

IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No. 73 of 2019

From judgment and order dated 29.06.2019 passed by the Sessions Judge, Keonjhar in Sessions Trial No.106 of 2017.

Rendo @ Karamsingh Munda

Appellant

-Versus-

State of Odisha

Respondent

For Appellant:

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Mr. Chitta Ranjan Sahu
Advocate

For Respondent:

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Mr. Arupananda Das
Addl. Govt. Advocate

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 11.08.2022

S.K. SAHOO, J. The appellant Rendo @ Karamsingh Munda faced trial in the Court of learned Sessions Judge, Keonjhar in Sessions Trial No.106 of 2017 for commission of offences punishable under sections 498-A, 302 and 201 of the Indian Penal Code (hereafter 'I.P.C.') on the accusation that he being the husband of Tiki @ Tikili Munda (hereafter 'the deceased') subjected her to

torture both physically and mentally, committed her murder on 28.04.2017 night and tied the saree of the deceased around her neck and hanged her from the roof beam of the room with an intention of screening himself from the legal punishment.

The learned trial Court vide impugned judgment and order dated 29.06.2019, though acquitted the appellant of the charges under sections 498-A and 302 of the I.P.C., but found him guilty under sections 304 Part-I and 201 of I.P.C. and sentenced him to undergo R.I. for ten years and to pay a fine of Rs.5000/- (rupees five thousand), in default, to undergo further R.I. for six months for the offence under section 304 Part-I of the I.P.C. and R.I. for two years and to pay a fine of Rs.2,000/- (rupees two thousand), in default, to undergo further R.I. for two months for the offence under section 201 of the I.P.C. and both the substantive sentences were directed to run concurrently.

2. The prosecution case, as per the first information report (Ext.1) lodged by one Guru Charan Munda (P.W.1), the father of the deceased on 29.04.2017 is that four years prior to the date of occurrence, the deceased married to the appellant and it was a love marriage and out of their wedlock, a male child was born, who was aged about three years at the time of occurrence. It is stated that after the marriage, the appellant

subjected the deceased to physical and mental torture and the deceased used to intimate the informant about the same. It is further stated that few days prior to her death, the deceased was assaulted by the appellant for which she came to reside in her uncle's house. On 29.04.2017 at about 9.00 a.m., the appellant communicated to the informant (P.W.1) about the death of the deceased and the family members of the deceased immediately rushed to the house of the appellant and found the deceased lying dead on the floor of her bed room. When P.W.1 confronted to the appellant as to why he killed the deceased, the appellant disclosed that on the previous night, there was a quarrel with the deceased and he assaulted her with a lathi on her head for which she died and then he tied the saree around the neck of the deceased. The informant found bloodstains on the floor of the house and accordingly, he lodged F.I.R. before the Inspector in-charge of Keonjhar Sadar police station on 29.04.2017, pursuant to which Keonjhar Sadar P.S. Case No.132 of 2017 was registered under sections 498-A, 302 and 201 of the I.P.C. against the appellant.

3. The Inspector in-charge of Keonjhar Sadar Police Station entrusted P.W.11 Srikanta Sahoo, Sub-Inspector of Police attached to the said police station for investigation. During

investigation of the case, the I.O. visited the spot, prepared the spot map (Ext.8), issued requisition to the S.D.M. -cum- Executive Magistrate, Keonjhar to depute one Executive Magistrate to the spot and accordingly, in the presence of the Executive Magistrate, he conducted inquest over the dead body and prepared the inquest report (Ext.2). The dead body was sent for post mortem examination and P.W.8 Dr. Ajaya Kumar Mohanty conducted post mortem examination over the dead body on 29.04.2017 and submitted his report (Ext.6).

The I.O. (P.W.11) during the spot visit, collected the sample earth and blood stained earth under seizure list Ext.3 and after the appellant was taken into judicial custody, on the basis of his statement recorded under section 27 of the Evidence Act, one bamboo lathi was seized as per the seizure list Ext.4. The wearing apparels of the appellant were seized under seizure list Ext.10 so also the wearing apparels and the biological samples of the deceased collected by the medical officer and produced by the constable, which were seized under seizure list Ext.11. The I.O. sought for opinion of the medical officer relating to the possibility of the injuries noticed on the deceased by the bamboo lathi and saree of the deceased and he received the query report (Ext.7/1). The material objects were sent to S.F.S.L., Rasulgarh,

Bhubaneswar through the learned S.D.J.M., Keonjhar for chemical examination and report and on completion of investigation, P.W.11 submitted charge sheet against the appellant under sections 498-A, 302 and 201 of the Indian Penal Code on 20.07.2017.

