

Bablu Tirkey had left the house saying that he was going to respond the call of nature and when his wife Dasmi Baitha did not come out of the house, he along with persons of the locality went to the room of Bablu Tirkey and found Dasmi Baitha dead bearing injury on her face, temple and several other parts of body. On 5th December, 2011, Bablu Tirkey had told him that his wife after quarrel had gone somewhere else. It seemed that Bablu Tirkey had committed murder of his wife on previous night. On 5th December, 2011, Bablu Tirkey was with his wife having closed the door of his house and in the morning, he left the house after having committed murder of his wife.

3. On this written information, Case Crime No. 507 of 2011 was registered with the Police Station Doranda, Division Sadar, District Ranchi under Section 302 of the Indian Penal Code against Bablu Tirkey. The investigating officer completed the investigation and filed charge-sheet against Bablu Tirkey under Section 302 of IPC and the Court of Magistrate concerned who took the cognizance on the charge-sheet and committed the case for trial to the Court of Judicial Commissioner, Ranchi who further transferred the same for trial to the Court of learned Additional Judicial Commissioner-XIII, Ranchi.

4. The Trial Court framed the charge against Bablu Tirkey under Section 302 of Indian Penal Code and same was read over and explained to him who denied the charge and claimed to face the trial.

5. On behalf of the prosecution to prove the charge against the accused in documentary evidence adduced Exhibit-1 signature of Anil Khakha on the *fardebayan*, Exhibit-1/1 signature of Praveen Lakra on the

fardebayan, Exhibit-2 signature of Anand Khakha on the inquest report, Exhibit-2/1 signature of Praveen Lakra on inquest report, Exhibit-3 Postmortem report, Exhibit-4 Formal FIR, Exhibit-5 Carbon copy of the inquest report.

6. On behalf of prosecution to prove the charge against the accused in oral evidence examined altogether 8 witnesses PW1- Anil Khakha (the informant), PW2- Anand Khakha, PW3- Manju Khakha, PW4- Monika Khakha, PW5- Dr. Vinay Kumar, PW6- Ram Shankar Patel, PW7- Bholam Ram and PW8- Pravin Lakra.

7. The statement of the accused under Section 313 of the Cr.P.C. was recorded who denied the incriminating circumstances in evidence against him and stated himself to be innocent.

8. The learned trial court after hearing the rival submissions of the parties passed the impugned judgment of conviction and sentenced as stated hereinabove.

9. Aggrieved from the impugned judgment of conviction and sentence, the instant criminal appeal has been directed on behalf of the appellant Bablu Tirkey.

10. We have heard the learned counsel for the parties and perused the materials available on record.

11. In order to decide the legality and propriety of the impugned judgment of conviction and sentence the evidence adduced on behalf of prosecution is reproduced hereinbelow for reappraisal:

11.1 **PW1- Anil Khakha (the informant)** in his examination-in-chief says Bablu Tirkey had been residing in house of wife of his brother as

a tenant for last 5-6 years. Along with him, his wife was also residing. Bablu Tirkey was confectioner. His wife also used to assist him in the work of confectionery. There was usual quarrel between Bablu Tirkey and his wife. Bablu Tirkey in intoxicated state of mind used to quarrel with her. One day Bablu Tirkey was missing from the house. For three days, door of his house was not opened. They made effort to open the door and went there, the door was found open from inside. Dasmi Baitha was found dead on the bed. There was mark of injury on her breast. He informed the police station. Police came and recorded his statement. It was read over and explained to him. He put his signature thereon. He identifies the same and on the *fardbeyan*, Praveen Lakra also put his signature as a witness. The same are exhibited as Exhibit-1 and Exhibit-1/1 respectively. He identified Bablu Tirkey in the dock.

In cross-examination, this witness says that **he came to know in regard to the occurrence after three days on opening the door, dead body was found and police was informed. He did not see the occurrence.**

11.2 **PW2- Anand Khakha** in his examination-in-chief says that he knows Bablu Tirkey for 5-6 years back. He was residing as a tenant in the house of the wife of his elder brother. The wife of Bablu Tirkey was also being residing with him whose name was Dasmi Tirkey. How she died, he is not aware. The dead body was found in her house. There was black mark on her neck. Bablu Tirkey was missing from the house when the dead body was found. Police carried the dead body of wife of Bablu Tirkey and two days thereafter, Bablu Tirkey came to the house, police nabbed him. The inquest report was prepared. He put his signature thereon. Another witness Praveen

Lakra also put signature. The same are marked as Exhibit-2 and Exhibit-2/1 respectively.

