

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.256 of 2010

Arising Out of PS. Case No.-42 Year-2008 Thana- SHEOHAR District- Sheohar

1. Sumitra Devi, W/O Sudarshan Pandey, Resident Of Mohalla- Sheohar (Ward No.-8), P.S.- Sheohar, District- Sheohar.
2. Puja @ Rashmi, W/O Late Chunchun Tiwari @ Sarojanand Tiwari, Resident Of Mohalla- Sheohar (Ward No.-8), P.S.- Sheohar, District- Sheohar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Virendra Kumar, Advocate

For the Respondent/s : Mr.D.K.Sinha, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

RESERVED JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 19-09-2025

Marriage of Chunchun Tiwari @ Sarojanand Tiwari

was solemnized with Puja, daughter of Sudarshan Pandey of Sheohar on 8th of February, 2007. On 9th of April, 2008, Chunchun Tiwari went to the paternal home of Puja to bring her back to his house. It was settled that the bride would come with the groom to her matrimonial home on 14th of April, 2008. On that day at about 7:30 A.M., the father of Chunchun, namely, Nandu Tiwari received a phone call from Puja who told him that Chunchun died in their house and he was cremated. Immediately, Nandu Tiwari trying to call his



son over his Cell Phone No. 9905498061 but he did not receive the phone call. After getting the said information, Nandu Tiwari started to cry and being accompanied by his fellow villagers went to Sheohar at about 11:00 P.M. When he reached the house of Sudarshan Pandey and asked him about his son, Sudarshan and his family members told him that his son Chunchun suddenly fell ill and breathed his last. After his death, he was cremated.

2. Nandu Tiwari lodged a written complaint against Sudarshan Pandey, his wife Sumitra Devi, Puja @ Rashmi Kumari and Mahavir Anand son of Sudarshan Pandey and 3/4 other unknown persons, alleging, inter alia, that they committed murder of Chunchun and somehow cremated him to destroy the evidence.

3. On the basis of the said written complaint, Sheohar P.S. Case No. 42 of 2008, dated 14th of August, 2008 under Sections 302, 201 and 34 of the IPC was registered and the SHO of the said police station directed Sub-Inspector Rameshwar Tiwari to investigate into the case. The Investigating Officer took up the case for investigation



which culminated in filing charge-sheet against accused Sudharsha Pandey, Puja @ Reshmi Kumari and Sumitra Devi under Sections 302, 34 and 201 of the IPC in the Court of learned Chief Judicial Magistrate at Sheohar. Since the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions for trial and disposal. The learned Sessions Judge, Sheohar at Sitamarhi received the case record on 4th of February, 2009 and transferred the same to the Fast Track Court No. 2 at Sheohar for trial and disposal. The learned Trial Judge received the record on 17th of Feb, 2009 and framed charge against the above-named three accused persons under Sections 302, 34 and 201 of the IPC. As the accused persons pleaded not guilty, trial of the case commenced.

4. During trial, prosecution examined as many as 10 witnesses. Some documents were marked exhibits which we propose to refer subsequently in the body of the judgement.

5. After examination of the witnesses on behalf of the prosecution, the accused persons were examined under



Section 313 of the Cr.P.C. They denied the prosecution case and by way of examination of two witnesses on behalf of the defence, it was specifically pleaded that death of Chunchun Tiwari was natural and after his death he was cremated following all rituals and there was no unnatural incident in entire occurrence.

6. The learned Trial Judge on appreciation of evidence held accused persons committed guilty for committing offence under Section 302 read with Section 34 of the IPC and Section 201 of the IPC. They were convicted accordingly.

7. The convicts were sentenced to suffer imprisonment for life and fine of Rs. 5,000/- each for the offence under Section 302 of the IPC. They were also sentenced to suffer imprisonment for a term of 3 years with fine of Rs. 1000/- for the offence under Section 201 of the IPC. It is also directed that in default of payment of fine, the convicts will suffer simple imprisonment for a term of 6 months.

8. The appellants preferred the instant appeal



assailing the judgement passed by the Trial Court in Sessions Trial No. 66 of 2009. During pendency of the appeal, the appellant Sudarshan Pandey died and the appeal stood abated as against the deceased appellant Sudarshan Pandey.

