Cr. Appeal (D.B.) No. 287 of 2011

(*Against the judgment of conviction dated 19.01.2011 and order of sentence dated 20.01.2011 passed by Sri Anil Kumar Choudhary, learned Sessions Judge, Godda in S.C. No. 29 of 2010.***)**

Pankaj Kr. Choudhary, son of Upender Choudhary, Village Gaida Bari, PO & PS Kadhea, Dist Katihar (Bihar)

.... Appellant(s)

Versus

The State of Jharkhand .... Respondent(s)

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE RAM SHARMA

For the Appellant(s) : Mr. Girish Mohan Singh, Advocate

For the State : Mr. Manoj Kumar Mishra, A.P.P.

CAV on 29/10/2026 **Pronounced on: 19/11/2026**

JUDGMENT

Per Ram Sharma:-

1. Heard Mr. Girish Mohan Singh, learned counsel for the petitioner and Mr. Manoj Kumar Mishra, learned A.P.P. for the State.

2. The instant appeal is directed against the judgment of conviction dated 19.01.2011 and order of sentence passed on 20.01.2011 by Shri Anil Kumar Choudahry, Sessions Judge, Godda in Sessions Case No. 29 of 2010 whereby and whereunder, the appellant was convicted for the offence punishable under section 302/34 of the Indian Penal Code and sentenced to undergo RI for life along with a fine of Rs. 10,000/- and in default of payment of fine to undergo further simple imprisonment for a period of three months.

3. The case of the appellant as set out in the *fardbeyan* of informant- Dasrath Prasad Sah is that on 15.02.2009 he called up his brother namely Ashok Kr. Sah (hereinafter referred to as the deceased) on phone and asked him to come along with his vehicle to the utensil factory situated at Giridih. On 16.02.2009, the deceased proceeded to Giridih on his 207 Tata Vehicle bearing no. BR 11E 9015 and reached at 3.00 p.m. on 17.02.2009 along with a cleaner namely

Md. Rahman. The deceased informed that the appellant Pankaj Kr. Choudhary was also travelling in the aforesaid vehicle but got down at Kursaila and told the deceased to drop his brother-in-law Sita Ram Bhagat at Hansdiha.

4. On 17.02.2009 at about 8.00 p.m. after loading the utensils from the factory, the informant along with the deceased and cleaner headed towards Gaidabari. It is stated that the deceased- Ashok Kr. Sah was driving the said vehicle. After 11.00 p.m., the appellant made a call on the mobile phone of the deceased and asked his whereabouts. The deceased told him that he is crossing Mohanpur, whereupon the appellant discloses that he is also heading towards Giridih on his 407 Vehicle (BR11E5273) and asked him to meet on the way. After a while, they saw a Tata 407 vehicle No. BR11E5273 parked on the road and the appellant signaled the deceased to stop the vehicle at a deserted place. Whereupon, the deceased slowed down his vehicle and asked him to meet at Yadav Hotel.

5. Thereafter, the informant- Dasrath Prasad Sah, deceased-Ashok Kr. Sah and the cleaner-Md. Rahman reached at Yadav Hotel. In the meantime, the appellant also came there by his 407 vehicle along with his brother-in-law and driver and started talking with the deceased. At about 5.00 a.m. the cleaner-Md. Rahman awoke the informant and apprised that the deceased was taken away by Pankaj Kr. Choudhary, his brother-in-law and driver towards the southern side of the Yadav Hotel and did not return thereafter. It is further stated that the appellant had taken Rs. 2,00,000/- for business purpose from the deceased and avoiding to make the payment of the said amount. At about 7.00 a.m. some persons came to Yadav hotel and disclosed that a dead body was lying about a kilometer away towards southern side of the hotel. The informant rushed to the place of incident and identified the dead body having head injuries. The informant claimed that the appellant Pankaj Kr. Choudhary along with his brother-in-law and the driver of TATA 407 bearing No. BR11E 5273 are responsible for committing the murder of deceased.

6. On the basis of the averments made in the aforesaid *fardbeyan*, the First Information Report was registered at Proaiyahat P.S. Case No. 24/2009.

7. On completion of the investigation, a charge sheet was submitted by the Investigating Officer against co-accused Sita Ram Bhagat on 03.01.2010 for committing the offence punishable under section 302/201/34 of the Indian Penal Code. After a couple of months the Investigating Officer filed another charge sheet against the appellant Pankaj Kr. Choudhary for committing the offence punishable under section 302/201/34 of the Indian Penal Code.

