AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 715 of 2023

(Arising out of the Judgment and Order of conviction on dated 27th of June, 2023 passed by Smt. Sasmita Parhi, 3rd Addl. Sessions Judge, Bhubaneswar in Crl. Trial No. 268 of 2013, for the offence under section 302/201 of the Indian Penal Code, 1860)

Ramamurty Gamango .... ***Appellant***

Mr. A. P. Bose, Advocate

-versus-

State of Odisha .... ***Respondent***

Mr. P. B. Tripathy,
Addl. Standing Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. SAHOO

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 30.10.2024

Chittaranjan Dash, J.

1. The Appellant, namely Ramamurty Gamango, faced the trial on the charges under Section 302/201 of the Indian Penal Code (in short, hereinafter referred to as "IPC") before the 3rd Additional Sessions Judge, Bhubaneswar on the charge of murder of his wife, Sashirekha Gamango and for disappearing the evidence to screen himself as offender, wherein, the learned Court found him guilty

therefor and convicted therein. Under section 302 IPC, the Appellant has been sentenced to undergo imprisonment for life and to pay a fine of ₹50,000/-, in default, to undergo further rigorous imprisonment for one year and under section 201 IPC, he has been sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹10,000/-, in default, to undergo further rigorous imprisonment for six months and with further direction that both sentences shall run concurrently.

2. The prosecution case, in brief, is that the Appellant used to reside with his wife, Sashirekha Gamango, in Qr. No. D.S. 18/1, MLA colony, Bhubaneswar since 1990. On the morning of 29.08.1995, Sashirekha rose from bed late, causing her husband to express his displeasure. It is alleged that at around 9 a.m., while the Appellant was reading the newspaper in the bedroom, he heard his wife scream. He rushed to the bathroom with Nila (the kitchen boy), Kishore Behera, and Ramachandra Panigrahi. They found the bathroom door locked from inside and smoke coming out of the room. Water was poured through the window and Kishore and others forcibly opened the door and found Sashirekha, the wife of the Appellant committed suicide by burning herself.

3. On the written report of the Appellant, the IIC, Kharavelnagar Police Station registered a U.D. Case No. 6/1995 relating to the death of the wife of the Appellant, Sashirekha Gamango due to burn injuries. P.W.10, the then S.I. of Police, Kharvelnagar Police Station namely Kishore Chandra Patsani proceeded with the enquiry in the said U.D. Case. In course of the enquiry, he examined the Informant, namely, Ramamurty Gamango, the present Appellant, visited the spot and prepared the spot map

(Ext.15). He sent intimation to the S.O., DFSL, Khurda and Chief Medical Officer, Capital Hospital, Khurda to depute F.M.T. Specialist to the spot. He made requisition to the S.D.M., Bhubaneswar to depute an Executive Magistrate to attend inquest over the dead body of the deceased, Sashirekha. On his intimation, Sri Bibhutibhusana Rath, the Scientific Officer and his team along with the Assistant Photographer Durga Prasad Nayak visited the spot, conducted inspection, took photographs of the deceased and the spot. Dr. S. K. Mishra, the F.M.T. Specialist of Capital Hospital, Bhubaneswar also visited the spot and inspected the dead body. P.W.10 received the spot visit report of the Scientific Officer under Ext.8. P.W.10, in course of the enquiry held inquest over the dead body of the deceased under Ext.1 and dispatched the dead body to the Capital Hospital, Bhubaneswar for post mortem. He issued injury requisition for medical examination of the Appellant, Ramamurty Gamango and the inmate namely Kishore Ch. Behera vide Exts. 6 & 7 respectively. During his spot visit, P.W.10 seized the incriminating materials and prepared seizure list under Ext.2. He too received the injury report in respect to the injured Ramamurty Gamango, the Appellant and the inmate, Kishore Ch. Behera. P.W.10 also seized the original command certificate, blood sample of the deceased, letter of the Specialist, F.M.T., Capital Hospital, Bhubaneswar and other incriminating articles under seizure list Ext.5. He also received the P.M. report. Subsequently, P.W.10 made query to FMT, Specialist, Capital Hospital, Bhubaneswar for his opinion as regards the mode and time of death of the deceased and received the opinion of the doctor. He too received one photocopy of the chemical examination report from SFSL vide M.O. No.5259 dated 01.09.1995.

P.W.10 from his enquiry coupled with the spot visit, the mark of injury on the dead body so also injuries received by the Appellant and the report sent by the SFSL found sufficient material that the death of the deceased is one of murder and disappearance of evidence. Accordingly, P.W.10 submitted a report to the IIC under Ext.17 wherein the IIC, Kharavelnagar P.S. registered the P.S. Case No.270 dated 01.09.1995 under Sections 302/201 of the Indian Penal Code and on the direction of the IIC, P.W.10 himself proceeded with the investigation. However, as per the direction of the S.P., Khurda, Bhubaneswar, he handed over the charge of investigation to Rajnish Ray, P.W.11, the then Addl. Superintendent of Police, on 01.09.1995.

4. Before formally assuming the charge of investigation, P.W.11 had visited the spot of the alleged incident, where he observed the deceased's body completely burned, including the soles of the feet, face, and hands. A bleeding injury was noted on the back of the deceased's head, while the bathroom, where the body was found showed no signs of tampering or violence. The soot deposit patterns on the bathroom door and objects nearby suggested no disturbance, indicating a staged scene. Broken glass pieces beneath the body and intact bangles on the deceased's wrists, along with undisturbed surroundings, pointed to foul play. During the investigation, P.W.11 discovered injuries on the Appellant's hand, which the Appellant attributed to Erythema, a claim later dismissed by medical examination. The deceased was pregnant, and rumors of the Appellant suspecting her fidelity surfaced during enquiries. Based on forensic reports, circumstantial evidence, and the absence of defensive injuries or signs of a struggle, P.W.11 concluded that

the death was homicidal, leading to the submission of the charge sheet under Sections 302 and 201 IPC.

5. The case of the defence is one of complete denial and false accusations. The further case of the defence is that his wife committed suicide and he has been falsely entangled in the case due to political rivalry.

6. To bring home the charge, the prosecution examined 12 witnesses in all. P.W.1, Narasingha Behera is an inmate of the quarter and a post-occurrence witness; P.W.2, Nilakantha Mulia is the cook of the Appellant; P.W.3, Lalit Ranjan Gomango, is the son of the deceased and the Appellant; P.W.4, Dr. Nagaja Nandan Das, is the medical officer who examined the Appellant; P.W.5, Mustafa Khan, is the police constable who escorted the dead body of the deceased to Capital Hospital for P.M. Examination; P.W.6, Ashok Kumar Bisoi, is the S.I. of Police who assisted the I.O. during course of investigation; P.W.7, Dr. Pradipta Das is the medical officer who examined the Appellant and found injury on his right hand; P.W.8, Bibhuti Bhushan Rath, is the scientific officer of DFSL, Khorda; P.W.9, Dr. Santosh Kumar Mishra, is the medical officer who conducted the P.M. Examination over the deceased's dead body; P.W.10, Kishore Chandra Patsani, is the enquiring officer as well as the Informant; and finally, P.W.11, Rajnish Rai, is the then A.S.P., who conducted investigation after the case was registered and submitted the chargesheet.