After submission of charge sheet, the case was committed to the Court of Session where the learned trial Court framed charges against the appellant and since the appellant refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute him and establish his guilt.

4. The defence plea of the appellant is one of denial.
5. During course of trial, in order to prove its case, the prosecution has examined as many as eleven witnesses.

P.W.1 Guru Charan Munda, is the informant of the case and father of the deceased and he stated that on being informed by the appellant regarding the death of the deceased, he along with his wife and other relatives had been to the house of the appellant, where they saw injury on the head of the deceased and on being asked by him to the appellant, the latter stated before them that he caused the death of the deceased by

physically assaulting her. He proved the F.I.R. (Ext.1). He is also a witness to the inquest report Ext.2.

P.W.2 is the mother of the deceased, who also accompanied P.W.1 to the house of the appellant on receiving the death news of the deceased and stated that she saw the injury on the head of the deceased and her dead body was lying on the floor of the house and a saree was tied around her neck and since the appellant had already gone to the police station, they could not ask him about the death of the deceased and she further stated that when they arrived at the house of the appellant, he was absent there.

P.W.3 Santosh Kumar Mohanta, who is a co-villager of P.W.1, stated that on being called by the police, he had been to the house of the appellant on the date of occurrence and he saw the deceased lying on the floor of her bedroom and a portion of saree was tied around her neck and the other portion of the same saree was thrown on the roof beam of her bedroom. He is a witness to the inquest report Ext.2.

P.W.4 Rabindra Munda, who is a co-villager of P.W.1, is a witness to the seizure of some sample earth and blood stained earth collected from the spot as per seizure list Ext.3

P.W.5 Manik Kumar Munda is a co-villager of P.W.1, who accompanied P.W.1 to the house of the appellant on getting the death news of the deceased and stated the same thing as that of P.W.2. He is a witness to the seizure of some sample earth and blood stained earth collected from the spot as per seizure list Ext.3.

P.W.6 Madhusudhan Mahanta, who is known to the appellant and the deceased, stated that in his presence as well as in presence of others, the appellant confessed before the I.O. to have killed his deceased wife by means of a lathi and concealed the said lathi in a 'huda' (i.e. embankment of the pond) and the lathi being produced by the appellant, the same was seized and he is a witness to such seizure as per seizure list Ext.4 and the statement of the appellant was recorded in his presence after the lathi was recovered as per Ext.5.

P.W.7 Rashmi Munda, who is the sister in-law of P.W.1 (being younger brother's wife), accompanied P.W.1 and P.W.2 on receiving the death news of the deceased. She stated that there was mark of violence on her back and there was bleeding from her head and on query being made to the appellant, he disclosed before them that in the preceding night, he demanded food from the deceased and when the same was

not served, he inflicted a blow to the deceased by means of a bamboo stick, as a result of which she fell down on the ground and did not respond.

P.W.8 Dr. Ajaya Kumar Mohanty was working as Pediatric Specialist in D.H.H. Keonjhar, who conducted the post mortem over the dead body of the deceased and proved the report as per Ext. 6. He also proved the requisition of the I.O. on the query dated 06.06.2017 as per Ext.7 with the production of bamboo lathi (M.O.I) and saree (M.O.II) and his report as per Ext.7/1.

P.W.9 Jyoti Munda, who is the aunt of the deceased (husband's sister's daughter) stated that on getting information about the serious health condition of the deceased, she had been to the house of the appellant and stated in the same manner as that of P.Ws.1 and 2. She is also a witness to the inquest report as per Ext.2.

P.W.10 Mangat Singh Purty, who is a neighbour of the appellant, did not support the prosecution case, for which he was turned hostile.

P.W.11 Srikanta Sahoo was the Investigating Officer of the case, who submitted charge sheet.

