HIGH COURT OF JHARKHAND

Bench: Justices Ananda Sen and Subhash Chand

Date of Decision: 24th April 2024

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal (D.B.) No. 1359 of 2023

[Arising out of Judgment of Conviction and Order of Sentence dated 24th July 2023 passed by the Sessions Judge, Simdega in Sessions Trial No.01 of 2019]

SANJAY KUJUR …APPELLANT

VERSUS

THE STATE OF JHARKHAND …RESPONDENT

Legislation:

Sections 302, 326, 307 of the Indian Penal Code (IPC)

Sections 313 of the Cr.P.C.

Indian Evidence Act, 1872

Subject: Criminal appeal challenging the conviction and life sentence for murder under Section 302 IPC. Examination of the credibility of witness testimonies and the sufficiency of evidence, particularly the reliability of the informant's claim as an eyewitness.

Headnotes:

Criminal Law – Conviction based on Eyewitness Testimony – Assessment of Reliability – Criminal Appeal against conviction for murder under Section 302 IPC – Sole purported eyewitness's testimony scrutinized for consistency with initial statements – Significant contradictions found between informant's fardbeyan and court deposition – Held that informant was not an eyewitness as she claimed in court – Conviction solely based on her testimony deemed unreliable. [Paras 7, 19-20]

Witness Credibility – Contradictory Statements – Analysis – Held – Informant initially stated knowledge of crime was derived from another witness – In

court, claimed to have witnessed the assault directly – Other key witness not examined – Discrepancies lead to the conclusion that the informant's testimony was fabricated to appear as an eyewitness. [Paras 18-20]

Evidence Law – Recovery of Murder Weapon – Insufficiency – Analysis – Held – Mere recovery of weapon (axe) on appellant's confession insufficient for conviction without corroborative evidence – Supreme Court precedent affirms that recovery alone cannot sustain conviction. [Paras 21-22]

Application of Section 106 of Evidence Act – Misapplication – Analysis – Held – Section 106 cannot relieve the prosecution of its burden to prove guilt – Only applicable when the prosecution has established a complete chain of evidence, which was not done in this case. [Paras 23-25]

Decision – Acquittal – Appeal allowed – Judgment of Conviction and Order of Sentence by Sessions Judge, Simdega set aside – Appellant acquitted of all charges due to unreliable evidence and failure to prove guilt beyond reasonable doubt – Appellant ordered to be released forthwith. [Paras 26-27]

Referred Cases:

- Raja Naykar v. State of Chhattisgarh (2024) 3 SCC 481
- Mustkeem v. State of Rajasthan (2011) 11 SCC 724
- Sabitri Samantaray v. State of Odisha 2022 SCC OnLine SC 673
- Rajinder Singh v. State of Haryana (2013) 15 SCC 245
- Satye Singh v. State of Uttarakhand (2022) 5 SCC 438
- Shambhu Nath Mehra v. State of Ajmer AIR 1956 SC 404

Representing Advocates:

Mr. Zaid Ahmed for the appellant
Mr. Anup Pawan Topno, A.P.P. for the respondent

J U D G M E N T

Per Ananda Sen, J. Today this appeal was listed for consideration of bail plea of the appellant after suspending the sentence.

2. Learned counsel appearing for the appellant argued the entire case on merits. He has taken this Court through the First Information Report, in details and also through the evidence of all the witnesses and also the documents, which have been exhibited. He submits that from the evidence on record and from the materials no case against the appellant under Section 302 of the Indian Penal Code is made out. He argues that the prosecution has miserably failed to establish the guilt of the appellant beyond all reasonable doubts, thus, he be released on bail.

3. Learned A.P.P. for the State opposes the prayer for bail of the appellant. He also argues the entire appeal on merit while opposing bail.

4. Considering the arguments of the appellant and the State, wherein they have argued each and every point and taken us through all the evidence, we feel that the entire appeal can be heard finally at this stage. Further, this appeal has already been admitted for final hearing and the Trial Court Record is already with us and both the State and the Appellant have submitted that they are well equipped with all the documents including the depositions and other materials and they have already assisted this Court and nothing more to be argued on the merit in the main appeal also.

5. Considering the aforesaid fact, we have taken up this appeal for final hearing and thus, we are proceeding accordingly.

6. The appellant has preferred this appeal against the Judgment of Conviction and Order of Sentence dated 24th July, 2023 passed by the Sessions Judge, Simdega in Sessions Trial No.01 of 2019, whereby the appellant has been held guilty and convicted for the offence punishable under Sections 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life and fine of Rs.10,000/- for the offence under Section 302 of the Indian Penal Code and in default of making payment of fine, the appellant has been further sentenced to undergo simple imprisonment of six months.

7. Learned counsel for the appellant submits that there is no eye witness to the occurrence. Though the informant while deposing in Court claims that she is the eye witness, but if her statement is read with her Fardbayan, it would be clear that she has developed her story and posed herself as an eye witness, which actually she was not at the time of occurrence. The statement of the informant to the effect that she is an eye witness and has seen the assault is not to be believed. It has been further argued that as per the First Information

Report, there was one eye witness namely Dutami Bhengra, who had narrated the entire fact of assault to the informant, surprisingly, this eye witness has not been examined during trial of this case as a witness, which is fatal for the prosecution case. It was necessary to produce the witness, who had seen the occurrence, through whom, informant had derived knowledge about the assault. Non-production of the said person as a witness is fatal for the prosecution. He further argues that if the testimony of this P.W.3 on the point of assault is not believed, then, there is no material against this appellant to convict him. Mere recovery of a weapon, even if the same is the murder weapon, on the confessional statement of the appellant, cannot lead to conviction. There has to be some corroborating evidence, which is missing in the instant case. On these grounds, the appellant prays for acquittal.

