GAHC010251492024

2026:GAU-AS:17223-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./405/2024

SANOWAR HUSSAIN
S/O MD. SUKUR ALI,
RESIDENT OF KANTAPUR PART II, PS LAKHIPUR, DIST GOALPARA ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. I U CHOWDHURY,MR. A AHMED
Advocate for the Respondent : Ms. B. Bhuyan, Sr.Adv. & Addl.P.P.
Ms. R. Saloi, Adv.

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved	: 11.11.2026
Date of pronouncement of judgment	: 20.11.2026
Whether the pronouncement is of the operative part of the judgment ?	: N/A
Whether the full judgment has been pronounced?	: Yes

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

1. Heard Mr. A. Ahmed, learned counsel for the appellant. Also heard Ms. B. Bhuyan, learned Senior Counsel & Addl. P.P. assisted by Ms. R. Saloi, learned counsel for the respondent.

2. This appeal is directed against the Judgment dated 21.10.2024 and Order dated 24.10.2024 passed by the learned Sessions Judge, Goalpara, convicting the appellant under Section 302 IPC and sentencing him to undergo rigorous imprisonment (R.I.) for life and also to pay a fine of Rs. 10,000/- and in default of fine, to undergo simple imprisonment (S.I) for six (6) months.

Factual Matrix:

3. The case of the prosecution, in brief, is that the informant Hasen Ali on 30.10.2022 lodged one ejahar before the Officer in charge of Lakhipur P.S stating inter alia that around 12 years ago informant's daughter Hasida Khatun got married with the accused (A1). After marriage the accused (A1) used to torture her physically and mentally and made demands of dowry. On 29.10.2022 at night the accused person with pre planned manner strangulated informant's daughter and killed her and informant came to know about the same in the

following morning.

4. After receiving the ejahar lodged by the informant, Officer in-charge of Lakhipur P.S. registered the same as Lakhipur P.S. case No. 405/2022 under section 302/34 of the IPC and entrusted the investigation to Sub-Inspector of Police, Mr. Eusub Ali Ahmed. The investigating officer subsequently after completion of investigation submitted charge-sheet against the present accused person (A1)/appellant under section 302 of IPC to stand trial.

5. The learned Trial Court framed charges under Section 302 IPC against the accused/appellant, which was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

6. During trial, the prosecution side in support of its case has examined seven (7) numbers of witnesses including the informant, the Medical Officer and the Investigating Officer.

7. After closing of prosecution witnesses, statement of the accused person under section 351 of BNSS was recorded.

8. The plea of the accused person is of total denial and he declined to adduce any evidence in his favour.

9. The proceedings culminated with the conviction and sentencing of the accused/appellant above. Hence, this appeal.

Evidence on Record:

10. PW-1 Robiyal Mondal deposed in his evidence that his house is situated near the house of the accused. The occurrence took place about five months ago in the house of the accused person. In the next morning of the occurrence, he heard hue and cry in the house of the accused person for which he went to the house of the accused person. On arrival, he came to know that Hasida Khatun had died. He saw the dead body of Hasida Khatun lying on the ground inside the room of the accused person.

11. PW-1 was deciare hostile on being cross examined by the prosecution, he denied having stated before police that *"I came to know from the informant that on 29.10.2022, at night, his daughter had been killed by her husband (accused) by strangulating her neck."*

12. In his cross examination by defence he deposed that he could not remember the date and day of the occurrence. He further deposed in his cross examination that the accused has three children and he resided along with his wife and children in a one room house. He further deposed in his cross examination that after the death of the deceased, the accused person informed the informant about the matter and then only the informant came to the house of the accused. He admitted that on the previous night of the death of the deceased, the deceased along with her husband (accused) and her children went to her parental home for having dinner. Prior to the aforesaid incident, he did not hear about demand of any dowry and physical assault committed on the person of the deceased.

