IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No.500 of 2017

[Against the Judgment of conviction dated 14.12.2016 and Order of sentence dated 16.12.2016/17.12.2016, passed by the learned Sessions Judge, West Singhbhum at Chaibasa, in Sessions Trial No. 10 of 2015,]

GomiaDiggi son of late Arjun Diggi, resident of village Masuri-Kudar, PO and PS Sonua, District West Singhbhum, Jharkhand.... ...Appellant

Versus

The State of Jharkhand. ... ..Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant(s) : Mr.Anupam Anand, Advocate
For the Respondent : Mr. Saket Kumar, A.P.P.

CAV ON:18/02/2026 **PRONOUNCED ON: 12 /03/2026**

[PerSujit Narayan Prasad, J.]

1. The present Appeal has been filed under section 374(2) of the Code of Criminal Procedure against the judgment of conviction dated 14.12.2016 and order of sentence dated 16.12.2016/17.12.2016, passed by the learned Sessions Judge, West Singhbhum at Chaibasa, in Sessions Trial No. 10 of 2015, whereby and whereunder, the learned court below has convicted the appellant under section 302 of the Indian Penal Code and sentenced him to undergo RI for life with fine of Rs. 10,000/- under section 302 of the IPC. In default he is further sentenced to undergo RI for one year.

Factual Matrix: -

2. The prosecution case, in brief, on the basis of *fardbeyan*(Ext.2) of the informant Dhanu Diggi (now deceased) dated 25.10.2014 is that on 24.10.2014 informant had gone for his labour work and returned on 25.10.14 at about 06:00 a.m. and saw that dead body of wife of his

younger brother was lying in his house. It is further alleged that informant's younger brother resides separately and always used to consume 'Haria' and thereafter he used to quarrel with his wife(deceased). He also used to quarrel with any person who try to intervene between them. He has two small children in between 10 to 12 years.

3. Further case of the prosecution is that the informant's wife Budhni Diggi told that in the night of 24.10.14 at about 03:00 A.M. Gomia Diggi(appellant herein) started asking money from his wife Mecho Diggi (deceased) for consuming 'Haria', then she didn't give money, hence Gomia Diggi assaulted her by wooden stick, hand and fist. His wife rushedoutside the house towards market, but was chased by the accused and they returned at about 07:00 P.M. to house and again started quarreling and assaulting his wife in the result of which she died. Neighbourers didn't intervene due to fear of accused.

4. On the basis of above fardbeyan Sonua P.S. Case No. 36 of 2014 was registered for the offence u/s 302 of the I.P.C. against the named accused, namely, Gomia Diggi and completion of investigation charge-sheet was submitted against the accused/appellant for the offence u/s 302 1.P.C. , thereafter the case was committed to the Court of Sessions.

5. Charge was framed against the accused on 21.07.15 for the offence u/s 302 of the I.P.C., to which he pleaded not guilty and claimed to be tried.Trial commenced and at the conclusion of the trial appellant was convicted and sentenced as aforesaid.

6. The prosecution, in order to prove its case, had examined altogether seven witnesses. Out of which, PW-2 Budhni Diggi is the wife of informant, PW-5 Dr. Shivlal Kunkal is the medical officer, PW-6 Prakash Hembram is the Investigating Officer of the case and PW-7 Brijlal Ram is the Officer In-charge.

7. PW-1 Hindu Sai is the hearsay witness and PW-3 Kirani Diggi and PW-4 Prahlad Pradhan have been declared hostile by the prosecution.

8. Apart from oral testimony of the witnesses following documentary evidences have also been adduced:-

(i) Ext.-1 Postmortem report of deceased MechoDiggi.

(ii) Ext.-2 Fardbeyan

(iii) Ext.-2/1 Endorsement of fardbeyan.

(iv) Ext.-3 Formal FIR

(v) Ext.-4 Carbon copy of inquest report.

(vi) Ext.5 One slip pasted on stick in which signature of accused Gomia Diggi and Thumb impression of witnesses Hindu Sai (PW-1 and Kirani Diggi (PW-3) (pasted on Material Exhibit-I)..

(vii) Ext.-6 Second slip pasted on stick in which GR case no. 297 of 2014 written and signature of SDJM, Porahat at Chaibasa (pasted on Material Exhibit-I).

(viii) Ext.-7 confessional statement of accused Gomia Diggi (with objection).

(ix) Ext.-8 seizure list.

9. Apart from aforesaid documentary evidences Material Exhibit-I is the stick used in commission of crime.

10. The learned trial Court, after recording the evidence of witnesses, examination-in-chief and cross-examination, recorded the statement of the accused person, found theappellant guilty and accordingly, convicted himin the manner as indicated hereinabove.