8. Learned Chief Judicial Magistrate, Godda took cognizance of the offence against accused-convict Sita Ram Bhagat on 29.01.2010 and the case was committed to the court of Sessions on 03.02.2010. Learned Chief Judicial Magistrate, Godda, also took cognizance of the offence against the appellant Pankaj Kr. Choudhary on 26.04.2010 and also committed his case to the court of Sessions on 05.05.2010. The case of the co-accused Sita Ram Bhagat was numbered as Sessions Case No. 29 of 2010 and the case of appellant was numbered as Sessions Case No. 139 of 2010.

9. Charge was framed against both the aforesaid accused under sections 302/34 and 201/34 of the Indian Penal Code and the same read over and explained to them in Hindi to which they pleaded not guilty claimed to be tried.

10. In order to substantiate its case, the prosecution has examined as many as 08 witnesses.

11. P.W.1 Md. Rahman is the cleaner of Tata 207 vehicle No. BR11E 9015. He has stated in his examination-in-chief that about a year ago at 3.00 a.m. Ashok Kr. Sah was murdered towards the southern side of Yadav Hotel situated at Bounsi Road. P.W.1 further stated that he along with the informant Dasrath Prasad Sah and the deceased loaded utensils on their pickup van at Giridih. In between Mohanpur and Poraiyahat Police Station, the appellant Pankaj Kr. Choudhary, his brother-in-law signaled to stop their vehicle but the deceased and his

brother refused to talk at a deserted place. The witness further stated that they stopped their vehicle at Yadav Hotel. In the meantime, the appellant, his bother-in-law and driver also came to Yadav line hotel and had a cup of tea. The witness has further stated that Dasrath Prasad Sah went for a sleep and the appellant Pankaj Kr. Choudhary, his brother-in-law and the driver took the deceased from their 407 vehicle towards southern side of the hotel. After a while, the appellant, and his driver came to the hotel and informed that the deceased is calling him, but, he refused to go after leaving his vehicle. In the morning, they saw the dead body of deceased.

In Cross examination P.W.1 deposed that they left for Giridih at about 8.00-9.00 p.m. and reached at Yadav hotel at about 3.00 a.m. After having tea and snacks, he went for a sleep in the vehicle and woke up at 2.00 a.m. by the driver of appellant. He saw the dead body of the deceased about a kilometer away towards the southern side of the hotel.

12. P.W.2 Gopal Prasad Sah is the brother of deceased. He stated that on 18.02.2009 at about 3.00 a.m. his brother Ashok Kr. Sah was murdered near Yadav Hotel by Pankaj Kr. Choudhary, Sita Ram Bhagat and driver. All of them took away the deceased towards the southern side of the hotel and committed his murder. P.W.2 further stated that the appellant had taken Rs. 2,00,000/- and he was not making the payment of the said amount.

In his cross examination P.W.2 deposed that he had not accompanied the deceased to Giridih. His brother Dasrath Prasad Sah had informed him through telephone then after getting information, he along with the other persons had reached at Yadav Hotel and the dead body was lifted by the police in his presence.

13. P.W.3 Rabindra Kumar Sah is the brother of the deceased and deposed identically on the line of P.W.2.

14. P.W.4 Shankar Rout is a formal public witness stated that on 17.09.2009 at 3.00 a.m. deceased Ashok Kr. Sah was murdered by Pankaj Kr. Choudhary, his brother-in-law Sita Ram Bhagat and their

driver at a distance of 02 kilometers from the Yadav Hotel.

In his cross examination P.W.4 deposed that after getting information of murder, he along with other persons reached at Yadav Hotel on 18.02.2009 @ 10-10.30 a.m., where the cleaner Md. Rahman had disclosed as to how the deceased was murdered. He also went to spot of incidence from where the dead body was recovered by the police and taken to the police station.

15. P.W.5 Vijay Choudhary also gave similar statement in his examination-in-chief. In cross examination, P.W.5 deposed that on 18.02.2009, he along with the other persons came to the place of incidence from where the dead body was taken to the police station.