9. Points for consideration in the instant appeal are as to whether the prosecution was able to bring home the charge against the appellants under Section 302 read with Section 34 of the IPC and secondly, whether the appellants committed any act of disappearance of evidence in respect of the offence of murder having been committed by them.

10. In order to bring home the charge, prosecution examined 10 witnesses amongst them P.W. 1 Shambhu Tiwari is the Sister's husband of deceased Chunchun Tiwari, P.W. 2 Rekha Kumari was posted as Executive Magistrate at Sheohar on 15th of April, 2008, P.W. 3 Umesh Prasad, was the Block Agricultural Officer, P.W. 4. Manoj Tiwari is a resident of Mehndi Nagar in the District of Sitamarhi, P.W. 5 Hemchandra Dwivedi, P.W. 6 Jairam Tiwari, P.W. 7 Amlesh Tiwari were known to the de facto complainant, P.W. 8 Nandu Tiwari is the de facto complainant, P.W. 9 Mantun Razak is a



police personnel who was In-charge of Sheohar P.S. Malkhana on 14th of April, 2008 and P.W. 10 Rameshwar Tiwari is the Investigating Officer of the case.

11. The accused persons, on the other hand, examined one Jai Prakash Thakur and Tarakant Jha as D.W. 1 and D.W. 2 respectively, who are the neighbours of deceased appellant Sudarshan Pandey.

12. In order to adjudicate the issues under consideration, let us now independently examine and scan the evidence of the witnesses on behalf of the prosecution. Prior to the consideration of the evidence on behalf of the prosecution and defence, it would be relevant for us to record the undisputed fact that marriage of deceased Chunchun Tiwari was solemnized with Puja @ Rashmi, daughter of Sudarshan Pandey of Sheohar on 8th of February, 2007. It is also not in dispute that on 9th of April, 2008, Chunchun Tiwari went to his Sasural to bring his wife back. On 14th of April, 2008, father of Chunchun (P.W. 8) received a telephone call at about 7:30 / 8:00 A.M that his son died on the previous night and in the early morning, he was cremated by his



matrimonial relations. Thus, the parents of Chunchun and his paternal relations did not know about his death at his matrimonial home prior to his cremation.

13. Under the above factual background, let us know consider the evidence on record.

14. It is found from the evidence of the de facto complainant who deposed during trial as P.W. 8 that after marriage of Chunchun with Puja, Puja came to his house. After few days, she went back to her parents' house. Again in the month of November, 2007, she went away to her parents' house. She did not want to stay with Chunchun at her matrimonial home because she had illicit relations with another person staying in the same villages where her parental home was situated. He heard the said fact from his son. His son went to the paternal home of Puja on 9th of April, 2008 to bring his wife back. It was settled that Puja would be back to her matrimonial home on Ram Navami day, which fell on 14th of April, 2008. He came to know about the said fact from his son Chunchun on the previous day of his departure. P.W. 8 also informed the Sudarshan Pandey and Sumitra



Devi, parents of Puja and Mahavir Anand, Baby Devi, Neelam Devi and others did not want to send Puja back to her matrimonial home. Chunchun also informed P.W. 8 that the paramour of Puja used to spend huge money for the family of Sudarshan Pandey. The family members of Puja were apprehensive that flow of money received from the said person having illicit relations with Puja would be stopped if she was sent to matrimonial home. Chunchun also stated that if the family members of Puja was not ready to send her back to her matrimonial home, he would bring her with the help of local people and police authority. Chunchun also told him that Puja was pregnant for about 2 / 3 months, though she had no occasion of having conjugal relationship with her husband during past few months, i.e., from November, 2007. P.W. 8 advised his son to take his wife back to their house in order to protect their family prestige. Then on 14th of April, 2008 at about 7:00 / 7:30 A.M., P.W. 8 received a phone call and informed that his son Chunchun died. P.W. 8 asked her whether his dead body was kept in their house or in the hospital. At this, she reply very normally that he was



