

(2024) 03 JH CK 0009

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No.589 Of 2011

Gangeshwar Chaudhary And Others

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 05-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 313, 374(2)

Indian Penal Code, 1860 — Section 34, 201, 302

Evidence Act, 1872 — Section 101, 102, 103, 104, 105, 106

Citation : (2024) 03 JH CK 0009

Hon'ble Judges : Sujit Narayan Prasad, J;Pradeep Kumar Srivastava, J

Bench : Division Bench

Advocate : Nilesh Kumar, Ayush Kumar Verma, Alka Kumari, Sonal Sodhani,
Arpan Mishra, Amicus Curiae, Bhola Nath Ojha

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J

1. The instant appeal, filed under Section 374 (2) of the Code of Criminal Procedure, is directed against the judgment of conviction dated 23.09.2011 and order of sentence dated 26. 09.2011 passed by the learned District & Sessions Judge-I, Garhwa in S.T. Case No.351 of 2008, whereby and whereunder, the appellants have been convicted and sentenced him to undergo R.I. for life with fine of Rs.3000/- each under Sections 302/34 of the IPC and further sentenced to undergo R.I. for four years with fine of Rs.1000/- each under Sections 201/34 and in default of payment of fine, they have further been directed to undergo two months simple imprisonment.

2. This Court, before proceeding to examine the legality and propriety of the judgment of conviction and order of sentence, deems it fit and proper to refer the background of prosecution case, as per fardbeyan of informant, which reads as under:

3. As per the fardbeyan of the informant-Ramgulas Chaudhary that the deceased (Indrawati Devi) is the daughter of his ?sarhu?, Mundrika Choudhary, who had died ten years ago from the date of lodging of the fardbeyan. The economical condition of Mundrika Chaudhary was not good and that was the reason, Ramgulas Chaudhary (informant) had managed the marriage of Indrawati Devi, D/o Mundrika Chaudhary with Gangeshwar Chaudhary three years ago.

4. It is further alleged that after one year from the date of marriage Indrawati Devi went to her sasural but after three to four months, Indrawati Devi made call on telephone to the informant that her husband, Gangeshwar Chaudhary, mother-in-law and nanad Sujanti Devi, had assaulted her and they are demanding a cycle. At that time, Indrawati Devi, the deceased was pregnant.

5. On information, Indradeo Chaudhary, brother of Indrawati Devi, went to village Marwania and pacified the matter. Indrawati Devi gave birth to one child.

6. After some time, i.e., after 3 to 4 months, Indrawati Devi came to the house of the informant and disclosed that facts that her husband, Gangeshwar Chaudhary, mother-in-law and sister-in-law (nanad) Sujanti Devi always used to assault her and tried to kill her.

7. It is further alleged that the informant summoned the father-in-law and mother-in-law of Indrawati Devi and thereafter, the informant requested both the persons that since the mother of Indrawati is very poor widow and she could not fulfill the demand of cycle. Thereafter, the informant sent Indrawati to her sasural.

8. It is further alleged that on 04.09.2008 at about 3:00 p.m., Indrawati further made call on the mobile of the informant bearing no.9936416319 asking him to reach at her sasural for the reason that the accused persons have assaulted her and they are ready to kill her and anyhow, she has managed to come at Ramna.

9. On information, the informant came to village Marwania, thereafter, he came to know that Indrawati Devi was going to her parental house to save her life but accused persons and Nanad of Indrawati Devi had taken Indrawati from Nagar Untari to their house and in the night of 04/05.09.2008 they committed her murder by pressing her neck and they put her on the ground of the room and poured kerosene oil and they set fire to her, as a result of which, she had died. Although, entire hair of deceased was burnt but the portion of head touching the ground could not have burnt and burnt match stick (tili), eight in number, were also found at the place of occurrence, tongue was also burnt.

10. On the basis of statement, FIR was registered and investigation started.

11. After due investigation, the Investigating Officer has submitted charge-sheet against accused persons under Sections 302/34 and 201/34 of the IPC.

12. Accordingly, cognizance of the offence has been taken under Sections 302/34 and 201/34 of the IPC against the accused persons. The case was committed to

the Court of Sessions, thereafter, the case was received for trial and disposal.