16. P.W.6 Dasrath Prasad Sah is the informant as well as the younger brother of the deceased. He stated that on 17.02.2009, he along with the deceased and P.W.1 Md. Rahman proceeded to Gerabadi from Giridih by 207 pick-up vehicle no. BR11E9015 at 9.00 p.m. After a while, Pankaj Kr. Choudhary called the deceased and discloses that his vehicle is just ahead of the petrol pump of Mohanpur. When they move ahead, they saw the parked vehicle of Pankaj Kr. Choudhary on the road side. Both Pankaj Kr. Choudhary and his brother-in-law Sita Ram Bhagat signaled the deceased to stop the vehicle, but, as the place was deserted so he did not stop and asked them to come to Yadav hotel. They reached at Yadav Hotel. In the meantime, Pankaj Kr. Choudhary and his brother-in-law Sita Ram Bhagat also reached there with their 407 vehicle and started talking with the deceased and took him along towards the Kamrodor. This witness further stated that about 4 to 5 months ago from the date of incident, the deceased had given a sum of Rs. 1,00,000/- to Pankaj Kr. Choudhary, who was avoiding to return the said amount. The witness has proved his signature on *fardbeyan* which is marked as Ext. 1.

In his cross examination, P.W.6 deposed that on 16.02.2009 both Pankaj Kr. Choudhary and his brother-in-law Sita Ram Bhagat travelled in their TATA 207. Pankaj Kr. Choudhary got down at

Kursaila and Sita Ram Bhagat got down at Hansdiha. He further deposed that he slept at Yadav hotel and woke up @ 6 a.m. on 18.02.2009 whereas P.W.1 slept inside the vehicle. On 18.02.2009 @ 6.30 a.m. he came to learn that a dead body is lying at some distance. He along with other persons went there and identified the dead body of the deceased. The witness has further deposed that the deceased had also demanded his money from Pankaj Kr. Choudhary, but he refused to pay the same. The witness denied the suggestion that both Pankaj Kr. Choudhary, his brother-in-law Sita Ram Bhagat and driver have been falsely implicated due to business rivalry.

17. P.W.7 Rajdev Mohli, is the Investigating officer of the case. After taking over charge of the Investigation, he collected the post mortem report and submitted the charge sheet against Sita Ram Bhagat. The witness has proved the *fardbeyan* of P.W.6 which has already been exhibited as Ext. 1. The witness also identified the handwriting of Shri Niwas Singh on the *fardbeyan* and endorsement in the handwriting of Ram Swarup which has been marked as Ext. 1/1. The witness has also proved the formal First Information Report as Ext. 2.

In cross examination the witness deposed that he did not record the statement of any person.

18. P.W.8 Dr. Binay Kumar conducted autopsy on the dead body of the deceased-Ashok Kr. Sah on 18.02.2009 and found the following ante-mortem injuries:

I. Lacerated wound on upper lip on left side 2”x1”x1/2”
II. Crushed and collapsed skull from left side involving parital and frontal bone.
III. Bruise on face left side area 3”x1”.

The cause of death is opined to be intensive intra cranial or extra cranial injury. Time of death was more than 24 hours. The post mortem report has been proved and marked as Ext. 3.

In his cross examination, the P.W.8 deposed that such injuries may be possible in case of the vital accident.

19. P.W.9 Sri Niwas Singh is the main Investigator Officer of the case. He had recorded the restatement of the informant during the course of investigation and also recorded the restatement of other witnesses namely Md. Rahman, Ravindra Kumar Sah, Gopal Sah, Santosh Kumar Choudhary, Vijay Choudhary, Shankar Rout and Gouri Shankar Bhagat. The witness has proved the place of incident, which is land of one Sahib Hansda situated at Kamrodor. The witness also proved his handwriting and signature on the *fardbeyan* as well as on the death inquest report. The death inquest report has been marked as Ext. 4. During the course of investigation he handed over the charge of the investigation to the officer In-charge on 04.05.2009.

In cross examination, he did not find any suspicious article at Yadav Hotel nor recorded the statement of the owner of the hotel or any staff. He had also not ceased the vehicle of the deceased from Yadav Hotel, in order to record the statement of any vehicle owner.

20. The statement of both appellant and his brother-in-law was recorded u/s 313 of Code of Criminal Procedure in which they denied their complicity in the commission of the alleged murder.

21. It is worthwhile to note that the co-accused Sita Ram Bhagat had also challenged the judgment and order of sentence vide Criminal Appeal (D.B.) No. 123 of 2011, but, he died during the pendency of the appeal and as such the same was abated vide order dated 28th October, 2026.

22. Learned counsel appearing for the appellant has submitted that the appellant has not committed any offence and he has been falsely implicated in this case. He further submitted that no independent witness has been examined by the prosecution showing the complicity of the appellant in the commission of the alleged offence. Moreover, the offence in question rests on last scene circumstances, but, there is no material showing that the appellant was lastly seen in the company of the appellant. The prosecution has also not recovered any incriminating material from the place of incident and in the absence of any clinching evidence, the trial court has convicted

him and as such he is liable to be acquitted.

