CRIMINAL APPEAL (D.B.) NO.387 OF 2018

(Arising out of judgment of conviction dated 19.01.2018 and order of sentence dated 20.01.2018 passed by learned Additional Sessions Judge-I, Sahib-ganj, in S.T. Case No.66 of 2012)

Barka Hembrom, S/o Late Bada Karia Hembrom, R/o Village Sarai, PS Borio, PO Borio, District Sahibganj, Jharkhand.

... ... Appellant

Versus

The State of Jharkhand **... ... Respondent**

PRESENT : SRI ANANDA SEN, J.
: SRI PRADEEP KUMAR SRIVASTAVA, J.

For the Appellants : Mr. Ankit Kumar, Advocate

For the State : Mr. Bhola Nath Ojha, Spl. P.P.

J U D G M E N T

Dated, 01st October, 2026

By Court : This Criminal Appeal is preferred on behalf of the appellant being aggrieved by the impugned judgment of conviction dated 19.01.2018 and order of sentence dated 20.01.2018, passed by learned Additional Sessions Judge-I, Sahibganj, in S.T. Case No.66 of 2012, whereby and wherein the appellant has been convicted for offences under Section 302 I.P.C. He was sentenced to undergo rigorous imprisonment for life, with fine of Rs.10,000/- and in default of payment of fine further to undergo S.I. for three months. It was also ordered that the period already undergone in custody by the appellant shall be set off.

2. We have heard, learned counsel representing the appellant and learned Spl. P.P. representing the State and perused the material available on record.

3. Learned counsel representing the appellant, submits that there is no eye witness to the said occurrence, which can remotely implicate this appellant for committing the offence. As per him, since the appellant is husband of the deceased, only on that ground he has been implicated in this case and convicted. The evidence is scratchy and the same will definitely not lead to an inevitable conclusion that the appellant has committed murder of the deceased. He further submits that the murder weapon which is allegedly to be a Bamboo

was not produced before the Court. As per him, it is clear from the evidence, that both the appellant and the deceased were in a drunken condition and thus, some altercation between them may have resulted in the incident. He further submits that none of the neighbour has whispered that the relationship between the parties was not cordial. He further argues that for the sake of argument, if the death is considered to be homicidal, but the same will not by any means come in the definition of Section 300 of IPC.

4. Learned Spl. P.P. representing the State, oppose and submits that the Trial Court has considered each and every aspect and has come to a conclusion that the prosecution has been able to prove the guilt of the accused beyond all reasonable doubt. He further submits that non-production of the murder weapon i.e. Baomboo in the Court is not fatal. The assault admittedly is on the vital part of the body. He contended that the medical evidence also supports the prosecution case. There is no material to acquit the accused.

5. The case of the prosecution, on the basis of fardbeyan of informant-Mangal Murmu is that on 06.7.2011 at 10:00 A.M his co-villagers Ruyu Hembrom came to his house and reported that his niece Ludgi Murmu is lying dead in her house. On information, he rushed there and found the information to be true where co-villagers told him narrating that his niece after doing the cultivation work, having taken wine had come to the house, whereafter her husband Barka Hembrom (appellant) also came, and later on there was altercation in between the couple and in that course Barka Hembrom gave several blows to his wife by means of bamboo, fists and slaps causing injuries upon the body and thereafter both of them went to bed separately. He further stated that in the morning when Barka Hembrom, came to know that his wife has died, then being frightened, he ran away from the house, but villagers caught him and brought him back to the house.

6. Thereafter investigation was carried out and the charge-sheet was submitted under Section 302 of IPC against the appellant and case was committed to the Court of Sessions.

7. The prosecution has altogether examined seven witnesses, statements of whom are as follows:-

P.W.-1 Sanjahala Hembrom in his deposition has stated that he got to know about the murder in the morning. He does not know which substance was used for murder. He had seen the Bamboo Stick in the morning. It was blood stained. He is a witness to the inquest report.

P.W.-2- Tala Biti Tudu has stated that she was in her house.