13. In course of trial, the prosecution has examined altogether

15 witnesses i.e., P.W.1-Radheshyam Biyar, P.W.2- Harihar Prajapati, P.W.3-Babu Mehta, P.W.4-Aditya Mehta, P.W.5-Ram Kumar Mehta, P.W.6-Kodu Ram, P.W.7-Dr. Mohan Prasad, P.W.8-Vijay Kumar Singh, P.W.9-Rajmani Kuanr, P.W.10-Girija Devi, P.W.11-Ram Gulas Chaudhary (Informant), P.W.12-Laxmi Prasad Mehta, P.W.13-Sujanti Devi (Nanad), P.W.14-Samir Kumar Chaudhary (Investigating Officer) and P.W.15-Bimleshwar Mahto.

14. The trial Court, after concluding the evidence of prosecution, recorded the statement of the accused persons under Section 313 of the Criminal Procedure Code, in which, accused persons had denied from the prosecution evidence and claimed themselves to be innocent.

15. However, the learned trial court after perusal of record found the charge levelled against the appellants proved. Accordingly, the appellants have been found guilty as such convicted and sentenced vide impugned judgment of conviction dated 23.09.2011 and order of sentence dated 26.09.2011, which is the subject matter of instant appeal.

16. Learned counsel appearing for the appellants has taken the following grounds by assailing the impugned judgment of conviction and order of sentence: -

(I) There is no eyewitness of the alleged occurrence and as such it is the case of circumstantial evidence but the prosecution herein has failed to prove the chain of circumstance which is the utmost requirement to prove the guilt of accused persons in case of circumstantial evidence.

(II) Further the evidences adduced by the prosecution have not fully been corroborated the circumstance available on record as such chain of circumstances is not completed.

(III) The demand of dowry and torture as alleged to made by the accused persons, have not fully been proved, hence, the evidence on this point is inconsistent and guilt of the accused/appellants regarding demand of dowry has not fully been established.

(iv) There is major contradiction amongst the evidence of prosecution witnesses.

(v) The learned Judge has failed to consider that in all 15 witnesses were examined by the prosecution, however, none of the witnesses testified that the appellants were present at the place of occurrence when the alleged incidence occurred.

(VI) Further the alleged phone calls which were said to have been made by the deceased to PW 11 but for reasons best known to the prosecution, the mobile call details were not brought on record to check the veracity of alleged calls

17. Learned counsel for the appellants, on the aforesaid premise, has submitted

that the impugned judgment of conviction suffers from patent illegality and hence, it is not sustainable in the eye of law.

18. Per Contra, Bhola Nath Ojha, learned A.P.P appearing for the respondent-State has vehemently opposed the aforesaid grounds by defending the impugned judgment by taking the following grounds: -

(I) The prosecution has fully proved the chain of circumstance and this case has purely based upon the circumstantial evidence.

(II) The ground has also been taken that all the witnesses, have supported the prosecution version and based upon the same, the learned trial Court has passed the judgment of conviction, hence, the same cannot be said to suffer from an error.

(iii) It is further submitted that the non-fetching of CDR may amount to lapse in the investigation but there are other cogent and reliable evidences are available on record which firmly established the prosecution case against the appellants.

(iv) It is further contended that the statement of informant regarding the making call by the deceased before death is fully substantiated by the P.W.10 as such the contention as made by the learned counsel for the appellants that the prosecution case has been vitiated in the absence of CDR is totally misplaced.

19. Learned Public Prosecutor, based upon the aforesaid grounds, has submitted that the instant appeal lacks merit and as such, the same is fit to be dismissed.

20. We have heard learned counsel for the parties, gone across the finding recorded by learned trial Court in the impugned judgment and the testimony of witnesses along with other documents as available in the lower court records.

21. This Court, in order to appreciate the aforesaid grounds and after going through the material available on record, deems it fit and proper first to refer the testimony of prosecution witnesses.

22. Radheyshyam Biyar has been examined as P.W.1. He has deposed in his examination-in-chief that the occurrence took place as some time 4 to 5 months ago, at that time, he was present at his residence. He was going to Ramna market, while he was on way, he saw the police vehicle at the door of Jagarnath. He saw the daughter-in-law of Jagarnath in burning condition.

23. He has been declared hostile. He has denied the entire statement made by him under Section 161 Cr.P.C. He has further stated in his cross-examination that who had told him regarding the burning of Indrawati Devi, he could not say about it.