The defence on the other hand, examined one witness, D.W.1, Kishore Chandra Behera, who was an inmate of the house.

7. The learned trial Court having believed the evidence of the prosecution witnesses found the prosecution to have proved its case beyond all reasonable doubt and held the Appellant guilty and convicted him awarding sentence as described above.

8. Mr. A. P. Bose, learned counsel for the Appellant, vigorously argued that the prosecution has failed to establish its case beyond a reasonable doubt, thereby warranting the acquittal of the Appellant. Mr. Bose contended that there was no history of animosity or discord between the Appellant and the deceased, and the prosecution has not established a credible motive for the alleged murder. According to Mr. Bose, given that the entire case is based on circumstantial evidence, the absence of motive seriously undermines the prosecution's narrative and casts doubt on the alleged intent behind the incident. He argued that without a clear motive, the prosecution's case lacks the foundational support required for conviction under Section 302 IPC. Mr. Bose further argued that the FIR's reference to the absence of Carboxy-haemoglobin (COHb) in the deceased's blood was not supported by any documentary evidence from the SFSL report, leaving the allegation unsubstantiated. He emphasized that without concrete proof of COHb absence, the claim that the deceased inhaled smoke during a homicidal fire becomes questionable. Furthermore, Mr. Bose argued that when charges are framed under Section 302 IPC, it is incumbent upon the prosecution to conclusively prove that the death was homicidal. In this case, the prosecution has not produced definitive evidence to establish that the death was a result of intentional killing rather than an accidental or self-inflicted injury.

Referring to the testimony of P.W.9, who conducted the post-mortem examination, Mr. Bose highlighted that the medical opinion merely suggested that death was caused by asphyxia due to inhalation of smoke. Importantly, the medical opinion was inconclusive as to whether the death was homicidal or suicidal. Mr. Bose elaborated that "subeoxia," or very low oxygen concentration, could occur in any fire, accidental or otherwise, thereby casting doubt on the prosecution's assertion of homicidal intent. He contended that without a clear indication of homicidal action, the prosecution has failed in its duty to eliminate all other possibilities, as required in cases based on circumstantial evidence. Additionally, Mr. Bose raised concerns over the quality of the investigation, arguing that it was perfunctory at best. He highlighted contradictions between the Scientific Officer's report and the Investigating Officer's (P.W.11) observations during the spot visit. These inconsistencies, he argued, create significant doubt regarding the reliability of the prosecution's evidence. He pointed out that the presence of an ante-mortem injury on the back of the deceased's head could reasonably have resulted from an accidental strike within a closed room during the course of a self-inflicted act, rather than as an intentional assault by the Appellant. In light of these ambiguities, Mr. Bose argued that the possibility of suicide cannot be ruled out and should be considered a viable explanation.

Finally, Mr. Bose underscored that in criminal jurisprudence, when two plausible interpretations are possible, the one favoring the accused must be accepted. He argued that the defence's theory of suicide is as credible as the prosecution's theory of homicide and, therefore, should lead to the benefit of the doubt being given to the

Appellant. On these grounds, Mr. Bose submitted that the evidence does not support a conviction under Sections 302 and 201 IPC and that the Appellant is entitled to an acquittal. Mr. Bose has relied on the decisions in **Darshan Singh vs. State of Punjab** reported in **[2024] 1 S.C.R.**; **Bindeshwari Prasad Singh @ B.P. Singh vs. State Of Bihar (Now Jharkhand)** reported in **AIR 2002 SC 2907**; **Trimukh Maroti Kirkan vs. State of Maharashtra** reported in **2006 (10) SCC 681**; **Basheera Begam vs. Mohammed Ibrahim and Ors.** reported in **(2020) 11 SCC**.

9. Mr. P. B. Tripathy, learned ASC for the State, argued that the evidence overwhelmingly points toward a case of homicide rather than suicide. He submits that the testimonies of key witnesses, including those who described hostile interactions between the Appellant and the deceased, reveal a strained relationship marked by frequent quarrels and verbal abuse. This friction culminated on the morning of the incident, where the Appellant's behaviour towards the deceased created an environment of fear and potential harm. P.W.2, the cook, testified to abusive language used by the Appellant towards his wife, indicating a level of animosity inconsistent with the defence's portrayal of a peaceful household. Mr. Tripathy further submits that P.W.8, the forensic expert, noted the absence of forced entry marks on the bathroom door, which contradicts the defence's claim that D.W.1 and the Appellant struggled to gain entry by force. This discrepancy suggests that the bathroom door may not have been locked or bolted, thereby undermining the theory of suicide and raising suspicion of foul play.

He further emphasised on the findings of P.W.9, the medical officer, who documented ante-mortem injuries i.e. a scalp hematoma

on the deceased, which suggests she was incapacitated before the fire was set. He asserts that the deceased was overpowered before being burned, rather than self-immolating herself. The report also notes soot and blood in the trachea, indicating that the deceased was breathing when the fire started, thus assuring that the deceased may have died due to burning but she was not conscious. Mr. Tripathy further contends that the Appellant's immediate recourse to calling the police, rather than seeking medical assistance, signals a lack of urgency or care for the deceased's wellbeing, pointing instead to premeditation. The decision not to call an ambulance highlights that the Appellant may have already assumed or been aware of the deceased's fate. Their reported injuries of the Appellant and D.W.1, were minor, raising doubt as to the extent of their claimed efforts to break down the door or extinguish the fire. Such minor abrasions do not align with the intense exertion that would be expected from a prolonged rescue attempt, thereby casting further doubt on the defence's narrative. Overall, Mr. Tripathy points out that the Appellant has failed to provide any plausible explanation under Section 106 of the Evidence Act and further asserts that the totality of evidence, including forensic findings, witness testimonies, and inconsistencies in the defence's account, establishes a strong chain of circumstantial evidence pointing toward homicide, and therefore urges this Court to uphold his conviction. The prosecution has relied on the decisions in **Vijay Kumar Arora vs. State Govt. of NCT of Delhi** reported in **(2010) 45 OCR (SC) 634**, and **Satish Setty vs. State of Karnataka** reported in **2016 Cri.L.J. 3147**.

10. Here is a peculiar case before us where the death appears to be one out of burn injuries. However, the circumstances appearing in

the scene of occurrence and the background facts indicate that the deceased before being affected by the burn injury, had no control over herself and almost helpless, having suffered injuries to the vital part of the body. She died from the burn injuries set out on her while in moribund condition. As a result, the circumstances forthcoming in the case neither speaks of a complete case of suicidal or homicidal death. However, various facts emerge including the conduct of the Appellant and the testimony of the prosecution witnesses so also the only defence witness leads to the conclusion that the death is one of homicidal nature.

