



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO(S). 458 OF 2012

NUSRAT PARWEEN

....APPELLANT(S)

VERSUS

STATE OF JHARKHAND

....RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S). 2032 OF 2017

J U D G M E N T

Mehta, J.

1. The present appeals by special leave are preferred on behalf of appellant-Nusrat Parween¹ and appellant-Ahmad Khan², assailing

¹ In Criminal Appeal No. 458 of 2012, the appellant is Nusrat Parween. Hereinafter referred to as ‘Nusrat Parween/appellant No. 1.’

² In Criminal Appeal No. 2032 of 2017, the appellant is Ahmad Khan. Hereinafter referred to as ‘Ahmad Khan/appellant No. 2.’

the judgment dated 19th January, 2011 passed by the Division Bench of the High Court of Jharkhand at Ranchi in Criminal Appeals³ upholding the separate judgments of conviction and orders of sentence⁴ passed by the 1st Additional Sessions Judge, Jamshedpur⁵ in Session trial cases⁶, whereby appellant No. 1, appellant No. 2 and Abdul Rahman Khan/accused No. 3 were convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860⁷, and were sentenced to undergo life imprisonment.

2. The facts giving rise to the present appeals are as under:

2.1 Hamida Parween was married to Abdul Hamid Khan, the brother of Ahmad Khan/appellant No. 2 and Abdul Rahman Khan/accused No. 3. Abdul Hamid Khan, the husband of Hamida Parween, passed away two years prior to the incident. Late Abdul Hamid Khan owned Holding No. 13 situated at Dhatkidih in 'A' Block wherein the accused-appellants as well as Hamida Parween along with her three children, namely, Md. Sahid Khan(PW3), Md. Javed

³ Criminal Appeal (DB) No. 101 of 2004, Criminal Appeal (DB) No. 1741 of 2003 and Criminal Appeal (DB) No. 1810 of 2003.

⁴ Conviction Order dated 25th November 2003 & Sentence Order dated 1st December 2003.

⁵ Hereinafter referred as 'the trial Court.'

⁶ Sessions trial Case No. 228 of 1998 and Sessions trial Case No. 393 of 2000.

⁷ Hereinafter referred as 'IPC.'

Khan and Kahkasan Anujam were jointly residing. Despite Late Abdul Hamid Khan having partitioned a part of Holding No. 13 in favour of the accused-appellants, they were still pressurizing Hamida Parween to give up her remaining share in the property. On this count, Hamida Parween had earlier lodged a complaint against the accused-appellants under Section 107 read with Section 116(3) of the Code of Criminal Procedure, 1973⁸.

2.2 On 11th March, 1997, at around 8:00 am, Hamida Parween sent her sons, Md. Sahid Khan(PW3) and Md. Javed Khan to school. Both the boys returned home after school time and found their house locked from outside. When their mother did not turn up by evening, both the boys approached their maternal uncle, Md. Firoj(PW4) whose shop was situated at Golmuri Road No. 304, Sakchi, and narrated the sequence of events to him.

2.3 Md. Firoj(PW4), accompanied by his brother, Parvej Ahmad(PW9) and their father, Md. Yunush(PW8), launched a search for Hamida Parween at various places including the houses of their relatives but they were unable to trace her. Md. Firoj(PW4) went to

⁸ Hereinafter referred as 'CrPC.'

the Bistupur Police Station to report about the disappearance of his sister Hamida Parween, but the police officials rather than registering any complaint advised him to continue the search. When the efforts to search Hamida Parween failed, Md. Firoj(PW4) again went to Bistupur Police Station on the next day, i.e., on 12th March, 1997, at around 10:15 am, and informed the Officer-in-Charge that his sister, Hamida Parween, had been missing since 11th March, 1997. Based on the said complaint, the police official recorded a missing person's report in the station diary. Sub-Inspector, Jitendra Kumar(PW12) proceeded to the locality and made inquiries. The neighbours divulged that a quarrel had taken place between Hamida Parween and her relatives i.e., the accused-appellants around 8:00 am on the day of the incident. Thereafter, the accused-appellants fled away in a tempo, but none of the neighbours saw Hamida Parween coming out of the house. After that the police officials broke open the lock of the front door in the presence of *panch* witnesses and found the dead body of Hamida Parween lying inside the room. These proceedings were recorded in a memorandum⁹.