Appellant had consumed wine and had killed the deceased by assaulting her with bamboo stick. Police had taken the body of the deceased and police had also seized and taken away the bamboo stick. She has stated that she had seen the dead body of the deceased.

P.W.-3- Mangal Murmu is the informant. He has stated in his deposition that he had heard that appellant has killed his niece, the deceased. He had gone to see and had took others also with him. He saw blood in the courtyard. Inside the house he saw that stick was also stained with blood. He stated that the appellant was not present there. Villagers had told that appellant had killed his wife, the deceased and has fled. He stated that before the incidence a quarrel had occurred between the appellant and the deceased and he had seen the same.

P.W.-4- Shamu Hembrom has stated that he had seen the dead body. He has stated that they suspected that it was appellant who had killed the deceased. Police had seized the blood stained stick. In the courtyard also, blood was there. He stated that frequent quarrels took place between the appellant and the deceased. He has stated that when he had gone to see, appellant had already fled.

P.W.-5- Jagdish Ram Choudhary is the investigation officer. He has stated about the fardbeyan of the informant P.W.3 recorded by him. It was marked Exhibit 1. He had also prepared the inquest report. He has also stated about seizure of bamboo stick which was in two parts. He has stated that villagers had caught the appellant and they had handed over the appellant to him. He has also given description of the place of occurrence.

P.W.-6- Dr. Sheo Shankar Bhagat is the doctor who had conducted autopsy on the dead body of the deceased. He found the following: -

Eyes- Black, Hair- Black, Body- Average built, Rigor Mortis- absent in all limbs, Mouth Open, Eyes closed.

On External Examination , the following ante-mortem injuries were found:-

I. Defused swelling over right temporal region,

II. Defused swelling over left temporal region.

On dissection:-

(i) Skull- Right Temporal bone fractured and collection of blood in cranial cavity.

(ii) Collection of blood in left temporal cranial cavity.

Two ante mortem injuries were also found which are:-

(iii) Defuse swelling over left upper arm and

(iv) Abrasion over left knee.

Opinion-

Cause of death due to shock and Hemorrhage as a result of injury Nos.I & II which is sufficient in the ordinary course of nature to cause death.

Time elapsed time death- 48 hours.

Weapons/object – by hard & blunt substance which may be a stick/danda made of bamboo.

In his cross examination, the doctor has stated that abovenoted injuries may be caused from a fall on a rough and stoney substance and that too from a height of 15' to 20'. He also stated that there was no bleeding from the wounds.

P.W.-7- Binodanand Singh is the subsequent investigation officer, who took charge from the earlier investigation officer P.W.5. He after obtaining postmortem report and had submitted chargesheet in this case in line with the supervision reports of Dy.SP and S.P., Sahebganj.

8. Some documents were also exhibited in this case, which are as follows:-

Exhibit-1- Fardbeyan

Exhibit-2 Formal F.I.R.

Exhibit-3 Postmortem report.

9. After closure of the evidence of the prosecution, the statement of the appellant under Section 313 of the Code of Criminal Procedure was recorded, wherein he denied the prosecution story and pleaded of false implication.

10. After hearing arguments of both the parties, the Trial Court by judgment of conviction dated 19th January, 2018 and order of sentence dated 20th January, 2018 passed in Sessions Trial No.66 of 2012 has convicted the appellant for offence under Section 302 of the Indian Penal Code and sentenced him in the manner as stated above.

11. Admittedly, there are no eye witness to the said occurrence. No one has seen this appellant assaulting the deceased. Thus, this case revolves around the circumstances.

12. The first circumstance is the death of deceased. The death is not natural, which has been proved by the prosecution.

Exhibit-3 is the post-mortem report, which has been proved by P.W.-6

(Doctor). The doctor has opined in the post-mortem report and also stated in evidence that the death is due to shock and Hemorrhage, as a result of injury Nos.I & II, i.e., fracture of right temporal bone and collection of blood in cranial cavity; and collection of blood in left temporal caranial cavity. Not only this, the Doctor has opined that the said injury was sufficient in ordinary course of nature to cause of death. Thus, from the evidence of the doctor and the post-mortem report, the homicidal death is proved.

