charge of investigation was assumed by S.I. Sri Nivas Officer-in-Charge, Bano police Station, who visited the place of occurrence, which is house of the accused having main doors towards south and roof with mud tiles. Just entrance door, there is a room and just adjacent to this room, there was another room whereby a burial place 5ft x 3 ft and 2 ft

deep was found and the dead body of the deceased was exhumed in the presence of witnesses and inquest report (Ext.5) was prepared. The dead body was sent by him for post-mortem. The accused Amrus Dang was also arrested on 02.08.2013 and his confessional statement was recorded on the same day at about 12:45 pm at his house. After finding sufficient evidence against the accused, he has submitted charge-sheet for the aforesaid offence.

6. After taking cognizance, the case was committed to the court of Sessions where S.T. No. 25 of 2014 was registered.
7. The accused has denied the charges leveled against him and claimed to be tried.
8. In course of trial, altogether 11 witnesses have been examined by the prosecution, namely:-

P.W.1-Bijay Bahadur Singh

P**.W.2**-Agatha Dang

P.W.3-Silna Dang

P.W.4-Dr. Sudheshwar Ohdar

P.W.5-Dr. Prabhu Sahay Linda

P.W.6-Dr. Sagar Tirky

P.W.7-Nirmal Dang

P.W.8-Silvanus Dang

P.W.9-Oscar Dang

P.W.10-Inosent Dang

P.W.11-Peter Dang

9. The Investigation Officer **S.I. Sri Niwas Kumar** of this case has been examined as court witness i.e. **C.W.1.**

10. Apart from oral testimony of the witnesses, following documentary evidence has been examined by the prosecution:-

Ext.1-Signature of Bijay Bahadur on the inquest report

Ext.2-Post-mortem report

Ext.3-Formal FIR

Ext.4-Fardbeyan

Ext.5-Inquest report

Ext.6-Confessional Statement of accused.

11. On the other hand, the accused in his statement under section 313 of Cr.P.C. has denied from the occurrence and pleaded his innocence. No oral or documentary evidence has been adduced by the defence.

12. Learned trial court after apprising with the oral as well as documentary evidence and hearing the argument of the prosecution and defence has relied upon following circumstances proved by the prosecution leading towards the conclusive inference about the guilt of the accused:

(i) Admittedly, the deceased was living as wife of the accused.

(ii) On the previous night of the occurrence, both the husband and the wife were inside the house and the

deceased and the accused were last seen together in their house.

(iii) The accused was alone with his wife in his house when she was murdered inside the house.

(iv) The presence of any other person has not been ascertained by the accused.

(v) The dead body of the deceased was recovered buried in a room of the house belonging to the accused.

(vi) The dead body was exhumed by the police and inquest report was prepared of the deceased (Ext.5).

(vii) The post-mortem report of the deceased (Ext.2) slitting of her throats was found and the cause of death is opined to be homicidal death due to above injuries leading of cardiorespiratory failure

(viii) The accused after commission of murder and burying the dead body of his wife fled away from the house.

(ix) The accused has completely failed to offer any reasonable explanation to the aforesaid incriminating circumstances appearing against him in his statement under section 313 of Cr.P.C., which provides an additional link in the chain of evidence against him

(x) Under the aforementioned circumstances, the burden of proof shifts upon the accused under section 106 of

Evidence Act to prove the circumstances which was exclusively within his knowledge as to how and under what circumstances, his wife has died homicidal death in his own house while she was under custody of her husband and was residing with him.

13. In view of the above clinching circumstantial evidence, learned trial court has held the appellant guilty for the offence under sections 302/201 of IPC and sentenced as stated above.

14. We have gone through the record of the case along with the impugned judgment and order in the light of contentions raised on behalf of the both side.

Submission on behalf of appellant:-

15. Learned counsel for the appellant assailing the impugned judgment has strenuously argued that in a case based on circumstantial evidence alone motive plays a vital role. The prosecution has miserably failed to prove any motive behind the occurrence or for what reason the appellant was intending to eliminate his wife. Learned trial court has formulated very scattered circumstances and tried to synthesize the same forming the complete chain of circumstances but failed to consider that without proving the foundational facts and motive behind the occurrence, the principle under section 106 of Evidence Act cannot be invoked and prosecution cannot be absolved from its initial burden of proof of the guilt of the accused beyond all reasonable doubt. It is further submitted

that in the instant case, out of 11 witnesses P.W.3, P.W.7, P.W.8, P.W.9, P.W.10 and P.W.11 have been declared hostile by the prosecution and failed to prove a single incriminating circumstance against the appellant. Learned trial court has also failed to appreciate that there is no eye-witness of the occurrence claiming to have last seen the deceased with the appellant and the FIR was lodged after a week without offering any reasonable explanation. It is also evident that no incriminating articles like weapon of offence, blood stained clothes, blood stained soil or any kind of incriminating articles have been recovered and seized in this case. Mere confessional statement of the accused recorded by the police without leading to any discovery/recovery is inadmissible in evidence. Learned trial court has committed serious illegality by accepting insufficient circumstances to be conclusive proof of the guilt of the appellant and arrived at wrong conclusion. Therefore, the impugned judgment and order of conviction and sentence of the appellant is liable to be set aside and this appeal may be allowed.

