

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIL. (JAIL) APPEAL NO.2 OF 2018

Ngangbam Premjit Singh, aged about 28 years, S/o Ngangbam Ibobi Singh, a permanent resident of Khurkhul Makha Leikai, P.O. Leimakhong & P.S. Sekmai, Imphal West District, Manipur (now in Manipur Central Jail, Sajiwa).

...Appellant

-Versus-

The State of Manipur, represented by the Chief Secretary (Home), Government of Manipur.

.... Respondent

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR
HON'BLE MR.JUSTICE M.V.MURALIDARAN**

For the Appellant :: Mr. S.Chittaranjan, Advocate

For the Respondent :: Mr. Athouba Khaidem, PP

Date of reserving Judgment & Order :: 10.10.2022

Date of delivery of Judgment & Order :: 03.11.2022

JUDGMENT AND ORDER (CAV)

Hon'ble CJ:

[1] Yumlembam (Ningol) Ngangbam (Ongbi) Latabi Devi, a newly wedded young woman of about 20 years of age, was killed on 02.03.2013. Ngangbam Premjit Singh, her husband, was charged with her murder. Ngangbam Ibobi Singh and Ngangbam (Ongbi) Channou Devi, his parents, were charged with offences punishable under Section 109 IPC read with Section 34 IPC and Section 498-A IPC read with Section 34 IPC. All of them pleaded not guilty and claimed to be tried. During the trial in Sessions Trial Case No.3 of 2015/10 of 2015 on the file of the learned Sessions Judge, Imphal West, the prosecution examined 13 witnesses and

marked in evidence 11 exhibits. Material Objects 1 to 6 were also marked. All the accused were subjected to examination under Section 313 Cr.P.C but they did not choose to adduce evidence. Thereupon, by judgment and order dated 17.04.2018, the learned Sessions Judge convicted Ngangbam Premjit Singh of the offence punishable under Section 302 IPC but acquitted his parents of all charges. By judgment of sentence dated 18.04.2018, the learned Sessions Judge sentenced Ngangbam Premjit Singh to rigorous imprisonment for life and payment of a fine of ₹ 10,000/-. Aggrieved by his conviction and sentence, Ngangbam Premjit Singh is in appeal under Section 374(2) Cr.P.C.

[2] Heard Mr. S.Chittaranjan, learned counsel for the appellant; and Mr. Athouba Khaidem, learned Public Prosecutor, appearing for the State.

[3] The case of the prosecution: Yumlebam Chourajit Singh, the father of the deceased, lodged a written report on 02.03.2013 with the Officer-in-Charge, Sekmai Police Station, alleging that his daughter was killed by strangulation at her husband's house at around 2.30 pm on that day. He alleged that this was done by her husband and his family members and requested that the culprits/accused persons be arrested. The Original Ejahar was marked as Ex.P-1. On the strength on Ex.P-1, FIR No.24 (03) 2013 was registered by the Officer-in-Charge, Sekmai Police Station, at 3.20 pm on 02.03.2013, under Sections 302 and 34 IPC. The accused were shown therein as 'Ngangbam Premjit Singh and his family members'. The FIR was marked as Ex.P-10. The case was thereupon endorsed to Oinam Nungshijao Singh, Inspector of Police (PW-12), for investigation. He stated before the Sessions Court that, upon receiving the endorsement, he took up investigation by examining the complainant who corroborated what was stated in the Original Ejahar. He then went to the place of occurrence at about 3.45 pm, along with a police party. He

investigated the spot and found that the body of the deceased was lying on a kouna mat on the floor in her bedroom. He found bruise marks around her neck. He prepared a Rough Sketch Map (Ex.P-11) and also got photographs taken (MOs 2 to 6). He claimed that the husband of the deceased, who was present there, admitted to having killed her by strangling with a Chuni. He also told him that the Chuni was lying on the bed of the deceased. PW-12 seized the Chuni under a Seizure Memo (Ex.P-2). He requested the District Magistrate, Imphal West, to depute an Executive Magistrate for conducting an inquest over the dead body. Within sometime, W. Itocha Singh, Sub-Deputy Collector, Sekmai (PW -7), came to the place of occurrence and conducted an inquest over the dead body in the presence of witnesses. His Inquest Report was marked as Ex.P-4. PW-12 also conducted an inquest under Section 174 Cr.P.C. in the presence of witnesses and his Inquest Report was marked as Ex.P-3. PW-12 thereupon arrested Ngangbam Premjit Singh and his father, Ngangbam Ibobi Singh. The body of the deceased was sent for post mortem examination to Regional Institute of Medical Sciences, Imphal, at about 7.45 pm. The Post Mortem Examination Report was marked as Ex.P-6. Dr. Memchoubi Ph., Assistant Professor, Department of Forensic Medicine, RIMS, Imphal (PW-11), conducted the autopsy of the deceased and opined that her death was due to strangulation and was homicidal in nature. She also confirmed that the deceased was pregnant at that time and the age of the foetus was more than four months. On 04.03.2013, PW-12 arrested Ngangbam (Ongbi) Channou Devi, the mother-in-law of the deceased. PW-12 completed the investigation and filed Charge-Sheet No.3/Sek-PS 2013 dated 31.07.2013 against the accused for the offences alleged therein. The Charge Sheet was marked as Ex.P-9.