At the outset it is felt expedient to mention that from the sequence of events as apparently disclosed in the case record every endeavor has been made in the case to suppress material evidence besides the inordinate delay caused in bringing the case to trial so much so that the incident that took place in the year 1995 wherein the Appellant who happened to be an Ex-MLA caused his appearance only after 19 years upon his release on bail i.e within three months of the incident. Surprisingly, not a single witness has been cited from the side of the family of the deceased though her parents, brothers and sister were present at the relevant time. Leaving the official witnesses, all others have turned hostile as they were directly or indirectly interested in favour of the Appellant. Even the Doctor and Scientific team have preferred not to examine the case with utmost clarity. Had the investigation not been in the hand of P.W.11 (An IPS Officer), the matter would have been closed with the U.D. enquiry only. With this factual background, we venture to evaluate the evidence to answer whether the trial Court is justified in holding the Appellant guilty.

11. Having regard to the arguments advanced by the learned counsel for the respective parties, while it is incumbent for this Court to examine first the nature of death of the deceased in view of the fact that the Appellant stood charged under Section 302 Indian Penal Code, the medical evidence in the case being inconclusive with regard to the nature of death as to whether suicidal or homicidal, a greater responsibility is bestowed upon this Court to examine the evidence and give a conclusive finding from the circumstances as to the nature of death. In this regard although the evidence of P.W.8, the Scientific Officer so also P.W.9, the Medical Officer carries importance, other circumstances appearing in the case coupled with the evidence of the witnesses being equally important are required to be taken into account to deduce the conclusion. Accordingly, we find it necessary to deal with the evidence in totality.

12. P.W.1, a resident of the MLA colony quarters where the incident occurred, testified that he knew the Appellant well and had been residing in the outhouse of the same quarters where the Appellant and his family were residing. According to him, on the morning of the incident, which took place on Ganesh Chaturthi sometime in August 1995, he invited the Appellant to accompany him to the temple. However, the Appellant chose to stay behind, allowing his son to go instead. They returned from the temple around 11 a.m. and found some police personnel and a crowd gathered at the Appellant's quarters. P.W.1 then learned that the Appellant's wife had allegedly set herself ablaze in the bathroom. He witnessed the burnt body being recovered by the police, who, along with an Executive Magistrate, conducted an inquest in his presence. The police documented the incident in an inquest report, which P.W.1

signed as Ext.1. Furthermore, they seized several items from the scene, including a plastic jerrican containing kerosene, broken bangles, a gold chain, a matchbox, an iron bucket, a soap case, and broken glass pieces, and prepared a seizure list marked as Ext. 2.

During cross-examination, P.W.1 stated that upon returning, he heard that the deceased had allegedly committed suicide by bolting the bathroom door from the inside. He noted that local residents had broken the bathroom's ventilator glass, when they failed to open the door, in an attempt to enter after noticing smoke and a kerosene smell coming from the bathroom. He affirmed that he had known the Appellant and the deceased for thirty years and believed that their relationship had been cordial. P.W.1 reiterated his belief that the deceased had committed suicide by pouring kerosene, having written this endorsement on the inquest report (Ext.1), indicating no other cause of death.

13. P.W.2, the cook employed by the Appellant, testified that on the morning of Ganesh Chaturthi, he and the Appellant noticed smoke emanating from the bathroom. They then broke open the door to find that the Appellant's wife had allegedly set herself on fire by pouring kerosene. P.W.2 stated that he had not observed any quarrel between the couple immediately prior to the incident.

In cross-examination by the prosecution, P.W.2, however, acknowledged previous statements made by him to the police indicating that there had been an argument between the Appellant and his wife the night before and again on the morning of the incident. He detailed that the Appellant had verbally abused his wife, allegedly due to her getting up late on the festive day, and even used obscene language towards her while P.W.2 was retrieving vegetables

from the refrigerator. Following the argument, he observed the Appellant raising a loud cry, after which both he and one Rath Babu tried to extinguish the fire by throwing water through the bathroom's ventilator. Meanwhile, the Appellant and Kishore (D.W.1) managed to break down the bathroom door, where they found the deceased's body badly burned and a plastic jerrican containing some kerosene. P.W.2 revealed that he had purchased the kerosene and kept it in a jar under the bed, which he admitted was an unusual storage choice.

During cross-examination by the defence, P.W.2 mentioned that the Appellant and the deceased generally had a good relationship, with the deceased often participating in household tasks like cooking and daily worship. However, he admitted that while the deceased had a generally calm temperament, she would occasionally react strongly to mistakes. He confirmed that he stated in his earlier statement that regular quarrels occurred between the Appellant and the deceased, and on the day of the incident, the Appellant had berated his wife for waking up late.

14. P.W.3, the son of the deceased and the Appellant, testified that on the day of the incident, which was Ganesh Chaturthi in 1995, he went to the temple with P.W.1 around 8:30 a.m. Upon returning at approximately 11:00 a.m., he found that his mother had allegedly committed suicide by setting herself on fire in the bathroom, using kerosene and locking the door from the inside. Inside the bathroom, he observed a plastic jerrican with some kerosene and a matchbox. P.W.3 noted that he does not remember seeing his mother's burned body, attributing this to his young age at the time of the incident.

In cross-examination by the prosecution, P.W.3 confirmed that his mother, the deceased, was the Appellant's second wife, as his

father's first wife had passed away. He also stated that he had not observed any serious quarrel between his parents and denied that his father had ever verbally abused his mother over her occasional late mornings. He mentioned that he still visits his father, who resides in their village.

During the defence's cross-examination, P.W.3 explained that the Government quarters were allocated to his father due to his position as an MLA, and that his parents generally had a good relationship. He acknowledged that his father married the deceased after his first wife's death. However, this account contrasts with his statement under Section 161 of the Criminal Procedure Code, where he previously informed the police that he had witnessed quarrels between his parents before he left for the temple. This inconsistency suggests a possible lack of clarity or memory about the events from his childhood.

15. P.W.7, a Medical Officer at the Casualty Capital Hospital in Bhubaneswar, testified that on 29.08.1995, he examined Mr. Ram Murty Gamango, the Appellant, upon police requisition. During the examination, he made following observation vide Ext. 6/1:

> "1. Abrasion on the dorsal aspect of right middle finger in the proximal 1/3" of size 1/4" inch × 1/6" inch.
>
> 2. Abrasion on the dorsal aspect of right ring finger in proximal 1/3" of size 1/6" inch × 1/6" inch."

P.W.7 observed that both the injuries were simple in nature and could have been caused by hard and blunt object, age of injuries within 48 hours, from the time of his examination which is 4:45 P.M. The identification mark is one dimple scar mark below right zygomatic area.