Submission on behalf of State:-

16. On the other hand, learned P.P. controverting the aforesaid arguments has contended that the circumstances formulated by the learned trial court are very the basic foundational facts, which have been proved by the prosecution leading a *prima facie* inference about the guilt of the accused. Learned trial court has very wisely and aptly applied the

principles of section 106 of Evidence Act and relying upon the judgment pronounced by the Hon'ble Apex Court in the case of ***Gajanan Dashrath Kharate vs. State of Maharashtra (2016) 4 SCC 604*** and other rulings relevant to conviction based on circumstantial evidence, has rightly recorded the offence of the guilt of the appellant and sentenced him adequately. Hence, there are no merits in this appeal and no legal substance in the points of argument raised on behalf of the appellant. This appeal is devoid of merits and fit to be dismissed.

17. We have gone through the record of the case along with the impugned judgment and order in the light of contentions raised on behalf of the both side.

18. The only point for determination in this appeal is that "**as to whether the impugned judgment and order of conviction and sentence of the appellant passed by learned trial court suffers from any error of law calling for any interference in this appeal?**"

Analysis, Reasons and Decision:-

19. Before imparting over verdict on the above point, we have to apprise with oral and documentary evidence adduced by the prosecution.

20. It appears that altogether 11 witnesses were examined by the prosecution.

Out of total 11 witnesses, **P.W.7-Nirmal Dang, P.W.8-Silvanus Dang, P.W.9-Oscar Dand, P.W.10-Inosent Dang and**

P.W.11-Peter Dang have been declared hostile by the prosecution and expressed their complete ignorance about the facts of the case.

P.W.1-Bijay Bahadur Singh is the Block Agricultural Officer of Bano Block Office. According to his evidence on 23.07.2013, he was appointed for exhuming the dead body of the deceased from her matrimonial home. He along with police personnels went to village Banki inside the house of Amrus Dang in a room, the dead body was exhumed and brought out the same was identified as wife of Amrus Dang. The inquest report of the deceased was prepared in his presence and appears his signature marked Ext.1. He also states that at the time of preparing inquest report and examining the dead body, Amrus Dang was not present.

P.W.2- Agatha Dang is the informant-cum-village *chaukidaar*. She has consistently corroborated her initial statement that she came to know through rumor about the commission of murder of a lady by her husband in village Banki. She went to the place of occurrence where the mother of the accused namely Silna Dang told that no one is present in the house, which was locked. The house was identified by the villagers also, who disclosed that Amrita Dang, the wife of the Amrus Dang has been killed and her dead body has been buried and her husband has fled away. She informed at the police station and proved her signature on her beyan given before officer-in-charge.

In her cross-examination, she has categorically stated that the house of the accused was not really locked rather in that house itself, the mother of the accused, Amrus Dang was residing in another room.

P.W.3-Silna Dang is the mother of the accused. According to her evidence, on the date of occurrence, she was not present in the house rather she had gone to her daughter's house. She also admits that her son Amrus Dang had kept a concubine, namely, Amrita Dang, who committed the murder of Amrita Dang. She has been declared hostile by the prosecution.

In her cross-examination, she has categorically admitted that Amrita Dang was brought by her son from Punjab and both were residing together under cordial relationship.

P.W.4-Dr. Sudheshwar Ohdar has conducted the post-mortem on the body of the deceased, Amrita Dang and found following:-

External Examination:-

(i) Built average, nutrition average, body was decomposed and swollen, skin, sloughed off here and there, mud was adherent in all over body, eyes and mouth were covered with mud.

(ii) There was a cut mark in front of neck with margin irregular due to sloughing off of surrounding skin.

(iii) Trachea was cut deeply beyond its diameter with damaged under lying structure.

Internal Examination:-

(i) All the internal organs of thorax and abdomen were decomposed to the extent that the exact nature of colour and appearance could not be elicited.

(ii) Uterus was non-gravid

(iii) Brain matters were decomposed.

He has opined that the nature of weapon used was sharp cutting weapon and the death has caused due to cardio respiratory failure and slitting of throat. He has proved the post-mortem report as Ext.3.

P.W.5-Dr. Prabhu Sahai Linda and P.W.6-Dr. Sagar Tirki were also members of Medical Board constituted by the Civil Surgeon, Simdega and in their presence, the post-mortem of the deceased, Amrita Dang were conducted. They have also proved their signature on post-mortem report Ext.3.