⁹ Exhibit 2 and 2/1.

2.4 Sub-Inspector, Jitendra Kumar(PW12) recorded the *Fardbayan* (statement) of Md. Firoj(PW4), the first informant, who alleged that after the death of Hamida Parween's husband, the accused-appellants, who lived in the same house along with her, were pressurizing her to give up the property. This resulted in frequent quarrels amongst them. The strifes escalated to such an extent that Hamida Parween(deceased) was even threatened with dire consequences, and resultantly, she was compelled to file a complaint against the accused persons under Section 107 read with 116(3) of the CrPC. Md. Firoj(PW4) alleged that his sister, Hamida Parween, had been done to death by the accused namely Ahmad Khan¹⁰, Abdul Rahman Khan¹¹, Nusrat Parween¹², Sayeda Bibi¹³, Rahemaa Khatoon@Chanda¹⁴, Reshma Bibi¹⁵, Md. Shahnawaz@Pappu¹⁶ and Amirullah Khan@Babar¹⁷, with the intention of usurping her house and other properties. The accused-appellants tried to cover up the incident by hiding the dead body of Hamida Parween inside the house

¹⁰ Brother-in-law of Hamida Parween (deceased).

¹¹ Brother-in-law of Hamida Parween (deceased).

¹² Sister-in-law of Hamida Parween (deceased).

¹³ Sister-in-law of Hamida Parween(deceased).

¹⁴ Sister-in-law of Hamida Parween (deceased).

¹⁵ Sister-in-law of Hamida Parween (deceased).

¹⁶ Nephew of Hamida Parween (deceased).

¹⁷ Nephew of Hamida Parween (deceased).

and locked it up from the outside so as to conceal the evidence of the crime. Sub-Inspector, Jitendra Kumar(PW12) noted this *Fardbayan* of Md. Firoj(PW4) on 12th March,1997, at around 11:30 am at the house of Hamida Parween(deceased) and based on the same, an FIR¹⁸ came to be registered at Bistupur Police Station on the same day for the offence punishable under Section 302 read with Section 34 of the IPC.

2.5 Inquest was conducted on the dead body of Hamida Parween which was then forwarded to the hospital for post mortem examination. The autopsy was carried out by Dr. Lalan Choudhary(PW10), who found several injuries on the dead body of Hamida Parween. There were abrasions on the front of the neck, waist, right elbow, left knee, and both hands. Additionally, there were large bruises on the front and side of the neck, and the hyoid bone was fractured. According to Dr. Lalan Choudhary(PW10), the cause of death was asphyxia, resulting from pressure applied to the neck. Based on these findings, the post-mortem report¹⁹ was issued. Upon concluding investigation, the Investigating Officer(PW12) filed

¹⁸ Case No. 67/1997.

¹⁹ Exhibit 3.

separate charge-sheets against the accused persons for the offences punishable under Sections 302 and 34 of the IPC. Since the offence under Section 302 IPC was exclusively triable by a Court of Session, the case was committed and transferred for trial to the Court of 1st Additional Sessions Judge, Jamshedpur('trial Court'). Separate trials were parallely held against the accused persons. Ahmad Khan/appellant No. 2 was put up for trial in Sessions Trial Case No. 228 of 1998 with the co-accused including Amirullah Khan@Babar(since acquitted), Rahemaa Khatoon@Chanda(since acquitted), Md. Shahnawaz@Pappu(acquitted) and Reshma Bibi(acquitted). Nusrat Parween/appellant No. 1, Abdul Rahman Khan/accused No. 3, and Sayeda Bibi(acquitted) were tried in Sessions trial Case No. 393 of 2000.