11. Against the aforesaid order of conviction and sentence the present appeal has been preferred.

Submissions advanced by the learned counsel for the Appellant:

12. The learned counsel appearing on behalf of the appellant has submitted that the judgment of conviction and order of sentence passed by the learned court below is apparently in absence of availability of cogent evidences.He has also submitted that there is no any eye-witness on record. No blood substance was found on the place of occurrence.

13. He has further stated that there is no eye-witness to the occurrence and all witnesses who have been examined are hearsay witnesses. He has further stated that the informant who is the brother of the appellant wanted to grab the land of the appellant and hence the present case has been filed.

14. It is further stated that appellant was in Chennai three months prior to the death of the deceased and after getting information of death of his wife he returned from Chennai four days after the death. He has further stated that inquest witness Amit Kumar Pradhan has not been examined and the appellant has been convicted only on mere suspicion.

15. It has been contended that there are no any evidences available in record, who connect the appellant with the offence and the Learned Trial Court has erroneously come in conclusion on the basis of logic that this appellant has committed murder of her wife, hence the impugned judgment and order is liable to be set aside.

16. It has been contended that there are no any eye witnesses available on record and further the prosecution has failed to brought complete chain of circumstantial evidence on record against the appellant, hence in absence of evidences conviction cannot be said true in the eyes of law.

17. It has further been submitted that the prosecution has not examined as a witness to the children of the deceased who is 10 and 12 years of the age at the relevant time due to which the prosecution case become doubtful.

18. It has further been contended that the prosecution has also failed to brought proper evidence regarding the said recovered 'Danda'/stickused in murder of deceased or not and further the prosecution has not brought any evidence regarding any expert opinion thatthe said Danda/stick used in murder of deceased and only on the basis of recovery of the danda/stick cannot be said that case has been proved under Section 27 of the Evidence Act.

19. It has further been contended that the Learned Trial Court has considered the fact that accused was addicted of liquor and always assaulting his wife and abusing her in filthy language and the death of deceased is not natural but he had failed to consider that due to previous

act anybody cannot be convicted and further in this case there is no any motive availablein recordto the appellant for the murder of his wife.

20. The learned counsel based upon the aforesaid grounds, have submitted that the judgment of conviction passed by the learned trial Court convicting the appellant, under section 302 of the Indian Penal Code therefore, is not sustainable and fit to be set aside.

Submission advanced by the learned counsel for the State:

21. The learned counsel appearing for the State has submitted that theappellant has been charged u/s 302 IPC for causing murder of his wife Mecho Diggi.

22. It is further submitted that the appellant has assaulted the deceasedwith stick, fist and slaps, resulting to the aforesaid assault she died which is consistent with the oral evidence of prosecution witnesses.

23. It has been submitted that from evidence of Investigating officer Prakash Hembrom (PW-6) and Brijlal Ram (PW-7), it is apparent that the accused was all along at his house till the arrival of police at 09:10 a.m., and the accused made ex-judicial confession before villagers and his sister-in-law Budhani (PW 2).

24. It has been submitted that so far, plea of alibi taken by accused that prior to three months of occurrence, he returned from Chennai after murder of his wife on receiving telephonic information after four days of occurrence and can't see the dead body of his wife is concerned, it is apparent from the record that the accused was arrested on 25.10.14 from his own house at about 12:30 P.M. and he was produced before Magistrate on 26.10.14. since the plea of alibi is the nature of defence,

hence, it is incumbent upon the accused to lead evidence in order to substantiate his plea of alibi, but no oral or documentary evidence has been adduced by the accused to prove his plea of alibi rather the circumstances brought on record unerringly leads towards conclusion that he was all along present in his house.

25. It has been contended that the totality of circumstances suggests that the death of deceased was not an accidental death, but homicidal one and the accused has taken a false plea of alibi which also adds an additional link to the chain of circumstances appearing against him.

26. Therefore, learned counsel for the State submitted that learned trial court on the basis of evidence of the witnesses and documents available on record has rightly convicted the appellant under section 302of the IPC and hence the impugned judgment of conviction as well as sentence, requires no interference by this court.

Analysis: -

27. We have heard learned counsel for the parties, perused the documents and the testimony of witnesses as also the finding recorded by learned trial Court in the impugned order.

28. This Court, before appreciating the arguments advanced on behalf of the parties as also the legality and propriety of the impugned judgment, deems it fit and proper to refer the testimonies of prosecution witnesses particularly PW-2 Budhni Diggi who is the wife of informant, PW-5 Dr. Shivlal Kunkal who has conducted autopsy over the dead body, PW-6 Prakash Hembram who is the Investigating Officer of the

case and PW-7 Brijlal Ram who is the Officer In-charge of Sonua Police Station. The relevant portion of their testimonies isbeing referred herein.