Later that day, at 5:00 p.m., P.W.7 examined Kishore Chandra Behera (D.W.1) and found the following observations vide Ext. 7/1:

> "Partial burning of hairs just above the forehead and on the left parietal region, which were simple in nature and could have been caused by fire, age of injuries within 12 hours from the time of his examination. The identification mark is one black mole above the inner end of the left eyebrow on the forehead"

In cross-examination by the defence, P.W.7 stated that the abrasions mentioned in Ext.6/1 could have occurred if the Appellant had come in contact with a wall, and the partial burning on D.W.1's hair noted in Ext.7/1, could have been caused by contact with fire while attempting to extinguish a fire.

16. P.W.8, the Scientific Officer from the District Forensic Science Laboratory (D.F.S.L.), Khurda, testified that on 29.08.1995, he, along with his staff, arrived at the crime scene, in response to a requisition from the I.O. Upon arrival, he observed that the body of the deceased was completely burnt, with most part of the upper skin was completely burnt. Her garments were mostly burnt, and a noticeable swelling was present on the right side of her forehead.

Additionally, P.W.8 noted a white jerrycan, partially burnt except for its lower part, which contained a small quantity of kerosene and was found near a washing machine. An iron bucket and a plastic mug were located close to the legs of the deceased, and broken bangles were scattered across the bathroom floor. He further made the following observation:

> 1. No mark of violence was detected on the door frame, door bolt and door of the bathroom.

2. No marks of tampering was noticed on the outer part of the door bolt or inside the door bolt.

3. No marks of violence found on the four walls of the bathroom.

4. The articles of the bathroom were found intact and undisturbed, though iron bucket and plastic mug were very close to the left region of the leg.

5. Broken pieces of glass of ventilator of the bathroom were detected beneath of the dead body and broken glass bangles were found lying scattered on the floor of the bathroom.

6. No injury was detected on the dorsal surface of the deceased i.e. the back side of the deceased and on the wrist area.

7. There was uniform smoke deposit all over the wall of the bathroom and on the bolt of the door of the bathroom. The bolt was found in open condition.

8. There was uniform smoke deposit in the inner portion of the door frame.

9. The colour paint of the bath room door (outside) was swollen and bulged, but inside part of that door was less effective to heat than outside.

17. P.W.9, the Medical Officer in F.M.T. at Capital Hospital, Bhubaneswar conducted the post-mortem examination of the deceased along with Dr. Ashok Ku. Pattnaik. He found the following:

EXTERNAL INJURIES –

a) The scalp hair was burnt (partly burnt and singed at places, longest at back of head).
b) Burn injuries covering all over body surface 100% with epidermal and demo-epidermal, burns mostly affecting deeper tissues, skin surface absent with tags of dark skin on the body
c) Charred skin flaps present on the hands
d) Lacerated wound 1/4th x l/4th x scalp deep on the back of head 2” right of midline.

ON DISSECTION –

a) Sooty & blood lined mucous present on trachea
b) Scalp hematoma 1" x 1" dia on back of head, right to midline, corresponding to External Injury No.2
c) Uterus enlarged containing foetus-17 c.m. long; 200 g.m., Sex- Male with intact amniotic sac.

Opinion: (i) The injuries were antemortem in nature (ii) The cause of death was due to 100% burn of body surface (iii) Time since death - within 4 to 12 hours from the time of post-mortem examination i.e. 4.15 P.M. (iv) The deceased was 14-16 weeks pregnant at the time of death.

THE I.O. MADE FOLLOWING QUERIES ON 01.09.1995 –

a) To ascertain the mode of death of the deceased either asphyxia or shock resulting put of burn.
b) To ascertain the approximate time of death with reasonable + and - hour.

Opinion: The mode of death was asphyxia and time since death was 4 to 12 hours as mentioned in the report vide Ext. 10/1

THE I.O. MADE FURTHER QUERY ON 04.09.1995 AS FOLLOWS –

a) To ascertain if the asphyxia was due to throttling/ strangulation or suffocation arising out of the smoke produced by burning
b) To ascertain if the cause of death was suicidal/ homicidal or accidental.

Opinion: The mode of death was asphyxia (shock and subeoxia) was due to suffocation resulting from inhalation of smoke from combustion. The manner of death was not accidental; however, the findings were not conclusive to opine whether the death was homicidal or suicidal. The query of the I.O. is marked Ext. 11. Ext. 12 is the reply.

18. The sole defence witness examined on behalf of the Appellant namely Kishore Chandra Behera cited as D.W.1, is an inmate of the house. He deposed on oath that the incident occurring

around 7:30 a.m. on Ganesh Chaturthi. He explained that on that morning, while he was heading to the bathroom, the wife of the Appellant, Mrs. Gamango, restrained him, indicating she wanted to use the bathroom herself. She entered and bolted the door from inside. Shortly after, smoke started emanating from the bathroom, and he heard her shouting. D.W.1 attempted to open the bathroom door but was unsuccessful, so he called for the Appellant, who was in the lobby talking to two other individuals. Together, D.W.1 and the Appellant forced open the door after about 10 minutes, breaking the bolt in the process. Upon entering, they saw the deceased lying on the bathroom floor, her clothing aflame. D.W.1 tried to extinguish the fire with a blanket, and the Appellant sustained hand injuries while assisting. D.W.1's own hair and eyebrows were singed as he tried to put out the fire.

After seeing that the wife of the Appellant was dead, the Appellant went to the police station. D.W.1 remained at the scene as neighbors and approximately 30-40 people gathered. Although many people arrived, none of the MLA's nearby family members came forward. D.W.1 stated that he then poured water on the body, and when the police arrived, they conducted an investigation, later sending both him and the Appellant for medical examination. D.W.1 also sustained an injury to his left hand. He was not present at the time of the inquest but signed the injury report as Ext. A.

19. For proper appreciation of the evidence, it is imperative to examine the evidence in the clear and chronological order taking into account the testimonies presented by both the prosecution and the defence which would allow the detailed understanding of the

circumstantial evidence surrounding the tragic death of the deceased and its connection with the Appellant.

20. Starting with P.W.3, who is none but the son of the deceased and the Appellant examined under oath during the trial in 2013 claimed that he did not recall if he had seen his mother's burnt body at the time of her death in 1995, as he was a small child then. This statement seems to reflect the natural fading of memory by efflux of time as he was only 13 years' old at the time of the incident. However, it is crucial to juxtapose this statement with the one he made under Section 161 of the CrPC immediately after the incident in 1995. In his earlier statement recorded under section 161 CrPC statement, P.W.3 specifically recounted that his father, the Appellant, was shouting at his mother on the morning of Ganesh Chaturthi for waking up late. Additionally, he mentioned that his mother was reluctant to send him to the temple, but his father insisted upon it. P.W.3 also stated that the Appellant and his mother frequently quarrelled, particularly over her habit of waking up late. This previous statement, given in the immediate aftermath of the incident, though found significant admittedly does not carry an evidentiary value. However, it indicates an environment of regular conflict between the Appellant and the deceased, underpinned by frustration, anger, and domestic strife. Such an atmosphere sets the stage for analysing whether the Appellant's conduct played a more direct role in the death of the deceased. For reasons obvious, this Court cannot take this into account for the evaluation of the case. However, it can be fairly regarded to visualise a scenario in absence of any such evidence forthcoming from either side to contribute towards the circumstances that lead to the occurrence.