cremated. When P.W. 8 asked her about the cause of death of his son, she disconnected the phone. The de facto complainant immediately informed the matter to the police at P.S. Sonbarsa and then to the Superintendent of Police at Sitamarhi. The S.P., Sitamarhi told him to lodge a complaint to the police at Sheohar Police Station. P.W. 8 then informed the incident over phone to the S.P., Sheohar. Then he informed the entire incident to his son in law Shambhu Tiwari. Shambhu Tiwari and Manoj Tiwari accompanied P.W.8 to Sheohar. P.W. 8 told Shambhu and Manoj to call Jairam Tiwari and he himself went to the house of Sudarshan Pandey. He met Sudarshan, his wife Sumatra Devi, Puja @ Rashmi Kumari, Mahavir Anand, Baby Devi and the mother in law of Mahavir Anand, namely, Nilam Devi in the said house. On being asked, they told him that in the night of 13th of April, 2008, Chunchun suddenly fell ill and died. Thereafter, he was cremated on the said night itself. Over this incident, some altercation took place between P.W. 8 and the family members of Puja. He and other persons who accompanied him also came to know from the local people that the dead



body of Chunchun was cremated near a godown of LPG. They went to the said place and found ashes mixed with the earth. Then P.W. 8 went to the police station and informed the entire incident to the police officer. The police office asked him to submit a written complaint. One Shambhu Tiwari wrote the written complaint and P.W. 8 put his signature thereon and handed over to the police. The written complaint was marked as Exhibit 3. In the evening of 14th of April, the de facto complainant went to the place where he found ashes of a dead body with S.I. Rameshwar Tiwari, I.O of the case. The I.O. deputed a village chowkidar to guard the place. On the following day, the said place of cremation was dug and police recovered some small and long bones of human body, burnt wood, stuck with hard caramelised sugar from the said place. There was smell of kerosene oil from the said materials. The Investigating Officer seized the bones and other materials under seizure list in presence of the Executive Magistrate. The Executive Magistrate also put her signature on the seizure list.

15. Finally, it was stated by P.W. 8 on oath that in order to conceal illicit relation of Puja with another person, all



the accused persons along with their family members committed murder of Chunchun by burning and cremated him.

16. P.W. 2 Rekha Kumari was the Executive Magistrate, Sheohar on 15th of April, 2008. It is ascertained from her evidence that on 15th of April, 2008, she accompanied the Investigating Officer of this case in connection with Sheohar P.S. Case No. 42 of 2008 as per the direction of the District Magistrate. Police dug the place where the dead body was burnt in her presence. After digging, police recovered some pieces of bones, caramelized sugar mixed with earth, with smell of kerosene and some other articles from the said place. S.I., Rameshwar Tiwari seized those articles in presence of one Kamlesh Tiwari and Jairam Tiwari. The witness also put his signature on the said seizure list. His signature was marked as Exhibit 1 during trial of the case. In course of cross-examination, P.W. 2 stated that the seized articles were not sealed in her presence by the Police Officer.

17. Evidence of P.W. 3 Umesh Prasad, who was a Block Agricultural Officer, Sheohar, is found to be immaterial



for the purpose of this case. He was a witness in respect of a seizure list of attachment of household articles seized by police from the house of the accused persons.

18. P.W. 1 Shambhu Tiwari is the husband of the sister of the deceased. It is ascertained from his evidence that marriage of the deceased was solemnized with Puja @ Rashmi, daughter of Sudarshan Pandey of village Sheohar. P.W. 2 stated that Chunchun is used to tell him that behaviour of Puja did not appear to be proper. On 9th of April, 2008, P.W. 1 met Chunchun in a shop at Sitamarhi and told him that Puja would be taken to her matrimonial home on 14th of August, 2008 being Ram Navami day. On 14th of April, 2008 the father-in-law of P.W. 1, Nandu Tiwari contacted him over phone and told that Chunchun was murdered in his Sasural and his dead body was cremated. Subsequently, Nandu Tiwari came to him and he along with Manoj Tiwari and Nandu Tiwari went to the house of Sudarshan Pandey. Then the above-mentioned persons went to cremation Ghat where they found fresh soil in a particular portion of cremation Ghat which was being guarded by a Chowkidar. On 15th of April, 2008, the