29. **PW-1 Hindu Sai** is a hearsay witness of the occurrence. According to his evidence accused Gomia Diggi was married with one Mecho Diggi and two children were begotten out of their wedlock and at present are between age group of 10 to 12 years. It is further deposed that wife of Gomia was killed about one year ago in her own house. The son of accused disclosed this witness that his father has killed his wife. A Danta(stick) was also seized by the police and seizure list was prepared, on which he put his thumb impression. The evidence of this witness further goes to show that accused Gomia Diggi works in brick kiln at West Bengal from where he brought Mecho and performed marriage with her. This witness had further stated that the accused always used to scuffle and assault his wife after consuming liquor. He has frequently seen their scuffle.

In his cross-examination, he has admitted that he did not see the occurrence nor the dead body of the deceased.

30. **PW-2 Budhni Diggi,** the wife of informant of the case. She in her examination-in-chief has deposed that about two years ago on the occasion of Deepawali, Gomia Diggi started scuffling with and assaulting his wife Mecho Diggi(deceased) in connection with some money. Both husband and wife always used to scuffle with each other. She has further deposed that on the date of occurrence, she had gone to her paternal home and returned in the next day morning, then Gomia Diggi himself told her that he has killed his wife Mecho Kui, then she

went to the room of Gomia Diggi and saw the dead body of Mecho Kui. She had further deposed that the case was lodged on the information of husband of this witness. Police arrived at the place of occurrence, where in presence of several villagers, the accused confessed his guilt. Her evidence further goes to show that Gomia Diggi has performed two marriages. He drove away his first wife from his house and performed second marriage with Mecho and he always used to assault her.

In her cross-examination, she admits that she didn't see any blood on the place of occurrence or any visible injury on the dead body of Mecho.

31. **PW-3 Kirani Diggi** and **PW-4 Prahlad Pradhan** have been declared hostile by the prosecution and not supported the prosecution case. Their attention has been drawn towards their statement u/s 161 Cr.P.C. to which they have denied.

32. **P.W.5 Dr. Shivlal Kunkal** is the Medical Officer of Sadar Hospital, Chaibasa, who conducted autopsy on the dead body of the deceased on 25.10.14 at 04:20 p.m. (Ext.1) and he found the following ante-mortem injuries: -

External Injuries:-

(i) Abrasion in forehead 1”x1/2”x skin deep.

(ii) Abrasion in right knee 1/2”x1/2”xskin deep.

(iii) Multiple bruises in the back side.

Internal Injuries:-

Thorax- empty, spleen-rupture, abdomen-peritoneal cavity full of blood, stomach-digested food particles present. Other viscera-NAD.

Time since death: - 04 to 36 hours.

Cause of death:- Above injuries are sufficient to death cause byhemorrhage and shock due to heavy and hard substance.

33. In his examination-in chief this witness opined that multiple bruises in back side signify internal injury of thorax and 5th to 7th ribs fracture is sufficient to cause death in ordinary course of nature and all other injuries caused by Danta.

In his cross-examination he has admitted that this kind of injuries may be caused by fall from a considerable height.

34. **PW-6 Prakash Hembram** who is the Investigating Officer of the case has deposed in his examination-in-chief that on 24.10.14 he was posted at Sonua Police Station and on that day at 09:00 A.M. information was received at police station that in between Masurikudar a person has killed his wife. After S.D. Entry, this witness along with officer-in-charge Brijlal Ram and S.I. Sohan Lal went to place of occurrence. Fardbeyan of Dhanu Diggi was recorded by officer-in-charge Brijlal Ram, which is marked Ext-2, the Endorsement on fardbeyan for registration of case is Ext-2/1 and Formal F.I.R. is Ext-3. At the place of occurrence officer-in-charge Brijlal Ram prepared inquest report of the deceased in presence of Dhanu Diggi and Amit Kumar Pradhan marked as Ext-4. The accused was arrested on the spot and upon interrogation, he confessed his quilt and his statement was

recorded at police station. He has further deposed that on the basis of confessional statement of accused a 'Danta' used for assaulting the deceased was recovered from the house of accused which was seized in presence of witnesses Hindu Sai (PW-1) and Kirani Diggi (PW-3) and seizure list was prepared.

He has further deposed that after receiving charge of investigation, he inspected the place of occurrence, which is kuchcha house of Gomia Diggi situated at Village-Masurikudar consisting of two rooms. There is no door in any room. Towards Western room dead body of Mecho Kui was found. No substantive material was found at the place of occurrence. He recorded re-statement of informant and statement of witnesses Budhani Diggi (PW-2), Hindu Sai (PW-1), Kirani Diggi (PW-3), Prahlad Pradhan (PW-4), Amit Kumar Pradhan and others. He sent the dead body for postmortem at Sadar Hospital, Chaibasa and obtained P.M. Report.