23. Per contra, learned A.P.P. appearing the State has vehemently opposed the submission made on behalf of the appellant and submitted that P.W.1 Md. Rahman and P.W.6 Dasrath Prasad Sah have clearly supported the case of the prosecution, which shows as to how the deceased was taken away by the appellant and others towards the southern side of the Yadav Hotel and in the morning the dead body of the deceased was recovered at a distance of approximately 1 kilometer from the hotel. He further submitted that the deceased was brutally assaulted by the appellant and others and the prosecution has been successful in establishing the chain of circumstances which clearly point out the guilt of the appellant.

24. We have heard the learned counsel of both parties and also perused the records including the evidence, documents and other materials.

25. On careful analysis of the evidence, it appears that none has witnessed the appellant committing the murder of deceased. Meaning thereby there is no direct evidence against the appellant and the prosecution case hinges on circumstantial evidence. It is settled principles of law that where a case is based on circumstantial evidence, the circumstances on the basis of which the conclusion of guilt is to be drawn must be fully established. The incriminating circumstances should be of conclusive nature and exclude all possible hypotheses except the one which must unerringly established that it was the appellant who committed the crime.

26. In the case of **Gambhir Vs. State of Maharashtra**, ***(1982) 2 SCC 351*** , the Hon'ble Supreme Court held in paragraph 9 is as under:-

> *"9……. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of*

the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

27. The "Panchsheel" principles of circumstantial evidence has been propounded by Hon'ble Apex Court in Para 153 of the case of **Sharad Birdhichand Sarda vs. State of Maharashtra**, (1984)4 SCC 116:-

i. **Fully Established circumstances:** The circumstances from which the conclusion of guilt is drawn must be fully established and not merely suggested.

ii. **Consistent with Guilt:** The facts established should be consistent only with the hypothesis of the accused's guilt.

iii. **Conclusive Nature:** The circumstances must be conclusive in nature.

iv. **Exclusion of other Hypotheses:** They must exclude every hypothesis other than the one to be proved (i.e., the guilt of the accused).

v. **Complete Chain:** There must be a complete chain of evidence, leaving no reasonable ground for doubt about the innocence of the accused.

28. In the light of the legal position about the circumstantial evidence, we have to examine whether the circumstantial evidence in the instant case satisfies the requirements of law.

29. It is clear from the evidence of P.W.1 Md Rahman and P.W.6 Dasrath Prasad Sah that both of them along with the deceased Ashok Kr. Sah were travelling in a pickup van and carrying utensils in their vehicle. It has also come in their respective evidence that the appellant, his brother-in-law and driver signaled the deceased to stop

the vehicle, but the deceased did not stop his vehicle on the ground that the said place was a deserted place. The prosecution has also established the fact that when the deceased brought his vehicle at Yadav hotel, the appellant, his brother-in-law and his driver also reached there by their respective vehicle and took the deceased in their vehicle and proceeded towards the southern side of the hotel and the deceased did not return thereafter. The prosecution has also successfully established the fact that the dead body of the deceased was recovered on the next day just about a kilometer away towards southern side of the hotel. Both the aforesaid witnesses were examined at length, but, their testimonies could not be impeached in any manner. Moreover, no questions or suggestions were given to the witnesses to the effect that they did not reach the Yadav hotel on the date of alleged incident or did not take the deceased in their vehicle or took him towards the southern side of the Yadav hotel. In absence of any contradictions, the evidence of P.W.1 and P.W.6 appears to be trustworthy and inspire confidence which leads to an inference that the appellant Pankaj Kr. Choudhary not only reached the Yadav Hotel on the alleged night, but, also took him to the southern side of the hotel and thereafter, the deceased was not seen with anyone else rather his dead body was recovered from that direction in the morning of the next day. The prosecution has been successful in establishing the theory that the deceased was last seen in the company of the appellant and it was none except the appellant who committed his murder.

30. Learned counsel appearing for the appellant contended that the time of death was more than 24 hours whereas both P.W.1 and P.W.6 have testified that the deceased was taken away by the appellant in the night of 17.02.2009 @ 3.00 p.m. Since, the prosecution has failed to establish the time of death and as such the appellant is liable to be acquitted on this ground alone.