said place was dug in presence of P.W. 1 and others. All persons assembled there got the smell of kerosene oil coming from the said place. They also found caramelised sugar, 3 / 4 pieces of half burnt bones, one long bone and 30 / 40 pieces of bone and a burnt piece of wood stuck with caramelised sugar. Police seized the said bones and other articles under a seizure list in presence of P.W. 1. P.W. 1 further stated that when Chunchun went to his matrimonial home, he was hale and hearty. He suspected that accused Sudarshan Pandey, Sumitra Deiv, Mahavir Anand, Baby Devi, Nilam Devi and Puja conjointly committed murder of Chunchun and burnt his dead body to disappear the evidence. From his cross-examination, it is ascertained that the Investigating Officer did not record the statement of P.W. 1 during investigation. He did not also have any talk with Puja about her relationship with Chunchun.

19. P.W. 4 Manoj Tiwari is resident of Mehndi Nagar in the district of Sitamarhi. He was informed about the death of Chunchun when he got a phone call on 14th of April, 2008 at about 8:00/8:30 A.M. from Nandu Tiwari. After getting



said information over phone, P.W. 3 contacted Jairam Tiwari, a resident of Babhantoli, Sheohar and narrated the incident to him. Again Jairam Tiwari called him over phone and confirmed the said information which P.W. 4 received from Nandu Tiwari. Thereafter, P.W. 4, Sambhu Tiwari and Nandu Tiwari came to Sheohar in the house of Sudarshan and found his entrance door under lock and key. Thereafter, they went to Sheohar Police Station to lodge complaint. P.W. 4 came to know about the location of cremation Ghat of the said locality which is situated by the side of Lanka. P.W. 4 went there and found that a dead body was cremated and the place was covered by fresh soil. However, it was not properly dressed with mud and water etc., and no "Tulsi" sapling was planted there. S.I. Rameshwar Tiwari and others were informed and they inspected the said place and posted guard to protect the said place. On the following day when the said place was dug, two pieces of long bones, 30 / 35 pieces of small bones with the smell of kerosene oil coming from it, were seized. P.W. 4 also stated that the accused persons along with one Mahavir Anand, Baby Devi, Nilam Devi committed murder of



Chunchun Tiwari. From his cross-examination, it is ascertained that the de facto complainant Nandu Tiwari is his brother-in-law. He could not say as to whether he was shown as a witness in the FIR or not. He also admitted that he did not make any statement before the I.O during investigation of the case. It is also found from the evidence of P.W. 4 that Shradh ceremony of deceased was performed at village Sonbarsa. The younger brother of the deceased, namely, Guddu Tiwari performed all rituals of Shradh ceremony of Chunchun Tiwari. He also opined that on the date of cremation, the person who performs last rituals of the deceased wears "Utari" (Dhoti) etc., and after performance of Shradh ceremony, the said "Utari" is changed. P.W. 4 also did not state in his examination that the wife of Chunchun was a lady of questionable character but he did not narrate the said fact to the Investigating Officer.

20. Evidence of P.W. 5 Hemchandra Dwivedi is almost similar to the evidence P.W. 4 Manoj Tiwari. It is found from his evidence that he accompanied the de facto complainant and others on 14th of April, 2008 to the house of



Sudarshan Pandey and found his house under lock and key. His tenant told them that Chunchun died on the previous night and he was cremated in Samshan Ghat. Thereafter, P.W. 5 went to Samshan Ghat and found that a new dead body was cremated and the site was covered. On the same day at about 5:00 / 6:00 P.M., police inspected cremation Ghat and posted one Chowkidar to guard the same. On 15th of April, 2008, at about 12 noon, the place was dug in front of the Magistrate and a peace of burnt wood, 30 / 35 pieces of bones and two long pieces of bones and caramalised sugar with smell of kerosene oil were recovered. Police seized those articles under a seizure list. From the evidence of P.W. 5, it is ascertained that before his death, Chunchun told the witness that some matrimonial discord were going on between him and his wife and he would bring her to his house. The witness also opined that Chunchun's death was caused by his wife, brother, father and brother's wife at his matrimonial home.

21. P.W. 6 Jairam Tiwari and P.W. 7 Amlesh Tiwari corroborated the evidence of the above-named witnesses in their deposition.