2.6 The trial Court framed charges against all the charge-sheeted accused persons for the above offences who abjured their guilt and claimed trial. The prosecution examined 12 witnesses to prove its case as per the following table:

PWs	Name	Relations/Positions
PW1	Chand Mohammad	Neighbour
PW2	Matiur Rahman	Neighbour Shopkeeper
PW3	Md. Sahid Khan	Deceased's Son
PW4	Md. Firoj	Brother of the deceased
PW5	Md. Sagir Ahmad Ansari	Tenant of the Shop owned by the deceased
PW6	Fazal Khan	Neighbour Shopkeeper
PW7	Ragho Sharma	Neighbour Shopkeeper
PW8	Md. Yunush	Father of the deceased
PW9	Parvej Ahmad	Brother of the deceased
PW10	Dr. Lalan Choudhary	Assistant Professor (Post-Mortem Examiner)
PW11	Md. Sagir Ahmad Ansari	Formal Witness
PW12	Jitender Kumar	Sub-Inspector Police Station

2.7 The accused persons were questioned under Section 313 of the CrPC and were confronted with the circumstances appearing against them in the prosecution case, which they denied and claimed to be innocent. The trial Court, *vide* its judgment²⁰ in Session Trial Case No. 228 of 1998, held that the prosecution had successfully established its case beyond reasonable doubt and, therefore,

²⁰ Dated 25th November 2003.

convicted Ahmad Khan/appellant No. 2 for the offence punishable under Section 302 of the IPC and sentenced him to life imprisonment. The trial Court acquitted Amirullah Khan@Babar, Rahemaa Khatoon@Chanda, Md. Shahnawaz@Pappu, and Reshma Bibi, on the ground of insufficient evidence against them. Based on the evidence on record, the trial Court in Session Trial Case No. 393 of 2000 held Nusrat Parween/appellant No. 1 and Abdul Rahman Khan/accused No. 3 guilty for the offence punishable under Section 302 of the IPC and sentenced them to life imprisonment. Sayeda Bibi was acquitted due to insufficient evidence against her.

2.8 Aggrieved by their conviction and sentence, Nusrat Parween/appellant No. 1, Ahmad Khan/appellant No. 2, and Abdul Rahman Khan/accused No. 3 filed separate Criminal Appeals²¹ before the High Court, which upheld the judgment of the trial Court convicting the accused-appellants and Abdul Rahman Khan/accused No. 3, confirming the sentence of life imprisonment awarded to them by the trial Court. The impugned judgment of the High Court dated 19th January 2011 is subjected to challenge by

²¹ Supra Note No. 3.

Nusrat Parween/appellant No. 1 and Ahmad Khan/appellant No. 2 in these appeals by special leave. Abdul Rahman Khan/accused No. 3, has not filed any appeal in this matter.

Submissions on behalf of the appellants: -

3. Learned counsel for the accused-appellants submitted that the entire prosecution case is based on circumstantial evidence and that the prosecution miserably failed to prove even a single of the so-called incriminating circumstances so as to bring home the guilt of the accused-appellants. Learned counsel for the accused-appellants advanced the following pertinent submissions to urge that the conviction of the accused-appellants as recorded by the trial Court and affirmed by the High Court is unsustainable on the face of record: -

(i) The prosecution failed to prove the motive attributed to the accused-appellants for commission of the crime. In this regard, attention of the Court was drawn to the evidence of Md. Sahid Khan(PW3) [the son of Hamida Parween(deceased)] to urge that he could have been the best person to elaborate upon the disputes allegedly going on between Hamida

Parween(deceased) and the accused-appellants over the subject property²² but he did not state anything specific regarding the same in his testimony. Even if there were some on-going day to day squabbles between the accused and the deceased, Md. Sahid Khan(PW3) did not specifically state that any quarrel took between the accused-appellants and Hamida Parween(deceased) on the fateful day which was allegedly the immediate cause of the incident.

(ii) That to prove the theory of motive, the prosecution heavily relied upon the alleged complaint lodged by Hamida Parween(deceased) against the accused-appellants under Section 107 read with Section 116 (3) of the CrPC. However, the said complaint was never proved in evidence and hence, there is no tangible incriminating material on record against the accused-appellants so as to corroborate the theory of motive.