Finding sufficient evidence against the accused, he submitted charge-sheet vide C.S.No.20/14 dated 22.11.14 against the accused for the offence u/s 302 of the I.P.C. This witness has also produced the seized weapon of offence i.e. 'Danta' which doesn't bear Malkhana Number but two slips are pasted on it. On first slip, thumb impression of accused Gomia Diggi and witnesses Hindu Sai (PW-1) and Kirani Diggi (PW-3) and second slip contains G.R.No.297/14 and signature of S.D.J.M., Porahat. These lips are marked Ext-5 & 6 respectively and Danta is marked as Material Exhibit-I.

In his cross-examination, he has admitted that from 09:10 a.m. to 13:00 hours, he was present at the place of occurrence and returned along with accused at Police Station, till 13:00 hours seizure list was not prepared. He further admits that seized 'Danta' was lying in the kitchen, which was inspected by him, but he does not knowwhether this 'Danta' was used as weapon of offence, hence he didn't seize it and after confessional statement of accused the same was seized. He started investigation of this case from 25.10.14 at 17:10 hours. Officer-in-charge was also accompanied with him; hence he prepared the seizure list. He further admits that after arrest accused was lodged in prison of police station, thereafter his confessional statement was recorded. There was no external injury on the dead body of Mecho Kui. He further admits that seized "Danta" was not stained with blood, even on wearing clothes of deceased no blood mark was found. He further admits that seized 'Danta' was produced before S.D.J.M., Porahat, but it was not sealed and it doesn't contain Malkhana Number. He has further denied the suggestion of defence that he obtained thumb impression of accused on several plain papers putting him under fear and compulsion and used the same for preparation of seizure list and confessional statement and he has submitted charge-sheet against the accused without sufficient evidence.

35. **P.W.7 Brijlal Ram** is the officer-in-charge of Sonua Police Station has deposed thaton 25.10.14 at about 09:00 A.M. information was received at police station that in Village Masurikudar a person has killed his wife. After S.D. Entry, this witness along with A.S.I. Sohan Lal and A.S.I. Prakash Hembrom went to the place of occurrence, where

fardbeyan of Dhanu Diggi was recorded and signed by him, which he identified earlier marked as exhibit. His evidence further goes to show that at the place of occurrence he prepared inquest report of the deceased in presence of independent witnesses Dhanu Diggi and Amit Kumar Pradhan earlier marked as exhibit. The accused was arrested on the spot and upon interrogation, he confessed his quilt and his statement was recorded at police station by this witness marked as Ext-7. He has further deposed that on the basis of confessional statement of accused a 'Danta' used for assaulting the deceased was recovered from the house of accused which was seized in presence of witnesses Kirani Diggi (PW-3) and Hindu Sai (PW-1) seizure list was prepared marked as Ext-8. He identified the arrested accused standing in the dock.

In his cross-examination, he has admitted that he arrested the accused Gomia Diggi 25.10.14 at 12:30 P.M. and after three and half hours of arrest, he prepared confessional statement of accused. The F.I.R. was registered on 25.10.14 at about 13:00 hours and charge of investigation verbally handed over to Prakash Hembrom (PW-6). He has not mentioned the diameter of 'Danta’ on the seizure list. He further admits that after arrest accused was lodged in prison of police station, thereafter, his confessional statement was recorded. There was no external injury on the dead body of Mecho Kui. He further admits that seized 'Danta' was not stained with blood even on wearing clothes of deceased no blood mark was found. He further admits that seized 'Danta' was produced before S.D.J.M., Porahat, but it was not sealed and it doesn't contain Malkhana Number.He has further denied the suggestion of defence that

he obtained thumb impression of accused on several plain papers putting him under fear and threatening and used the same for preparation of seizure list and confessional statement.

36. Admittedly in this case as per the version of prosecution witnesses no ocular witness was traced out in course of investigation to vindicate the alleged occurrence of ravishment and murder of the deceased/victim by the hands of accused/appellant. In such situation the prosecution case rests upon circumstantial evidence.

37. The learned counsel for the appellant has contended that the learned Trial Court has failed to appreciate the fact that there is no eye witness to the alleged occurrence and that the prosecution failed in to complete the chain of circumstances therefore order impugned suffer from an error. It has further been contended that the learned Trial Court has failed to take into consideration that the case was of circumstantial evidence however none of the chain of circumstances were complete so as to give rise to an irrefutable inference that the alleged crime has been committed by the Appellant.

38. Per contra the learned counsel for the state has contended that by virtue of the testimonies of the witnesses particularly P.W.2 the chain of circumstances completes herein which indicates only conclusion of the guilt of the present appellant/accused.