[4] This being the investigation undertaken in the case, it would be appropriate now to examine the evidence adduced before the Sessions Court. PW-1, the father of the deceased, stated that, about three months after his daughter's marriage to Ngangbam Premjit Singh, he was informed that she had expired at the house of her husband. He stated that he went to the said house and found his daughter lying dead in her room. He further stated that he made a report to the Officer-in-Charge, Sekmai Police Station, on suspicion and confirmed that Ex.P-1 was the Original Ejahar. In his cross-examination, he stated that his son, late Uday Singh, informed him of the death of his daughter at around 2-2.30 pm on that day. He admitted that he did not go to Sekmai Police Station on the date of the occurrence and that he made a report verbally to the police personnel of Sekmai Police Station who came to the place of occurrence. He further stated that he could not read and write English language and he did not know who wrote Ex.P-1. He also confirmed that he simply put his signature therein at the instance of the police personnel without knowing the contents. He denied the suggestion that he did not make any report to the police.

[4a] PW-2 was a witness to the Inquest Reports (Ex.P-3 and Ex.P-4) and the Chuni Seizure Memo (Ex.P-2). In his chief examination, he stated that he was a Store Keeper in the Consumer Affairs, Food and Public Distribution Department, Government of Manipur, and was informed, while he was in office, about the expiry of Latabi Devi. He stated that he went to the house of the accused persons, who were known to him as they were from his locality, and found her dead body in her room. He stated that the family of the accused told him that she had killed herself but he suspected that she was killed by strangulation. He admitted that he signed Ex.P-2, Ex.P-3 and Ex.P-4 as a witness. He identified MO-1 (Chuni). He also

admitted that he was a witness to the Seizure Memo (Ex.P-5) in relation to 5(Five) photographs (MOs-2 to 6). He further stated that he found strangulation marks on the neck of the deceased but did not find any other injury on her body. He stated that she had expired about 2-3 months after her marriage to Ngangbam Premjit Singh. He was not subjected to cross-examination.

[4b] PW-3 was the Secretary of the Nupi Lup (Women's Group) of the village in the year 2013. She stated that she knew Latabi Devi even prior to her marriage. She stated that on 02.03.2013 at about 3.00 pm, while she was at her house, she heard that Latabi Devi had died at her husband's house. She called all the members of the Nupi Lup (Women's Group) and they went to the house of the accused. She stated that she saw the dead body lying on a mat in the house and when she asked the mother-in-law of the deceased how Latabi Devi had died, she replied that she did not know anything. Thereafter, the mother-in-law fell unconscious. She inquired with the sister-in-law of the deceased, who replied that she also did not know anything but had been informed by the mother-in-law of the deceased that she tried to hang herself. The sister-in-law produced the Chuni which was allegedly used by the deceased to hang herself. PW-3 stated that they suspected the cause of death and the father of the deceased accordingly reported the matter to the police. A team from Sekmai Police Station came to the place of occurrence around 4.30 pm and an inquest was conducted over the body in her presence. She also figured as a witness to the Chuni Seizure Memo (Ex.P-2). In her cross-examination, PW-3 denied that she did not put her signature in Ex.P-2 Seizure Memo as a witness and that the same was false and fabricated. She also denied the suggestion that she did not know MO-1 and that it was also a fabricated exhibit.