13. PW-2 Hasen Ali, the informant of this case deposed in his evidence that accused (A1) is his son-in-law and Deceased Hasida Khatun was his daughter who expired about eight months ago at the house of her husband situated at village Kantapur. His daughter got married to accused (A1) about twelve years ago prior to the incident and three children were born to them. He further deposed that on the date of incident, at about 3:00 am, accused (A1) informed him over phone that his daughter had died in the residence and after hearing the incident, he went to the house of his daughter which is about 3 KM from his residence along with his family members and saw the dead body of his daughter lying on the bed in her house.

Thereafter, he lodged the ejahar at the police station. He exhibited the ejahar as Ext.P-1/PW-2 and his signature as Ext.P-1(1)/PW-2.

14. PW-2 did not support the prosecution case and thereafter he was cross-examined by the prosecution wherein he denied that he deposed before police that after the marriage, his son-in-law (A1) used to torture his daughter physically and mentally and, on 29.10.2022, at night, the accused person had killed his daughter by strangulating her neck.

15. Cross examination of PW-2 is declined by the defence side.

16. PW-3 Akbor Ali deposed in his evidence that the incident took place about one year ago. He deposed in his evidence that he came to know from the villagers that the wife of the accused had expired and on getting the information, he went to the house of the accused person and saw the dead body was wrapped with a bamboo mat in the courtyard of the house of the accused person. He also saw police personnel there.

17. PW-3 was also declared hostile and thereafter he was cross-examined by the prosecution side, wherein he denied that he deposed before investigating officer that about twelve years ago, Hasida Khatun got married to accused Sanowar Hussain of village kantapur and since her marriage, accused Sanowar Hussain had been torturing her physically and mentally on demand of dowry and he came to know from the informant that on 29.10.2022, at night, the accused person had killed her by strangulation. Defence declined cross-examination.

18. PW-4 Mizanur Rahman deposed in his evidence that the incident took place about one year ago. He got the information about the death of Hasida Khatun and on getting the information, he went to the house of the accused person and saw the dead body. He does not know how the deceased had expired. He was declared hostile and in his cross examination by prosecution, he denied that he stated before police that on 29.10.2022, at night, he came to know from the informant that accused (A1), son-in-law of the informant, had killed his wife by strangulation. Defence declined cross-examination.

19. PW-5 Peer Mahammad also did not support the prosecution case and was declared hostile.

20. In his cross examination by prosecution side, he denied that he stated before police that after the marriage, the accused person had been torturing his deceased/wife physically and mentally and he came to know from the informant that on 29.10.2022, at night, the accused person had killed his wife Hasida Khatun by strangulation.

21. Cross examination PW-5 is declined by the defence side.

22. PW-6 Dr. Arup Ghosh is the medical officer who had conducted the post mortem of the deceased at Goalpara civil hospital. He deposed in his evidence that on 30.10.2022, while he was working at Civil Hospital, Goalpara as Senior Medical & Health Officer, he conducted post mortem examination on dead body of the deceased.

23. The Medical Officer (M.O.) deposed that he found Multiple contusions of approximately (1 x 0.8) cm seen on both sides of the neck in the upper parts in the form of finger prints with nail marks.

On dissection of the neck the underline muscles were contused. The shape of the thyroid cartilage was distorted.

24. As per the medical opinion, the cause of death was due to:-

1. Asphyxia as a result of homicidal strangulation which was ante mortem in nature.

He exhibited the post mortem report of the deceased as Ext.P-2/PW-6 and his signature as Ext.P-2(1)/PW-6.

PW-7 SI Yusuf Ali Ahmed the investigating officer deposed in his evidence that on 30.10.2022, he was posted as Sub-Inspector at Lakhipur Police Station. On that day, the Officer-in-Charge of Lakhipur Police Station, on receipt an ejahar from informant Hasen Ali, registered a case vide Lakhipur P.S. Case

No.405/2020 under section 302/34 of the IPC and entrusted him for conducting the investigation. Accordingly, he conducted the investigation and after completion of the investigation, he submitted the charge sheet against the accused (A1) under section 302 of the IPC.