The prosecution exhibited fourteen numbers of documents. Ext.1 is the F.I.R., Ext.2 is the inquest report, Ext.3 is the seizure list of sample earth and blood stained earth, Ext.4 is the seizure list relating to recovery of bamboo lathi at the instance of the appellant, Ext.5 is the statement of the appellant recorded under section 27 of the Evidence Act, Ext.6 is the post mortem examination report, Ext.7 is the requisition of the I.O. to the medical officer seeking opinion on production of bamboo stick and the saree, Ext.8 is the spot map, Ext.9 is the dead body chalan, Ext.10 is the seizure list in respect of the wearing apparels of the appellant, Ext.11 is the seizure list in respect of the wearing apparels and biological samples of the deceased being produced by the medical officer, Ext.12 is the seizure list of the biological samples of the appellant, Ext.13 is the forwarding report of the exhibits by the learned S.D.J.M., Keonjhar to the S.F.S.L., Rasulgarh for chemical examination and Ext.14 is the chemical examination report.

The prosecution examined five material objects. M.O.I is the bamboo lathi, M.O.II is the saree of the deceased, M.O.III is the pink colour saya of the deceased, M.O.IV is the black colour blouse of the deceased and M.O.V is the wearing

apparels of the appellant including a black colour trouser and one white T-shirt, one maroon and white check napkin.

6. The learned trial Court after assessing the evidence on record came to hold that there is no evidence to corroborate the facts alleged in the F.I.R. to constitute the offence under section 498-A of I.P.C. and accordingly, held the appellant not guilty under such offence. Learned trial Court further found that it is clearly established that the deceased was found lying dead in her bed room with injuries on her person particularly on the head and there was also bleeding when the witnesses found her lying and it is also clear from the evidence that a portion of the saree was tied round her neck, whereas the other portion of the saree was tied on the roof beam of the said house. After accepting the evidence of the doctor, who conducted the post mortem examination, it was held that the deceased died a homicidal death. Learned trial Court also accepted the extra judicial confession of the appellant and held that it has come out of the evidence on record that the appellant not only confessed his guilt before the family members of the deceased such as P.Ws.1 and 7, but also before the co-villagers, namely, P.Ws.6 and 10. It was further held that in the night of occurrence, the appellant and the deceased were together in the house and on

the following morning, the deceased was found lying dead on the floor with bleeding injuries and a portion of the saree was tied on the neck of the deceased while the other portion of the saree was tied on the roof beam of the house and the appellant has not given any explanation as to the cause of death of the deceased or the circumstances under which she met her death while staying in the same room. It was also further held that the facts so established by the witnesses are consistent with the hypothesis of the guilt of the appellant and no inference can be drawn that he is innocent and some others were involved in the alleged crime and as such, there was no reasonable ground for presuming that the appellant was innocent, rather in all probabilities, it can be concluded that he is the author of the crime. Learned trial Court has also held that the appellant committed the offence under grave and sudden provocation without any premeditation and in the heat of passion, the appellant assaulted his wife causing her death and the evidence on record does not make out a case under section 302 of I.P.C. rather it is a case under section 304 Part-I of I.P.C. The learned trial Court further held that the appellant concealed the evidence of killing the deceased and the weapon of assault, i.e. the bamboo lathi was seized on the embankment of the village pond,

which was recovered at the instance of the appellant by the I.O. and therefore, it was held that the appellant is guilty under section 201 of I.P.C.

7. Mr. Chitta Ranjan Sahu, learned counsel appearing for the appellant contended that there are no eye witnesses to the occurrence and the case is based on the circumstantial evidence and the circumstances are not clinching. He further submitted that the circumstances taken together do not form a complete chain so as to unerringly arrive at the guilt of the appellant. It is further submitted that the materials available on record indicate that the marriage between the appellant and the deceased was a love marriage and they were blessed with a son, who was aged about three years at the time of occurrence and there is absolutely no material on record that at any point of time, the appellant subjected the deceased to physical and mental torture for which the appellant was acquitted of the charge under section 498-A of I.P.C. It is argued that though some witnesses have stated about the extra judicial confession of the appellant before them, but the same is not acceptable as there are evidences on record to show that such confession was made in the presence of police officials and moreover, the learned trial Court should not have placed reliance on the

evidence of the close relatives of the deceased as they are interested witnesses. Learned counsel further submitted that there is absence of materials to show that the appellant was present with the deceased in the occurrence night in the spot room and there were other family members residing in the house and if the evidence of extra judicial confession is taken out of consideration, then there is no material to come to a conclusion that the appellant is the author of the crime and therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mr. Arupananda Das, learned Additional Government Advocate appearing for the State, on the other hand, supported the impugned judgment and submitted that when the witnesses have stated that on getting information from the appellant that the deceased committed suicide, they arrived at the scene of occurrence and found the appellant was present there and the deceased was lying dead on the floor of the house with bleeding injuries on the head and the doctor has opined the death to be homicidal in nature, it was for the appellant to explain as to under what circumstances, the deceased met with a homicidal death and since the appellant has failed to discharge the burden, which was cast on him in view of the provision under section 106

