**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

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**Cr. Appeal (DB) No. 1389 of 2018**

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**(**Against the Judgment of conviction and order of sentence both dated 20.11.2018 passed by learned Additional Sessions Judge-XII, Hazaribagh, in Sessions Trial No. 335 of 2017.)

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1. Kailash Ram age 40 years, S/o Chaudhari Ravidas.
2. Lalita Devi aged 26 years, W/o Kailash Ram.
   Both Resident of Shyampatti, P.O. & P.S. Charhi, District-Hazaribag.

… … Appellants

**Versus**

The State of Jharkhand … Respondent

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**P R E S E N T**

**HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**
**HON'BLE MR. JUSTICE SANJAY PRASAD**

…..

For the Appellants : Mr. Abdul Wahab, Advocate
For the Resp.-State : Mrs. Vandana Bharti, APP

…..

**C.A.V./Reserved on 21st August, 2026** **Pronounced on: 30/09/2026**

***Per Sujit Narayan Prasad, J.:***

**1.** The instant appeal, under Section 374 (2) of the Code of Criminal Procedure, has been preferred against the Judgment of conviction and order of sentence both dated 20.11.2018 passed by learned Additional Sessions Judge-XII, Hazaribagh, in Sessions Trial No. 335 of 2017 corresponding to G.R. No.2102 of 2017 arising out of Charhi P.S. Case No.58 of 2017, whereby and whereunder, the appellants have been convicted under Section 302/34 of IPC and sentenced to undergo rigorous imprisonment for life along with fine of Rs.30,000/- (Rupees Thirty Thousand) each and in default of payment of fine they shall further undergo a period of one year Simple Imprisonment.

**Factual Matrix**

**2.** The prosecution story in brief is required to be referred herein, which is as under:

2.1 The prosecution case is based on the written report of the informant Mahaveer Ram (PW-9) alleging therein that on 21.07.2017 at about 15:00 hrs., informant received a telephonic information that his daughter is ill. On this information he went to the house (matrimonial house) of his daughter at Charhi and he saw his daughter was lying dead.

2.2 Informant further stated that the marriage of his daughter Sita Devi(deceased) was performed in the year 1998 with Kailash Ram (appellant herein), but his daughter was issueless and his son-in-law had solemnized second marriage with Lalita Devi (appellant herein) and both his wives quarrel with each other. Informant claimed that his son-in-law and his new wife had murdered informant's daughter, pressing her neck.

2.3 On the basis of written application of the informant, Charhi P.S. Case No. 58/2017 was registered u/s 302/34 of the IPC against accused persons/appellants.

2.4 After investigation charge-sheet No. 107/17 dated 31.10.2017 and charge-sheet No.18/18 dated 28.02.2018, were submitted against the accused Kailash Ram and Lalita Devi, respectively under Section 302/34 of IPC and cognizance of the offence was taken and the case was committed to the court of sessions.

**3.** Charge was framed against the accused persons/appellants Kailash Ram and Lalita Devi u/s 302/34 of the IPC and the same was read over and explained to both of the accused persons in Hindi to which they pleaded not guilty and claimed to be tried.

**4.** Thereafter, after the framing of charges, trial proceeded and on conclusion of the trial, the appellants were convicted and sentenced as aforesaid, hence, this appeal.

**5.** The aforesaid judgment of conviction and sentence is under challenge herein.

**<u>Submission of the learned counsel for the Appellants</u>:**

**6.** Learned counsel for the appellants has taken the following grounds for interfering with the finding recorded by the learned trial court in the impugned judgment:

(i) It is submitted that the learned trial court has committed error in law as well as on facts in its finding while passing the judgment impugned.

(ii) It is also submitted that there is no evidence for commission of offence except confession before the police, as such, the judgment of conviction is fit to be set aside.

(iii) It has also been submitted that there is no eye witness to the occurrence and the prosecution witnesses P.W.-4 to P.W.-7 have turned hostile and rest of the prosecution witnesses are hearsay witnesses.

(iv) It has been contended that the investigating officer has stated in his evidence that no incriminating material like *danda,* rope, weapon, etc. were found from the place of occurrence as well as no materials like hair or blood on the nail etc. was found from the palm of the deceased.

**7.** The learned counsel for the appellants, based upon the aforesaid grounds, has submitted that the learned trial court has not taken into consideration the aforesaid facts, as such, the impugned judgment requires interference, hence not sustainable in the eyes of law.

**Submission of learned counsel for the Respondent-State:**

**8.** While defending the impugned judgment of conviction and order of sentence, the learned Additional Public Prosecutor appearing for the State has submitted that the prosecution has fully succeeded in establishing the charge levelled against the accused persons beyond shadow of reasonable doubt and from all corners, the ingredients of the charge levelled against the accused persons stand completely proved.

**9.** The learned Additional Public Prosecutor further submitted that murder of the deceased is proved from the medical evidence of the Doctor as Doctor in postmortem report had opined that death of the deceased was result of Asphyxia due to throttling.

**10.** The learned Additional Public Prosecutor appearing for the respondent-State, based upon the aforesaid premise, has submitted that the impugned judgment does not suffer from any error, hence the instant appeal is fit to be dismissed.

**Analysis**

**11.** We have heard learned counsel for the parties, perused the documents available on record as also the finding recorded by the learned trial court in the impugned judgment.

**12.** We have also gone through the testimonies of the witnesses as available in the LCR as also the exhibits appended therewith.

**13.** This Court before considering the argument advanced on behalf of the parties is now proceeding to consider the testimonies of witnesses, produced on behalf of both sides, which have been recorded by learned trial Court.

**14.** The learned trial court had altogether examined eleven prosecution witnesses out of whom PW-9 Mahaveer Ram, is the informant of the case and father of the deceased; PW-1 Kapil Ram, is the uncle of the deceased; PW-2 Anand Ram, is the cousin brother of the deceased; PW-3 Dileshwar Ram, is the another uncle of the deceased; PW-4 Gopal Ravidas, PW-5 Shanti Devi, PW-6 Lalo Devi and PW-7 Binita Devi, all these four witnesses were declared hostile on the request of prosecution; PW-8 is Dr. Mahendra Prasad Chaudhary, PW-10 Naresh Ram, is uncle of the deceased and PW-11 Vijay Kerketta, is the Investigating Officer.