21. The Investigating Officer of this case is **S.I. Shri Nivas Kumar**, who has been examined as court witness i.e. **C.W.1.** According to his evidence, on 23.07.2013, the charge of investigation has been handed over to him and he has recorded the restatement of the informant as well as statement of other witnesses and also visited the place of occurrence and inspected the same. The place of occurrence is Bandi, Pahan Toli under Bano Police Station. The house, which has a tiled roof, faces south and at the entrance of the house, there was a room wherein the deceased Amrita Dang was buried at a particular area measuring 5 ft long, 2 feet wide and 3/2 feet deep. He further states that the dead body of the deceased was exhumed from that place in the presence of

witnesses and inquest report was prepared. He received the post-mortem report and recorded the confessional statement of the accused, Amrus Dang marked Ext.6. He has proved the *fardbeyan* marked as Ext.3 and FIR as Ext.4 and has also proved the inquest report marked as Ext.5. After finding sufficient evidence against the appellant, he submitted charge-sheet against the appellant.

In his cross-examination, he has denied the suggestion of defence that his investigation is defective and perfunctory and without any evidence, he has submitted charge-sheet.

22. We have given thoughtful consideration to overall aspects of the case as testified by the prosecution witnesses during trial and also examined the evidence available on record.

23. From the aforesaid discussion of evidence, it transpires that there is no dispute that the deceased was residing with the appellant as a husband and wife and on the date of occurrence, they were last seen together in the house. The death of deceased was caused by cardio respiratory failure and slitting of throat with the sharp cutting weapon, which has been proved by the doctors i.e. P.W.4, P.W.5 and P.W.6. It further appears that the appellant has failed to offer any explanation to the aforesaid incriminating circumstances appearing against him in his statement under section 313 of Cr.P.C that also provides an additional link in the chain of evidence against him. For the aforesaid proved foundational circumstances, reasonable inference about commission of

murder of the deceased by the appellant can be drawn. Therefore, corresponding burden of prove shifts on the shoulder of accused to prove the facts specially within his knowledge under section 106 of Indian Evidence Act to explain the facts and circumstances under which the deceased died when the deceased was under the custody of the appellant.

24. In his statement under section 313 of Cr.P.C., the appellant has simply denied the occurrence and pleaded his innocence. He failed to explain under what circumstances, the deceased died, which also provides an additional link in the chain of evidence against him.

25. It is trite that provision of Section 106 of Indian Evidence Act is not intended to relieve the prosecution of its burden to prove guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, offer any explanation which might driver the Court to draw a difference inference.

26. In the case of State of ***"State of Madhya Pradesh vs. Balveer Singh"*** reported in ***(2025) 8 SCC 545***, wherein the accused was charged with killing his wife in night in his house. The accused neither claimed that deceased was suffering from any ailment nor there found any evidence worth the name to suggest the possibility of her death occurring due to

any health issue. In the case of non-explanation of circumstances, specially within the knowledge of the accused, the Hon'ble Apex Court has held at paras 77, 80 and 81 as under:-

> ***"77.*** *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. The word "especially" means facts that are or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its Illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".*
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> ***80.*** *In Tulshiram Sahadu Suryawanshi v. State of Maharashtra [Tulshiram Sahadu Suryawanshi v. State of Maharashtra, (2012) 10 SCC 373 : (2013) 1 SCC (Cri) 193] , this Court observed as under: (SCC pp. 381-82, para 23)*
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> > *"23 [Ed.: Para 23 corrected vide Official Corrigendum No. F.3/Ed.B.J./58/2012 dated 9-10-2012.] . It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve*

the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the following observation in State of W.B. v. Mir Mohammad Omar [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] : (SCC p. 393, para 38)

'38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In Shambu Nath Mehra v. State of Ajmer [Shambu Nath Mehra v. State of Ajmer, (1956) 1 SCC 337 : AIR 1956 SC 404] the learned Judge has stated the legal principle thus: (SCC OnLine SC para 9)

"9. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge."'"

(emphasis supplied)

81. *In Trimukh Maroti Kirkan v. State of Maharashtra [Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] , this Court was considering a similar case of homicidal death in the confines of the house. The following observations are considered relevant in the facts of the present case: (SCC pp. 690-91 & 694, paras 14-15 & 22)*

"14. <u>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</u>

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 [Stirland v. Director of Public Prosecutions, 1944 AC 315 (HL)] — quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh [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.

* * *

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that

shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

(emphasis supplied)

27. In view of the above discussion and reasons and settled principles of law as discussed, we don't find any error of law in the impugned judgment. There is no substance in the point of arguments raised on behalf of the appellant and no merits in this appeal. Therefore, the conviction and sentence passed by the learned Trial Court against the appellant is hereby confirmed and upheld.

28. Accordingly, this appeal is **dismissed**.

29. Pending I.A(s), if any, is also disposed of, accordingly.

30. The appellant is in custody. Let a copy of this judgment be furnished forthwith to the appellant through learned P.P.

31. Let a copy of this judgment be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Per Ananda Sen, J. : I agree

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi
Dated:-06/11/2026
Pappu/-N.A.F.R.
Uploaded on 06/11 /2026