of the Evidence Act, the learned trial Court was quite justified in holding that it is the appellant and none else to be the author of the crime. It is contended by the learned counsel for the State that the weapon of offence, i.e. lathi was seized at the instance of the appellant on the basis of his statement recorded under section 27 of the Evidence Act and the appellant has tried to give the homicidal death of the deceased as a colour of suicidal hanging and that is why after assaulting the deceased with the bamboo lathi (M.O.I), he tied one end of the saree on the neck of the deceased and the other end in the roof beam of the house and therefore, there is no illegality or impropriety in the judgment of the learned trial Court in convicting the appellant under section 304 Part-I of I.P.C so also under section 201 of I.P.C.

Whether the deceased met a homicidal death:

8. Coming to the evidence regarding the nature of death of the deceased, it appears from the evidence of the doctor (P.W.8) that he conducted post mortem examination over the dead body on 29.04.2017 and he detected the following external injuries on the person of the deceased, i.e. (i) haematoma of 4 cm diameter over occipital areas of the scalp, reddish brown in colour and (ii) one curvilinear ligature mark on

the neck of size 1.5 cm in breadth and 22 cm in length on the front of neck and the doctor opined that the cause of death was due to asphyxia resulting from mechanical pressure (constricting force) along with injuries to vital organs like brain which is homicidal in nature. P.W.8 examined the bamboo lathi (M.O.I) as well as the saree (M.O.II), which was sent by the I.O. and he opined that the injuries detected on the person of the deceased over the head of the deceased could have been caused by the bamboo lathi and further stated that the ligature mark around the neck of the deceased can be possible by use of saree. The post mortem examination report has been marked as Ext.6 and the query report has been marked as Ext.7/1 and nothing has been elicited in the cross-examination to discard such evidence of the doctor. Learned counsel for the appellant has also not challenged the same. In view of the inquest report and the post mortem examination report, I am of the humble view that the learned trial Court has come to a right conclusion that the deceased met with a homicidal death.

Whether the evidence of the close relatives of the deceased is to be discarded:

9. Learned counsel for the appellant contended that the learned trial Court should not have relied upon the evidence of

the close relatives of the deceased such as P.W.1., P.W.2, P.W.7 and P.W.9. This Court in the case of **Pradip Sahoo -Vrs.- State of Orissa reported in (2015) 61 Orissa Criminal Reports 289** has held that related witnesses are not necessarily false witnesses. Unless their evidence suffers from serious infirmity or raises considerable doubt in the mind of the Court, it would not be proper to discard their evidence straightaway. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefits from the result of litigation. Close relatives of the deceased are most reluctant to spare the real culprit and falsely mention the names of other persons. The close relationship of the witnesses to the deceased is no ground for not acting upon their testimony. If the evidence is otherwise found to be reliable after close scrutiny, it can be acted upon.

Thus, I am not able to accept the contention of the learned counsel for the appellant to discard the evidence of P.W.1., P.W.2, P.W.7 and P.W.9 on the ground of their relationship with the deceased.

Whether the chain of circumstances is complete:

10. The evidence of the informant (P.W.1) indicates that the deceased and the appellant fell in love with each other while

they were working together in a construction company at Talcher and no traditional form of marriage was held between them and after return from Talcher, the deceased continued to stay with the appellant as his wife. P.W.1 further stated that he was informed about the death of the deceased over phone and he along with his wife (P.W.2) and other relatives proceeded to the house of the appellant, where they saw injuries on the head of the deceased and when he asked the appellant about the cause of death, he told that he caused the death of the deceased by physically assaulting her.

At this juncture, if the evidence of P.W.2 is analysed, it appears that she has also stated that when she along with her husband (P.W.1) and other relatives came to the house of the appellant, they saw the dead body of the deceased lying on the floor of the house and a saree was tied around her neck, but the appellant had already gone to the police station and therefore, they could not ask him about the cause of death of the deceased. She has further stated that when they arrived at the house of the appellant, he was absent. Thus, the extra judicial confession of the appellant, which is stated to by P.W.1 is absent in the evidence of P.W.2 even though both of them arrived at the house of the appellant together on receiving the death news. In

the absence of any corroboration to the evidence of P.W.1 by P.W.2, the extra judicial confessional part is not acceptable.