22. P.W. 10 Rameshwar Tiwari is the Investigating Officer. From the evidence of P.W. 10, specially in course of his cross-examination, we find that he did not seal the seized peaces of bones and no seal memo was prepared after recovery of bones and fire wood from cremation Ghat. It is also stated by him that P.W. 5 Hemchandra Dwivedi did not state to him that deceased Chunchun Tiwari told him about one week from the date of his death that some matrimonial discord was going on with his wife. He also admitted in cross-examination that he recorded joint statement of witness Kamlesh and Jairam and they told him that on 9th of April, 2008, Chunchun came to the house of the Sudarshan to take his wife back to his house and when they went to the house of the Sudarshan, they came to know that the accused persons committed murder of Chunchun and cremated his dead body. P.W. 10 denied the suggestion that the de facto complainant prepared the FIR under his instruction. It is also ascertained that the said witness did not collect the phone number of Chunchun Tiwari and Nandu Tiwari. In cross-examination, he clearly stated that he did not get any evidence of commission



of murder of Chunchun from the house of Sudarshan Pandey.

23. We have already recorded that defence case as disclosed from the trend of cross-examination of the witnesses on behalf of the prosecution is that of complete denial of prosecution story. The wife of deceased Chunchun informed her father-in-law over phone that her husband suddenly became ill on the last night and died his natural death. Thereafter, he was cremated. As a matter of fact the accused persons also examined two witnesses, namely, Jai Prakash Thakur and Tarakant Jha, who were the neighbors of Sudarshan Pandey. They stated in their evidence that immediately after the death of Chunchun, his family members were informed, his younger brother Guddu Tiwari came to the house of Sudarshan and he performed last rituals in the cremation Ghat over the dead body of Chunchun Tiwari. Thus, it is absolutely false to make out a case that the deceased was murdered and thereafter to disappear the evidence of murder, he was burnt with the help of kerosene oil and wood at the local Ghat. During cross-examination, it was ascertained that the P.W. 2 was not present during the last rituals of deceased



at cremation Ghat.

24. Assailing the order of conviction and sentence, learned Advocate on behalf of the appellants submits that the appellants were made accused in connection with Sheoghar P.S. Case No. 42 of 2008 only on the ground the deceased Chunchun used to stay in their house on the date of his death and he died at his matrimonial home. Secondly, he was cremated in the cremation Ghat of Sheoghar. The de facto complainant lodged a complaint against the appellants as well as Sudarshan Pandey (since deceased), father-in-law of Chunchun that they committed murder of his son because they did not want to send accused Puja @ Rashmi Kumari, wife of Chunchun to her matrimonial home on one pretext or another. In FIR de facto complainant stated that accused Sumitra Devi mother of Puja told him that Puja and her newly born child would be sent to her matrimonial home during Ram Navi. Therefore, Chunchun went to the house of Sudarshan Pandey on 9th of April, 2008 and on 14th of April, 2008 at about 7:30 A.M., Puja informed the de facto complainant that his son Chunchun died during the last night and he was



cremated.

25. It is submitted by the learned Advocate for the appellants that nobody saw appellants committing murder of Chunchun Tiwari. The Investigating Officer failed to collect any evidence in support of charge under Section 302 of the IPC against the appellants.

26. We have carefully perused the judgement passed by the Trial Court.

27. The Trial Court held accused persons guilty of offence under Section 302 of the IPC on the ground that Chunchun was last seen alive in the house of the appellants. Therefore, the appellants were under obligation as to how he died under the provision of Section 106 of the Evidence Act.

28. It is needless to say that the whole prosecution case rests on circumstantial evidence. From careful examination of the evidence on record, we find the following circumstances:-

(i) Appellant Puja @ Rashmi Kumari used to stay at her paternal home on the date of occurrence;

(ii) She went to her paternal home and gave birth to



a child;

(iii) It is not challenged that Chunchun went to the house of the appellants to bring his wife back on 9th of April, 2008. On 13th of April, 2008, Chunchun died in the house of Sudarshan Pandey. On the same night his dead body was cremated;

(iv) After cremation of dead body, his half burnt bones and were concealed by digging the earth.

(v) No circumstantial evidence is brought forward to link the appellant with unnatural death of Chunchun.