**15.** Defence had examined three witnesses in support of their case which are D.W.-1 Prakash Singh, D.W.-2 Mutun Ravidas and D.W.-3 is Tilki Devi.

**16. PW-1 Kapil Ram**, is the uncle of the deceased, who had stated in examination-in-chief that on 21.07.2017, he was at his house. At 3:00 P.M, information was received that his niece Sita Devi has been murdered by

throttling and hearing this information, he went at the matrimonial house at Charhi, of his niece Sita Devi. He saw his niece was lying dead on cot in a room and throttling mark was there on the neck. When he reached there, husband of his niece Kailash Ram and his second wife Lalita Devi were absconding. His niece Sita Devi was issueless, so, his husband Kailash Ram had solemnized another marriage and used to beat his niece and lastly has murdered her.

**17.** During cross-examination, this witness has deposed that the deceased was his niece and he used to meet her after her marriage. Deceased had never complaint before the occurrence.

**18. PW-2 Anand Ram**, is the cousin brother of the deceased, who had stated in his examination-in-chief that on 21.07.2017 at 3:00 PM, his uncle Mahaveer Ram, received an information from Shayam Patti, Charhi, which is the matrimonial house of his daughter that his daughter was ill. On this information, he also accompanied with other persons and went to the matrimonial house of Sita Devi and there they saw that the dead body of Sita Devi was lying and there was mark of throttling on her neck. Sita Devi was issueless, so her husband Kailash Ram used to quarrel with her and solemnized second marriage with Lalita Devi. He further stated that his sister was murdered by throttling by her husband and his second wife Lalita Devi. When they had reached at the matrimonial house of Sita Devi, her husband and his second wife were absconding.

**19. PW-3 is Dileshwar Ram**, is another uncle of the deceased, who had stated in examination-in-chief that on 21.07.2017, at about 3:00 PM, his cousin brother Mahabir Ram received information on his mobile that his daughter

was ill and to come and see her. Then they went to the matrimonial house of Sita Devi where they saw Sita Devi in dead condition and there was throttling mark on her neck. Later on, they came to know that Kailash Ram and his second wife had murdered her.

**20.** During cross-examination, he stated that he had visited matrimonial house of Sita Devi several time with brother of Sita Devi and his father. The dead body of Sita Devi was inside the house lying on a *chauki*.

**21. PW-8 is Dr. Mahendra Prasad Chaudhary**, who had conducted postmortem examination. He had stated in his evidence that on 22.07.2017 he was posted as a Medical Office at Sadar Hospital, Hazaribag, and on the same day he had conducted postmortem examination on the dead body of Sita Devi. Doctor had given following findings-

> ***<u>On external examination</u>: -***
>
> *1. Hair black and long*
>
> *2. Both eyes open, blood stain discharge from right nostril of the nose, mouth partly open and teeth visible and froth present on mouth.*
>
> *3. Rigor mortis present in both upper and lower limbs*
>
> ***<u>Injuries</u>: -***
>
> *1. Bruise 1/4'' X 1/4'' black in colour on right part of neck behind right ear.*
>
> *2. Black colouration of skin on front of neck.*
>
> *3. All are Antimortem in nature and caused by hard and blunt substance.*
>
> ***<u>On external examination</u>: -***
>
> *1. Extra vasation of blood present in the subcutaneous tissue on front of neck and adjacent muscles of neck.*
>
> *2. Heamatoma present on external part of hyoid bone and hyoid bone not fractured.*
>
> *3. Internal wall of hyoid bone congested.*
>
> *4. Laryinx and trachea are congested.*

*5. Both lungs intact and congested.*

*6. Right chamber of heart contains dark blood and left chamber of heart empty.*

*7. Stomach contains undigested food particles rice and vegetables ounce five and mucosal wall normal.*

*8. Liver, Spleen and Kidneys are intact and congested.*

*9.Urinary bladder empty*

*10. Uterus non gravid and normal and Vagina normal.*

**22.** Doctor opinioned that time elapsed since death was within 36 hrs and cause of death was Asphyxia due to throttling. Postmortem report was marked as Ext-1.

**23.** In his cross-examination, Doctor deposed that no internal injuries were found. In case of hanging ligature, mark will be present on the neck but no such ligature mark was found in this case on the neck of deceased. By pressing nose, neck and mouth such death may by caused.

**24. PW-9 Mahaveer Ram,** is the informant of the case and father of the deceased. He had stated in examination-in-chief that occurrence took place on 21.07.2017 at Shyampatti within Charhi police station and he received a telephonic message at about 3:00 PM that his daughter was ill. On this information he along with Anand, Kapil, Naresh and 2-4 women went to his daughter's house. His daughter was married with Kailash Ram. When they reached there, they saw the dead body of his daughter lying on a *chauki*. His son-in-law Kailash Ram and his second wife Lalita Devi were absconding from the house. There was black mark on the neck of his daughter. On inquiry he came to know that Kailash Ram and his second wife had killed his daughter by throttling.

**25.** Informant further stated that quarrel used to occur between his daughter and accused person. His son-in-law used to torture his daughter and through her demand dowry. Informant has proved his signature on the written application and in the inquest report which were marked as Ext-2 and Ext.-3 respectively.

**26.** In his cross-examination, informant stated that his daughter Sita Devi was married with Kailash Ram 18-19 years ago. He used to visit to the matrimonial house of his daughter and he stayed there for 2-3 days. He had seen the dead body of his daughter Sita Devi at Shyampatti.

**27. PW-10 Naresh Ram**, is another uncle of the deceased. He had stated in examination-in-chief that incident took place on 21.07.2017 at about 10:00 AM situated at Shayampatti within Charhi. Kailash Ram and Lalita Devi murdered his niece Sita Devi by throttling. Persons of matrimonial house of Sita Devi informed by phone at about 3:00 P.M that Sita Devi is ill. On information he along with Mahabir Ram, Kapil Ram, Dineshwar Ram, Lakhan Ram and Anand Ram reached at the place of occurrence and saw his niece Sita Devi was killed and laying on a *chauki*. There was pressure mark on her neck and froth was coming from her mouth. Persons nearby told that Kailash Ram and his second wife Lalita Devi killed Sita Devi by throttling. Police reached at the place of occurrence and prepared inquest report which bears his signature, marked as Ext-3/1. When they reached at the matrimonial house of Sita Devi, Kailash Ram and his second wife Lalita Devi was not present at the house, they absconded.