P.W.2 has stated that prior to the incident, the deceased had told before them that the appellant was insisting her to bring a motor cycle from her father and they did not give any motor cycle. P.W.1 has not stated any such thing regarding demand of the appellant in his statement before the Court, rather, he has stated about the love marriage of the deceased with the appellant and therefore, this part of the evidence of P.W.2 regarding demand of motor cycle is not acceptable. P.W.3 has stated to have noticed the dead body of the deceased lying on the floor of her bed room and he had seen a portion of the saree being tied around her neck and the other portion of the same saree was tied on the roof beam of her bed room.

P.W.4 has stated in the similar manner like P.W.3 about the dead body of the deceased lying on the floor of the house and the floor was blood stained. He further stated that the police seized some sample earth and blood stained earth as per seizure list Ext.3 and this witness has been declared hostile by the prosecution. P.W.5 has stated like P.Ws.3 and 4 regarding the dead body of the deceased lying on the floor of the house

and a saree was tied around her neck and he is also a witness to the seizure of sample earth and blood stained earth.

P.W.9 has stated that he found the deceased lying on the floor of the house with bleeding injuries and there was mark of assault on her person and a saree was tied around her neck.

The inquest was conducted in presence of the Executive Magistrate and the inquest report vide Ext.2 was prepared and in the inquest report, it is also mentioned that one portion of the saree was tied around the neck of the deceased and the other portion of the saree was tied to the roof beam of the house. The evidence of the witnesses as referred to above coupled with the inquest report makes it very clear that the dead body of the deceased was lying in her bed room and there was mark of assault on her body and there was blood stains on the floor of the bed room and one saree was tied around her neck and the other portion of the saree was tied to the roof beam of the house.

P.W.7 though stated that the appellant made extra judicial confession before her that in the preceding night, he demanded food from the deceased and when the same was not served, he inflicted a blow by means of a bamboo lathi, as a result, she fell down and did not respond, but in the cross-

examination, it has been elicited that the appellant was in the police outpost when he was asked about the cause of death to which he narrated the incident. Therefore, this evidence of extra judicial confession is not acceptable.

Even if the extra judicial confession of the appellant is taken out of consideration and that the prosecution has not adduced any clinching evidence that there was any demand of dowry or any physical or mental torture on the deceased by the appellant, but the fact remains that the deceased along with the appellant was staying together and the spot room was their bed room where her dead body was found and there were marks of injuries not only on the head but also around her neck and there were blood stains on the floor of the bed room. The doctor, who conducted the post mortem examination, has categorically stated that it was a homicidal death. Though the appellant was asked about each of the circumstances appearing against him in the accused statement, but he has taken a plea of denial.

Section 106 of the Evidence Act states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. When the husband (appellant) and wife (deceased) were together in their bed room in the night and the deceased was found dead with injuries over her head

and neck in the morning, it was for the appellant to explain it away as to under what circumstances, the deceased died.

In case of **Ajitsingh Harnamsingh Gujral -Vrs.- State of Maharashtra A.I.R 2011 Supreme Court 3690**, it is held as follows:-

“29. The evidences of PW.3, PW 4 and PW 5, which we see no reason to disbelieve, thus fully establish that the Appellant was last seen with his wife at about midnight and was in fact quarrelling with her at that time.

30. The incident happened at 4 or 4.30 a.m. and hence there was a time gap of only about 4 hours from the time when the Appellant was seen with his wife (deceased) and the time of the incident. Thus he was last seen with his wife and there was only a short interval between this and the fire.

31. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible, vide **Mohd. Azad alias Samin v. State of West Bengal 2008 (15) SCC 449** and **State through Central Bureau of Investigation v. Mahender Singh Dahiya 2011 (3) SCC 109, Sk. Yusuf v. State of West Bengal JT 2011 (6) SC 640** .

32. In our opinion, since the accused was last seen with his wife and the fire broke out about 4 hours thereafter it was for him to properly explain how this incident happened, which he has not done. Hence this is one of the strong links in the chain connecting the accused with the crime.

33. The victims died in the house of the accused, and he was there according to the testimony of the above witnesses. The incident took place at a time when there was no outsider or stranger who would have ordinarily entered the house of the accused without resistance and moreover it was most natural for the accused to be present in his own house during the night”.