Furthermore, the testimony of P.W.2, the cook, provides additional corroboration regarding the strained relationship between the Appellant and the deceased. This witness too in his earlier statement recorder under 161 CrPC had explicitly stated that the Appellant was abusing the deceased in obscene language on the morning of the incident, as well as on the preceding night. He also noted that the Appellant regularly abused his wife. While P.W.2 initially testified on oath in Court that he had not seen any quarrel immediately prior to the incident, he later conceded in cross-examination that he had stated before the police about the quarrels between the Appellant and the deceased, particularly on the day of the occurrence. This shift in his testimony suggests some hesitation in fully disclosing the extent of the domestic conflict during his examination in Court. However, his acceptance under cross-examination reinforces the narrative of regular discord and emotional abuse between the Appellant and the deceased, lending credibility to the prosecution's version of events.

When both P.W.3 and P.W.2's statements are considered together, they paint a picture of a volatile marital relationship. P.W.2 has been consistent with his statement as to the troubled relationship of the deceased and the Appellant citing repeated quarrelling, particularly over seemingly trivial matters like waking up late.

21. Coming to the incident itself, according to P.W.2's testimony, after hearing the Appellant shout "Podigala, Podigala" (meaning "burning"), he and others, including one Ratha Babu and D.W.1, followed the Appellant to the bathroom whereas D.W.1's version, on the other hand, describes that the smoke coming from the skylight was followed by the deceased's cry of "marigali, marigali"

(meaning "I am dying"). These accounts emphasise a sudden and frantic situation where the Appellant, along with others, attempted to rescue the deceased from a burning scenario in the bathroom. However, the defence case argues that the deceased committed suicide, and D.W.1's narrative attempts to explain the efforts made to forcefully enter the bathroom.

The fact that the P.W.2, who only saw smoke emanating from the bathroom did not hear any scream, contradicts the version of D.W.1 account, where he claims to have first seen smoke and then heard the deceased scream "marigali, marigali." This cry of desperation holds significant weight in evaluating the circumstances surrounding her death. If the deceased had truly intended to commit suicide, as claimed by the defence, it is unlikely that she would have screamed for help while the fire consumed her. The cry "marigali, marigali" indicates a clear effort, either consciously or unconsciously, to alert others to her plight and to escape the pain of burning. Further, if the deceased had intended to commit suicide by burning, her screams would have likely been cries of pain rather than cries for help. The fact that her words indicate an appeal for assistance suggests that she was not entirely resigned to death but instead was seeking to escape the situation. This distinction between a cry of pain and a cry for help is crucial. A person committed to the act of suicide would not typically call out for rescue in such a manner. Instead, the scream "marigali, marigali" reveals that the deceased was in distress and wanted to be saved, casting doubt on the theory of a deliberate, premeditated self-immolation.

Furthermore, D.W.1's testimony that the deceased restrained him before entering the bathroom, ostensibly to commit suicide, is

incongruent with typical behaviours observed in suicidal actions, which are generally acts of isolation. In cases of suicide, individuals often seek to ensure solitude, minimising the chance of intervention or rescue. The act of instructing someone to wait before using the bathroom if the intent was truly self-immolation raises questions, as it inherently increases the risk of being discovered and saved. Additionally, the timing between the deceased's alleged instructions to D.W.1 and the immediate act of setting herself on fire introduces an unusual haste and lack of privacy, which are atypical in suicide cases where the individual often seeks controlled isolation.

22. The key issue here revolves around the plausibility of the situation where entry was difficult. There are multiple inconsistencies between this testimony and the forensic evidence at the scene, which fundamentally disputes the credibility of the defence's version of events.

23. First, it is essential to note that as per the evidence of P.W.8, the Scientific Officer, no visible signs of tampering or violence were found on the door frame, the bolt, or the door itself. If the door was indeed pushed with significant force, for 10-15minutes, naturally, such a forceful and prolonged effort to break open the door would have left some physical evidence, such as damage to the door frame, the bolt, or the door itself.

Moreover, both P.W.2 and D.W.1 testified that they assisted the Appellant in breaking open the door; P.W.2 claimed he and the Appellant forced open the door, while D.W.1 similarly stated that he and the Appellant pushed the door together to rescue the deceased. However, the absence of any physical marks or indications of forced

entry contradicts their statements and does not align with P.W.8's findings.

Throughout the trial, no suggestion was made to P.W.8, that the door to the bathroom had been forcibly broken open, either by the Appellant with P.W.2, or by the Appellant with D.W.1. P.W.8's observations clearly indicate that there was no visible mark of violence, no sign of damage to the door, and no evidence of a broken tar bolt; findings that remain unchallenged in the cross-examination.

At this juncture, an explanation from the side of the Appellant having special means of knowledge was inevitable, the absence whereof gives a cogent link to the scenario where the only plausible explanation is that the door was never closed or bolted from the inside, contradicting the defence's portrayal of a locked and inaccessible bathroom and raising serious questions about the true nature of the events that led to the deceased's death.

24. Turning to the defence, according to D.W.1, on the morning of the incident, the deceased entered the bathroom, bolted the door from inside, and after some time, smoke began to emerge from the skylight. He then heard the deceased scream "marigali, marigali" and rushed to the bathroom, but despite pushing the door, it would not open. He then went to call the Appellant, who was conversing with two other individuals in the lobby. The Appellant and D.W.1 together tried to break open the door, and after several minutes of pushing, they managed to break the upper bolt of the door and enter the bathroom. Inside, they found the deceased engulfed in flames, lying on the floor. D.W.1 claims that they extinguished the fire, and the Appellant then left to inform the police.

25. Secondly, D.W.1 stated that after the door was opened, he and the Appellant found the deceased already engulfed in flames. However, the fact that the body continued burning for about 10-15 minutes raises questions about the timeline and their response. It is highly unlikely that a body could sustain 100% burns from just 10-15 minutes of burning, especially in a confined space like a bathroom. While the intensity of the fire, the materials involved (e.g., clothing, accelerants), and the environment could influence the severity of the burns, achieving 100% burns on a human body in such a short time typically requires sustained, high-temperature exposure.

26. Furthermore, P.W.8's observations revealed that there was a uniform smoke deposit across the walls of the bathroom and on the bolt of the bathroom door, which was found in an open condition. Despite the claim of the defence that the supposed-suicidal burning occurred inside the bathroom, the articles in the bathroom were intact and undisturbed. Additionally, broken pieces of glass from the ventilator were detected beneath the dead body, and scattered glass bangles were observed on the bathroom floor. These details provide important clues about the state of the scene, suggesting that while there was a fire or smoke event, no signs of disturbance or struggle were immediately visible, other than the broken glass. This evidence could be significant in determining the cause of death and the sequence of events leading up to it.