In cross-examination this witness says, **he came to know in regard to the occurrence from the wife of his elder brother. He did not go to the place of occurrence, rather his wife went to the place of occurrence. He, Anil Khakha, Praveen Lakra and one more person took the dead body to RIMS. He only heard in regard to the occurrence. Nothing was seen by him.**

11.3 **PW3- Manju Khakha** in her examination-in-chief says that she knows Bablu Tirkey. He was residing in the house of the wife of elder brother of Anil Khakha as a tenant. The name of wife of Bablu Tirkey was Dasmi Baitha. Three years ago, Dasmi Baitha died. **The dead body was found from the tenanted room. Bablu Tirkey and his wife both had been residing therein. How Dasmi Baitha died, he is not aware.**

11.4 **PW4- Monika Khakha**, in her examination-in-chief says that she also knows Bablu Tirkey. He had been residing in the adjoining house of Ashrita Khakha as a tenant along with his wife. Name of the Wife of Bablu Tirkey was Dasmi Tirkey. **She heard that Dasmi Tirkey died. The dead body was found in the house. On the date of occurrence whether Bablu Tirkey was in his house or not, she is not aware.** After this occurrence, she never met with Bablu Tirkey. Police interrogated him. She did not give such statement to police that on 6th December, 2011 in the morning Bablu Tirkey had left the house saying that he was going somewhere else and thereafter never came back. She did not see the occurrence.

11.5 **P.W. 5- Dr. Vinay Kumar** in his examination-in-chief says that on 6th December, 2011, he was posted as a Tutor in the Department of FMT, RIMS, Ranchi. On that day at 15.50 hours, he conducted the postmortem of the dead body of the deceased Dasmi Tirkey, wife of Bablu Tirkey of village Argora, PS Dhltahi, District Ranchi and found the following injuries:

Injuries: Abrasion fresh red in colour age of injury less than six hours from the time of death was-

I. 3 c.m. x 2 c.m. over back of right shoulder lateral part

II. $\frac{1}{2}$ x $\frac{1}{2}$ c.m. over left side of forehead lower part. 1 c.m. lateral to mid line

III. 2 c.m. x 1 c.m. over front of right knee lower part

IV. 3 c.m. x 1 c.m. over postero lateral aspect of left thigh upper part

V. 1 c.m. x 1 c.m. under the chin

Lacerated wound-

I. 2 x $\frac{1}{2}$ c.m. x soft tissue deep over left pinna lower part.

There is a contusion of:-

I. Left side of entire face

II. Over right cheek prominence

III. 5 x 4 c.m. area over chin

IV. In entire upper part of front of chest as lower part of front of neck

V. 5 x 4 c.m. area over right flank lateral aspect

VI. Diffused contusion on right fronto parieto temporal optical scalp and right temporally muscles.

Both side of brains are diffusely contused with pressure of subdural blood and blood clots defused in both sides. There is fracture of left third and fourth rib in middle doricular line lacerating left lung contusion of mesentery spleen is lacerated left chest cavity contains 150 c.c. and abdominal cavity contains 200 c.c. of blood and blood clots.

Stomach contains pasty material 50 c.m.

All the injuries were antemortem in nature caused by hard and blunt substance. Cause of death is combined effect of head injury as asphyxia and hemorrhage shock. Time elapsed since death is 36 hours +/- 6 hours from the time of postmortem examination. This postmortem report is in his pen and signature. He identifies the same marked Ext. 3.

11.6 **P.W.6- Ram Shankar Patel (investigating officer)** in his examination-in-chief says that he took over the investigation of this case on 10th December, 2011 and prepared the inquest report of deceased and received the postmortem of deceased then he also recorded the *fardebayan* of Anil Khakha. It is in his handwriting he identified the same marked Exhibit-3. The Formal FIR was prepared on the basis of the *fardebayan* by the clerk of Doranda Police Station. It bears signature of Fazal Ahmed then Station Officer In-charge of police station concerned. He identified the same marked Exhibit-4. Carbon copy of the inquest report is in his pen and signature marked Exhibit-5. He filed the charge-sheet on 23rd February, 2012.