24. Harihar Prajapati has been examined as P.W.2. He has deposed that when he was going to market, he saw a crowd near the house of Jagarnath, but he could not see anything. He has been also declared hostile and he has denied the entire statement made by him under Section 161 Cr.P.C.

25. Baban Mehta has been examined as P.W.3 who has deposed in his examination-in-chief that he could not know about the occurrence. He has been also declared hostile. He has denied the entire statement made by him under Section 161 Cr.P.C.

26. Aditya Mehta has been examined as P.W.4 who has deposed in his examination-in-chief that the occurrence took place one year ago. When he was returning back from Bhandar, Police asked his name and address. He saw the dead body of daughter-in-law of Jagarnath but he could not say how she was burnt.

27. Ram Kumar Mehta has been examined as P.W.5 and he has deposed in his examination-in-chief that the occurrence took place on 04.09.08, and on that date daughter-in-law of Jagarnath was died. He had not gone to the house of Jagarnath Chaudhary. Police asked his name and address. He has also been declared hostile.

28. Kodu Ram has been examined as P.W.6 and he has also been declared hostile.

29. Dr. Mohan Prasad has been examined as P.W.7 and he has stated in his examination-in-chief that on 06.09.2008, he was posted at Sadar Hospital, Garhwa as Medical Officer and on that day at about 02:00 p.m., he had conducted the post-mortem examination upon the dead body of Indrawati Devi, wife of Gangeshwar Chaudhary of Village Marwania, P.S. Nagar Untari, Distt.-Garm and identified by police no.79, Ramashankar and Chaukidar, Rohan Dushadh. On examination, he found hundred per cent burnt injuries, few vesicles found in the right arms pit, cause of death-due to shock as well as due to 100% anti mortem burn injuries caused by fire, time elapsed since death within 48 hours.

30. He has proved the postmortem report and marked as Ext.-I. He has stated in his cross-examination that about apparel on the dead body, he has not mentioned it in his report but he has mentioned somewhere as per inquest report prepared by police. He has not mentioned the smell of cloths burning from the body in his report.

31. Vijay Kumar Singh has been examined as P.W.8. He has proved his signature available on the inquest report and his signature is marked as Ext.2.

32. He has deposed in his cross-examination that he has not seen the dead body of Indrawati Devi.

33. Rajmani kuanr has been examined as P.W.9 and she has stated in his examination-in-chief that Indrawati Devi was her daughter. She was married to one Gangeshwar of village Marwania. She has identified the accused. She was weeping on being seen the accused. She could not have provided a cycle on the eve of marriage that's why accused persons always used to assault her daughter and accused persons did not used to allow her to come at her maikey. The accused persons killed Indrawati only for non-fulfillment of demand of cycle.

34. She saw the dead body of deceased at the police station. She was burnt and she saw the sign of pressing of neck. She identified the accused Manmati Devi.

35. She has further stated in her cross-examination that accused persons had not assaulted her daughter in her presence, rather, they used to demand a cycle at their house. Police has not asked anything but Indrawati gave birth to a son, aged about three years old and he was residing at her father's house.

36. Girija Devi has been examined as P.W.10 and she has deposed in her examination-in-chief that Indrawati Devi was the daughter of her sister. She was married to one Gangeshwar of village Marwania.. Accused persons had killed her. She saw the dead body of the Indrawati at Police Station, Nagar Untari, she saw the sign of pressing of neck. She was burnt. Indrawati gave birth to a child. Indrawati made telephone to her regarding the demand of dowry and assaulting. Indrawati also told her Mausea to take her to the house of her Mausai, otherwise, the accused persons will kill her. Indrawati anyhow managed to come at Nagar Untari, she made telephone call to her from Nagar Untari but accused persons had caught hold of her and had taken her to village Marwania, thereafter, she came to know that accused persons had killed her. One person carrying of business of P.C.O., telephoned her regarding the occurrence. She could not have gone to village Marwania but her husband gone to Marwania. She claimed to have identified the accused person.

37. She has further deposed in her cross-examination that she could not disclosed her telephone number, she could not disclosed the name of the owner of P.C.O. she deposed that accused persons also assaulted Indrawati in her presence at her residence as some time four months ago in her presence but she could not disclosed the date and day. She could not have gone to sasural of Indrawati. She along with her son came to seen the dead body. Police recorded her statement and she has told the Police that Indrawati made telephone to her just a day before from the date of occurrence. She has seen the sign over the neck, Indrawati was burnt.