P.W.8 also noted that the paint on the outside of the bathroom door was swollen and bulged, indicating exposure to significant heat, while the inside of the door, which is supposed to be the spot of occurrence, was less affected by the heat. If the fire had originated or burned intensely inside the bathroom, one would expect the inner

side of the door to show more significant heat damage, with uniform signs of burning across the bathroom's interior. However, the fact that the outside of the door was more damaged by heat suggests that the fire or a major heat source was either stronger or positioned outside the bathroom.

Analysing this in the context of the defence's argument, it raises doubt about the claim that the burning took place inside the bathroom, which is a central point for the defence to support a theory of suicide. If the deceased had set herself on fire or the fire began from within, it would be logical for the inner side of the door to exhibit greater signs of heat exposure than the outside. Instead, the reverse seems true. This discrepancy weakens the argument of suicide, as it implies that the fire or heat source might have been external to the bathroom, raising the possibility of foul play or external involvement.

Moreover, the presence of undisturbed bathroom items, broken glass beneath the body, and scattered bangles further complicates the narrative of suicide. Together, these elements create an inconsistent picture that challenges the defence's claim, pointing instead to the likelihood of external factors contributing to the death. Thus, this analysis could potentially rule out suicide and strengthen the case for homicidal nature of death.

27. Moving on to the medical evidence provided by P.W.9, the ante-mortem injuries observed on the deceased offer significant insight into the nature of the death. The medical officer noted a lacerated wound on the back of the deceased's head, which was later confirmed to correspond with a scalp hematoma during internal examination. This injury, which occurred prior to death, is indicative

of blunt force trauma, suggesting that the deceased was struck or otherwise injured before she was exposed to the fire. This is crucial evidence pointing towards a homicide, as it indicates that the deceased was likely incapacitated or killed by this head injury before her body was set on fire. It is improbable that this kind of injury would be self-inflicted in the course of a suicide, especially since there is no evidence to suggest the deceased fell or accidentally hit her head in a manner that could have caused this wound.

28. According to Modi's Medical Jurisprudence reported in Modi, J. P. (2021), *A textbook of medical jurisprudence and toxicology* (27th ed.), Chapter IX: Death from Burns, Scalds, Lightning, And Electricity - Burns and Scalds (p. 200), it is mentioned –

> "Causes of Death.—1. Shock.—Severe pain from extensive burns causes shock to the nervous system, and produces a feeble pulse, pale and cold skin and collapse, resulting in death instantaneously or within twenty-four to forty-eight hours. In children it may lead to stupor and insensibility deepening into coma and death within forty-eight hours. In order to avoid the suggestion that coma was due to the drug it is advisable not to administer opium in any form for the alleviation of pain.
> 2. Suffocation.—Persons removed from the houses destroyed by fire are often found dead from suffocation due to the inhalation of smoke, carbon-dioxide and carbon-monoxide—the products of combustion. In such a case the burns found on the body are usually post-mortem…
>
> Between 1 a.m. and 3 a.m. on the 6th January, 1922, some dacoits broke into the house of one Kusher Lodh, aged 50 years, and, finding him and his son, 20 years old, sleeping in a room, chained it from outside. On leaving the house they set fire to rubbish lying at the door with the result that the father and the son died in the

room. The post-mortem examination of both the bodies afforded clear evidence of death from suffocation. The larynx and trachea in both were congested with a deposit of soot along the interior. The lungs were congested and exuded frothy blood on section. The brain vessels were found engorged with blood. There was general venous engorgement. Externally the bodies showed a few small superficial burns on the face, thighs and legs with singeing of the hair of the head.

3…

4…

5…

6…

7…

Fatal Period.—As already mentioned, death may occur within twenty-four
to forty-eight hours, but usually the first week is the most fatal. In suppurative cases death may occur after five or six weeks or even longer."

29. According to P.W.9 the cause of death was asphyxia due to suffocation from inhalation of smoke, even in the absence of carboxyhemoglobin in the blood. While the absence of carboxyhemoglobin (which typically indicates that a person was alive when they inhaled smoke) could raise doubts, the presence of sooty and blood-tinged mucus in the trachea suggests that the deceased was indeed breathing in smoke at the time of the fire. This aligns with the principles outlined in Modi's Medical Jurisprudence, which emphasises that suffocation can be a primary cause of death in fire-related incidents. D.W.1's claim that the deceased's body was burning for 10 to 15 minutes presents a crucial inconsistency. According to Modi's text, death can occur within 24 to 48 hours post-burn, especially when considering factors and the extent of injuries cause by the fire. If D.W.1's assertion is accurate, the prolonged burning time indicates that the victim was likely alive

during this period, which raises significant concerns about the circumstances of her death. Given that asphyxia is cited as the cause of death, it suggests that the deceased may have been incapacitated or unable to escape the flames, potentially indicating foul play. The presence of asphyxia in conjunction with D.W.1's account of extended burning time points to a scenario where the deceased was not just a victim of fire but may have been deliberately placed in a situation that led to her suffering both from smoke inhalation and severe burns. P.W.9 was unequivocal in stating that the death was not accidental, further narrowing down the possible manner of death to either suicide or homicide. However, the surrounding circumstances make it highly unlikely that the death was the result of suicide.

The report of P.W.9 to the effect that the cause of death was asphyxia due to suffocation from inhalation of smoke seems stage managed for the simple reason that if the findings of the report was correct, the doctor could safely have opined with a definite report as to the cause of death to be suicidal but it did not happen so as he found a hurdle before him that is the CE report. In the CE report, it was opined that there was absence of Carboxy Hemoglobin suggesting that the death could not have been for suffocation. This discrepancy is what is observed by this Court earlier as suppression of material. This is more so when original CE report was not produced before the trial Court while a true attested copy was produced which was not accepted by the learned trial Court as evidence. We, however, do not find the opinion of the trial Court correct. This is because the case record reveal that a photocopy of the CE report has been annexed to the FIR by the I.O who relied upon it

as one of the key documents holding prima facie the cause of death of the deceased as homicidal. P.W.8 adduced evidence on oath to the effect that there was absence of Carboxy Hemoglobin ruling out possibility of inhalation of smoke as per medical jurisprudence. As we have already observed there was every possible effort made to weaken the evidence and it is for this reason in order to get rid of the consequence of the opinion in the CE report, the only way out was to withdraw the said documents from being proved to accommodate the Appellant. Consequently, therefore, in the opinion of this Court having regard to the fact that the existence of the original cannot be denied as the attested true copy has been produced from proper custody and its authenticity has not been challenged by the defence in any manner, the same can very well be read in evidence accepting the document (the CE Report marked "Z") as proved by secondary evidence. Otherwise, this would amount to travesty of justice and the investigating agency shall be allowed to "rule the roost." In sequel to the above, once the CE report is read in the manner it is opined, it is clear to suggest that the victim had already died by the time she was put to fire.