39. In the pretext of aforesaid contention it is considered view of this Court that before venturing to the merit of the case it would be apt to discuss herein the settled proposition of law on the issue of circumstantial evidence.

40. The Hon'ble Apex Court in the year 1952, in the judgment rendered in ***Hanumant Son of Govind Nargundkar vs. State of Madhya Pradesh [AIR 1952 SC 343]*** has laid down the parameters under which, the case of circumstantialevidence is to be evaluated, which suggests that: "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. ......"

41. The judgment referred in Hanumant (supra) has been consistently followed by Hon'ble Apex Court in the judgment rendered in ***Tufail (Alias) Simmi Vs. State of Uttar Pradesh [(1969) 3 SCC 198]; Ram Gopal Vs. State of Maharashtra [(1972) 4 SCC 625]*** and ***Sharad Birdhichand Sarda Vs. State of Maharashtra [(1984) 4 SCC 116*** and also in ***Musheer Khan alias Badshah Khan &Anr. Vs. State of Madhya Pradesh [(2010) 2 SCC 748.***

42. The Hon'ble Apex Court in ***Musheer Khan (Supra)*** while discussing the nature of circumstantial evidence and theburden of proof of prosecution has held as under paragraph nos. 39 to 46 as under:

"39. In a case of circumstantial evidence, one must look for complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence. This Court finds that this case is entirely based on circumstantial evidence. While appreciating circumstantial evidence, the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances.

40.Chief Justice Fletcher Moulton once observed that "proof does not mean rigid mathematical formula" since "that is impossible". However, proof must mean such evidence as would induce a reasonable man to come to a definite conclusion. Circumstantial evidence, on the other hand, has been compared by Lord Coleridge "like a gossamer thread, light and as unsubstantial as the air itself and may vanish with the merest of touches". The learned Judge also observed that such evidence may be strong in parts but it may also leave great gaps and rents through which the accused may escape. Therefore, certain rules have been judicially evolved for appreciation of circumstantial evidence.

41. To my mind, the first rule is that the facts alleged as the basis of any legal inference from circumstantial evidence must be clearly proved beyond any reasonable doubt. If conviction rests solely on circumstantial evidence, it must create a network from which there is no escape for the accused. The facts evolving out of such circumstantial evidence must be such as not to admit of any inference except that of guilt of the accused. (See Raghav Prapanna Tripathi v. State of U.P. [AIR 1963 SC 74 : (1963) 1 Cri LJ 70])

42. The second principle is that all the links in the chain of evidence must be proved beyond reasonable doubt and they must exclude the evidence of guilt of any other person than the accused. (See State of U.P. v. Dr.Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : 1992 Cri LJ 3693] , SCC p. 309, para 20.)

43. While appreciating circumstantial evidence, we must remember the principle laid down in Ashraf Ali v. King Emperor [21 CWN 1152 : 43 IC 241] (IC at para 14) that when in a criminal case there is conflict between presumption of innocence and any other presumption, the former must prevail.

44. The next principle is that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the

accused and are incapable of explanation upon any other reasonable hypothesis except his guilt.

45. When a murder charge is to be proved solely on circumstantial evidence, as in this case, presumption of innocence of the accused must have a dominant role. In Nibaran Chandra Roy v. King Emperor [11 CWN 1085] it was held that the fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. It seems, therefore, to follow that whatever force a presumption arising under Section 106 of the Evidence Act may have in civil or in less serious criminal cases, in a trial for murder it is extremely weak in comparison with the dominant presumption of innocence.

46. The same principles have been followed by the Constitution Bench of this Court in Govinda Reddy v. State of Mysore [AIR 1960 SC 29 : 1960 Cri LJ 137] where the learned Judges quoted the principles laid down in Hanumant Govind Nargundkar v. State of M.P. [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] The ratio in Govind [(1952) 2 SCC 71 : AIR 1952 SC 343 :1953 Cri LJ 129] quoted in AIR para 5, p. 30 of the Report in Govinda Reddy [AIR 1960 SC 29 : 1960 Cri LJ 137] are:

"5. ... „10. ... in cases where the evidence is of a circumstantial nature, the circumstances [which lead to the conclusion of guilt should be in the first instance] fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be [shown] that within all human probability the act must have been [committed] by the accused." [As observed in Hanumant Govind Nargundkar v. State of M.P., (1952) 2 SCC 71 : AIR 1952 SC 343 at pp. 345-46, para 10.] " The same principle has also been followed by this Court in Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607 : 1974 SCC (Cri) 643 : AIR 1974 SC 1144] "

43. Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

44. There is no dispute regarding the settled position of law that in the case of circumstantial evidence, the chain is to be complete then only there will be conviction of the concerned accused person but, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