He exhibited the inquest report of the deceased as Ext.P-3/PW-7 and his signature as Ext.P-3(1)/PW-7, Ext.P-4/PW-7 as the sketch map of the place of occurrence wherein Ext.P-4(1)/PW-7 was his signature, Ext.P-5(a)/PW-7, 5(b) & 5(c)/PW-7 as the photographs of the deceased and Ext.P-6/PW-7 as the charge-sheet wherein Ext.P-6(1)/PW-7 was his signature.

25. The previous statements of the witnesses who were declared hostile were confirmed by the Investigating Officer (I.O.). The defence suggested to the I.O. that he did not record the statements of Hasem Ali, Robiyal Mondal, Akbor Ali, Mizanur Rahman and Peer Mahmmad and they did not state before him that accused person killed the deceased by strangulating her neck, which is denied by the investigating officer.

Submissions of the Appellant

26. Mr. A. Ahmed, learned counsel for the appellant submitted that all the prosecution witnesses, except the official ones, turned hostile and did not support the prosecution case and the conviction of the appellant was based on

Section 109 of the BSA, whereby, the burden of proving his innocence was cast upon the appellant by the learned Trial Court, which approach is unsustainable in law.

27. It is further submitted that although, admittedly, the three minor children aged 9 years and below of the appellant were present in the house, none of them were examined by the I.O., and such deficiency in the investigation has dented the credibility of the prosecution case.

28. In support of his aforesaid submissions, learned counsel has relied upon the following decisions:

1. ***Takhaji Hiraji vs. Thakore Kubersing Chamansing & Ors.***, *reported in* ***(2001) 6 SCC 145***.
2. ***Nagendra Sah vs. State of Bihar***, *reported in* ***(2021) 10 SCC 725***.
3. ***Shivaji Chintappa Patil vs. State of Maharashtra***, *reported in* ***(2021) 5 SCC 626***.
4. ***Renuka Prasad vs. State represented by Assistant Superintendent of Police***, *reported in* ***2025 SCC OnLine SC 1074***.
5. ***Jupudi Suresh vs. That State of Andhra Pradesh*** *in* ***Criminal Appeal No. 4849 of 2025***.

6. ***Reena Hazarika vs. State of Assam****, reported in* ***(2019) 13 SCC 289.***

Submissions of the Prosecution

29. *Per contra*, the learned Additional Public Prosecutor has submitted that although the witnesses have turned hostile, their entire evidence cannot be wiped out, and those parts of their evidence which lend support to the prosecution case have been taken into account by the learned Trial Court to complete the chain of circumstances, pointing unerringly towards the guilt of the accused.

30. It is further submitted that mere non-examination of the children of the appellant does not discredit the prosecution case in any manner, as they were very small children who would be sleeping at the time of occurrence, which was in the middle of the night, and therefore they may not have anything to state before the I.O.

Analysis and Findings

31. The limited facts which clearly emanate from the evidence on record are that on that fateful night, the appellant, along with his wife and three children, were present in the one-room house of the appellant. It is also established that

the appellant had informed the father of the deceased/informant that his wife (the deceased) had died at about 3:00 A.M., which was during the night.

32. As rightly observed by the learned Trial Court, when a case is based on circumstantial evidence, the settled law is that the evidence on record must satisfy the following tests:-

a. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.

b. Those circumstances taken cumulatively should form a chain, so complete that there is no escape from the conclusion that within all human probabilities, the crime has been committed by the accused and none else.

c. Those circumstances should unerringly point out towards the guilt of accused.

d. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation by any other hypothesis than that of guilt of accused and such evidence should not only be consistent with the guilt of the accused, but should also be inconsistent with his innocence.

33. In this regard, the learned Trial Court had referred to the decisions in the following cases:

a. **Hanumant Govind Nirgudkar and another v. State of M.P.**; **AIR**

1952 SC 343.

b. **Shivaji Sahebrao Bobade v. State of Maharashtra**; **AIR 1973 SC 2622**.

c. **Sharad B. Sarda v. State of Maharashtra**; **AIR 1984 SC 1622.**

d. **Padala Veera Reddy v. State of Andhra Pradesh**; **1989 (Suppl.2) SCC 706**.

e. **Dhananjoy Chaterjee @ Dhana v. State of West Bengal**; **1994 SCC (2) 220**.

f. **State (NCT of Delhi) v. Navjyot Sandhu @ Afsan Guru**; **2005(11) SCC 600**.