(iii) That the circumstance of last seen together could not be proved by the prosecution, as neither Md. Sahid Khan(PW3)

²² Holding No. 13

[the son of Hamida Parween(deceased)] nor any of the immediate neighbours, i.e Chand Mohammad(PW1), Matiur Rahman(PW2), Md. Sagir Ahmad Ansari(PW5), Fazal Khan(P6) and Ragho Sharma(PW7) uttered a single word to suggest that the accused-appellants and the co-accused Abdul Rahman Khan/accused No. 3 were present in the house when Md. Sahid Khan(PW3) and his brother Md. Javed Khan left for the school or that the accused persons were seen fleeing away from the house on the day of incident.

(iv) The trial Court as well as the High Court heavily relied upon Section 106 of the Indian Evidence Act, 1872²³ so as to hold that the accused-appellants were under the burden to explain the circumstances under which Hamida Parween(deceased) who was living in the same premises, was found dead in her room. However, the fact remains that no tangible evidence whatsoever was led by the prosecution to lend credence to the theory that any or all of the three convicted accused-appellants were actually present in the

²³ Hereinafter the 'Evidence Act'.

house on the fateful morning, i.e., 11th March, 1997. As this basic and foundational fact was not proved by leading cogent evidence, it has to be inferred that the prosecution miserably failed to establish the circumstance of last seen together. Hence, the accused-appellants could not have been placed under the burden to explain the circumstances in which Hamida Parween was done to death.

(v) That the very inception of the prosecution case is shrouded under a grave cloud of doubt. In this regard, it was contended that Md. Firoj(PW4), [the brother of Hamida Parween(deceased)], being the first informant, categorically stated that there was a strife going on between his sister and the accused persons over Holding No. 13. The situation had gone bad to such an extent that Hamida Parween(deceased) was compelled to lodge a complaint against the accused-appellants under Section 107 read with Section 116(3) of the CrPC. The first informant, Md. Firoj(PW4), also alleged in the FIR that the accused-appellants had quarreled with Hamida Parween(deceased) on the morning of the incident and

thereafter, they were all seen moving out from Holding No.13 and fleeing away in a tempo. Hamida Parween(deceased) was not seen alive after the accused-appellants absconded from the place of incident. In this background, the first and natural reaction of the family members on finding out about the quarrel followed by absence of Hamida Parween and noticing the house locked from outside would have been to break open the lock and to take stock of the situation inside. The utter failure of the maternal family members of Hamida Parween(deceased) to take any step in this regard clearly establishes that the entire case of the prosecution is based purely on conjectures and surmises without an *iota* of truth in it.

On these grounds, learned counsel appearing for the accused-appellants implored the Court to accept the appeals, set aside the impugned judgments and direct acquittal of the accused-appellants from the charges levelled against them.

Submission on behalf of the Respondent/State: -

4. *Per contra*, learned standing counsel appearing for the State, vehemently and fervently opposed the submissions advanced on behalf of the accused-appellants and advanced the following pertinent submissions imploring this Court to dismiss the appeals: -

- (i) That the trial Court's judgment convicting the accused-appellants for the murder of Hamida Parween(deceased) is based on sound reasoning and evidence. The case of prosecution is based on a complete chain of highly incriminating circumstances which irrefutably point towards the guilt of the accused. The prosecution established a strong motive rooted in an ongoing property dispute between the accused-appellants and Hamida Parween(deceased), and the said theory has been corroborated by the complaint filed by Hamida Parween(deceased) against the accused under Section 107 read with Section 116(3) of the CrPC.
- (ii) That Nusrat Parween/appellant No. 1, Ahmad Khan/appellant No. 2 and Abdul Rahman Khan/accused No.

3 used to reside in the same premises²⁴ with Hamida Parween(deceased). The accused-appellants and Hamida Parween(deceased) were last seen quarrelling with each other in the house on the morning of 11th March, 1997 whereafter, the accused-appellants absconded after locking the house from outside and leaving behind the dead body of Hamida Parween inside the house.