45. The same view has been taken by the Hon'ble Apex Court in ***Bakhshish Singh vs. State of Punjab, (1971) 3 SCC 182*** wherein the Hon'ble Apex Court has observed that the principle in a case resting on circumstantial evidence is well settled that the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. These circumstances should be of a conclusive nature and tendency and they

should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

46. The Hon'ble Apex Court while laying down such proposition in the said case has considered the factual aspect revolving around therein and while considering the fact hasonly found the incriminating evidence against the appellant was his pointing the place where the dead body of the deceased had been thrown which the Hon'ble Apex Court has not considered to be circumstantial evidence though undoubtedly it raises a strong suspicion against the appellant. the Hon'ble Apex Court while coming to such conclusion has observed that even if he was not a party to the murder, the appellant could have come to know the place where the dead body of the deceased had been thrown. Hence anyone who saw those parts could have inferred that the dead body must have been thrown into the river near about that place. In that pretext, the law has been laid down at paragraph-9 thereof, which reads as under:

> *"9. The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well-settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any*

reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

47. Further, in this regard, reference is required to be made of the judgments rendered by Hon'ble Apex Court in ***Anwar Ali Vs. State of Himachal Pradesh (2020) 10 SCC 166*** and ***Mohd. Yonus Ali Tarafdar Vs. State of West Bengal, (2020) 3 SCC 747*** wherein the Hon'ble Apex Court has laid down the following propositions to be taken into consideration in a case based on circumstantial evidences: -

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established;
(ii) The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
(iii) The circumstances taken cumulatively should form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused;
(iv) The circumstances should be consistent only with the hypothesis regarding the guilt of the accused; and
(v) They must exclude every possible hypothesis except the one which is sought to be proved.

48. The authoritative judgment in the aforesaid context is the ***Sharad Birdhichand Sarda vs. State of Maharashtra, (supra)*** wherein the Hon'ble Apex Court has held all the above five principles to be the golden principles which constitute the "panchsheel" of the proof of a case based on circumstantial evidence. The Hon'ble Apex Court in the said case as under paragraph-155, 156, 157, 158 and 159 has been pleased to hold that if these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional linkto lend an assurance to the court and not otherwise. Paragraphs-155, 156, 157, 158 and 159 of the said judgment read as under:

"155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus: "Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry case [1952 NZLR 111] was approved by this Court in Anant Chintaman Lagu v. State of Bombay [AIR 1960 SC 500] Lagu case [AIR 1960 SC 500] as also the principles enunciated by this Court in Hanumant case [(1952) 2 SCC 71] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — Tufail case [(1969) 3 SCC 198] , Ramgopal case [(1972) 4 SCC 625] , Chandrakant Nyalchand Seth v. State of Bombay [Criminal Appeal No 120 of 1957,], Dharambir Singh v. State of Punjab [Criminal Appeal No 98 of 1958,]. There are a number of other cases where although Hanumant case [(1952) 2 SCC] has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration [(1974) 3SCC 668, 670] , Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607,] , Shankarlal Gyarasilal Dixit v. State of Maharashtra [(1981) 2 SCC 35, 39] and M.G. Agarwal v. State of Maharashtra [AIR 1963 SC 200 : (1963) 2 SCR 405,] — a five-Judge Bench decision.

158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar [AIR 1955 SC 801] to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With

due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus: "But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation. such absence of explanation or false explanation would itself be an additional link which completes the chain.

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied: (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation."

49. The foremost requirement in the case of circumstantial evidence is that the chain is to be completed. In ***Padala Veera Reddy v. State of A.P. [1989 Supp. (2) SCC 706***], theHon'ble Apex Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

"10. ... (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with

> *the guilt of the accused but should be inconsistent with his innocence."*

50. Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

51. A theory of "accused last seen in the company of the deceased" is a strong circumstance against the accused while appreciating the circumstantial evidence. In such cases, unless the accused is able to explain properly the material circumstances appearing against him, he can be held guilty for commission of offence for which he is charged.

52. The Hon'ble Apex Court in the case of **Satpal v. State of Haryana, (2018) 6 SCC 610** has observed that when there is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant, the Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. For ready reference the relevant paragraph is being quoted as under:

"6. We have considered the respective submissions and the evidence on record. There is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwiseforming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

53. In the backdrop of the aforesaid discussed settled legal position this Court is now adverting to the factual aspect of the instant case in order to find that whether charges against the present appellant have been proved beyond reasonable doubt.

54. From the discussion of oral testimony of witnesses as referred in the preceding paragraph the following circumstances has been emerged which are as follows:

(i) It is evident that the accused was married with deceased Mecho Kui Diggi and out of their wedlock 9 two sons were begotten. This fact is also admitted by accused in his statement u/s 313 Cr.P.C.