**28.** ***PW-11 Vijay Kerketta,*** is the Investigating Officer of the case. He had stated in his examination-in-chief that on 22.07.2017, he was posted as

officer-in-charge at Charhi police station. On receiving the written application, he registered the case and he himself took the charge of investigation of the case. He went to the place of occurrence and prepared inquest report and sent the dead body for postmortem to Sadar Hospital, Hazaribag. Thereafter he inspected the Place of occurrence. The place of occurrence of this case is the house of accused Kailash Ram situated at Shayampatti which is one kilometer south from Charhi police station where dead body of deceased was found. Thereafter, he recorded the re-statement of informant who supported the written application. He recorded the statement of witness Anand Ram, Kapil Ram, Dineshwar Ram, Gopal Ravidas, Shanti Devi, Kalo Devi, all supported the FIR and stated the deceased Sita Devi was murdered by Kailash Ram and Lalita Devi.

**29.** Investigating officer further stated that during the inspection of place of occurrence both the accused persons were found absconding. Later on, dated 08.08.2016, Kailash Ram was arrested and confessed his guilt. Thereafter, he received the postmortem report wherein the cause of death by throttling was mentioned. He submitted charge-sheet No. 107/17 dated 31.10.2017 u/s 302/34 of the IPC against accused Kailash Ram and investigation kept going on against accused Lalita Devi. Formal FIR, endorsement on written application and Charge-sheet No. 107/17 were written and signed by him, which were marked as Ext.-4, Ext.- 2/1 and Ext- 5 respectively.

**30.** Investigating officer further stated that on 23.02.2018, Lalita Devi was arrested and she also confessed her guilt. He submitted charge-sheet No. 18/18 dated 28.02.2018 against accused Lalita Devi u/s 302/34 of the IPC,

which was written and signed by him and marked as Ext.-6. Carbon copy of Inquest report was written by A.S.I Anil Kumar Singh which he knows and marked as Ext- 3/2. Confessional statement of accused Kailash Ram and Lalita Devi were recorded and written by him, which were marked as Ext.- 7 and Ext-8 respectively.

**31.** In his cross-examination, Investigating Officer stated that first time he reached at the place of occurrence on 22.07.2017 at about 6:30 A.M. No map was prepared of the place of occurrence. Statements of Gopal Ravidas, Shanti Devi, Kalo Devi, were recorded who comes within the boundary of the place of occurrence. *Maike* people of Sita Devi first went to police station, then they went to the place of occurrence with him. There is no eye witness of this occurrence. No *sanha* was registered with respect to dispute between the deceased Sita Devi and accused persons. No objectionable materials like *danda*, rope, weapon etc. were recovered from the place of occurrence. Froth was coming out from the mouth of deceased and no external injury was found on the body of deceased.

**32.** The learned trial court had recorded the testimony of three defence witnesses which are being referred herein as under.

**33. D.W.-1 is Prakash Singh**, who had stated in examination-in-chief that he knows Kailash Ram. He does not know anything about the family of Kailash Ram. In his cross-examination, he deposed that he had not received any notice for adducing his evidence.

**34. D.W.-2 Mutun Ravidas,** had stated in examination-in-chief that he knows Kailash Ram and he knows about the family of Kailash Ram. He had not heard any dispute between Kailash Ram and his family. He had not seen

quarrel between Kailash Ram and his wife. His house is 200 meter away from the house of Kailash Ram. He used to meet daily with Kailash Ram and his wife. In his cross-examination he deposed that he had not received any notice or summon for adducing his evidence. On instruction of Kailash Ram and Lalita Devi, he came to adduce his evidence. In the life time of Sita Devi, Kailash Ram had solemnized second marriage with Lalita Devi.

**35.** **D.W.-3 Tilki Devi,** had stated in examination-in-chief that she knows Kailash Ram and his family. Kailash Ram is not her relative, she resides in the same *mohalla*. She denied that Sita Devi wife of Kailash Ram was murdered. She never saw quarrel between Kailash Ram and his wife. In her cross-examination, she deposed that she had not received any notice for adducing her evidence. She came to the court for adducing her evidence on instruction of Kailash Ram and Lalita Devi. Sita Devi was first wife of Kailash Ram and in her life time Kailash Ram solemnized second marriage with Lalita Devi. She admitted that accused Kailash Ram, is the son of her sister-in-law (*gotni*).

**36.** The learned Trial Court on the basis of the testimony of witnesses, who had seen mark of injury over the neck of the deceased and medical evidence of the Doctor PW-8, who had opined death was caused as a result of asphyxia due to throttling, found the substance in the prosecution version and passed the impugned judgment of conviction, convicting the appellants under Section 302/34 of IPC and sentenced as aforesaid.

**37.** This Court, on the basis of aforesaid factual aspect vis-à-vis argument advanced on behalf of parties, is now proceeding to examine the legality

and propriety of impugned judgment of conviction and order of sentence by formulating following questions to be answered by this Court:

i. *Whether the prosecution has proved the homicidal death of the deceased?*

ii. *Whether on the basis of the testimony of the witnesses can it be said to be a case based on circumstantial evidence or if it based upon the circumstantial evidence the chain is being completed or not?*

iii. *Whether the trial Court, while convicting the appellants, has committed any illegality or not?*

**Re: Issue no.(i)** :

**38.** The issue no.(i) is whether the prosecution has proved the homicidal death of the deceased?

**39.** To answer this issue, this Court has firstly gone through the oral testimony of PW-1, PW-3 and PW-10, who are the uncles of the deceased and PW-9(informant), who is the father of the deceased, and all these witnesses have stated in their evidences that they had seen the mark of injury on the neck of the deceased.

**40.** Further, Doctor PW-8, who had conducted post mortem examination had found antemortem injuries-*(i) bruise 1/4'' X 1/4'' black in colour on right part of neck behind right ear and (ii) Black colouration of skin on front of neck*.