34. From the unchallenged medical evidence, it stands established that the death of the deceased was homicidal in nature, caused by manual strangulation.

35. As already noted above, none other than the appellant, save for three minor children aged 9 years and below, were present in the house on the night of the occurrence besides the deceased. From the evidence of the informant (PW-2), which is not challenged in cross-examination, it appears that the incident took place sometime prior to 3:00 A.M. on that night. Therefore, a reasonable inference arises that no other person was present inside the house of the appellant, having regard to the time of the night. There is no evidence of

any break-in, as during that time the door of the house would be locked from the inside. Therefore, the possibility of some other person entering the house and committing the offence, even as the appellant was sleeping in the same room can safely be ruled out in the absence of evidence to the contrary.

36. Although the prosecution witnesses, except the official ones, were declared hostile, from their evidence, this much is clear that the deceased was found dead inside their room, and as per the unrebutted evidence of the informant, she was lying dead on her bed. Further to that, although three other children aged 9 years and below were present in the room on that night, having regard to the time of the occurrence, which was sometime before 3:00 A.M., it would be obvious that they would be fast asleep. Since the present is a case of manual strangulation by hand as well as a blunt object as per the medical evidence, it is quite probable that the victim could not have offered much resistance by way of shouting so as to wake up the children.

37. From the above chain of circumstances, which have been satisfactorily proved, the learned Trial Court rightly held that the burden (*onus* of proof) shifted to the accused-appellant in view of Section 109 of the Bharatiya Sakshya Adhiniyam (BSA), which provides *inter alia* that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon

him.

38. In **Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681,** Hon'ble Apex Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said: ***" Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."***

39. **Ganeshlal v. State of Maharashtra(1992) 3 SCC 106** was a case where the Appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the Appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the

prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the Appellant was a prime accused in the commission of murder of his wife.

40. The Hon'ble Supreme Court in State of Rajasthan Vs. Thakur Singh, (2014) 12 SCC 211 has held that in a case of unnatural death of wife of accused in a room occupied only by both of them, when there was no evidence of anybody else entering the room and the accused has not explained the circumstances about unnatural death of his wife, the principle under Section 106 of the Evidence Act, 1872 was clearly applicable. It was held as under: ***"We find that the High Court has not at all considered the provisions of Section 106 of the Evidence Act, 1872. This section provides, inter alia, that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him."***

41. Herein, it would be apt to quote the observation of the learned Trial Court as reflected in the judgment:

"*It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in lying 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 of Evidence Act 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. ***(Naina Mohd. AIR 1960 Madras, 218)."***

42. This brings us to the authorities cited by learned counsel for the appellant in support of his submissions:

1. In ***Takhaji Hiraji*** (supra), which was cited with reference to the submission regarding non-examination of the children of the appellant, it was held by the Apex Court as follows:

> *19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself - whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act*

upon it, uninfluenced by the factum of non-examination of other witnesses.

As already observed hereinabove, the three minor children of the appellant, aged 9 years and below, would have been fast asleep at the time of occurrence, and therefore they cannot be regarded as eyewitnesses or even as material witnesses. Rather, it appears that it is the appellant who took advantage of the state of sleep of his children to commit the heinous offence. In our considered opinion, the non-examination of the children of the appellant, though may be termed as a lapse in investigation, in no way dents the credibility of the prosecution case. Moreover, the defence has not set up a case of some other intruder having entered the place of occurrence (P.O.) house to commit the offence, and therefore it is not understood as to how, even if the statements of the said children of the appellant were recorded, it would have helped the defence.