38. Ram Gulas Chaudhary has been examined as P.W.11 and has deposed in his examination-in-chief that Indrawati was the daughter of his ?sarhu?. He was married to one Gangeshwar sometime six years ago. Accused persons had killed Indrawati only on non-fulfillment of demand of cycle. The accused persons always used to assault Indrawati due to demand of a cycle. He came to the house but anyhow he pacified the matter and sent Indrawati to her sasural. Indrawati requested him to take her to his house but he could not go to the sasural of Indrawati. Indrawati made telephone from Ramna at about 04.00 P.M.

39. He has further deposed that accused persons had further taken Indrawati from Ramna to their house, on the next day morning, he received a telephone that Indrawati has already died and he went to Village Marwania, Thereafter, he came to know that Police had taken the dead body to police station, thereafter, he went to Police Station at Nagar Untari. He saw the dead body. He saw the sign

of pressing of the neck, dead body was burnt. Darogajee recorded his statement.

40. He has further deposed in his cross-examination that village Marwania is situated at a distance of five kilometers from his village. He has further deposed in his cross-examination that his ?Sarhu? was a poor man. The first wife of the accused Gangeshwar, has already left him and he was unaware of this fact. Indrawati gave birth to a child and that child is residing with his father.

41. Laxmi Prasad Mehta has been examined as P.W.12 and has proved his signature available on the inquest report and marked as Ex.2/1. He also proved his signature available on the seizure list and marked as Ext.3. The dead body of Indrawati was burnt. Police has not seized the match stick and jerking in his presence. He has been declared hostile and he denied the statement made by him u/s 161 Cr.P.C.

42. Sujanti Devi has been examined as P.W.13 and has stated in her examination-in-chief that Indrawati was the wife of her brother, she died some time two years ago. There was quarrel in between the wife and husband. She had gone field for the purpose of planting the paddy crops, while she was returning back to her house, she saw the dead body of her bhabhi but she could not say how she had died. She has also been declared hostile.

43. Samir Kumar Chaudhary has been examined as P.W.14 and has stated in his examination chief that he is the Investigation Officer of this case. On 05.09.2008, he was posted at Nagar Unatari P.S., on that day, Rohan Chaukidar disclosed the facts that a lady has burnt in village Marwania, thereafter, he, along with officer-in-charge, Hari Prasad Sah and other police personnel went to village Marwania and found that Indrawati Devi was in burnt condition. Hari Prasad Sah prepared inquest report, Binod Kumar Singh and Laxmi Prasad Mehta both put their signatures in presence of Chaukidar and other police personnel.

44. He has proved the inquest report of Hari Prasad Sah, officer-in-charge and marked as Ext.2/2. Kerosine oil, and broken bangle were seized and seizure list was prepared. Vijay kumar singh and Laxmi prasad Mehta put their signature on the seizure list. He has proved the seizure list and marked as Ext.3/1. Hari Prasad Sah, Officer-in-charge recorded the fard byan of Ram Gulas Chaudhary (informant) at the place of occurrence. Ram Gulas Chaudhary put his thumb impression on the fardbeyan and Arvind Chaudhary put his signature on the fard beyan. He has proved the fardbeyan and marked as Ext.4. He has also proved the endorsement made by Hari Prasad Sah on the fardbeyan which is marked as Ext.4/1.

45. He has proved the formal F.I.R. marked as Ext.5. The seized articles are available in malkhana at Nagar Untari. He has recorded statement of the informant. He has also recorded the statement of Indradeo Chaudhary, Rajmani Kuanr, Girja Devi, Ram Mehta, Ram Das biyar, Radheshyam Biyar, Harihar Prajapati, Harihar Prasad Mehta, Gagan Mehta, Aditya Mehta, Bilayi Chaudhary and Kodu Ram. Most of the witnesses had stated before him that the deceased

was being ill-treated by the accused persons, and they had killed her, thereafter, they set fire to her dead body. He had visited the place of occurrence. He had arrested Gangeshwar Chaudha and Manmati Devi from the place of occurrence.