[4c] PW-4 is a relation of the deceased. She stated that the deceased was the daughter of her elder brother. She stated that on 02.03.2013 at about 2.00 pm, while she was at her house, Uday Singh called her through her mobile and informed her that his younger sister, Latabi Devi, did not wake up from her sleep. She thereupon called the husband of the deceased on his mobile phone and asked for information. He replied that Latabi Devi did not respond and did not wake up from her sleep. He also told her that he went to the ground which was situated behind his house after distribution of Invitation cards for a Shradha ceremony. She then went to the house of the accused and upon entering the bedroom of the deceased, she found her lying on her bed. Immediately, the body was taken down from the bed and laid on a mat on the floor. She looked at the body and saw a mark of strangulation with a chain on her neck. PW- 4 stated that Latabi Devi had married Ngangbam Premjit Singh on 24.12.2012 after eloping with him. She claimed that when she went to her parental home on 28.01.2013, Latabi Devi also came there and told her that she was not willing to go back to her matrimonial home on that day. PW-4 claimed that when she asked her to go back to her matrimonial home, Latabi Devi told her that she could not tolerate the torture of her mother-in-law. While saying this, she was crying. Again, in the evening, PW-4 told Latabi Devi to go back to her matrimonial home as her marriage was just a month old and it would be better for her to go back to her matrimonial home. Thereafter, Latabi Devi went back to her matrimonial home. PW-4 further stated that, on 21.02.2013, she went to the house of the accused and the mother-in-law of the deceased was in the verandah. She stated that she sat near the mother-in-law of the deceased and Latabi Devi also came out and sat next to her. The mother-in-law angrily told PW-4 that Latabi Devi had conceived prior to her marriage and she suspected her

behavior. The mother-in-law further stated that she disliked Latabi Devi remaining as her daughter-in-law and that she had purchased one san of gold for Latabi Devi from the money received as gifts during the performance of the marriage and from her own money. The mother-in-law also told her that she desired to get the pregnancy of Latabi Devi aborted but Latabi Devi refused to do so as her husband did not want to abort her pregnancy. PW-4 further stated that she took some vegetables on that day but the mother-in-law refused to accept the same. PW-4 stated that during her lifetime, Latabi Devi told her that her mother-in-law and Louriyam (O) Pambi Devi, sister of Ngangbam Premjit Singh, frequently tortured her. In her cross-examination, PW-4 stated that Latabi Devi came to her parental home after PW-4 reached there at about 8.30 am on 28.01.2013. Latabi Devi was dropped by her husband on a motor cycle. She denied the suggestion that Latabi Devi never told her that she was subjected to ill treatment by her mother-in-law. She denied the suggestion that Latabi Devi never told her that she could not go back to her matrimonial home on account of ill treatment by her mother-in-law. She also denied that the suggestion that she did not visit the matrimonial home of the deceased on 21.02.2013 and did not meet the mother-in-law. Lastly, she denied the suggestion that the mother-in-law did not tell her that she had asked the deceased to get the child aborted

[4d] PW-5 is also a relation of the deceased. She stated that Latabi Devi was the daughter of her uncle, the younger brother of her father. She said that, on 28.01.2013, there was a Swasti Puja at her parental home and she had gone there. While she was there, the grandmother of Latabi Devi informed her that Latabi Devi had come to their house and, thereupon, she went to the house of her uncle, Chourajit Singh, and met Latabi Devi. She asked Latabi Devi the reason for coming

to her parental home. Latabi Devi told her that she had left her matrimonial home and was dropped by her husband. She also told her that she had been quarrelling with her husband and her mother-in-law also frequently tortured her. She stated that she was not willing to go back to her matrimonial home and on further inquiry, she told PW-5 that she had left her matrimonial home without the knowledge of her mother-in-law. Upon hearing these words, PW-5 asked Latabi Devi to go back to her matrimonial home but she refused to do so. Thereafter, PW-5 returned to her parental home for attending the Swasti Puja and when she was on her way to her own matrimonial home, she saw that Latabi Devi was going with her grandmother towards her matrimonial home. She stated that, on 02.03.2013, she was informed by her sister-in-law that Latabi Devi had expired at her matrimonial home due to suspected strangulation. In her cross-examination, PW-5 stated that the parental home of Latabi Devi was situated just adjacent to her parental home. She denied the suggestion that she did not meet Latabi Devi on 28.01.2013 and that Latabi Devi had never told her that she was quarrelling with her husband. She also denied the suggestion that Latabi Devi never told her that she was frequently tortured by her mother-in-law.