In cross-examination this witness says that on the face, chin, cheek, breast, lip and there were several multiple injuries on the body of deceased. **Nothing incriminating article was recovered from the place of occurrence.**

11.7 **PW7- Bhola Ram**, in his examination-in-chief says that on 6th December, 2011, he was Sub-Inspector in Argora Police Station. He took over investigation of this case on 6th December, 2011. After having perused the *fardebayan*, he proceeded to the place of occurrence and investigated on pointing out of informant Anil Khakha. He recorded the restatement of Anil

Khakha and thereafter recorded statement of Anand Khakha, Monika Khakha, Manju Khakha. On 8th December, 2011, he was transferred and investigation was handed over to Rama Shankar Patel.

In cross-examination, this witness says that **he did not prepared the site plan of the place of occurrence.**

11.8 **PW8- Pravin Lakra**, in his examination-in-chief says that the inquest report of the deceased was prepared. He put the signature thereon. He identified his signature marked Exhibit-2/1. **He does not know how Dasmi Tirkey died and by whom she was murdered. This witness was declared hostile and in cross-examination by prosecution he denied the statement given to the investigating officer under Section 161 of Cr.P.C.**

12. **The prosecution case is based on circumstantial evidence.** As per FIR case Bablu Tirkey who had been residing as a tenant in the house of informant for last 15-16 years had left the house in morning of 06.12.2011 saying that he was going to respond the call of nature and did not come back. When his wife had not opened the door of the house, informant alongwith the persons of locality went there and door was found open from inside and he saw the deadbody of Dasmi Baitha, wife of Bablu Trikey in injured condition having multiple injuries. It is also further stated in the FIR that on 05.12.2011 Bablu Trikey was with his wife over the day closing the door from inside and remained there over a night and in the morning 06.12.2011 left the house. **The informant was examined as PW1. PW1 Anil Khakha deviates from the contents of FIR. He says that Bablu Trikey had been residing as a tenant in the house of the wife of his elder brother alongwith his wife Dasmi Baitha. He also says that door of the**

room of Bablu Trikey was closed for three days. He alongwith persons of the locality went to the room of Bablu Trikey and found the door open from inside and deadbody of wife of Bablu Trikey was found on the bed.

Further in cross-examination this witness says that **he came to know after three days on opening the door in regard to the occurrence. In view of the testimony of PW1 the contents of the written information *fardbeyan* Exhibit-1 is not found proved rather this witness PW1 gives contrary statement to the contents of the written information/*fardbeyan* therefore, the testimony of this witness PW1- Anil Khakha is to be evaluated in view of testimony of the other prosecution witnesses.**

13. **PW2- Anand Khakha, PW3- Manju Khakha, PW4- Monika Khakha** all these three witnesses have stated that Bablu Trikey had been residing alongwith his wife as a tenant in the house of wife of elder brother of Anil Khakha. They saw the deadbody in the tenanted room of Bablu Trikey. **There is discrepancy in statement of these witnesses in regard to the missing of appellant Bablu Trikey.** PW2- Anand Khakha says that Bablu Trikey was missing from the house from the very day and the deadbody was found. PW3- Manju Khakha has shown her unawareness in regard to the occurrence and also in regard to missing of Bablu Trikey. PW4- Monika Khakha has also expressed her unawareness whether Bablu Trikey was in his tenanted house alongwith his wife on the date of occurrence. She has also stated that police had interrogated him and she did not say to the police officer that on 06.12.2011 in the morning Bablu Tirkey has left the house saying that he was going somewhere else and thereafter

never came. PW8- Pravin Lakra though has identified his signature on the inquest report but he has turned hostile and has denied the statement given to the investigating officer under section 161 of Cr.PC.