29. The accused persons took a plea that the family members of Chunchun were informed immediately after his death and his younger brother Guddu Tiwari and some other relatives came to the house and Guddu performed the last rituals of his elder brother. During cross-examination of one of the witnesses on behalf of the prosecution, it was suggested by defence that Guddu performed Shradh ceremony of his elder brother and at the time of his Shradh ceremony, he was wearing "Utri". A general suggestion was made to the witness that "Utri" is worn by the person who



performs last ritual in the cremation Ghat and the same “Utri” is thrown away after completion of Shradh ceremony.

30. Thus, it was contended on behalf of the appellants that since Guddu was wearing “Utri”, he performed the last ritual over the dead body of his elder brother Chunchun at the cremation Ghat.

31. We are not in a position to accept such argument advanced on behalf of the appellants. It might be a fact that Guddu performed Shradh ceremony wearing “Utri” but this does not necessarily prove that he performed last rites of his elder brother in the cremation Ghat. There is no explanation as to why Nandu Tiwari (P.W. 8) was informed about the death of his elder son on 14th of April, 2008 at about 7:00 / 7:30 AM by Puja. There is also no explanation as to why his dead body was not fully cremated and partly burnt bones were thrust inside the earth.

32. In ***Sharad Birdhichand Sarda v. State of Maharashtra***, reported in ***(1984) 4 SCC 116***, it was held by the Hon’ble Supreme Court in Paragraph No. 153 that the following conditions must be fulfilled before a case against an



accused can be said to be fully established.

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

33. It may be noted here that the Hon'ble Supreme Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by the Hon'ble Supreme Court in ***Shivaji Sahabrao Bobade v. State of Maharashtra*** reported in ***(1973) 2 SCC 793***, where the following observations were made:-

"Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,



(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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.

34. It is also held in the aforesaid decision that where it was natural for the deceased to be with the accused at the material time, other possibilities must be excluded before an adverse inference can be drawn.

35. In the instant case, prosecution has failed to produce any evidence regarding the time of death of the deceased. It is found from the evidence on record that the deceased was in Sheohar from 9th of April, 2008. There is absolutely no evidence that the deceased was confined till his death inside his Sasural by the accused persons. It is very normal and natural that the deceased a young man of 28



years, would go here and there in the village during his stay at Sheohar. There is absolutely no evidence collected by the I.O. that the deceased was with the accused persons at the material time of his death and there was no other possibilities for him to be away from the accused persons. All such possibilities must be excluded before an adverse inference can be drawn.

36. The Trial Court failed to discuss the possibilities of adverse inference under the facts and circumstances of the case.

37. In a very recent case, the Hon'ble Supreme Court decided the scope of Section 106 of the Evidence Act in the State of **Madhya Pradesh v. Balveer Singh** reported in **2025 INSC 261**. It has been held by the Hon'ble Supreme Court in the aforementioned decision that if an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at the time and in the circumstances of its choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the



accused. In order to resolve such a situation, Section 106 of the Evidence Act exists in the statute book.

38. Therefore, the Hon'ble Supreme Court was pleased to observe that before taking the recourse to Section 106 of the Evidence Act, it is bounden duty of the prosecution to prove the foundational facts to justify the invocation of the principles enshrined under Section 106 of the Evidence Act. As examples, the Hon'ble Supreme Court lays down the following circumstances which are required to be proved before invocation of Section 106 of the Evidence Act:-

a) The offence took place inside the four walls of the house in which the accused and the deceased were staying.

In the instant case, the appellants did not state that the deceased was not staying in their house at the time of his death.

b) The failure on the part of the appellants to inform the family members about the death of their son and the clandestine manner in which the body was cremated, more particularly when the parents and other family members of the deceased used to reside in a nearby village is the



incriminating circumstances.

c) The dubious conduct of the appellants in fleeing away from home putting the home under the lock and key is another incriminating circumstances which might go against the appellants. In this respect, the evidence on record is contradictory. When other witnesses stated that the house of Sudarshan Pandey was under lock and key,, the de facto complainant stated on oath that he met the father of Puja in his house and there was some altercation.

d) The untimely death of the deceased in suspicious circumstances, ought to be considered as the fourth circumstance.

e) Lastly, the appellants failed to explain any incriminating circumstance pointing a finger against them.