30. Finally, the testimony of P.W.9 further corroborates the theory of homicide by highlighting the pregnancy of the deceased. The deceased was approximately 14-16 weeks pregnant at the time of her death significantly weakens the possibility of suicide. The maternal instinct to protect an unborn child is a powerful force, and it is highly unlikely that a woman in her second trimester, who was carrying a fetus would deliberately seek to harm herself or her unborn baby without a compelling cause. The absence of any evidence suggesting emotional distress, a suicidal mindset, or any

circumstantial triggers that could lead a pregnant woman to take such a drastic step further diminishes the likelihood of suicide. The pregnancy becomes a critical factor in the analysis, suggesting that the deceased was the victim of homicidal violence, with her pregnancy possibly playing a role in escalating tensions within her marriage, rather than someone who would willingly end her own life and that of her unborn child. The medical officer's findings, along with circumstantial evidence suggesting a strained relationship between the Appellant and his wife, may suggest a motive for the crime.

31. While neither P.W.8 nor P.W.9 provided a definitive medical conclusion that the death was homicidal, the combination of ante-mortem injuries, the undisturbed scene, and the pattern of smoke deposition, as well as the absence of evidence supporting suicide or accident as argued by the defence strongly indicate that homicide is the most likely explanation. The head injury, coupled with the asphyxia caused by smoke inhalation, points to a scenario where the deceased was incapacitated before the fire was started, suggesting an intentional act to both kill and conceal the evidence.

32. The Appellant, being the husband of the deceased and present at the house at the time of the occurrence, failed to provide any reasonable explanation for the defence of suicide. Under Section 106 of the Indian Evidence Act, the burden of proving facts that are peculiarly within the knowledge of a person rests on that person. The prosecution has established that the Appellant was seen quarreling with the deceased before the occurrence and was present at the scene during the critical time. These circumstances placed the Appellant in

a position where he had exclusive knowledge of the events leading to the death of the deceased.

Since the Appellant was the only individual with close access to the deceased at the time of her death, it was incumbent upon him to provide a plausible explanation for her death, especially when claiming that it was a case of suicide. The burden of proof, while primarily on the prosecution to prove guilt beyond reasonable doubt, shifts in part to the Appellant under Section 106 when it comes to facts exclusively within his knowledge. He failed to explain the cause of the fire and the circumstances under which his wife was found engulfed in flames. This failure to discharge the burden raises an adverse inference against him.

33. Moreover, D.W.1's testimony contains notable inconsistencies, regarding his claim that he attempted to extinguish the fire by placing a blanket over the deceased's body. He stated that while trying to smother the flames with the blanket, he sustained minor burns to his eyebrow and hair and even the Appellant sustained injuries on his hand. However, no blanket was found or seized from the bathroom during the investigation, as confirmed by the seizure list. It is expected that a blanket used to put out a fire to be present at the scene or to exhibit burn marks or soot if it had indeed been in contact with the flames.

The analysis of injuries suffered by the Appellant and D.W.1, as documented by P.W.7, reveals inconsistencies that weaken the defence's narrative of a desperate rescue attempt. According to P.W.7, the Appellant sustained only minor abrasions on the dorsal aspect of his right middle and ring fingers, injuries that could be caused by contact with a hard surface but are not consistent with the

vigorous force that would be required to break down a door or manage a burning body. Furthermore, D.W.1, who claims to have sustained partial burns while attempting to extinguish the flames, exhibited burns only on the hair above the forehead and the left parietal region. This minor burn pattern does not align with the defence's portrayal of a sustained attempt to rescue a person on fire, as one would expect more extensive burns or injuries to the hands, arms, or clothing.

Furthermore, the Appellant's assertion of suffering from Erythema, a skin condition that could potentially explain injuries from scratching or irritation, was not corroborated by any medical findings. P.W.7's examination report found no signs of Erythema or any other dermatological condition that could justify the abrasions. The evidence presented by P.W.7 does not support a scenario where the Appellant and D.W.1 undertook a strenuous, genuine rescue attempt.

These inconsistencies, along with the absence of physical evidence such as a blanket, undermines the defence's claim of a genuine rescue effort. Collectively, this supports the prosecution's theory that the injuries and the rescue narrative were minimal, contrived, and insufficient to support a plausible defence, reinforcing the prosecution's case of intentional conduct rather than a spontaneous, earnest attempt to save the deceased.

34. The prosecution has provided sufficient circumstantial evidence such as the Appellant's presence, prior quarreling, and lack of effort to explain the situation that casts serious doubt on the defence of suicide. Without a credible explanation from the

Appellant, especially considering the circumstantial evidence strongly implicating him, the prosecution's burden to prove guilt beyond a reasonable doubt is sufficiently met.

35. Furthermore, the Appellant's decision to contact the police rather than immediately seek medical assistance, such as calling an ambulance, raises significant doubts about his conduct during the critical moments following the incident. In a situation where an individual is engulfed in flames, a natural and reasonable reaction would be to prioritise obtaining medical help, as every second counts in the case of burn injuries. The fact that the Appellant did not first attempt to arrange for urgent medical care, but instead contacted the police, reflects a lack of concern for the potential survival of his wife and raises questions about his state of mind and intentions.

The timeline of the burning is crucial to understanding the proximity of the events. D.W.1's testimony suggested that the deceased was engulfed in flames for approximately 10-15 minutes, which is inconsistent with the typical response expected in such an emergency. The Appellant, who was present in the house, could not have reasonably concluded that his wife had already died without any attempt at medical intervention or verifying her condition with professional assistance. Burns of 100%, as recorded, often result in death, but the Appellant's immediate assumption that his wife was beyond help without even attempting to summon an ambulance seems premature and raises suspicions about his foreknowledge of the situation.

This conduct further diminishes the credibility of the Appellant's defence. His actions reflect a deliberate choice not to seek immediate help, despite the possibility that his wife could have

survived with timely medical care. The Appellant's failure to act appropriately in such a situation, coupled with his absence of any reasonable explanation under Section 106 of the Indian Evidence Act, significantly weakens his defence and supports the prosecution's case of foul play rather than suicide.

36. In a case of circumstantial evidence, before reaching a conclusion, the Court is required to examine the evidence on the touchstone of the decision reported in the matter of ***Sharad Birdhi Chand Sarda vs. State of Maharashtra*** reported in **AIR 1984 SC 1622** –

> "3:3. Before a case against an accused vesting on circumstantial evidence can be said to be fully established the following conditions must be fulfilled as laid down in Hanumant's v. State of M.P. [1953] SCR 1091.
>
> 1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
>
> 2. The facts so established should be consistent with the hypothesis of guilt and 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.
>
> These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence and in the absence of a corpus deliciti.