**41.** Again, on the internal examination, Doctor PW-8 had inter alia found-

i. *Extra vasation of blood present in the subcutaneous tissue on front of neck and adjacent muscles of neck.*

ii. *Heamatoma present on external part of hyoid bone and hyoid bone not fractured.*

iii. *Right chamber of heart contains dark blood and left chamber of heart empty*.

**42.** Doctor opined that cause of death was asphyxia due to throttling. In his cross-examination, doctor stated that in case of hanging ligature, mark will be present on the neck but no such ligature mark was found in this case on the neck of deceased and by pressing nose, neck and mouth such death may by caused.

**43.** Upon careful appraisal of the evidence adduced, particularly the testimony of P.Ws. 1, 3, 9 (informant), and 10, together with the medical evidence tendered by P.W.8 (the Doctor), It is evident that the prosecution has successfully established that the death of the deceased was occasioned by asphyxia resulting from throttling.

**44.** Accordingly, upon the cumulative assessment of the ocular and medical evidence, this Court arrives at the considered conclusion that the death of the deceased was homicidal in nature. The cause of death being asphyxia due to throttling, as duly corroborated by the medical testimony, unmistakably excludes any possibility of accidental or natural demise.

**45.** Accordingly, issue No.(i) has been answered herein.

**Re: issue no.(ii)** :

**46.** This issue is whether on the basis of the testimony of the witnesses can it be said to be a case based on circumstantial evidence or if it based upon the circumstantial evidence the chain is being completed or not?

**47.** The learned Trial Court, in the impugned judgment, noted that when the prosecution witnesses reached the house of the accused, both accused persons had already fled from the place of occurrence. The Trial Court regarded such conduct as highly suspicious and, by invoking the principle embodied in Section 106 of the Indian Evidence Act, inferred that the accused persons were responsible for the homicidal death of the deceased and, apprehending arrest, absconded from the scene.

**48.** Before adverting to the merits of such inference, this Court considers it apposite to recall the settled proposition of law enunciated by the Hon'ble Supreme Court in relation to Section 106 of the Indian Evidence Act. The said provision assumes particular significance in circumstances where the homicidal death of a woman has occurred within the confines of her matrimonial home and, immediately thereafter, the accused/appellants are found absconding from the said premises.

**49.** It cannot be disputed that if the death has occurred within the four corners of the matrimonial house of the deceased, then the principle of reverse onus will be there. Further, it needs to refer herein that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the onus of proving that fact is upon him. 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.

**50.** In case of ***Shambu Nath Mehra v. State of Ajmer*, *AIR 1956 SC 404: (1956)1SCC 337,*** Hon'ble Apex Court laid down that it is general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge. Relevant paragraph of this case is quoted herein below-

> ***"11.*** *This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. R. [Attygalle v. R., 1936 SCC OnLine PC 20 : AIR 1936 PC 169] and Seneviratne v. R. [Seneviratne v. R., 1936 SCC OnLine PC 57 : (1936) 44 LW 661]"*

**51.** Again, in case of ***State of W.B. v. Mir Mohammad Omar*, *(2000) 8 SCC 382,*** Hon'ble Apex Court laid down that section 106 of the Evidence Act, is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section 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. Paragraph-36,37 and 38 of this judgment is quoted herein below-

> ***"36.*** *In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."*
>
> ***37.*** *The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section 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.*
>
> ***38.*** *Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In Shambhu Nath Mehra v. State of Ajmer [AIR 1956 SC 404 : 1956 SCR 199 : 1956 Cri LJ 794] the learned Judge has stated the legal principle thus:*
>
> > *"This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult*

*for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience."*

**52.** Further in case of ***Sucha Singh v. State of Punjab ,(2001) 4 SCC 375,*** Hon'ble Apex Court reiterated that It is trite law that Section 106 of the Indian Evidence Act does not absolve the prosecution of its primary burden to establish the guilt of the accused beyond reasonable doubt. The provision is intended to operate in a limited sphere, namely, in cases where the prosecution has succeeded in proving certain foundational facts from which a reasonable inference may legitimately be drawn regarding the existence of other attendant facts. In such circumstances, if the accused, by virtue of special knowledge of those attendant facts, fails to tender any plausible explanation, the Court may be driven to draw an adverse inference. Pargraph-19 of this judgment is quoted herein below-

*"19. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference."*

**53.** In the case of ***Tulshiram Sahadu Suryawanshi v. State of Maharashtra, (2012) 10 SCC 373***, Hon'ble Apex Court held that 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. The paragraph-23 of this judgment is quoted herein below-

> ***"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…."*

**54.** Thus, it is evident that in cases of this nature, unless the accused is able to properly explain the material circumstances appearing against him, he may be held guilty of the offence with which he is charged. At the same time, it is equally well-settled that the applicability of this doctrine must be tested on the facts of each individual case, and every matter must therefore be examined on its own merits before invocation of the principle.

**55.** Re-adverting to the present case, in the forthcoming discussion, this Court will examine whether the prosecution had laid evidences to prove the two vital facts –

*i.* Firstly, whether the body of the deceased was found in her matrimonial home i.e. in the house of her husband Kailash Ram (appellant herein), and

*ii.* Secondly, whether the accused persons absconded from their house immediately after the homicidal death of the deceased.

**56.** In order to examine the fact whether the body of the deceased was found in her matrimonial home i.e. in the house of her husband Kailash Ram (appellant herein), this Court finds that PW-1 and PW-10, who are the uncles of the deceased, had specifically deposed that they had seen the body of the deceased lying on the cot inside the room. PW-11 Investigating Officer had also deposed that the body of the deceased was found in the house Kailash Ram (appellant herein).

**57.** Again, from the inquest report Ext.-3, this Court finds that body was found in the house.

**58.** Hence, from the testimony of P.W.-1, P.W.-10, the Investigating Officer P.W.-11, and the inquest report (Ext.-3), it stands proved that the dead body of the Sita Devi (deceased) was recovered from her matrimonial home, i.e., from the house of her husband Kailash Ram (the appellant herein).

**59.** In order to ascertain whether the accused persons/appellants absconded from their matrimonial home immediately after the homicidal death of the deceased, this Court has scrutinised the depositions of P.Ws. 1, 2, 9

(informant), and 10. Each of these witnesses has consistently deposed that upon their arrival at the matrimonial house of the deceased, both accused/appellants were conspicuously absent. This circumstance stands corroborated by the testimony of the Investigating Officer, P.W. 11, who categorically stated that at the time of his inspection of the place of occurrence, neither of the appellants was present in the house. The uniformity of these testimonies lends credence to the prosecution's assertion that the accused persons absconded from the scene immediately after the incident, thereby constituting a circumstance of considerable evidentiary value.