2. ***Nagendra Sah*** (supra) has been cited with reference to the permissibility of casting the burden / applicability of Section 106 of the Evidence Act / Section 109 BSA imposing a burden upon the accused-appellant to explain the circumstances. It was contended by learned counsel for the appellant that the learned Trial Court had misdirected itself

by relying solely upon Section 109 BSA and imposing the entire burden upon the accused-appellant to prove his innocence. The Apex Court in the said decision observed as follows:

> "*17. As the entire case is based on circumstantial evidence, we may make a useful reference to a leading decision of this Court on the subject. In Sharad Birdhichand Sarda v. State of Maharashtra, in para 153, this Court has laid down five golden principles (Panchsheel) which govern a case based only on circumstantial evidence. Para 153 reads thus: (SCC p. 185)*
>
> > *"153. A close analysis of this decision would show 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.*
>
> *It may be noted here that this 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 this Court in Shivaji Sahabrao Bobade v. State of Maharashtra* wherein the following observations were made: (SCC p. 807, para 19)*
>
> > *'19.... 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." (emphasis supplied)

18. Paras 158 to 160 of the said decision are also relevant which read thus: (Sharad Birdhichand Sarda case, SCC pp. 186-87)

"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. 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: (AIR pp.

806-07, para 9)

`9. ... But in a case like this where the various links as started 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.

160. 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. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case

wherein this Court observed thus: (SCC p. 43, para 30)

> *`30. ... Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused.' "(emphasis supplied)*

19. In this case, as mentioned above, neither the prosecution witnesses have deposed to that effect nor any other material has been placed on record to show that the relationship between the appellant and the deceased was strained in any manner. Moreover, the appellant was not the only person residing in the house where the incident took place and it is brought on record that the parents of the appellant were also present on the date of the incident in the house. The fact that other members of the family of the appellant were present shows that there could be another hypothesis which cannot be altogether excluded. Therefore, it can be said that the facts established do not rule out the existence of any other hypothesis. The facts established cannot be said to be consistent only with one hypothesis of the guilt of the appellant."

43. The above was clearly a case where other adult members of the family were present in the house where the occurrence took place, and therefore, in the absence of specific evidence, the entire guilt could not have been attributed to the accused therein, that is, the husband of the deceased. Therefore, the said case is clearly distinguishable on facts.

Moreover, what has been held in ***Nagendra Sah*** (supra) is also that the circumstances relied upon by the prosecution must be satisfactorily established, which, in our opinion, has been done by the prosecution in the present case so as to bring forth a complete chain of circumstances pointing towards the guilt of the accused. Therefore, the learned Trial Court rightly insisted that the burden was upon the accused-appellant to explain or bring forth the facts which would point towards his innocence. What also does not escape notice is that despite the clinching medical evidence pointing towards homicidal death by way of manual strangulation, the accused-appellant in his statement under Section 313 Cr.P.C. had offered a story that he found the deceased dead, which was on account of illness. This certainly amounts to a false explanation, which provides an additional link to complete the chain of circumstances.

44. As already observed hereinabove, in the present case the prosecution has satisfactorily proved the various links in the chain of evidence, i.e. the circumstances pointing towards the guilt of the accused, and we also find that the said circumstances are in proximity to the time and situation inasmuch as, the occurrence took place during the night hours inside the one room house of the appellant wherein the appellant was present alongwith the deceased along with his minor children and no

other person was present. Therefore, based on the principles laid down in ***Deonanda Mishra*** (Supra), we are of the view that the false explanation offered by the appellant can be treated as an additional link to complete the chain of circumstances.

45. In ***Nagendra Sah*** (Supra) itself, relied upon by the appellant, it has been held by the Apex Court as follows:

"*22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.*

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

Therefore, it is only where the prosecution fails to satisfactorily establish in the chain of circumstances that the failure of the accused to explain the circumstances as the falsify of his defence cannot be used to convict him or becomes irrelevant. The said evidentiary situation does

not obtain in the present case.

3. In ***Sivaji Chintappa Patil*** (Supra), the Apex Court has held as follows:

> "*23. It could thus be seen that it is well-settled that Section 106 of the Evidence Act does not directly operate against either a husband or wife staying under the same roof and being the last person seen with the deceased. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof would lie upon the accused.*
>
> *24. In the present case, as discussed hereinabove, the prosecution has even failed to prove beyond reasonable doubt, that the death was homicidal."*

Therefore in the above case, there was doubt even as to whether the death was homicidal in nature. As already observed herein above in the present case, the prosecution has definitely let evidence and established the circumstances, which make out a prima facie case, and therefore, the onus of proof can definitely be shifted to the petitioner/appellant to establish the facts which are especially within his knowledge and which would point towards his innocence.