(ii) It further transpires that dead body of deceased was found in her matrimonial home under injured condition. It is also admitted fact that accused was residing with his wife and children in his house.

(iii) The accused always used to scuffle with and assault his wife after consuming liquor is proved by independent witnesses Hindu Sai(PW-1) and Budhani Diggi (PW-2), who is non-else but sister-in-law of the accused and not rebutted by defence in their cross-examination.

(iv) As per P.M. Report of the deceased, there was abrasion in forehead, right knee and back-side multiple bruises were found. $5^{th}$to 7^{th}ribs were found fractured with left side of lung ruptured. Spleen was also ruptured. Thus, it is apparent that the death of deceased was homicidal one and injuries sustained by her were found sufficient to cause death in ordinary course of nature caused by 'Danta'/stick

(v) It is further evident that incident took place in the night of 24.10.14 and F.I.R. was lodged on 25.10.14 after arrival of officer-in-charge Sonua Police Station (PW-7 Brijlal Ram), who recorded

fardbeyan(Ext-2) of informant Dhanu Diggi(died during pendency of trial) at about 10:00 A.M. at Village Masurikudar and the accused was arrested on the same day i.e. 25.10.14 at about 12:30 P.M.

(vi) It has come on record that PW-7 Brijlal Ram, Officer-in-charge of Sonua P.S., has also recorded confessional statement(Ext-7) of the accused and on that basis a 'Danta' used for assaulting the deceased was recovered from the house of accused, which was seized in presence of witnesses Kirani Diggi(PW-3) and Hindu Sai(PW-1) and accordingly seizure list (Ext-8) was prepared.

55. From the testimony of evidences, it has firmly come on record that the unnatural death of deceased in her matrimonial home was occurred, while she was under custody of her husband and further satisfactorily explanation has not been given by the husband/appellant in this regard that how the death of his wife (deceased) was occurred in the boundary of the house.

56. Therefore, in such circumstances as per the settled position of law that there will be reverse onus upon the appellant/husband to disbelieve the allegation as has been leveled against the appellant, since, Section 106 of the Indian Evidence Act, 1972 speaks that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

57. For ready reference, Section 106 of the Evidence Act is reproduced 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.*"

58. In this context, the Hon'ble Apex Court in the judgment rendered in ***Joshinder Yadav Vs. State of Bihar*** reported in **(2014) 4 SCC 42** has held at paragraphs 16, 17, 18 considering the implication of the provision of Section 106 of the Evidence Act, as under:

"16. In our opinion, the prosecution having established that the accused treated the deceased with cruelty and that they subjected her to harassment for dowry, the accused ought to have disclosed the facts which were in their personal and special knowledge to disprove the prosecution case that they murdered Bindula Devi. Section 106 of the Evidence Act covers such a situation. The burden which had shifted to the accused was not discharged by them. In this connection, we may usefully refer to the judgment of this Court in Shambhu Nath Mehra v. State of Ajmer [Shambhu Nath Mehra v. State of Ajmer, AIR 1956 SC 404 : 1956 Cri LJ 794] wherein this Court explained howSection 101 and Section 106 of the Evidence Act operate. Relevant portion of the said judgment reads thus : (AIR p. 406, paras 10-11)

"10. Section 106 is an exception to Section 101. Section 101 lays down the general rule about the burden of proof. „101.Burden of proof.—Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist." Illustration (a) says— „A desires a court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime."

11. 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."

17. In Balram Prasad Agrawal v. State of Bihar [(1997) 9 SCC 338 : 1997 SCC (Cri) 612] the prosecution had established the cruel conduct of the accused i.e. her husband and members of his family and the sufferings undergone by the deceased at their hands. The unbearable conduct of the accused ultimately resulted in her death by drowning in the well in the courtyard of the accused's house. This Court observed that what happened on the fateful night and what led to the deceased's falling in the well was wholly within the personal and special knowledge of the accused. But they kept mum on this aspect. This Court observed that it is true that the burden is on the prosecution to prove the case beyond reasonable doubt. But once the prosecution is found to have shown that the accused were guilty of persistent conduct of cruelty qua the deceased spread over years as was well established from the unshaken testimony of father of the deceased, the facts which were in the personal knowledge of the accused who were present in the house on that fateful night could have been revealed by them todisprove the prosecution case. This Court observed that the accused had not discharged the burden which had shifted to them under Section 106 of the Evidence Act. While coming to this conclusion, this Court relied on Shambhu Nath Mehra [Shambhu Nath Mehra v. State of Ajmer, AIR 1956 SC 404 : 1956 Cri LJ 794] .