> Hanumant v. The State of Madhya Pradesh [1952] SCR 1091; Tufail (Alias) Simmi v. State of Uttar Pradesh [1969] 3 SCC 198; Ramgopal v. State of Maharashtra AIR 1972 SC 656; and Shivaji Sahabrao Babode & Anr. v. State of Maharashtra [1973] 2 SCC 793 referred to.
>
> 3:4. The cardinal principle of criminal jurisprudence is that a case can be said to be proved only when there is certain and explicit evidence and no pure moral conviction."

37. The prosecution has meticulously established a robust chain of circumstantial evidence that firmly points to the Appellant's guilt, fulfilling the standards set forth in ***Sharad Birdhi Chand Sarda vs. State of Maharashtra*** (*supra*). Each circumstance, from the forensic findings to witness testimonies, aligns solely with the hypothesis of the Appellant's involvement in the crime, with no reasonable alternative explanation. The conclusive nature of the evidence, including ante-mortem injuries on the deceased, the Appellant's minor injuries inconsistent with his rescue claim, and the Appellant's immediate call to the police instead of seeking medical help, collectively negates any hypothesis of innocence. Therefore, in all likelihood and based on the well-founded evidence, the prosecution has decisively proved the Appellant's guilt.

38. It is pertinent to note that Section 106 of the Evidence Act serves as an exception to the general rule that the burden of proof lies with the prosecution. Under Section 106, if any fact is especially within the knowledge of a person, the burden of proving that fact lies upon him. As held in **Anees v. State Govt. of NCT** reported in **2024 INSC 368** by the Hon'ble Supreme Court –

> "35. Section 106 of the Evidence Act 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.*
> *Illustration*
> *(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."*

36. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its illustration (a) 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 the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience."

39. Section 106 of the Evidence Act applies particularly in cases where the accused is in a unique position to explain facts or circumstances that are otherwise difficult for the prosecution to establish. Therefore, in circumstances such as those presented here, the Appellant is expected to provide an explanation for the events within his exclusive knowledge, as required by Section 106 of the

Evidence Act. The Appellant's actions following the incident further reinforce a strong link to his culpability. His repeated absences and delays in appearing before the Court, alongside witnesses turning hostile, reflect a pattern of evasion that is inconsistent with the behaviour of an innocent person. By invoking Section 106 of the Evidence Act, the prosecution rightfully argued that the Appellant, being in exclusive control of the household and present at the time of the incident, bore the burden of providing a plausible explanation for the death of his wife. However, the Appellant's narrative of suicide was unsupported by both forensic evidence and witness testimonies, leaving the prosecution's version as the only plausible conclusion.

40. A disturbing fact before parting with the case is the glaring reality that the witnesses have gone hostile, and the Appellant has been persistently avoiding Court proceedings. The Appellant was released on bail on 01.11.1995. Despite the order dated 27.10.1995 directing the case record to be placed before the Presiding Officer (P.O.) on 10.11.1995, it was not presented until 20.09.1996, when the final form was received by the Court.

Upon notice, the Appellant failed to appear before the Court on 06.01.1997 and subsequently filed repeated petitions requesting time to appear from 06.01.1997 until 26.11.1997. When the Appellant did appear on 26.11.1997, the case was adjourned to 15.12.1997 for the supply of police papers. However, he continued to be absent, represented solely by his lawyer. Due to his continued absence, despite repeated notifications from the Court, a Non-Bailable Warrant (NBW) was issued on 22.03.2003. Unfortunately, this NBW remained unexecuted until 23.08.2013, when the trial

Court issued an order directing the Petitioner to be released upon his appearance.

The case record was subsequently transmitted to the Court of sessions on 27.08.2013, with instructions for the Appellant to appear before the Sessions Court. The matter was placed before the Sessions Judge on 30.10.2013, on which date the charges were formally framed, and the trial commenced.

41. The case record reveals a disappointing lapse in adherence to the legislative mandate of Section 309 of the CrPC, which stipulates that the trials should proceed on a day-to-day basis to ensure timely justice. Despite the fact that the Forensic Science Laboratory was situated only a few kilometres from the trial Court, the case experienced repeated adjournments due to the unavailability of the original Chemical Examination Report, without a diligent effort to secure its prompt production.

Moreover, the delay in examining witnesses spanning nearly four years from the first witness being examined on 24.06.2014 to the last on 12.02.2018 exemplifies an unacceptably depressed pace that fails to meet the standards expected of a fair and expeditious trial. The accused statement, recorded as late as 28.03.2023, reflects a gross departure from timely trial obligations, raising serious concerns about the trial Court's commitment to judicial efficiency. While it appears that the Appellant may have contributed to certain delays, the trial Court's passive role in permitting such prolonged adjournments cannot be overlooked. This regrettable delay undermines the justice system's ability to uphold procedural mandates.

42. In light of the above discussion, the conviction of the Appellant under Sections 302 and 201 of the IPC stands firmly substantiated. The prosecution has established, beyond a reasonable doubt, that the Appellant intentionally caused the death of his wife, fulfilling the requirements of Section 302 IPC for murder. The forensic findings, including antemortem injury on the deceased, soot in the trachea indicating inhalation during the fire, and the Appellant's implausible claims of suicide, all negate any hypothesis other than intentional homicide.

Furthermore, the Appellant's actions to mislead the investigation and create a narrative of suicide meet the criteria under Section 201 IPC for causing the disappearance of evidence. The tampering with the scene and delayed call to the authorities, with no attempt to seek immediate medical assistance, reflect clear intent to mislead and obstruct the course of justice. Each element of Section 201 is satisfied, as the Appellant's actions were intended to shield himself from liability by erasing critical evidence of the crime.

43. The decisions referred to by the Appellant is not elaborately discussed, as they are factually distinguishable. However, while analysing the case in hand, the ratio of the decisions cited by the learned counsel is taken care of. Thus, the evidence leaves no reasonable ground for doubt regarding the Appellant's guilt under both Sections 302 and 201 IPC. The conviction on both counts is therefore confirmed, as it is supported by a coherent and complete chain of evidence that establishes the Appellant's culpability.

44. The impugned order and judgment of the learned 3rd Additional Sessions Judge, Bhubaneswar, in Crl. Trial No. 268 of

2012, dated 27.06.2023, being consistent and akin to the evidence both in fact and law cannot be faulted with and in our humble opinion, the same meets the requirement of law with regard to the circumstantial evidence is accordingly confirmed. Since the sentence awarded is absolutely in accordance with law, there is nothing to interfere therewith.

45. As a result, the Appeal stands dismissed being devoid of merit.

46. The Appellant who is reported to be on bail is directed to surrender forthwith before the learned trial Court to suffer the sentences and deposit the fine amount. Needless to say, that on the failure of the Appellant to surrender, the learned Court shall proceed in accordance with law.

(Chittaranjan Dash)
Judge

(S.K. Sahoo)
Judge

A.K.Pradhan/Bijay