39. At this stage the question that appears for consideration before us is as to whether the above circumstance irresistibly complete the chain of circumstance which should be treated consistent only with the hypothesis of the guilt of the accused that is to say, they should not be explainable on any other hypothesis except that the accused



is guilty.

40. Secondly, whether the circumstances as stated hereinabove should be of a conclusive nature and tendency.

41. Thirdly, whether the above circumstances exclude every possible hypothesis except the one to be proved and lastly the above-mentioned circumstances create 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.

42. In the instant case, it is unequivocally admitted by the Investigating Officer that he did not find any evidence of commission of murder of Chunchun in the house of the appellants.

43. Thus, prosecution has failed to prove that the appellants committed murder of Chunchun. Secondly, the Investigating Officer did not take any attempt to collect evidence by examining the accused persons and their neighbors as to who cremated the dead body of the deceased.



44. It is found from the record that on 15th of April, 2008, some pieces of bones, burnt wood covered with caramelized sugar were recovered. The Investigating Officer sent the said bones to forensic science laboratory to ascertain as to whether there was any smell of kerosene oil or not but he did not try to collect any evidence as to whether the said bones were human bones or not. If the said bones were human bones, the Investigating Officer could have easily been ascertained as to whether these bones were of the deceased or not by DNA examination. No attempt was done.

45. Therefore, we do not find any evidence before us in support of charge of murder against the appellants and disappearance of evidence of offence.

46. The Hon'ble Supreme Court in ***Nusrat Parween v. State of Jharkhand*** reported in ***2024 SCC Online 3683*** relied on the observations of its previous judgement in ***Tulshiram Sahadu Suryawanshi v. State of Maharashtra*** reported in ***2012 10 SCC 373*** and reproduced paragraph 23 of the said judgement as here under:-



“23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”



47. The same principle is applicable in the instant case.

48. In a case based on circumstantial evidence, motive is a very important circumstance which the Court should find out.

49. In the instant case, the de facto complainant (P.W. 8) elaborately stated in his evidence that appellant Puja @ Rashmi Kumari had illicit relation with another person of his village. The said boy used to spend huge amount of money for the family of the father of the Puja. Therefore, the parents of Puja did not want her to send her to her matrimonial home. The said fact was not disclosed in the FIR by P.W. 8.

50. We are aware that FIR is not an encyclopedia of incident. The purpose of FIR is to set criminal administration of justice in motion. It is not a substantive piece of evidence, it can only be used for limited purpose either to corroborate or to contradict with the evidence of the FIR maker, but what is important, P.W. 8 even did not state those facts to the I.O. also in course of his further statement recorded under Section 161 of the Cr.P.C. Therefore, prosecution has hopelessly



failed to prove the motive of the alleged offence.

51. Thus, we are of the view that the chain of circumstances was snapped in the absence of any evidence with regard to commission of murder of the deceased Chunchun which was allegedly committed in the house of the accused.

52. Secondly, the prosecution failed to collect any evidence with regard to motive of the murder.

53. Thirdly, prosecution hopelessly failed to collect and produce any evidence as to the persons who were present at the time of cremation of the dead body of the deceased Chunchun.

54. Fourthly, prosecution also failed to prove whether the bones seized from the cremation Ghat were human bones or not. No DNA profiling test was conducted to establish that the said bones were of the deceased.

55. In view of the absence of such evidence, we are of the view that the Trial Court committed gross error in convicting and sentencing the appellants under Section 302,



34 and 201 of the IPC because of the fact that chain of circumstances constituting foundational fact has not been proved by the prosecution so the appellants cannot be held guilty only on the basis of an abstract principle of Section 106 of the Evidence Act.

56. For the reasons stated above, the instant appeal is allowed.

57. The judgement and order of conviction and sentence passed by A.D.J. F.T.C. IInd, Sheorhar at Sitamarhi is set aside.

58. If the appellants are in correctional home, release order be issued at once.

59. Let a copy of this judgement be sent to the Court below along with LCR.

(Bibek Chaudhuri, J)

(Dr. Anshuman, J)

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