- (iii) That the absence of the accused-appellant from the house when the sons of Hamida Parween(deceased) i.e., Md. Sahid Khan(PW3) and Md. Javed Khan returned home from school unerringly points towards their involvement in the crime. Thus, it was a fit case for invocation of Section 106 of the Evidence Act thereby, requiring the accused-appellants to explain the circumstances in which Hamida Parween died. The accused-appellants miserably failed to discharge this onus cast upon them by law and thus their conviction for the charge of murder is fully justified.

²⁴ Holding No. 13

- (iv) That the medical evidence affirmed the cause of death as strangulation, aligning with the sequence of events proved by cogent convincing evidence, which bolstered the case of prosecution against the accused-appellants.
- (v) That the trial Court and the High Court both minutely analyzed and marshalled the circumstantial evidence to concurrently hold that the prosecution established a complete chain of incriminating circumstances linking the accused-appellants to the crime.

On these grounds, the learned counsel for the State contended that the present appeals against the judgments of the trial court and the High Court should be dismissed, as both courts have applied the law to the facts on record correctly and reached the only possible conclusion pointing towards the guilt of the accused.

Discussion and Conclusion: -

5. We have heard learned counsel appearing on behalf of the parties and have pursued the evidence available on record.

6. There is no dispute that the case of prosecution is based on purely circumstantial evidence in the form of motive and the theory of last seen together, since no witness claims to have seen the alleged incident wherein Hamida Parween was done to death. The fact that death of Hamida Parween was homicidal was duly proved by the Medical Officer(PW15) in his evidence. The Medical Officer(PW15) also proved the post mortem report²⁵ wherein a large number of injuries were noted on the dead body of Hamida Parween and the cause of death was opined to be asphyxia owing to strangulation. Thus, there is no doubt on the aspect that the death of Hamida Parween was homicidal in nature.

7. It is a well-established principle of criminal jurisprudence that conviction on a charge of murder may be based purely on circumstantial evidence, provided that such evidence is deemed credible and trustworthy. In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused person's guilt. The chain of incriminating

²⁵ Exhibit 3.

circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused. In other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person's innocence, demonstrating that it was the accused and none other who committed the offence. The law with regard to conviction based on circumstantial evidence has been crystalised by this Court in the case of ***Sharad Birdhichand Sharda v. State of Maharashtra***²⁶, wherein it was held:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793] where the observations were made: [SCC para 19, p. 807]

“Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between

(1984) 4 SCC 116.

‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

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

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

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

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

(emphasis supplied)

8. Having noted the principles governing a case based purely on circumstantial evidence, we now proceed to discuss the evidence led by the prosecution in order to bring home the charges against the accused-appellants. The prosecution portrayed the following circumstance in its endeavour to establish the charge of murder against the accused-appellants: -

- (i) Motive, i.e., to say that Hamida Parween(deceased) and the accused-appellants were involved in an ongoing

strife, wherein the accused-appellants were pressuring her to give away her remaining share in the property in question i.e., Holding No. 13. On the morning of 11th March, 1997, Hamida Parween(deceased) and accused-appellants quarrelled with each other which fueled the accused-appellants with such animosity that they murdered her for usurping her property.

- (ii) 'Last seen together' theory i.e., to say that Hamida Parween(deceased) and the accused-appellants were the only persons present in Holding No. 13 when her sons, Md. Sahid Khan(PW3) and Md. Javed Khan left for the school. The accused-appellants absconded from Holding No. 13, after killing Hamida Parween and hiding her dead body inside the house and locking it up from the outside so as to conceal the evidence of the crime.