13. The second circumstance is that appellant is the husband of the deceased and the entire incident had occurred inside the house of this appellant. The dead body was found in the house of the appellant, which is evident from the evidence of P.W.-5, who is the Investigating Officer (IO), who partly investigated the occurrence. In paragraph no.1, P.W.-5 has stated that, the body was lying on the cot in the house. He also admitted that from the place of occurrence, he has prepared the inquest report. Thus, the prosecution has proved that the dead body was found in the house of the appellant.

14. The next circumstance is that in the said house there were only two persons residing i.e. the appellant and the deceased. There is no contrary evidence that there were any other persons in the house nor it is the case of defence that someone entered the house and committed the murder.

P.W.3 has stated that he saw the dead body in the house of the appellant. P.W.-3's evidence suggests that the relationship between the husband and wife was not cordial, there were often quarrels.

P.W.-1 and 4, who are villagers also have stated that they have seen the dead body lying in the house. P.W.-4 also stated that there was quarrel amongst them.

15. Another important circumstance, which can be extracted from the evidence of P.W.-4 is that he also stated that when he went to the place of occurrence Barka Hembrom had fled. Fleeing from the place of occurrence where there was no other person and only wife was lying dead also implicate this appellant.

16. These circumstances, prima facie, suggest the guilt of the appellant. The prosecution has been able to prove that the death is unnatural and caused by shock and hammerrohage. The prosecution has also proved that the entire occurrence had occurred in the house of the appellant. Evidence of the witnesses also suggests that the appellant had fled from the place of occurrence after committing the crime and there was no body in the house. In these types of scenarios only, the Hon'ble Supreme Court has held that Section

106 of the Indian Evidence Act applies. Section 106 of the Indian Evidence Act, 1872 reads as follows: -

> ***106. Burden of proving fact especially within knowledge. – When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.***
>
> ***Illustrations***
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> ***(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.***
>
> ***(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.***

17. Thus, Section 106 of the Evidence Act casts burden of proving things which are within the special knowledge of an individual or on that individual. It is true that aforesaid Section does not exonerates the prosecution from discharging its burden of proof beyond reasonable doubt, but it prescribes that when an individual has done an act, with an intention other than that which the circumstances indicate, the onus is upon him of proving the specific intention.

18. The principal law of governing the applicability of Section 106 of the Evidence Act has been laid down by the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh vs. Balveer Singh,*** reported in (2025) 8 SCC 545. Paragraphs 76 to 90 of the aforesaid judgment deals with the law. What would be the *prima facie* case has also been very elaborately discussed in the aforesaid judgment from paragraph 91 onwards.

19. Considering the aforesaid judgment, we hold that the prosecution has been able to establish the foundational fact and justifies invocation of Section 106 of the Evidence Act. In this case, the accused has miserably failed to explain the same and in explanation, to all the questions put to him while examining him under Section 313 of Cr.P.C., in only one line, he stated that the allegations were false or he has no knowledge about the same. This is not, what he was supposed to explain.

20. When the offence has taken place within the four corners of the house/room, it is the person, who is residing there, other than the deceased, is to be held guilty of the offence in view of the circumstances that have been brought in by the prosecution through the evidence of the prosecution witnesses. In this case, considering what has been held above, except the

appellant, no one could have committed the murder.

21. Considering what has been held above, we find that the prosecution has been able to prove the guilt of the appellant beyond all reasonable doubts. Thus, there being no merit, this criminal appeal stands **dismissed**. The impugned judgment of conviction and order of sentence are upheld. Pending interlocutory applications, if any, stands disposed of.

22. Trial Court Record be transmitted back to the Court concerned along with a copy of this judgment.

(Ananda Sen, J.)

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi
Dated, the 1st October, 2026
AFR/Kumar/Cp-03

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