**60.** In view of the consistent depositions of P.Ws. 1, 2, 9 (informant), and 10, duly corroborated by the testimony of the Investigating Officer, P.W. 11, this Court finds that the prosecution has proved the circumstance that, immediately after the homicidal death of the deceased when the prosecution witnesses reached at the house of appellant namely Kailash Ram (husband of the deceased), both the appellants were not present in their matrimonial home and had absconded therefrom.

**61.** From the foregoing discussion, three material facts stand conclusively established: **firstly**, that the death of the deceased was homicidal in nature, caused by asphyxia due to throttling; **secondly**, that the dead body of Sita Devi (deceased) was discovered within her matrimonial home, namely the house of her husband, Kailash Ram (appellant herein); and **thirdly**, that immediately after the homicidal death, the accused/appellants were not found present in their house and had absconded.

**62.** Thus, in the present case, once it stands proved that the death of Sita Devi (deceased) was homicidal in nature, that her dead body was recovered from her matrimonial home, i.e., the house of her husband/appellant Kailash Ram, and that immediately after the homicidal death the accused persons were not found in their house and had absconded, the burden of proof, by virtue of Section 106 of the Indian Evidence Act, squarely shifts upon the accused/appellants to explain the circumstances under which the homicidal death of the deceased occurred within the four corners of her matrimonial home.

**63.** Before proceeding, it is pertinent to note herein that informant (PW-9), who is the father of the deceased, had specifically stated in his written report that his daughter Sita Devi (deceased), was married to Kailash Ram (appellant herein), in the year 1998 and his daughter had no issue and hence, his son-in law Kailash Ram (appellant herein) had married again, some days ago, prior to the death of his daughter Sita Devi(deceased).

**64.** Further, Informant (PW-9), PW-1 and PW-2, have deposed that Sita Devi(deceased) had no issue, due to this reason her husband Kailash Ram (appellant), used to quarrel with her and torture her and had married again, some days ago prior to the occurrence, with Lalita Devi (appellant no.2).

**65.** In the present case, the evidence of P.W. 9 (informant), P.W. 1, and P.W. 2 establishes that appellant Kailash Ram was in the habit of quarrelling with and subjecting his first wife, Sita Devi (deceased), to torture. It further stands proved that shortly prior to the occurrence, appellant Kailash Ram contracted a second marriage with appellant no. 2, Lalita Devi. In the backdrop of these facts and circumstances, the obligation under Section

106 of the Indian Evidence Act lies heavily upon appellant Kailash Ram to disclose any fact within his special knowledge as to how his first wife, Sita Devi, came to suffer homicidal death inside his house.

**66.** In the instant case, it is manifest from the record that appellant Kailash Ram, being the husband of the deceased Sita Devi, has failed to furnish any explanation during the course of trial as to the circumstances under which his wife suffered homicidal death inside his matrimonial home. Equally, no explanation has been offered as to why, immediately after the death, he absconded from the house. The failure of the appellant to discharge the burden cast upon him under Section 106 of the Indian Evidence Act, despite the facts being within his exclusive knowledge, constitutes a grave infirmity in his defence and warrants the drawing of an adverse inference against him.

**67.** In the present case, a presumption of fact arises against appellant Kailash Ram, the husband of the deceased Sita Devi, under Section 114 of the Indian Evidence Act. The proved circumstances are fourfold: **(i)** that Sita Devi(deceased) suffered homicidal death by strangulation within her matrimonial home, i.e., the house of appellant Kailash Ram; **(ii)** that no plausible explanation has been offered by him as to the manner in which such homicidal death occurred; **(iii)** that immediately thereafter he absconded from the house; and **(iv)** that there exists a prior history of cruelty inflicted by him upon the deceased, as corroborated by the prosecution witnesses.

**68.** When these circumstances are read conjointly, the evidentiary burden under Section 106 of the Evidence Act squarely fell upon appellant Kailash

Ram to explain facts within his exclusive knowledge. His failure to discharge this burden, coupled with his incriminating conduct of abscondence, justifies the drawing of an adverse inference under Section 114(g).

**69.** The Hon'ble Supreme Court has consistently held as discussed in preceding paragraphs that in cases of matrimonial or custodial deaths, where the deceased is found dead within the four corners of the matrimonial home, the husband or inmates of the house are under a special duty to explain the circumstances of death.

**70.** In ***Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681***, the Hon'ble Court while taking reference of ***Ganeshlal v. State of Maharashtra (1992) 3 SCC 106*** wherein the appellant was prosecuted for the murder of his wife which took place inside his house has observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife.

**71.** Similarly, in ***State of Rajasthan v. Kashi Ram (2006) 12 SCC 254***, it was held that abscondence and silence of the accused in such circumstances are strong incriminating factors.

**72.** Applying these settled principles, this Court is constrained to hold that the homicidal death of Sita Devi was caused by appellant Kailash Ram. The presumption under Section 114(g), read with the burden under Section 106,

operates decisively against him, and his failure to explain the death of his wife within his own house leaves no escape from the conclusion of guilt.

**73.** Now, in the present case, since there is no eye witness to the homicidal death of the deceased, therefore, this Court is now adverting to analyze and appreciate the circumstances that whether on the basis of the circumstantial evidence the culpability of the accused particularly the appellant Kailash Ram, can be proved or not, therefore this Court think it apposite to refer to certain authorities pertaining to delineation of cases that hinge on circumstantial evidence.