[4e] PW-6 is the elder brother of Latabi Devi. He stated that she got married to Ngangbam Premjit Singh three months prior to her death. According to him, Latabi Devi came to the parental home one or two times after her marriage and during her visits, she told him that she was subjected to torture by her mother-in-law and sister-in-law. He further stated that about three years prior to his deposition, one Lor Singh, husband of his aunty, informed him that something had happened to his sister at her husband's house and asked him to come immediately. He thereupon went to the house of Ngangbam Premjit Singh and found his sister

lying dead on a mat in front of her bed. Before he reached the house, a team of police personnel of Sekmai Police Station had already reached there. He felt suspicious that his sister had been killed by her in-laws and her husband. He stated that police conducted an inquest over the body of his sister in his presence and prepared an Inquest Report (Ex.P-3), wherein he signed as a witness. He also admitted that he was a witness to the Post Mortem Examination Report (Ex.P-6). In his cross-examination, PW-6 stated that he had never visited his sister at her matrimonial home. He further stated that except the statement attributed to his deceased sister in respect of the alleged torture by her mother-in-law, he had never seen any such torture. He however denied the suggestion that his sister never told him that she was tortured by her mother-in-law.

[4f] PW-7 is the Sub-Deputy Collector, Sekmai, who was deputed to act as the Executive Magistrate for conducting the inquest over the body of the deceased on 02.03.2013. He stated that he prepared the Inquest Report (Ex.P-4) after following the due procedure and also attended the post mortem examination of the deceased at RIMS morgue. Nothing worth mentioning was elucidated in his cross-examination.

[4g] PW-8 is an ASHA worker in the Primary Health Centre, Khurkhul. She stated that, one day in February, 2013, in the morning, the mother-in-law of the deceased came to her residence and told her that her daughter-in-law, Latabi Devi, had conceived and asked her to come to her house to discuss her pregnancy. PW-8 stated that, on the evening of the next day, she went to the house of the accused and upon reaching there, she asked Latabi Devi whether she had conducted a pregnancy test by means of Velocit test kit. Latabi Devi told her that she had done so and showed her the Velocit test result and PW-8 found it to be

positive. PW-8 stated that, on 06.02.2013, she went to the Primary Health Centre, Khurkhul, along with Latabi Devi for check-up. After her examination at the Primary Health Centre, the Doctor confirmed that Latabi Devi was pregnant. PW-8 stated that they came back home happily and she did not meet Latabi Devi thereafter. About a month later, she heard that Latabi Devi had expired. Her cross-examination did not elicit anything worthwhile.

[4h] PW-9 lived on the eastern side of the house of the accused. He knew the deceased as well as the accused. He stated that Ngangbam Premjit was his 'local friend'. He further stated that in the month of March, about three years prior to his deposition, at about 7 am, he and Ngangbam Premjit Singh had distributed Invitation cards amongst the villagers of Khurkhul for the Shradha ceremony of one Chaobi Devi of their locality. He stated that they completed distribution of the Invitation cards at about 9.30 am and came back. The Invitation card of one Thingujam Kula Singh however remained with them. At that time, Ngangbam Premjit Singh returned to his house and PW-9 stated that he went to the house of Thingujam Kula Singh to give his Invitation card. He stated that he then went to Leimakhong to purchase some medicine and returned home at about 11.30 am. At about 2.00 pm, while he was at home, he claimed that he heard sounds of crying from the house of the accused and upon reaching there on his bicycle, he found some persons crying but did not enter the house. The people who had gathered at the gate of the house of the accused told him that Latabi Devi had died. He stated that he came back home thereafter. At about 4.00 pm, he again came out of his house and went towards the house of the accused. He saw the body of Latabi Devi lying on the ground outside the gate of the house, covered with white cloth. PW-9 was not cross-examined.

[4i] PW-10 is the Medical Officer who was posted at the Primary Health Centre, Khurkhul, at the relevant time. He stated that, on 06.02.2013, he examined Latabi Devi and found that she was 12 weeks pregnant. PW-10 was not cross-examined.