31. In the case of ***Bodhraj Vs. Jammu & Kashmir***, (**2002) 8 SCC 45,** the Hon'ble Supreme Court observed that proximity test is a

usual guide to find out involvement of the accused in the crime. It was held that mere the time gap between the point of time when the victim was last seen alive with the accused and when he or she was found dead, is so small that chances of any other person other than the accused committing the crime becomes remote, last seen theory becomes credible. The estimation by a doctor about time of death of a person would be the approximate time and not always precise. A doctor renders opinion on the basis of clinical examination of the dead body and at that very moment he has no help of any scientific test or report. His visual observation about vital organs of a person is the only guide to him and, therefore, a precise time of death of a person cannot be ascertained at the time of post mortem examination.

32. It is not disputed that autopsy over the dead body of deceased Ashok Kr. Sah was held by Doctor Vinay Kumar on 18.02.2009. The post mortem report discloses crushed and collapsed skull from left side of perital and frontal bone. The doctor has rendered an opinion that the death was more than 24 hours before the post mortem examination which appears to have been conducted after 4.00 p.m. on 18.02.2009. In our opinion, the estimation of death of the deceased by the doctor does not contradict the prosecution case in any manner rather supports it and satisfies the proximity test. The next circumstance that goes against the appellant is that P.W.6 specifically stated in his testimony that the deceased had given hefty amount to the accused for his business purposes, but, the said amount was not returned back rather it was the accused who was making excuses on one pretext or the other, but the testimony of P.W.6 is not even touched on this point and no question or suggestion was given to the witness that the deceased did not lent any amount and as such the same remained intact.

33. In ***Rajender Vs. State (NCT of Delhi) , (2019) 10 SCC 623,*** the Hon'ble Apex Court held as under:-

> *"12.2.14……. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. In other words, he must furnish an explanation that appears to the court to be probable and satisfactory, and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him under Section 106 is not discharged. Particularly in cases resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. This, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the accused. Such burden always rests on the prosecution. Section 106 only lays down the rule that when the accused does not throw any light upon facts which are specially within his/her knowledge and which cannot support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances. ″*

34. It would not be out of place to mention here that a question was put to the appellant in his statement recorded under section 313 Code of Criminal Procedure that "*do you want to say anything in your defence*". In answer to the said question, he stated that from 17.02.2009 to 18.02.2009 Dasrath Prasad Sah was present at Gerabari bazaar, but, this fact was not confronted either with P.W.1 or P.W.6 Dasrath Prasad Sah nor any evidence is brought on record by the appellant in his defence.

35. The next contention of the learned counsel for the appellant is that the weapon used in the commission of the alleged offence was

not recovered by the Investigating Officer. In the case of ***Rakesh Vs. State of UP, 2021 SCC online SC 451***, the Hon'ble Apex Court held that the production of crime weapon is not a *sine qua non* for conviction in a murder case. No witness has seen how the deceased was murdered. This fact was within exclusive knowledge of the accused. Moreover, he was arrested after a couple of months from the date of alleged crime and as such it was almost impossible to the Investigating Officer to unearth the said weapon. In our opinion, in the present case absence of the aforesaid materials which could have also come in aid of the prosecution to connect the accused with the crime is not fatal for the prosecution.

36. In view of the aforesaid discussions, we hold that the incriminating circumstances such as last seen together, recovery of dead body from the southern side of Yadav Hotel, homicidal death of deceased Ashok Kr. Sah and non-payment of borrowed amount by the appellant are proved by the prosecution by leading cogent evidence and chain of circumstances, is so complete as to lead to an irresistible conclusion that the appellant was involved in the murder of deceased- Ashok Kr. Sah. There is no material on record to support any hypothesis consistent with innocence of the appellant rather the materials on record lead to a contrary conclusion.

37. The learned Trial Judge has rightly held that the appellant is guilty for the offence punishable under section 302/34 of the Indian Penal Code and, we find no ground to interfere with the judgment delivered in the Sessions Case No. 29 of 2010. Accordingly, Cr. Appeal (DB) No. 287 of 2011 is dismissed.

38. It appears that the appellant was released on bail by a coordinate Bench of this Court vide order dated 19.04.2011. The appellant is directed to surrender within a period of four weeks from today and serve the sentence in terms of the order of sentence passed by the learned Trial Court, failing which coercive steps shall be taken against him.

39. A copy of this judgment be sent to the concerned jail Superintendent of the court concerned for necessary action. Lower court record also be sent to the court concerned forthwith.

40. Interlocutory application, if any, stands disposed of.

(RONGON MUKHOPADHYAY, J.)

Jharkhand High Court, Ranchi
Dated : 19th November, 2026
MM/NAFR
Uploaded on 19/11/2026

(RAM SHARMA, J.)