46. He has further deposed that Sujanti Devi disclosed the facts that Gangeshwar and her bhabhi both were quarreling each together while she went to rescue her, the accused persons assaulted her, thereafter, she went to the house of Ram Kumar Mehta. Kodu Ram also disclosed the facts that mother-in-law as well as others killed Indrawati. Thereafter they set fire to her. He sent the dead body of the deceased to Garhwa for post-mortem.

47. He has further deposed in his cross-examination that he recorded the statement of Ram Gulas Chaudhary, Rajmani kunar. Girja Devi has also stated the same thing. Girja Devi only stated before him regarding the marpit. He has further stated that he recorded the statement of Girja Devi at the place of occurrence, there was no sign over neck of the deceased.

48. Lileshwar Mahto has been examined as P.W.15 and has deposed in his examination-in-chief that he has posted at Nagar Unatari P.S. as Officer-in-charge, he has brought the material exhibit in connection with Nagar Unatari P.S. Case No.202/08. Piece of bangle is marked as Ext.I, burning matchis tilli 8 pieces and without burning matchis tilli 4 pieces which is marked as EXt. II, one bottle full of kerosene oil marked as Ext. III and half bottle kerosene oil is marked as of Ext. IV. One jerking full five liters kerosene oil marked as Ext.V, one cot of rassi which part was burnt, marked as Ext.VI.

49. He has proved the forwarding report which was written by Francis Jewiar Tikka marked as Ext.6. He has proved the signature of then then officer-in-charge, Hari Prasad Sah on seizure list and marked as Ext.7. He has also proved the fardbeyan which is as per pen of the then Officer-in-charge Hari Prasad Sah, marked as Ext. 4/2. Identification mark has been mentioned as 31/2008 over the seized articles.

50. This Court, before proceeding to examine the legality and propriety of the order passed by the learned trial court, is required to answer the following issues: -

(i) Whether the judgment passed by the learned trial court convicting the appellants, can be said to be justified?

(ii) Whether on the basis of the testimony of the witnesses, can it be said to be a case based upon circumstantial evidence or if it is based upon the circumstantial evidence whether the chain of circumstances is completed?

51. Since both the issues are interlinked and as such, are being considered together and being answered hereinafter.

52. But, before considering the aforesaid issues this Court deems it fit and proper to discuss the foremost argument of learned counsel for the appellant

that it is a case of circumstantial evidence and as such, the chain is to be complete before passing the judgment of conviction.

53. There is no quarrel with the settled position of law that in the case of circumstantial evidence, the chain is to be completed, then only there will be conviction of the concerned accused person, as has been laid down by the Hon'ble Apex Court in the case of Hanumant son of Govind Nargundlar vs. The State of Madhya Pradesh, AIR 1952 SC 343 wherein, it has been held 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."

54. The same view has been taken by the Hon'ble Apex Court in the case of 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.

55. 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, has only 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. For ready reference, the law as has been laid down at paragraph-9 thereof, 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.?

56. It is, thus, evident from the close analysis of the aforesaid judgments, the following conditions must be fulfilled against an accused, can be said to be fully established:

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, i.e., they should not be explainable on any other hypothesis except that the accused is guilty,

(iii) The circumstances should be of a conclusive nature and tendency,

(iv) They should exclude every possible hypothesis except the one to be proved, and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused

57. The Hon'ble Apex Court has reiterated the said principle again in the case of Sharad Birdhi Chand Sarda vs. State of Maharashtra, (1984) 4 SCC 116 holding all the above five principles to be the golden principles which constitute the panchsheel of proof of a case based upon circumstantial evidence. The Hon'ble Apex Court in the said case as under paragraphs-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 link to lend an assurance to the court and not otherwise. For the ready reference, 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) 3 SCC 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.'

58. The foremost requirement in the case of circumstantial evidence is that the

chain is to be completed.

59. The Judgment rendered by the Hon^{ble} Apex Court in the case of Laxman Prasad @ Laxman vs. The State of Madhya Pradesh\ passed in Criminal Appeal No. 821 of 2012 dated 14.06.2023 has held at paragraphs-3 & 4 as follows:

¶3. We do not find such conclusion of the High Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point. Reference may be had to the following cases: (i) Sharad Birdhichand Sarda vs. State of Maharashtra,(1984) 4 SCC 116;

(ii) Sailendra Rajdev Pasvan vs. State of Gujarat Etc., AIR 2020 SC 180

4. Thus, if the High Court found one of the links to be missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with.?

60. In the background of the aforesaid settled legal proposition of law, this Court is now advertng to the fact of the case to decide the aforesaid issues.