**74.** There is no quarrel with the settled position of law that in the case of circumstantial evidence, the chain should be complete then only there will be conviction of the concerned accused person, as has been laid down by the Hon'ble Apex Court in the case of ***Hanumant son of Govind Nargundlar vs. State of Madhya Pradesh, AIR 1952 SC 343*** wherein it has been held that "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

**75.** The same view has been taken by the Hon'ble Apex Court in ***Bakhshish Singh vs. State of Punjab, (1971) 3 SCC 182*** wherein the Hon'ble Apex Court has observed that the principle in a case resting on circumstantial evidence is well settled that the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. These circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

**76.** The Hon'ble Apex Court while laying down such proposition in the said case has considered the factual aspect revolving around therein and while considering the fact has only found the incriminating evidence against the appellant was his pointing the place where the dead body of the deceased had been thrown which the Hon'ble Apex Court has not considered to be circumstantial evidence though undoubtedly it raises a strong suspicion against the appellant. The Hon'ble Apex Court while coming to such conclusion has observed that even if he was not a party to the murder, the appellant could have come to know the place where the dead body of the deceased had been thrown. Hence anyone who saw those parts could have inferred that the dead body must have been thrown into the river near about that place. In that pretext, the law has been laid down at paragraph-9 thereof, which reads as under:

> *"9. The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well-settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again, those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."*

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

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

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

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

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

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

**78.** The Hon'ble Apex Court has reiterated the said principle again in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116*** holding all the above five principles to be the golden principles which constitute the panch-sheel of the proof of a case based on circumstantial evidence. The Hon'ble Apex Court in the said case as under paragraph-155, 156, 157, 158 and 159 has been pleased to hold that if these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. Paragraphs-155, 156, 157, 158 and 159 of the said judgment read as under:

> *"155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus: "Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and 2025:JHHC:13669-DB compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."*
>
> *156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".*
>
> *157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry case [1952 NZLR 111] was approved by this Court in Anant Chintaman Lagu v. State of Bombay [AIR 1960 SC 500] Lagu case [AIR 1960 SC 500] as also the principles enunciated by this Court in Hanumant case [(1952) 2 SCC 71] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases -- Tufail case [(1969) 3*

*SCC 198] , Ramgopal case [(1972) 4 SCC 625] , Chandrakant Nyalchand Seth v. State of Bombay [ Criminal Appeal No 120 of 1957,], Dharambir Singh v. State of Punjab [ Criminal Appeal No 98 of 1958,]. There are a number of other cases where although Hanumant case [(1952) 2 SCC] has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration [(1974) 3 SCC 668, 670] , Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607,] , Shankarlal Gyarasilal Dixit v. State of Maharashtra [(1981) 2 SCC 35, 39] and M.G. Agarwal v. State of Maharashtra [AIR 1963 SC 200 : (1963) 2 SCR 405,] -- a five-Judge Bench decision.*

*158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar [AIR 1955 SC 801] to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus: "But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation. such absence of explanation or false explanation would itself be an additional link which completes the chain."*

*159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied: (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation."*

**79.** The foremost requirement in the case of circumstantial evidence is that the chain is to be completed. In ***Padala Veera Reddy v. State of A.P. [1989***

***Supp (2) SCC 706*** the Hon'ble Apex Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

> *"10. ... (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; and (4) 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 and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."*

**80.** In ***Ram Singh v. Sonia (2007) 3 SCC 1***, while referring to the settled proof pertaining to circumstantial evidence, the Hon'ble Apex Court reiterated the principles about the caution to be kept in mind by court. It has been stated therein as follows:

> *"39. ... in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts."*

**81.** Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is complete as not to leave any reasonable ground for a conclusion consistent with the

innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

**82.** Reverting to the present case, since the present case is based on the circumstantial evidence, hence, at this juncture, this court is proceeding examine, whether motive is present, in the homicidal death of the deceased.

**83.** In this regard this Court has gone through the written report dated 22.07.2017, wherein the informant PW-9 (father of the deceased) had stated that his daughter Sita Devi (deceased), was married to Kailash Ram (appellant herein), in the year 1998 and his daughter had no issue and his son-in law Kailash Ram (appellant herein) had married again, some days ago, prior to the death of his daughter Sita Devi(deceased).

**84.** In his evidence also, Informant (PW-9), had deposed that quarrel often took place between his daughter (deceased) and the accused persons and his daughter(deceased) was being tortured by her husband Kailash Ram (appellant herein). PW-1, who is the uncle of the deceased had deposed in his evidence that his niece Sita Devi(deceased) was issueless, so his husband Kailash Ram (appellant herein) had solemnized another marriage and used to beat his niece and lastly murdered her. PW-2, who is the cousin brother of the deceased had also stated in his evidence that his sister Sita Devi(deceased) had no issue and for this reason her husband Kailash Ram (appellant herein), used to quarrel with her.

**85.** On the basis of the written report and the testimony of P.W. 9 (informant), P.W. 1, and P.W. 2, this Court finds that the deceased, Sita Devi, had no issue from her marriage with appellant Kailash Ram. The evidence further establishes that, owing to this circumstance, appellant Kailash Ram was in

the habit of quarrelling with and subjecting her to cruelty. It also stands proved that shortly prior to the occurrence, he contracted a second marriage with appellant no. 2, Lalita Devi.

**86.** These facts, taken together, furnish a clear motive for the commission of the crime. The absence of issue, coupled with habitual cruelty and the contracting of a second marriage, created a hostile matrimonial environment and provided appellant Kailash Ram with a compelling reason to eliminate his first wife. The existence of motive, though not indispensable in every case of circumstantial evidence, assumes considerable significance here, as it fortifies the prosecution's chain of circumstances.

**87.** The Hon'ble Supreme Court has consistently held that proof of motive, while not a sine qua non for conviction, strengthens the prosecution case where the evidence is otherwise circumstantial. In ***Babu v. State of Kerala (2010) 9 SCC 189***, it was observed that motive assumes importance in cases resting on circumstantial evidence, as it provides the background against which the incriminating circumstances must be evaluated. Applying this principle, the motive established in the present case operates as an additional link in the chain of circumstances pointing towards the culpability of appellant Kailash Ram.

**88.** This Court, after adverting to the testimony of the prosecution witnesses and upon reference to the settled principles of law on circumstantial evidence as laid down by the Hon'ble Supreme Court in the preceding paragraphs, finds that the prosecution has succeeded in proving the following material facts:

*i.* Homicidal death of the deceased by asphyxia due to throttling, substantiated from the evidence of PW-1, PW-3, PW-10, PW-9(informant) and medical evidence of the Doctor (PW-8).