[4j] PW-11 is the doctor who conducted the post mortem examination of the deceased. She stated that she was working as an Associate Professor in the Department of Forensic Medicine, RIMS, Imphal, since the year 2001. She further stated that, on 04.03.2013 at 11.25 am, she had conducted the post mortem examination of the body of the deceased, Latabi Devi. She gave details of the two ligature marks which were found on the neck of the deceased and also the internal injuries that she had noted. She confirmed that her opinion was that death had been caused by strangulation and was homicidal in nature. She also confirmed that the time of death was about 36 to 48 hours prior to her examination and the injuries noted were ante mortem in nature and were fresh at the time of death. She confirmed that Ex.P-6 was the Post Mortem Examination Report and it bore her initials. In her cross-examination, medical literature was put to PW-11 and she stated her agreement with what was noted in the text books. She, however, stated that in her opinion, both the external injuries mentioned in her Post Mortem Examination Report were capable of causing the death of the deceased. She denied the suggestion that the deceased did not die from strangulation but from some other cause. She also denied the suggestion that Ex.P-6 Post Mortem Examination Report was false and fabricated.

[4k] The gist of the chief examination of PW-12, the Investigating Officer, has already been set out hereinabove and does not require reiteration. However, in his cross-examination, PW-12 stated that the bruise marks found on the body of

the deceased did not encircle the whole circumference of her neck. He affirmed that he did not find any mark of struggle or violence other than the injury on the neck of the deceased. He admitted that the matrimonial home of the deceased was not properly fenced and that a stranger could easily gain access into the house. He stated that PW-5 had not told him that Latabi Devi had told her that she had been quarreling with her husband, when he examined her under Section 161 Cr.P.C. He also admitted that, before the death of the deceased on 02.03.2013, he did not receive any information either from her parental family or anyone else about the alleged cruelty of the deceased's in-laws towards her.

[4] PW-13 is the photographer who took pictures of the body of the deceased. He stated that he was called by the local women's group to take photographs on that day and he went to the house of the accused along with his camera. On reaching there, he found the deceased, Latabi Devi, lying on a bed and took her photographs. He stated that he saw some bruise mark on her neck. He further stated that he did a video recording of the post mortem examination of the deceased and that he handed over video cassette as well as the photographs to the police. Nothing worth mentioning was elucidated in his cross-examination.

[5] Thirty-two questions were put to Ngangbam Premjit Singh during his examination under Section 313 Cr.P.C.. Most of the questions run into long paragraphs but his answers were mostly in a single line. When asked as to whether he had anything to say in connection with the case, he stated that he was innocent; that he was falsely implicated in the case; and that he did not commit the murder of his wife. He further stated that he would not lead any evidence for his defense, when asked whether he would lead such evidence.

[6] The prosecution's version and the oral evidence clearly demonstrate that there was no eye-witness to how Latabi Devi came to meet with an unnatural death. The case, therefore, rests purely on circumstantial evidence. This is not a case where the 'last seen' theory can be applied, as Latabi Devi was not seen by any independent witness in the company of her husband or others prior to her death. The evidence of PW-9 indicates that the husband returned home at about 9.30 am on the fateful day after distribution of cards. According to PW-4, the husband told her that he went to the ground which was situated on the back of his house after distribution of the Invitation cards. No evidence was adduced by the prosecution of the husband being seen in the company of the deceased after 9.30 am or as to how long he was in the ground behind the house, if at all true. There is also no evidence on record as to whether the father-in-law and mother-in-law of the deceased were in the house throughout and, if so, whether they were with her. The Rough Sketch Map (Ex.P-11) prepared by PW-12 does not give any indication of where the parents-in-law of the deceased had their rooms and living quarters. It is, however, not in dispute that they lived with their son and daughter-in-law.

[7] It is well settled that in a case based entirely on circumstantial evidence, it is for the prosecution to establish an unbroken chain of events unerringly pointing to the guilt of the accused. In **Hanumant Govind Nargunkar vs. State of MP (AIR 1952 SC 343)**, the Supreme Court observed that, in a case where evidence is of a circumstantial nature, the circumstances from which a conclusion of guilt has 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. It was pointed out that 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, *per* the Supreme Court, 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, in all human probability, the act must have been done by the accused. Again, in **Padala Veera Reddy vs. State of A.P [1989 Supp.(2) SCC 706]**, the Supreme Court reiterated that when a case rests solely upon circumstantial evidence, such evidence must satisfy the following tests: 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.

[8] In **Nizam vs. State of Rajasthan [(2016) 1 SCC 550]**, the Supreme Court held that, where there are missing links and the chain of circumstantial evidence cannot be said to be concluded in any manner, the last seen theory cannot be applied as it could be a case where more than one inference can be drawn and the accused would be entitled to the benefit of doubt. Further, as pointed out in **Sahadevan vs. State of T.N. [(2012) 6 SCC 403]**, in a case resting solely on circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which points towards the guilt of the accused.