14. **Therefore, from testimony of all these prosecution witnesses only this fact is proved that appellant Bablu Trikey had been residing alongwith his wife Dasmi Baitha in a tenanted house of the wife of elder brother of Anil Khakha for last 5 or 6 years back. No one prosecution witness has proved that the appellant Bablu Trikey was seen by any of them prior to the date of occurrence or on the date when the deadbody of wife of Bablu Trikey was found bearing multiple injuries on the bed.** Infact all the prosecution witnesses, even informant PW1- Anil Khakha has stated that he had seen the door of Bablu Trikey closed for three days and after three days when some doubt was created, with the help of persons of locality, went to the room of Bablu Trikey and door was opened which was not closed from the inside and found the deadbody of wife of Bablu Trikey. Therefore, **there is major contradiction in regard to presence of the appellant Bablu Trikey at the tenanted room prior the occurrence or before recovery of the deadbody of wife of appellant Bablu Trikey in his tenanted room.**

15. From the prosecution evidence this fact is proved that the homicidal death of Dasmi Baitha wife of Bablu Trikey which is well corroborated with the medical evidence of **PW5. Dr. Vinay Kumar** who has opined that he had found several abrasions, lacerated wound, contusion as such multiple injuries on the body part of deceased Dasmi Baitha. **Certainly the homicidal death of wife of Bablu Trikey, appellant herein was**

caused in his tenanted house. But there is no evidence in regard to presence of Bablu Trikey in the tenanted room alongwith his wife before the day when the deadbody of Dasmi Baitha was found in his tenanted room.

16. Further on behalf of prosecution investigating officer Bhola Ram was examined as PW7. This witness inspected the place of occurrence but he did not prepare the site plan of the place of occurrence. PW6- Ram Shankar Patel who is the main investigating officer of this case who has recorded the statement of the prosecution witnesses and also prepared the inquest report and got the postmortem done of deceased he has stated that he did not find any incriminating article in the house wherein the deadbody of deceased was found. **None of the two investigating officers had taken the blood stained soil from the place of occurrence. Neither the incriminating article was recovered nor the blood stained soil was taken in possession in his custody by the investigating officer and presence of the appellant on the fateful night of homicidal death of Dasmi Baitha is not proved by prosecution witnesses.**

17. Unless and until, the prosecution has proved beyond reasonable doubt its case, the burden of proof upon the accused under section 106 of Evidence Act cannot be shifted. **Herein from the prosecution evidence, the presence of the appellant prior or on the fateful night of the homicidal death of wife of appellant in his tenanted room being not proved, the burden of proof under section 106 of Evidence Act cannot be shift upon the appellant-convict.** The learned trial court had based the conviction of the appellant on the sole ground that appellant-convict has not given the

explanation of the homicidal death of his wife in the tenanted room. **But the learned trial court did not record any finding in regard to the presence of the appellant on the date of occurrence or prior to date of occurrence.** The finding recorded by the trial court in regard to the presence of the appellant is not based on the prosecution evidence rather same is based on the surmises and conjectures which is found perverse.

17.1. The Hon'ble Apex Court in "**Joydeb Patra & Ors. v. State of West Bengal**" AIR 2013 SC 2878 held:

*"8. We are afraid, we cannot accept this submission of Mr. Ghosh. This Court has repeatedly held that the burden to prove the guilt of the accused beyond reasonable doubt is on the prosecution and it is only when this burden is discharged that the accused could prove any fact within his special knowledge under Section 106 of the Indian Evidence Act to establish that he was not guilty. In **Sucha Singh v. State of Punjab, (2001) 4 SCC 375 : (AIR 2001 SC 1436 : 2001 AIR SCW 1292)**, this Court held:*

"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 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."

*Similarly, in **Vikramjit Singh v. State of Punjab, (2006) 12 SCC 306 : (2006 AIR SCW 6197)**, this Court reiterated:*

"Section 106 of the Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule, e.g., where burden of proof may be imposed upon the accused by reason of a statute."

17.2 The Hon'ble Apex Court in "**Rajinder Singh v. State of Haryana**" (2013) 15 SCC 245 held:

"18. Section 106 of the Evidence Act does not relieve the burden of the prosecution to prove guilt of the accused beyond reasonable doubt but where the prosecution has succeeded to prove the facts from which a reasonable inference can be drawn regarding the existence of certain other facts and the accused by virtue of special knowledge regarding such facts fail to offer any explanation then the court can draw a different inference."