18. In the present case, the deceased was admittedly in the custody of the accused. She disappeared from their house. As to how her dead body was found in the river was within their special and personal knowledge. They could have revealed the facts to disprove the prosecution case that they had killed Bindula Devi. They failed to discharge the burden which had shifted to them under Section 106 of

the Evidence Act. The prosecution is not expected to give the exact manner in which the deceased was killed. Adverse inference needs to be drawn against the accused as they failed to explain how the deceased was found dead in the river in one foot deep water.

59. Further, reference, in this regard be made to the judgment rendered in ***Tulshiram Sahadu Suryawanshi & Anr Vs. State of Maharashtra*** reported in***(2012) 10 SCC 373***at paragraph 22 held as under:

"22. The evidence led in by the prosecution also shows that at the relevant point of time, the deceased was living with all the three accused. In other words, the appellants, their son A-3 and the deceased were the only occupants of the house and it was, therefore, incumbent on the appellants to have tendered some explanation in order to avoid any suspicion as to their guilt. All the factors referred above are undoubtedly circumstances which constitute a chain even stronger than the account of an eyewitness and, therefore, we are of the opinion that conviction of the appellants is fully justified."

60. The proposition of law as laid down in the cases referred hereinabove is regarding implication of the provision of Section 106 which clarifies that the burden which has shifted to the accused if not discharged by him, he will be liable to be punished by drawing inference against the accused that he failed to explain that how the deceased was found dead.

61. In the case at hand, it is evident from record that though defence has taken the plea of alibi by stating that three months of occurrence, accused/appellant returned from Chennai after murder of his wife on receiving telephonic information after four days of occurrence and can't see the dead body of his wife. But from testimony of P.W.6 and 7 it is evident that the accused was arrested on 25.10.14 from his own house at about 12:30 P.M. and he was produced before Magistrate on 26.10.14. Since, the plea of alibi is the nature of defence, hence, it is

incumbent upon the accused to led evidence in order to substantiate his plea of alibi, but it is evident from record that no any cogent oral or documentary evidence has been adduced by the accused/appellant to prove his plea of alibi rather the circumstances brought on record precisely leads towards conclusion that he was all along present in his house along with the deceased.

62. It has fully been established by the testimony of prosecution witness particularly P.W.2 who is sister-in-law of the accused/appellant that accused was addicted of liquor and always assaulting his wife and abusing her in filthy language. P.W.2 has further stated that accused had confessed before that he had killed his wife (deceased).

63. Further death of deceased is not natural, but homicidal due to assault which has been corroborated by the testimony of P.W.5 i.e. doctor who had conducted autopsy of the deceased wherein he has opined that opined that multiple bruise in back side signify internal injury of thorax and 5th to 7th ribs fracture is sufficient to cause death in ordinary course of nature and all other injuries caused by Danta.

64. The medical version has fully substantiated the prosecution version that death of appellant's wife was caused due to assault made by the *Danta* and since it has not been satisfactorily explained by the appellant that how his wife death was caused inside the house and further there is no explanation of accused that any-one-else entered into his house and caused death of his wife by giving assault and also accused has taken false plea of alibi therefore, this Court is of the view that the chain of circumstances has fully been completed herein.

65. Further as per the settled position of law that the accused is bound to give an explanation under section 106 of the Evidence Act, 1872. If he does not do so, or furnishes what may be termed as wrong explanation or it a motive is established-pleading securely to the conviction of the accused closing out the possibility of any other hypothesis, then a conviction can be based thereon. This opinion of this court is fortified from the ratio laid down in ***Satpal Singh Vs State of Haryana (supra)*** .

66. Thus, the entirety of circumstances as referred in preceding paragraphs is of indicative of the fact that the death of deceased was not an accidental death, but homicidal one and the accused has taken a false plea which also adds an additional link to the chain of circumstances appearing against him and further it has been firmly established by the prosecution that on the day of alleged occurrence accused was inside his house and from the testimony of P.W.2 it has fully been established that on the alleged day of occurrence Gomia Diggi (appellant herein) started scuffling with and assaulting his wife Mecho Diggi (deceased) in connection with some money.Therefore, it is a fit case where inference is to be drawn against the appellant as he failed to explain how the deceased was found dead.

67. On the basis of the discussion made hereinabove this Court is of the considered view thatthe judgment passed by learned trial Court requires no interference.

68. Accordingly, the instant appeal fails and is dismissed.

69. Pending interlocutory application(s), if any, also stands disposed of.

70. Let the Lower Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgment.

I agree **(Sujit Narayan Prasad, J.)**

(Arun Kumar Rai, J.) **(Arun Kumar Rai, J.)**

Jharkhand High Court
Dated: 12 / 03/2026
KNR/AFR

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