61. In the instant case, it is admitted fact that Indrawati (deceased) was died at her sasural (father-in-law's house) within the 3 years of her marriage and appellant no.1 Gangeshwar is the husband of the deceased and Manmati Devi is the mother-in-law of the deceased.

62. It is the case of the prosecution that the deceased Indrawati Devi died in the night of 4/5.09.08 and just a day before her death, she had made telephone to the informant as well as wife of the informant. This one is the strong circumstance to connect the conduct of the accused persons for the reason that Indrawati had made complaint to the informant as well as her wife just a day before her death and has stated to the informant that the accused persons had assaulted her and they are ready to kill her that's why she had come to Ramna.

63. This fact has been corroborated by the testimony of PW.11 Ramgulas Chaudhary(informant) wherein he has stated the deceased had made complaint to him just a day before her death explaining the circumstance under what she had come to Ramna. PW. 11 has fully corroborated the facts that Indrawati made telephone to him from Ramna and requested him to take her to his house.

64. PW.11 is the most important witness, reason being that he has fully supported his fardbeyan. He has fully corroborated the fact that there was no good relation between Indrawati and accused persons. Indrawati made complaint to the informant that accused persons always used to assault her and they are demanding a cycle. This witness has been cross-examined at length but no major contradiction could have come out from the mouth of this witness.

65. PW.10 is also important witness for the reason that she is the wife of Ram Gulas Chaudhary (P.W.11) and she had fully acquainted with the facts that just

before a day, Indrawati made telephone to her and explaining the circumstance. She has fully supported the facts in examination that Indrawati made telephone to her to explain the circumstance regarding the assault made by the accused persons as well as demand of a cycle. She has been cross-examined by length but no major contradiction could have come out from her mouth.

66. Thus, the evidence of PW.10 and 11 are fully corroborated the facts that the deceased had made telephone just a day before her death explaining the facts that accused persons had assaulted her and they are ready to kill her. Thus, it is evident from the statement as made by PW.10 & PW.11 that the deceased has explained the circumstance to both witnesses and thereafter, deceased died.

67. Thus, the circumstances as stated above a strong circumstance to consider the facts that accused persons were torturing the deceased as a result of which there was no good relation with the accused persons and deceased.

68. The next circumstance is that the Indrawati died at her sasural where the accused persons were found present and further, there is no evidence on record to show that the accused persons had played a good role to save the life of Indrawati. Further, the Investigating Officer has fully corroborated the facts that deceased was found dead at her sasural and accused persons were arrested from the place of occurrence.

69. Thus, it is evident from the aforesaid fact that when alleged occurrence was taken place at that time appellants/accused persons were with the deceased and as such, onus upon them to explain that in which circumstances, the death of deceased was caused.

70. In this context, the statutory provision as contained under Sections 101 to 105 of the Evidence Act, is required to refer herein.

71. It is stipulated in the aforesaid section that the burden of proving the charge is upon the prosecution and only in case the prosecution will be able to prove the case beyond all reasonable doubt, then only the judgment of conviction can be passed but the exception has been carved out under Section 106 of the Evidence Act, whereby and whereunder, it has been provided that there will be reverse onus upon the accused person to disprove what has been alleged.

72. In this context, it also requires to refer herein that onus to disprove the guilt lies on the accused persons in view of provision as contained under Section 106 of the Indian Evidence Act, 1972, which reads as under:

?106. Burden of proving fact especially within knowledge. ? When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.?

73. In this context, the Hon?ble Apex Court in the judgment rendered in the case of 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 which reads 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 how Section 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.¶

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] 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 to disprove 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] .

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.?

74. Likewise, the judgment rendered by the Hon?ble Apex Court in the case of Tulshiram Sahadu Suryawanshi & Anr. Vs. State of Maharashtra, reported in (2012) 10 SCC 373, wherein, at paragraph 22, it has been 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.?

75. The position of law as per the provision of Section 101 to Section 105 of the Evidence Act is very explicit wherein the burden will lie upon the prosecution to prove the charge beyond all shadow of doubt but in certain circumstances, the onus will shift upon the accused to disprove the commission of crime.