9. Firstly, we proceed to consider the theory of motive. It is trite law that proof of motive is not *sine qua non* in a case of murder. However, in a case based purely on circumstantial evidence, motive if properly established, assumes great significance and would

definitely provide an important corroborative link in the chain of incriminating circumstances and strengthen the case of prosecution. The reliance in this regard may be placed on the case of ***Nandu Singh v. State of Chhattisgarh***.²⁷

10. Hamida Parween(deceased)'s son Md. Sahid Khan(PW3), her brother Md. Firoj(PW4), her father Md. Yunush(PW8) and her brother Parvej Ahmad(PW9) in their oral evidence stated about the so-called quarrels going on between the accused-appellants and Hamida Parween(deceased). All these witnesses have made omnibus allegations that the accused-appellants used to quarrel with Hamida Parween(deceased) in relation to the property in question i.e. Holding No.13.

11. Ongoing squabbles between close relatives residing under one roof are nothing out of usual and may give rise to an inference that all was not well within the family. However, in our opinion, merely because such quarrels were going on between the accused persons and Hamida Parween(deceased), that by itself could not be a ground

²⁷ 2022 SCC Online SC 1454.

to impute motive to the accused-appellants for murder of Hamida Parween(deceased).

12. Immediate cause of the incident as per the prosecution was a quarrel which allegedly took place between the accused-appellants and Hamida Parween(deceased) on the morning of 11th March, 1997 just before her children i.e. Md. Sahid Khan(PW3) and Md. Javed Khan left for school. However, upon a close scrutiny of the depositions of Md. Sahid Khan(PW3) and the immediate neighbours, namely, Chand Mohammad(PW1), Matiur Rahman(PW2), Md. Sagir Ahmad Ansari(PW5), Fazal Khan(PW6) and Ragho Sharma(PW7), we do not find anything in their evidence which can even remotely suggest that there had been any quarrel between the accused-appellants and Hamida Parween(deceased) on the day of the incident. Hence, there is a total lack of evidence to convince the Court that there was any immediate strife on the fateful day which could have fuelled the accused-appellants with such rage that they were impelled to murder Hamida Parween.

13. The Investigating Officer, Jitender Kumar(PW12) stated in his evidence that Md. Yunush(PW8) [the father of Hamida Parween(deceased)] had informed him that his son-in-law i.e. Abdul

Hamid Khan [the husband of Hamida Parween] had already given half a share of the house to Ahmad Khan/appellant No. 2 and Abdul Rahman Khan/accused No. 3 during his lifetime. Thus, the theory of motive attributed to the accused-appellants i.e., that they wanted to usurp Holding No. 13 could not be established by unimpeachable evidence.

14. The complaint under Section 107 read with Section 116(3) of the CrPC allegedly lodged by Hamida Parween(deceased) against the accused persons could have provided an important corroborative link in the chain of incriminating circumstances. However, on a threadbare scrutiny of the record, and after going through the statements of the material prosecution witnesses, we notice that the said complaint never saw the light of the day inasmuch as, neither it was placed on record with the charge-sheet nor did any of the prosecution witnesses bother to prove the same during the evidence. Hence, the most important document, in the form of a complaint filed by Hamida Parween(deceased), under Section 107 read with Section 116(3) of the CrPC on which the prosecution heavily relied upon in support of the theory of motive, was never proved as per law.

15. Thus, we have no hesitation in holding that the evidence led by the prosecution to prove the theory of motive for commission of the crime as attributed to the accused-appellants is far from convincing and a vital link in the chain of incriminating circumstances is snapped. In view of the above finding, unquestionably, the trial Court as well as the High Court erred in holding that the prosecution has been able to prove the motive for the murder against the accused-appellants beyond all manner of doubt.

16. The second circumstance on which the prosecution relied upon was the theory of 'last seen together', thereby, trying to shift the burden of proof by virtue of Section 106 of the Evidence Act and placing the accused-appellants under the onus to explain the circumstances under which Hamida Parween(deceased) was found murdered in the house by manual strangulation.

17. It is a cardinal principle of criminal jurisprudence that Section 106 of the Evidence Act shall apply and the onus to explain would shift on to the accused only after the prosecution succeeds in establishing the basic facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer

a proper explanation about the existence of the said other facts, the Court can draw an appropriate inference against the accused. In cases based on circumstantial evidence, the accused's failure to provide a reasonable explanation as required under Section 106 of the Evidence Act can serve as an additional link in the chain of circumstantial evidence - but only if the prosecution has already established other essential ingredients sufficient to shift the onus on to the accused. However, if the prosecution fails to establish a complete chain of circumstances in the first place, then the accused's failure to discharge the burden under Section 106 of the Evidence Act becomes irrelevant.