In case of **Babu S/o Raveendran -Vrs.- Babu S/o**

Bahuleyan and Anr. reported in (2003) 7 Supreme Court

Cases 37, it is held as follows:

“14. The second important circumstantial evidence against the accused is that the accused and the deceased were last seen together. To put it tersely, both of them slept together by retiring to the room that night. Last seen together in legal parlance ordinarily refers to the last seen together in the street, at a public place, or at any place frequented by the public. But here, the last seen together is much more than that. The last seen together here is sleeping together inside the bolted room. It is in the evidence of PW-3 and PW-6 that they had dined together and the accused and the deceased were closeted in a room at about 8.30 p.m. Therefore, on the fateful day the accused and the deceased were closeted in a bedroom at about 8.30 p.m. is undisputed and it is for the accused alone to explain as to what happened and how his wife died and that too on account of strangulation.

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18. Now the question which remains to be considered is, who is responsible. As already noticed, the accused and the deceased were closeted inside the room. There is no evidence of an intruder. In such a situation, the circumstances leading to the death of the

deceased are shifted to the accused. It is he who knows in what manner and in what circumstances the deceased has met her end and as to how the body with strangulation marks found its way into the nearby well. All the aforesaid circumstances, taken together cumulatively lead and unerringly point only to the guilt of the accused”.

In **Trimukh Maroti Kirkan -Vrs.- State of Maharashtra reported in 2006 AIR SCW 5300**, the Hon’ble Supreme Court held as follows:

“12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties.....Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of S. 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely

upon the prosecution and there is no duty at all on an accused to offer any explanation”.

In case of **State of Rajasthan -Vrs.- Kashi Ram** reported in **2006 AIR SCW 5768**, the Hon’ble Supreme Court held as follows:

“19.....whether an inference ought to be drawn under Section 106 Evidence Act is a question which must be determined by reference to facts proved. It is ultimately a matter of appreciation of evidence and, therefore, each case must rest on its own facts”.

The Court further held that:

“23.....The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can

consider his failure to adduce any explanation, as an additional link which completes the chain”.

In view of the materials available on record, it appears that homicidal death of the deceased took place in her bed room where the appellant was present and it was within the special knowledge of the appellant and therefore, it was incumbent upon him to explain as to how the death of the deceased was caused and if that remains unexplained by him, then there can be an inference of guilt as per the provision under section 106 of the Indian Evidence Act. Though the appellant is not under any obligation to disprove the prosecution case, yet when the prosecution has proved the death of the deceased in the bed room where the appellant was there, then it can be said that the prosecution has discharged its initial burden and in such a situation, if the appellant fails to discharge his burden in terms of section 106 of the Evidence Act, then it can be a clinching circumstance, which would point towards the guilt of the appellant. No doubt, it is a case based on circumstantial evidence and law is well settled that the circumstances from which conclusion is drawn should be fully proved, circumstances should be conclusive, all the established facts should be consistent with the hypothesis of guilt and inconsistent with the innocence of the accused and that the circumstances should exclude possibility of

guilt of any person other than the accused, but in view of the materials available on record, particularly, failure of the appellant to explain the circumstances under which the death of the deceased took place coupled with the spot room visit findings, the inquest report as well as post mortem report findings and the surrounding circumstances, I am of the humble view that the learned trial Court has rightly come to the conclusion that the chain of evidence is complete and the irresistible conclusion is that the appellant has committed the murder of the deceased; first by assaulting her on the head and then by tying the saree around her neck and hanging the dead body from the roof beam of the bed room.

The learned trial Court has held that in the heat of passion the appellant assaulted the deceased and in view of the community the appellant belonged to, the learned trial Court has rightly found him guilty under section 304 Part-I of I.P.C.

The concealment of weapon of offence, i.e. bamboo lathi and giving recovery of the same has also been proved by the witnesses including the I.O. and the learned trial Court has rightly held that the appellant in order to screen himself from the legal punishment has tied one portion of the saree on the neck of

the deceased and the other portion on the roof beam of the house and therefore, held him guilty under section 201 of I.P.C.

In view of the foregoing discussions, I find that there is no illegality or infirmity in the impugned judgment and order of conviction passed by the learned trial Court and accordingly, the conviction of the appellant under sections 304 Part-I and 201 of I.P.C. is upheld. The sentence imposed for both the offences cannot be said to be on the higher side under any stretch of imagination, which also stands confirmed.

Accordingly, the JCRLA being devoid of merit, stands dismissed.

Trial Court records with a copy of this judgment be communicated to the concerned Court forthwith for information and necessary action.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 11th August 2022/PKSahoo