17.3 The Hon'ble Apex Court in "**Sabitri Samanta Ray v. State of Odisha**" 2022 Livelaw (SC) 503 held:

"17. Having perused the relevant facts and contentions made by the appellants and the respondent herein, in our considered opinion, the key issue which requires determination in the instant case is whether the prosecution has successfully discharged its burden of proof, and that the chain of events has been successfully established so as to attract application of Section 106 of the Evidence Act."

18. Section 106 of the Evidence Act postulates that the burden of proving things which are within the special knowledge of an individual is on that individual. Although the Section in no way exonerates the prosecution from discharging its burden of proof beyond reasonable doubt, it merely prescribes that when an individual has done an act, with an intention other than that which the circumstances indicate, the onus of proving that specific intention falls onto the individual and not on the prosecution. If the accused had a different intention than the facts are specially within his knowledge which he must prove.

19. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events. [See Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681]”

18. In the case in hand which is based on circumstantial evidence the chain of the events has not been successfully established by the prosecution evidence and the learned trial court has wrongly shifted the burden of proof upon the appellant-convict to explain how the homicidal death of his wife was caused in his tenanted room without

proving of his presence at the place of occurrence before or on the date of occurrence.

18.1 The Hon'ble Apex Court also in “*Rangammal v. Kuppuswami*” AIR 2011 SC 2344 held:

“20. Since the High Court has misplaced burden of proof, it clearly vitiated its own judgments as also of the courts below since it is well established dictum of the Evidence Act that misplacing burden of proof would vitiate judgment. It is also equally and undoubtedly true that the burden of proof may not be of much consequence after both the parties lay evidence, but while appreciating the question of burden of proof, misplacing of burden of proof on a particular party and recording findings in a particular SC2351 way definitely vitiates the judgment as it has happened in the instant matter. This position stands reinforced by several authorities including the one delivered in the case of Koppula Koteshwara Rao v. Koppula Hemant Rao, 2002 AIHC 4950 (AP).”

19. Only on the basis of the strong suspicion, the FIR of this case was lodged on the ground that there was usual quarrel between the appellant Bablu Tirkey and his wife deceased Dasmi Baitha on the issue of demand of money to drink wine or other trivial issues and the appellant-convict who was not seen at his tenanted house wherein he had been residing along with his wife for three days back, it arose the doubt in the mind of the informant and other persons of the locality who went to the tenanted room and found the dead body of Dasmi Baitha bearing multiple injuries. **As such there is only suspicion, but there is no cogent evidence in regard to the presence**

of the appellant at the place of occurrence on or before the date of occurrence and even nothing incriminating article was recovered from the place of occurrence. The chain of the circumstances as the case is based on circumstantial evidence is not found complete. The suspicion, however, strong may be cannot take the place of proof.

19.1 The Hon'ble Apex Court in “*Narendrasinh Keshubhai Zala v. State of Gujarat*” 2023 Live law SC 227, “*State through C.B.I v. Mahender Singh Dahiya*” AIR 2011 SC 1017 held:

*“19.Undoubtedly, this case demonstrates the actions of a depraved soul. The manner in which the crime has been committed in this case, demonstrates the depths to which the human spirit/soul can sink. But no matter how diabolical the crime, the burden remains on the prosecution to prove the guilt of the accused. Given the tendency of human beings to become emotional and subjective when faced with crimes of depravity, the Courts have to be extra cautious not to be swayed by strong sentiments of repulsion and disgust. It is in such cases that the Court has to be on its guard and to ensure that the conclusion reached by it are not influenced by emotion, but are based on the evidence produced in the Court. **Suspicion no matter how strong cannot, and should not be permitted to, take the place of proof.** Therefore, in such cases, the Courts are to ensure a cautious and balanced appraisal of the intrinsic value of the evidence produced in Court.”*

20. In view of the above analysis of the evidence on record, we are of considered view that the impugned judgment of conviction and order of sentence passed by the learned trial court is based on the perverse finding

and the same needs interference. Accordingly, this criminal appeal deserves to be allowed.

21. This criminal appeal is, hereby, **allowed**. The impugned judgment of conviction and order of sentence passed by the court below is, hereby, **set aside**.

22. Let the appellant be released forthwith if not wanted in any other case.

23. Let the record of learned trial court be sent back alongwith copy of judgment for necessary compliance.

(Subhash Chand, J.)

Per Ananda Sen, J. : I agree

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated: 01/05/2024

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