18. The law concerning the invocation of shifting of onus under Section 106 of the Evidence Act has been explained by this Court in the case of ***Shambu Nath Mehra v. State of Ajmer***²⁸, wherein it was held as follows:

“8. Section 106 is an exception to section 101. Section 101 lays down the general rule about the burden of proof.

"Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist".

Illustration (a) says-

²⁸ AIR 1956 SC 404.

"A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime".

9. **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. Emperor and Seneviratne v. R.**

11. We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be "especially" within the knowledge of the accused. **This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts."**

(emphasis supplied)

19. Further, in *Tulshiram Sahadu Suryawanshi and Anr. v. State of Maharashtra*²⁹, this Court observed as under:

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

(emphasis supplied)

20. A similar observation is found in *Nagendra Sah v. State of Bihar*³⁰, wherein the Court held that: -

“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding

²⁹ (2012) 10 SCC 373.

³⁰ (2021) 10 SCC 725.

the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

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

21. Recently, this Court in the case of *Anees v. The State Govt. of NCT*³¹, held in the following terms:

“40. Section 106 of the Evidence Act cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.”

³¹ 2024 INSC 368.

22. Applying the aforesaid principles to the case at hand, the prosecution would be required to establish that the accused-appellants and Hamida Parween(deceased) were present inside the house i.e., Holding No. 13 on the fateful morning, and to be specific during the time immediately preceding the incident.

23. The best witness to narrate about the presence of the accused-appellants in the house with Hamida Parween(deceased) on the fateful morning would have been none other than the sons of Hamida Parween(deceased) i.e., Md. Sahid Khan(PW3), and Md. Javed Khan.

24. On a minute perusal of the deposition of Md. Sahid Khan(PW3), we find nothing in his testimony which could even remotely suggest that any or all of the three accused persons were present in the house or that they had quarrelled with his mother when he left for school along with his brother Md. Javed Khan.

25. In addition thereto, none of the neighbours i.e., Chand Mohammad(PW1), Matiur Rahman(PW2), Md. Sagir Ahmad Ansari(PW5), Fazal Khan(P6) and Ragho Sharma(PW7) made any such assertion in their testimonies that they had seen the accused present with Hamida Parween(deceased) or that they were seen fleeing away from Holding No. 13 on the fateful morning.

26. From the evidence of Md. Yunush(PW8) [the father of Hamida Parween(deceased)], it also transpires that Hamida Parween(deceased) had 3 children i.e. two sons, Md. Sahid Khan(PW3) and Md. Javed Khan, and a daughter, namely, Kahkasan Anujam. However, the prosecution has not explained as to where the girl child was on the date of the incident. Nothing is available on record to throw light regarding the age of the girl child, or to infer that she was incapable of testifying or was not present with her mother on the fateful day. Likewise, the prosecution has also failed to provide any explanation whatsoever as to why the other son, Md. Javed Khan was not examined in evidence. The prosecution failed to show that Md. Javed Khan and Kahkasan Anujam were incapable of giving evidence and hence, failure to examine them in evidence calls for drawing of adverse inference thereby, further denting the credibility of the prosecution case.

27. Md. Firoj(PW4), the first informant alleged in the FIR³² that Abdul Rahman Khan/accused No.3 and Nusrat Parween/appellant No.1 started fighting with his sister in the morning and, sometime

³² Exhibit 4.

later, her other sister-in-law namely Sayedi Bibi, also came to the house located at Holding No. 13. As many as eight accused-persons³³ were charge-sheeted in the case, however, the trial Court acquitted all other charge-sheeted accused citing insufficient evidence while convicting the appellants, namely, Nusrat Parween/appellant No. 1, Ahmad Khan/appellant No. 2 and Abdul Rahman Khan/accused No. 3.