*ii.* From the testimony of PW-1, PW-10, Investigating Officer (PW-11) and the inquest report Ext.-3, it is proved that dead body of the deceased was found at her matrimonial home i.e. in the house of her husband Kailash Ram (appellant herein).

*iii.* After the homicidal death of the deceased, appellants were not present in their house and they had absconded.

*iv.* There is presumption of facts under Section 114(g) of the Indian Evidence Act and this Court, in the preceding paragraph, has come to the conclusion that Sita Devi(deceased), was strangulated before her death by the appellant Kailash Ram, who is the husband of the Sita Devi (deceased), as a result she died in her matrimonial home and after homicidal death of the deceased, the accused/appellants absconded from their house and the accused person failed to disprove this presumption of facts.

**89.** Hence, due to the establishment of aforesaid facts in the present case, chain of circumstances is complete, from which the conclusion of guilt may be drawn against the accused person.

**90.** Accordingly, issue no.(ii) has been answered.

**Re: issue no.(iii)**

**91.** This issue is whether the trial Court, while convicting the accused persons/appellants, has committed any illegality or not?

**92.** In this regard this Court finds that both the appellants Kailash Ram and Lalita Devi, were convicted under Section 302/34 of IPC.

**93.** Regarding this issue, this Court is proceeding to examine the individual guilt or innocence of the appellants Kailash Ram and Lalita Devi.

**Re: Conviction of appellant no.2 Lalita Devi:**

**94.** Appellant Lalita Devi, was convicted by the learned Trial Court under Section 302 with the aid of 34 of IPC.

**95.** The only incriminating circumstance alleged against appellant no. 2, Lalita Devi, is that when the prosecution witnesses reached the place of occurrence, namely the house of appellant no. 1, Kailash Ram, she was not present and had absconded. Save and except this solitary circumstance, no other incriminating material has surfaced against her. None of the prosecution witnesses have deposed that Lalita Devi ever participated with appellant no. 1 in causing cruelty to the deceased. It is further an admitted fact that she had contracted marriage with appellant no. 1 only a few days prior to the occurrence, and therefore she cannot be attributed any role in the longstanding strained relationship between appellant no. 1 and the deceased.

**96.** This Court now proceeds to examine the culpability of appellant no. 2, Lalita Devi, in the light of the principles of joint criminal liability under Section 34 of the Indian Penal Code, under which she was convicted by the learned Trial Court. The background circumstances are that she is the newly-wedded second wife of appellant no. 1, Kailash Ram, having contracted marriage with him only a few days prior to the homicidal death of Sita Devi (deceased), his first wife. The crucial issue for consideration is

whether appellant no. 2 shared a common intention with appellant no. 1, i.e., whether there was a prior meeting of minds which activated and facilitated the homicidal death of Sita Devi.

**97.** At this juncture, it needs to refer herein the judgment of the Hon'ble Apex in the case of ***Pandurang v. State of Hyderabad***, ***AIR 1955 SC 216,*** wherein Hon'ble Apex Court laid down that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. Paragraph-33 and 34 of this judgment is quoted herein below-

> ***"33.*** *Now in the case of Section 34 we think it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all : Mahbub Shah v. King Emperor. Accordingly there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case : Barendra Kumar Ghosh v. King-Emperor[2] and Mahbub Shah v. King-Emperor[3]. As Their Lordships say in the latter case, "the partition which divides their bounds is often very thin : nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice".*
>
> ***34.*** *The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example when one man calls on bystanders to help him kill a given individual and*

*they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre-arranged plan however hastily formed and rudely conceived. But pre-arrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other, e.g., the intention to rescue another and, if necessary, to kill those who oppose."*

**98.** Again, in case of ***Devi Lal v. State of Rajasthan, (1971) 3 SCC 471*****,** Hon'ble Apex Court laid down that the words "in furtherance of the common intention of all" are a most essential part of Section 34 of the Penal Code, 1860. It is common intention to commit the crime actually committed. This common intention is anterior in time to the commission of the crime. Common intention means a pre-arranged plan. Paragraph-13 of this judgment is quoted herein below-

***"13.*** *The distinction between Sections 34 and 149 of the Penal Code, 1860 was not clearly noticed by the Sessions Court and the High Court did not deal with this point at all. Under Section 34, when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. The words "in furtherance of the common intention of all" are a most essential part of Section 34 of the Penal Code, 1860. It is common intention to commit the crime actually committed. This common intention is anterior in time to the commission of the crime. Common intention means a pre-arranged plan. On the other hand. Section 149 of the Penal Code, 1860 speaks of an offence being committed by any member of an unlawful assembly in prosecution of the common object of that assembly. The distinction between "common intention" under Section 34 and "common object" under Section 149 is of vital importance. The Sessions Court fell into the error of convicting the appellants under Section 302, read with Section 34 of the Penal Code, 1860 by holding that "if a number of persons assault another with a stick mercilessly their intention can only be to murder that man or at least they should know that they are likely to cause death of the person concerned".*

*This aspect of their being likely to cause death would be relevant under Section 149 and not under Section 34 of the Penal Code, 1860 for the obvious reason that under Section 34 it has to be established that there was the common intention before the participation by the accused."*

***(emphasis supplied)***

**99.** Hence, Hon'ble Apex Court laid down that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. The words "in furtherance of the common intention of all" are a most essential part of Section 34 of the Penal Code, 1860. It is common intention to commit the crime actually committed.

**100.** Reverting to the facts of the present case, in order to examine the guilt of the appellant no.2 Lalita Devi, this Court finds that out of the eleven witnesses examined by the prosecution, Mahaveer Ram (PW-9), is the informant and father of the deceased and Kapil Ram (PW-1), Dileshwar Ram (PW-3) and Naresh Ram (PW-10) are the three uncles of the deceased and Anand Ram (PW-2), is the cousin brother of the deceased.

**101.** This Court finds that out of the aforesaid five witnesses, PW-1 has not testified anything entangling appellant Lalit Devi, in his oral evidence.

**102.** Further, both PW-3 and PW-10 has also not stated anything overt act against the appellant Lalita Devi. PW-3 had simply stated in his evidence, that after the occurrence, later on he came to know that Kailash Ram and his second wife (appellant Lalita Devi), both had murdered Sita devi. Likewise, PW-10, had deposed that from neighbors he, came to know that

Kailash Ram and his second wife (appellant Lalita Devi) had killed the deceased by throttling.