76. Now, in the light of aforesaid legal position, this court again revisit the facts of the case and from perusal of the same, it is evident that the dead body of Indrawati was found at her sasural on the date of occurrence. Accused persons were present at their house but there is no evidence available on the record to show that the accused persons had taken any step to save the life of deceased, even they have not informed about the incident to the police. Further, being the husband and mother-in-law of the deceased, it was the prime duty to take the deceased either to Hospital or in a nursing Home but they could not have done so.

77. It is evident that Gangeshwar, i.e. appellant no.1, is the husband but neither he has taken pain to take the deceased to Hospital nor in a Nursing Home, as such, there are also strong circumstances regarding conduct of the accused persons that they were found present at their house but they have not taken any step to save the life of deceased.

78. Almost, all the witnesses have fully supported the facts that Indrawati was burnt. PW.7-Dr. Mohan Prasad has conducted post-mortem examination upon the dead body of Indrawati on 06th September 2008 and given his opinion that she was died due to shock as well as 100 % anti mortems burnt injuries caused by

fire and he has also given the time of death within 48 hours from the date of post-mortem. It also support and corroborate the facts that Indrawati died due to burned injuries. So far as death is concerned, it could be only possible either by assault or by the burnt.

79. At this juncture, it is pertinent to mention here that if the victim could have poured kerosine oil over herself, certainly accused person could raise halla or they could have informed the neighbours but they could not have informed to anyone. Thus, it is the strong circumstance against the appellants.

80. PW.14-Samir Kumar Chaudhary is the I.O. of this case and fully supported the facts that almost all the witnesses have stated that accused persons have caused death of Indrawati Devi and he had taken the statement of the witnesses, who visited the place of occurrence and he arrested the accused persons from the place of occurrence.

81. PW.9-Rajmani has fully supported the facts that Indrawati was her daughter and she got married with one Gangeshwar and accused persons used to assault her daughter only for the purpose of a cycle and they had killed Indrawati. She had seen her daughter while she was found dead and she saw the sign of pressing the neck.

82. Thus, on perusal of evidence of PW.9, it appears that there was no good relation of Indrawati with accused persons, she was being ill-treated by the accused persons either for the purpose of cycle or whatever may be, but it is crystal clear that there was no good relation of the accused persons with deceased.

83. On perusal of the evidence of PWs as discussed above and as per the discussion made above, it is evident that the prosecution has proved the circumstances that prior to the occurrence Indrawati (deceased) had made telephone to the informant well as wife of the informant regarding the circumstance under which she was leaving. Indrawati has died just informing the circumstance and this fact has been proved by the witnesses as discussed above, as such prosecution has fully proved the facts that prior to the occurrence, deceased has informed about the circumstance under which she has left her house and made telephone to informant and his wife from Ramna.

84. Thus, from the aforesaid discussion and in the light of settled position of law as mentioned above, the circumstances are proved against the present appellants and chain of circumstance is also completed.

85. Learned counsel for the appellants has further taken the ground of contradiction in the testimony of witnesses.

86. In the aforesaid context, it is settled proposition of law that merely because there is some contradiction and discrepancies in the testimonies, the same cannot be enough to vitiate the prosecution story, as has been held by the Hon'ble Apex Court in the case of Mukesh Kumar vs. State (NCT of Delhi),

reported in (2015) 17 SCC 694, wherein, at paragraph-8, it has been held as under: ?

?8. While the slight difference in the initial version of the prosecution and the FIR version has been reasonably explained by the cross-examination of PW 6, it is our considered view that minor discrepancies, embellishments and contradictions in the evidence of the eyewitnesses do not destroy the essential fabric of the prosecution case, the core of which remains unaffected. Even if we have to assume that there are certain unnatural features in the evidence of the eyewitnesses the same can be reasonably explained on an accepted proposition of law that different persons would react to the same situation in different manner and there can be no uniform or accepted code of conduct to judge the correctness of the conduct of the prosecution witnesses i.e. PWs 1 and 2. The relation between PWs 5 and 6 and PWs 1 and 2 and the deceased, in our considered view, by itself, would not discredit the testimony of the said witnesses. There is nothing in the evidence of PWs 1 and 2 which makes their version unworthy of acceptance and their testimony remains unshaken in the elaborate cross-examination undertaken.?