28. Hence, we have no hesitation in holding that the prosecution failed to prove presence or what to say exclusive presence of the accused-appellants in Holding No. 13 with Hamida Parween(deceased) contemporaneous to the time of the incident, thereby, demolishing the prosecution theory of last seen together.

29. There is no credible evidence on record of the case to establish the exclusive presence of the accused-appellants with Hamida Parween(deceased) in the house in question at any time before the incident, justifying the shifting of the burden of proof on to the accused-appellants by invocation of Section 106 of the Evidence Act.

³³ Refer Para 2.4 of this judgment.

Thus, the theory of last seen together attributed by the prosecution could not be proved beyond all manner of doubt.

30. There is another doubtful feature which cast a grave doubt on the truthfulness of the prosecution case. The first informant, Md. Firoj(PW4) alleged that he had gone to the police station on 11th March, 1997 to inform about the disappearance of his sister, Hamida Parween. However, the Investigating Officer, Jitender Kumar(PW12) emphatically denied that Md. Firoj(PW4) or any other relative of Hamida Parween(deceased) had visited the police station on 11th March, 1997 for lodging a report regarding disappearance of Hamida Parween(deceased). As per the Investigating Officer, Jitender Kumar(PW12), Md. Firoj(PW4) [the brother of Hamida Parween(deceased) had come to the police station only on the morning of 12th March, 1997 for the first time and made a complaint regarding the disappearance of his sister upon which an entry was made in the station diary at Serial No. 517. However, the said station diary entry was not brought on record which is yet another circumstance which persuades us to draw an adverse inference against the prosecution.

31. The maternal family relatives of Hamida Parween(deceased) have come out with a categoric assertion that after the death of Hamida Parween's husband, the accused persons were continuously quarreling with her for usurping the entire Holding No. 13. The first informant, Md. Firoj(PW4) also alleged in the FIR that the accused persons had quarreled with Hamida Parween(deceased) in the morning of the incident and were seen fleeing away together in the tempo. Had there been an *iota* of truth in these allegations, the immediate and natural reaction of the maternal family members after being informed about the missing of Hamida Parween(deceased) and noticing the lock on the door of the house would have been to break open the lock and take a stock of the situation inside. The utter indifference of the family members in taking any such measures makes the entire prosecution story doubtful.

32. As a consequence of the discussion made above, we are of the view that the prosecution has failed to prove the chain of incriminating circumstances against the accused-appellants by convincing evidence and beyond the shadow of doubt, so as to affirm their guilt. The trial Court as well as the High Court clearly erred while appreciating the evidence and in holding that the prosecution

has proved the case against the accused-appellants beyond all manner of doubt. Hence, the accused-appellants deserve to be acquitted of the charges by giving them the benefit of doubt.

33. It is noteworthy that Abdul Rahman Khan/accused No. 3 did not file any appeal before this Court challenging the judgment of the High Court. Since we have consistently found that the case of the accused-appellants herein is identical to that of Abdul Rahman Khan/accused No. 3, we are inclined to extend the benefit of this judgment to Abdul Rahman Khan/accused No.3 as well by exercising our power under Article 142 of the Constitution of India.

34. Resultantly, the impugned judgment dated 19th January, 2011 passed by the Division Bench of the High Court and judgments and orders dated 25th November, 2003, and 1st December, 2003 passed by the trial Court are hereby reversed and set aside.

35. The accused-appellants, namely, Nusrat Parween/appellant No. 1, Ahmad Khan/appellant No. 2 and Abdul Rahman Khan/accused No. 3 are acquitted of the charges.

36. Nusrat Parween/appellant No. 1 and Ahmad Khan/appellant No. 2 are on bail. They need not surrender. Their bail bonds are discharged.

37. We also direct that if Abdul Rahman Khan/accused No. 3 is in custody, he shall be released forthwith, if not wanted in any other case.

38. The appeals are allowed accordingly.

39. Pending application(s), if any, shall stand disposed of.

.....**J.**
(DIPANKAR DATTA)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
DECEMBER 10, 2024