**103.** Again, PW-9, who is the father of the deceased had made only specific allegation against his son-in-law Kailash Ram (appellant no.1) and deposed that Kailash Ram used to torture his daughter(deceased).

**104.** Hence, fact emerges that none of the related witnesses PW-1, PW-2, PW-3, PW-9(informant) and PW-10, had given any concrete oral evidence against Lalita Devi(appellant), pointing her guilt, in murder of the Sita Devi.

**105.** Further, this Court in the preceding paragraph has strong presumption of the existence of fact under Section 114(g) of the Indian Evidence Act, against the the appellant Kailash Ram, who is the husband of the Sita Devi (deceased), that he had strangulated Sita Devi(deceased).

**106.** Hence, in the facts and circumstance of the present case, there is no evidence against the appellant Lalita Devi, that she had pre-arranged plan, with the appellant Kailash Ram and she acted in furtherance of the common intention in murder of Sita Devi(deceased).

**107.** The only circumstance against, appellant Lalita Devi, was that after the death of the deceased, she was absconded. Hence, under such situation, she being newly married wife of Kailash Ram (appellant no.1herein), after the death of the deceased, had chosen to absconded out of fear. Hence, in the present case only her fleeing away from her matrimonial home, does not lead to conclusion that she was she acting in furtherance of the common intention in murder of Sita Devi(deceased).

**108.** The Hon'ble Supreme Court in **Dharam Pal v. State of Haryana (2002) 4 SCC 163** and ***Ramaswami Ayyangar v. State of T.N. (1976) 3 SCC 779*** has held that common intention must be established either by direct evidence or by necessary inference drawn from proved circumstances, and cannot be presumed solely on account of association or relationship.

**109.** The learned Trial Court, overlooked that a man can be vicariously convicted for the criminal act of another, if the act has been done in furtherance of the common intention. But, the learned trial court, in convicting the appellant Lalita Devi, did not gather the facts from the oral evidence of prosecution witnesses, as to how she was acting in furtherance of the common intention.

**110.** This Court finds that none of the prosecution witnesses have testified any overt act against the appellant Lalita Devi(appellant). But, without any cogent evidence against the Lalita Devi(appellant), the learned trial court had convicted her under Section 302 with aid of 34 of IPC.

**111.** Hence, this Court, after having discussed the factual aspect and legal position as discussed hereinabove is of the view that the prosecution has failed to prove the charge under section 302 IPC, against the appellant no.2 Lalita Devi beyond all reasonable doubt as such the impugned judgment of conviction and order of sentence requires interference by this Court, so far as conviction of appellant Lalita Devi is concerned.

**Re: Conviction of appellant no.1 Kailash Ram:**

**112.** Regarding conviction of the appellant Kailash Ram, this Court finds that informant (PW-9), who is the father of the Sita Devi(deceased) had

deposed that appellant Kailash Ram used to torture his daughter Sita Devi (deceased).

**113.** In the preceding paragraph, motive is also proved from the evidence of Informant (PW-9), PW-1 and PW-2, that Sita Devi(deceased) since had no issue, due to this reason her husband Kailash Ram (appellant), used to quarrel with her and torture her and some days ago prior to the occurrence, his son-in-law (i.e. appellant Kailash Ram) had married again with Lalita Devi (appellant no.2).

**114.** Further, prosecution has proved the chain of circumstances, linking him in the murder of his first wife Sita Devi(deceased), as has been discussed in the issue no. (ii).

**115.** Hence, prosecution has proved the charge against the appellant Kailash Ram, under Section 302 of IPC, beyond reasonable doubt.

**Conclusion:**

**116.** On the basis of the discussion made hereinabove, this Court modifies the conviction of appellant no. 1, Kailash Ram, and holds him guilty of committing culpable homicide amounting to murder of his wife, Sita Devi. Accordingly, he stands convicted for the offence punishable under Section 302 of the Indian Penal Code only. Consequent thereto, the impugned order of sentence dated 20.11.2018, in so far as it relates to appellant no. 1, Kailash Ram, passed by the learned Additional Sessions Judge-XII, Hazaribagh, in Sessions Trial No. 335 of 2017 corresponding to G.R. No. 2102 of 2017 arising out of Charhi P.S. Case No. 58 of 2017, requires no interference and is hereby sustained and upheld.

**117.** So far as appellant no. 2, Lalita Devi, is concerned, this Court held in the preceding paragraphs that no incriminating material against her. The only circumstance relied upon by the prosecution is that when the witnesses reached the place of occurrence, namely the house of appellant no. 1, she was not present and had absconded. Beyond this solitary circumstance, no cogent overt act has been attributed to her, nor has any witness deposed that she ever participated with appellant no. 1 in causing cruelty to the deceased. It is further an admitted fact that she had contracted marriage with appellant no. 1 only a few days prior to the occurrence, and therefore she cannot be implicated in the longstanding strained relationship between appellant no. 1 and the deceased.

**118.** In these circumstances, mere suspicion or conjecture that appellant no. 2 might have participated in the crime cannot substitute for proof. The settled principle of law is that suspicion, however strong, cannot take the place of legal evidence.

**119.** Accordingly, the impugned judgment of conviction and order of sentence dated 20.11.2018 passed by learned Additional Sessions Judge-XII, Hazaribagh, in Sessions Trial No. 335 of 2017 corresponding to G.R. No.2102 of 2017 arising out of Charhi P.S. Case No.58 of 2017 against appellant no. 2, Lalita Devi, is hereby quashed and set aside.

**120.** Consequent thereto she stands acquitted of all charges.

**121.** Appellant Lalita Devi who is on bail, is discharged from the liabilities of her bail bonds.

**122.** In the result, Criminal Appeal (D.B.) No. 1389 of 2018, is partly allowed.

**123.** Pending interlocutory application(s), if any, stands disposed of.

**124.** Let the Trial Court Records be sent back to the Court concerned forthwith, along with a copy of this Judgment.

**(Sujit Narayan Prasad, J.)**

**I agree,**

**(Sanjay Prasad, J.)** **(Sanjay Prasad, J.)**

**High Court of Jharkhand, Ranchi**
**Dated: 30/09/2026**
*Saurabh* /**A.F.R.**