4. ***Renuka Prasad*** (supra), was a case where all the prosecution witnesses turned hostile, despite which the High Court had convicted the accused therein by relying upon the statements of the witnesses before the police under Section 161 Cr.P.C., which was held to be impermissible by the Hon'ble Apex Court. There is no cavil with the aforesaid established principle of law. In the instant case, however, no reliance has been placed upon the part of the evidence of the hostile witnesses that did not support

the prosecution case. In any case, in the present case, none of the witnesses who turned hostile were eyewitnesses to the occurrence, and the only part with regard to which they turned hostile is with regard to their previous statements to the police that the accused had killed the deceased, a fact to which none of them were eyewitnesses. Therefore, even if the said witnesses had not turned hostile, their evidence would have been discarded as hearsay. Therefore, this decision does not help the appellant in any manner.

5. The facts in ***Jupudi Suresh*** (supra), cited by learned counsel for the appellant, are entirely different, and therein the Court had held that there is no single circumstance proved by the prosecution in the trial, and the possibility of the death being a suicidal one led the Court to disbelieve the prosecution version, and that was a case of death due to burning. We fail to find any application of the aforesaid decision to the facts of the present case for reasons already explained.

6. In ***Reena Hazarika*** (supra) upon which heavy reliance was placed by learned counsel for the appellant, the Hon'ble Supreme Court observed as follows:

> "*9. The essentials of circumstantial evidence stand well established by precedents and we do not consider it necessary to reiterate the same*

and burden the order unnecessarily. Suffice it to observe that in a case of circumstantial evidence the prosecution is required to establish the continuity in the links of the chain of circumstances, so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused. Mere invocation of the last-seen theory, sans the facts and evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a prima facie case. If the links in the chain of circumstances itself are not complete, and the prosecution is unable to establish a prima facie case, leaving open the possibility that the occurrence may have taken place in some other manner, the onus Will not shift to the accused, and the benefit of doubt will have to be given."

46. A perusal of the aforesaid case as reflected in the said judgment reveals that the main prosecution witnesses i.e., PWs 1, 2 and 3, had given conflicting and contradictory versions of the events that unfolded on the night on which the death of the deceased in that case took place. It may be mentioned that in the said case, the appellant was convicted by the learned Trial Court (affirmed by the High Court) upon the finding that she had killed her husband inside their home and such finding was based upon the evidence of the aforesaid PWs i.e., the circumstances established on the basis of their evidence as well as the other evidence, including the medical

evidence.

47. In the said case, because of such contrary and unreliable evidence, the Apex Court held that in the facts and circumstances of the case, the nature of the evidence available coupled with the manner of its consideration, the links in the chain of circumstances cannot be said to have been established. The Hon'ble Apex Court also took into consideration the statement of the accused appellant recorded under Section 313 Cr.P.C. which was also entitled to be given due importance and such statement had also pointed to a different possibility as to the manner in which the death of the deceased in the aforesaid case took place.

48. However, the facts of the present case are entirely different. There is hardly any conflicting or contradictory evidence regardless of the fact that of the prosecution witnesses except the official ones were declared hostile. To reiterate, the prosecution has been successful in establishing a *prima-facie* case, ruling out the possibility of the occurrence having taken place in some other manner. To further reiterate, in the present case, the appellant in his defence statements had set up a story of illness of the deceased having led to her death, which has been thoroughly negated by the medical evidence. Therefore, the aforesaid decision is clearly distinguishable and therefore, of

no helps whatsoever to the appellant.

49. In view of the aforesaid discussion, we do not find any merit in the appeal which accordingly stands dismissed and the impugned judgment and sentence stands affirmed.

50. Send back the TCR.

JUDGE **JUDGE**

Comparing Assistant