[9] These being the legal requirements in a case built on circumstantial evidence, it is manifest that the prosecution failed to establish an unbroken chain of events in the case on hand which point unerringly towards the guilt of the husband of the deceased. The oral evidence highlighted the fact that the deceased had consistently claimed that it was her mother-in-law and her sister-in-law who had subjected her to torture and ill-treatment. Only PW-5 stated that Latabi Devi had told her on 28.01.2013 that she had been quarrelling with her husband. Significantly, PW-12 stated in his cross-examination that PW-5 had not mentioned to him that Latabi Devi had told her that she was quarrelling with her husband when he recorded her statement under Section 161 Cr.P.C. However, the said S.161 statement was never put to PW-5 during her cross-examination for contradiction and, therefore, the same cannot be considered by this Court. However, the evidence of PW-4, another near relation of the deceased, clearly indicates that it was not the husband of the deceased who wanted her to abort the child but it was the mother-in-law. In fact, this witness stated that the mother-in-law told her that she desired Latabi Devi to abort her pregnancy but Latabi Devi refused to do so as her husband did not want her to abort her pregnancy. There is, therefore, no indication of any rupture of relations between the deceased and her husband due to the pregnancy. On the other hand, the statement of PW-4 indicates to the contra that he was happy with Latabi Devi's pregnancy and wanted her to continue with it. In effect, there was no motive for the husband to resort to the extreme act of killing his young wife of just a few months with whom he had eloped and who was pregnant with his child. In **Wakkar and another vs. State of Uttar Pradesh [(2011) 3 SCC 306]**, the Supreme Court held that in a case based on circumstantial evidence, the motive of the accused for committing the crime assumes importance. In the case

on hand, no motive has been established for the accused to kill his wife. It is not brought out that the husband was so much under the thumb of his mother that he would have succumbed to her pressure owing to her desire to abort his child. Reliance is placed on **Jarnail Singh and another vs. State of Haryana, [1993 Supp (3) SCC 91]** by Mr. Athouba Khaidem, learned Public Prosecutor, wherein it was held that, if the positive evidence against the accused is clear, cogent and reliable, the question of motive would not be of importance. This principle is inapplicable presently as the chain of evidence built up by the prosecution is not conclusive and does not unerringly implicate the husband. Equally inapplicable is the *ratio* laid down in **Sucha Singh and another vs. State of Punjab [(2003) 7 SCC 643]**. Therein, the Supreme Court held that if a major portion of the evidence is found to be deficient but the residue is sufficient to prove the guilt of an accused, it would be the duty of the Court to separate the grain from the chaff as the maxim *'falsus in uno falsus in omnibus'* has no application in India. The Supreme Court therefore stressed that it has to be appraised in each case as to what extent the evidence is worthy of credence and merely because, in some respects, the Court considers the same to be insufficient or unworthy of reliance, it would not necessarily follow as a matter of law that it must be disregarded in all respects. However, as already noted *supra*, there is no evidence worth the name which directly links the accused husband to the untimely death of his wife.

[10] Though much stress was laid by Mr. S.Chittaranjan, learned counsel, upon how the examination of the accused husband was undertaken under Section 313 Cr.P.C., this Court is of the opinion that it would not be necessary to touch upon that issue inasmuch as the circumstantial evidence placed on record by the prosecution is wholly insufficient to support the conviction of the husband. Reliance

placed on case law by both sides in that regard is therefore eschewed from consideration.

[11] The Sessions Court placed much reliance on Section 106 of the Evidence Act, 1872 (for short, 'the Act of 1872'). It would, therefore, be apposite to examine the applicability of this provision in the present scenario. In this regard, it may be noted that in **Nagendra Sah vs. State of Bihar [(2021) 10 SCC 725]**, the Supreme Court held that the burden, as per Section 101 of the Act of 1872, would always be on the prosecution to bring home the guilt of the accused beyond reasonable doubt but Section 106 thereof constitutes an exception. Reference was made to **Shambu Nath Mehra vs. State of Ajmer [AIR 1956 SC 404]** which had stood the test of time and held to the effect that Section 106 of the Act of 1872 is not intended to relieve the prosecution of the duty of discharging the burden of proof but 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 Supreme Court therefore affirmed that Section 106 of the Act of 1872 would apply only to cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused and when the accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.