87. Likewise, the Hon'ble Apex Court in the case of Shyamal Ghosh vs. State of West Bengal, reported in (2012) 7 SCC 646, wherein, at paragraphs-46 & 49, it has been held as under:

?46. Then, it was argued that there are certain discrepancies and contradictions in the statement of the prosecution witnesses inasmuch as these witnesses have given different timing as to when they had seen the scuffling and strangulation of the deceased by the accused. It is true that there is some variation in the timing given by PW 8, PW 17 and PW 19. Similarly, there is some variation in the statement of PW 7, PW 9 and PW 11. Certain variations are also pointed out in the statements of PW 2, PW 4 and PW 6 as to the motive of the accused for commission of the crime. Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.

49. It is a settled principle of law that the court should examine the statement of a witness in its entirety and read the said statement along with the statement of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused.

88. As such, in the view of the aforesaid legal ratio the contention of the learned counsel for the appellants regarding the contradiction in testimonies of witnesses is not tenable in the eye of law because the contradiction as stated is trivial in nature and has no adverse impact on the case of the prosecution.

89. The learned counsel for the appellants has further contended that the informant has stated that deceased Indrawati had made call to him from Ramna at about 04.00 P.M. just a day before her death, but this fact has not been properly enquired by the concerned investigating officer and further the concerned officer had never tried to fetch the call details of the informant and learned trial court without taking into consideration the aforesaid aspect of facts convicted the appellants which is not valid in the eye of law.

90. In the context of the aforesaid argument, it is pertinent to mention here that the other witnesses especially P.W.10 has fully substantiated the statement of P.W.11 and in her testimony, she has stated that she had also received the call from the PCO at Ramna that the deceased was assaulted by her-in-laws and husband.

91. Further the non-fetching of CDR may amount to lapses on the part of the investigating officer but it does not amount to vital omission because the instant case of the prosecution is firmly established by the other cogent evidences as available on record.

92. Further, it is settled law that in the case of a defective investigation, it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer and if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice.

93. The Hon^{ble} Apex Court in the case of Dhanaj Singh @ Shera & Ors. vs. State of Punjab, reported in (2004) 3 SCC 654 has categorically observed that in the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer. For ready reference, the relevant paragraph of the aforesaid judgment is being quoted herein under:

75. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. [(1995) 5 SCC 518]).

94. Similarly, it was observed by the Hon^{ble} Apex Court in the case of Ram Bihari Yadav vs. State of Bihar & Ors., reported in [(1998) 4 SCC 517] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice.

95. Thus, in the background of the aforesaid legal ratio the contention of learned counsel for the appellant that by non-fetching of CDR the prosecution case is vitiated, is not tenable.

96. Now coming back to the facts of the instant case in the light of aforesaid settled position of law, it is evident that the statement made by deceased prior to her death is strong circumstance. Further, the death of deceased due to burn was happened at her matrimonial house and at that relevant time, husband as well as mother-in-law of deceased were found present at the place of occurrence and they have not taken any effort to save life of deceased, even they could not have informed the matter to the neighbours, thus, the conduct of accused persons indicates strong circumstances against them.

97. Further, the opinion of doctor suggests that 100% burning could be only possible when a dead person could have found either on ground and thereafter the entire body could receive such burnt injuries. The entire facts suggest that it is also the strong circumstances against the appellants.

98. Regard being had to the facts and circumstances and coupled with the evidence, it is evident that prosecution has been able to prove the chain of circumstance as discussed above and further taking into consideration the aforesaid strong circumstances against accused persons, namely, Gangeshwar Chaudhary and Manmati Devi, as discussed above, the order impugned does not require any interference.

99. We, on the entirety of the facts and circumstances and as per the discussion made hereinabove, are of the view that the impugned judgment of conviction/sentence, requires no interference.

100. In the result, the instant appeal fails and stands dismissed.

101. The appellant no.2, namely, Manmati Devi is on bail and her bail is hereby, cancelled. Therefore, the appellant no.2 is directed to surrender in the court concerned forthwith for serving out the sentence passed by the trial court. The concerned court is also directed to issue process forthwith compelling the surrender/production of the appellant no.2 for serving out the sentence.

102. In consequence thereof, Pending Interlocutory Application(s), if any, stands disposed of.

103. Let this order/judgment be communicated forthwith to the Court concerned along with the Lower Court Records.