[12] In the case on hand, though the Sessions Court pressed into service Section 106 of the Act of 1872 and held that the accused husband failed to explain as to what happened within the house where he was with the deceased wife after

he returned home at about 9.30 am., this approach completely overlooked the fact that the accused husband was not alone at home with the deceased as his parents were also there with them. Therefore, it was not a case where he alone could have offered an explanation as to what happened within the four walls of the matrimonial home. All the more so, when he claimed that he had gone to the ground behind the house for some time and that claim remained untested. Unless it was shown, in no uncertain terms, that it was the accused husband alone who remained within the bedroom with his wife all through, the question of imposing the burden upon him under Section 106 of the Act of 1872 would not arise. The Sessions Court therefore erred in applying Section 106 of the Act of 1872.

[13] Mr. Athouba Khaidem, learned Public Prosecutor, would place reliance on **Trimukh Maroti Kirkan vs. State of Maharashtra [(2006) 10 SCC 681]** in support of his contention that when an offence like murder is committed within the secrecy of a house, the initial burden to establish a case would 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. He would point out that it was held in the aforesaid judgment that the burden would be of a comparatively lighter character and in view of Section 106 of the Act of 1872, there would be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed and they cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish the case lies entirely upon the prosecution. The Supreme Court also held that in a case based on circumstantial evidence where no eye-witness account is available, when incriminating circumstances are put to the accused but the accused either offers no explanation

or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. However, this decision is of no avail to the State as it was not only the accused husband who was within the house but also his parents. Significantly, they were not even charged with the offence of murder but only with abetment under Section 109 IPC. In terms of the law laid down by the Supreme Court, a duty is cast upon all the inmates to explain what had happened within the four walls of the house but when the charge against them was not the same, the picture is entirely different. Had all the inmates been charged with the murder of the deceased by incorporating Section 34 IPC, the case would have stood on a different footing and they could have all been held liable to explain, by application of Section 106 of the Act of 1872. That being not the case presently, the accused husband cannot alone be burdened with the duty of an explanation under Section 106 of the Act of 1872 and be saddled with guilt for failing to offer one. Thus, on a conspectus of the evidence and material adduced by the prosecution, the picture that emerges is that Latabi Devi and her husband, Ngangbam Premjit Singh, eloped and got married about three months prior to the fateful incident and she was pregnant by the time of her marriage. However, it appears that it was only her mother-in-law who was averse to her pregnancy and the accused husband, on the other hand, did not want her to abort her pregnancy. The evidence also demonstrates that it was the mother-in-law and the sister-in-law of the deceased, who subjected her to ill-treatment and torture. Except for a stray sentence from PW- 4, there is no evidence of the accused husband even quarrelling with his wife. In the absence of the husband being averse to the pregnancy of his wife with his child, there is no motive established to explain as to why he would resort to such a dastardly act. That apart, there is no unbroken chain of events

established by the prosecution leading to the sole inference that it could only be the accused husband and none other who could have killed his wife. His return to the house at 9.30 am, with nothing further, is insufficient in itself to hold that he alone was with the deceased all through, whereby he could have been called upon to explain as to what had happened within the house, by invoking Section 106 of the Act of 1872. The prosecution therefore failed to establish an unbroken chain of events unerringly pointing to the guilt of the accused husband, leaving no hypothesis which is compatible with his innocence. On the other hand, the presence of the father-in-law and mother-in-law within the house, who did not even stand trial for the offence of murder, is sufficient to extend to him the benefit of doubt.

[14] Viewed thus, the conviction of Ngangbam Premjit Singh for the offence punishable under Section 302 IPC in relation to the homicidal death of his wife, Latabi Devi, cannot be sustained. The charge against him was not proved beyond reasonable doubt and he was entitled to claim the benefit of doubt. The judgment of conviction dated 17.04.2018 passed by the learned Sessions Judge, Imphal West, in Sessions Trial Case No.3 of 2015/10 of 2015 is accordingly set aside. In consequence, the judgment of sentence dated 18.04.2018 passed against him by the learned Sessions Judge, Imphal West, is also set aside. The fine amount, if any, paid by him shall be refunded by the State. Ngangbam Premjit Singh, the appellant, shall be set at liberty forthwith unless his continued incarceration is validly required in connection with any other case.

JUDGE

CHIEF JUSTICE

FR/NFR
Opendro