8. Learned A.P.P. for the State submits that the informant is an eye witness as she has stated in her deposition before the Court that she had seen the appellant assaulting the deceased with axe. Since there is nothing to disbelieve this witness, there is no doubt that conviction can be sustained on the basis of testimony of this sole eye witness. He further submits that the appellant has confessed and on his pointing out, the murder weapon was recovered, which is sufficient to sustain conviction. The FSL report also suggests that the murder weapon contained human blood.

9. We have gone through the records and have gone through the entire evidence.

10 The First Information Report is at the instance of one Bilchen Kujur, who is the wife of the deceased. She, in her fardbeyan recorded on 16.08.2018, states that at about 08.00 a.m. in the morning she went to the fields to work. Both her matrimonial home and paternal home are in the same village. When she was working in the field at about 08.30 a.m., her sister-inlaw Dutami Bhengra came and informed her that her husband Mukesh Kujur was assaulted by her brother-in-law Sanjay Kujur by axe on his neck 3 to 4 times, as a result of said assault, Mukesh Kujur became seriously injured and was drenched in blood and was lying in unconscious state in the courtyard. Said Dutami Bhengra presumed that he is already dead. On receiving such information, informant rushed to her house and found Mukesh Kujur lying in pool of blood in the courtyard. She felt that he is dead, but, later on found that he was breathing. There was injury mark on the neck below the ears at three places. She then started yelling and crying, upon which the villagers assembled and took the injured to Simdega Hospital. She further stated that she asked her mother-in-law, who stated that because of a land dispute, both of them were fighting

and the mother-in-law tried to intervene, then Sanjay Kujur assaulted Mukesh with tangi and injured him. Police reached, thereafter. The First Information Report being Muffasil Police Station Case No.20 of 2018 was registered on the basis of the fardbayan.

11. The First Information Report was initially registered under Sections 326/307 of the Indian Penal Code. Later on Section 302 of the Indian Penal Code was added. Police investigated the case and upon completion of investigation, filed chargesheet under Section 302 of the Indian Penal Code. Cognizance of the offence was taken and subsequently the case was committed to the Court of Sessions.

12. In order to prove the charges against the appellant, the prosecution had examined 08 (eight) witnesses, namely, P.W.1 Maitan Minz, P.W.2 Herman Bara, P.W.3 Bilchen Kujur (Informant), P.W.4 Fulkumari Kujur, P.W.5 Sishir Kumar Singh (Investigating Officer), P.W.6 Dr. Sujit Kumar Murmu, P.W.7 Mahendra Das (Investigating Officer) and P.W.8 Nageshwar Singh (A.S.I.). In addition to the oral evidence of above witnesses, the prosecution also produced the following documentary evidence, which were marked as Exhibits: -

Exhibit 1	Signature of Maitan Minz on Seizure list
Exhibit 1/1	Seizure List of soil mixed blood
Exhibit 2	Signature of Maitan Minz in seizure list
Exhibit 2/1	Seizure list of axe (Tangi)
Exhibit 3	Signature of Bilechan Kujur on fardbeyan
Exhibit 3/1	Signature of Fulkumari on fardbeyan
Exhibit 3/2	Signature of Fulkumari on fardbeyan
Exhibit 3/3	Fardbeyan
Exhibit 3/4	Case registration on fardbeyan
Exhibit 4	Charge sheet

Exhibit 5	Postmortem Report
Exhibit 6	Memo of arrest
Exhibit 7	Confessional statement of accused
Exhibit 8	Carbon copy of inquest report
Exhibit 9 & 9/1	Written application and Challan to produce material exhibit
Exhibit 10 & 10/1	SFSL Report No.1830/18 dated 21.5.2019 and SFSL report No.1830/18 dated 31.5.2019

The prosecution had produced the following material objects also, which were marked material exhibits

MO-1 An axe of iron with blood stain MO-2 Soil mixed with blood

13. P.W.1 is Maitan Minj, who stated that occurrence took place on 16.08.2018 at about 08.00 a.m. He stated that he was working in the field, when he heard hue and cry. He, thereafter, reached the place of occurrence. He stated that before he reached the place of occurrence, Sanjay Kujur had assaulted Mukesh Kujur on his neck with an axe and he saw Mukesh Kujur is lying in the courtyard. He felt that Mukesh Kujur was breathing. With the help of police, Mukesh Kujur was sent to hospital. Police seized blood stained soil and he signed the seizure list, which was marked Exhibit 1. On confession of the accused, axe was recovered, which was smeared with blood. He also signed the seizure list of axe, which was marked as Exhibit 2. He stated that the deceased died on the way. He identified the accused in the dock. In cross examination, he stated that because of some land dispute, this occurrence had taken place. He stated that both the deceased and the appellant are brothers. Partition had already taken place, but the appellant was not happy with his share. He stated that the place of occurrence is at a distance of 0.75 k.m. from the place where he was working. He in cross examination, stated that mother of Mukesh Kujur and Sanjay Kujur reached prior to them. Nothing more was extracted from his cross examination.

P.W.2 is Herman Bara. He stated that at the time of occurrence, he was at field, grazing his ox. When he returned, he came to know that Sanjay Kujur has committed murder of his brother. He stated that he put his thumb impression on the inquest report. Police also seized blood smeared axe and blood smeared soil. He put his thumb impression on the seizure list. He stated that he does not know why the occurrence took place. In cross examination, he

stated that he had not seen the axe, which was murder weapon nor the same was seized in his presence.

P.W.3 Bilechan Kujur is the informant. She stated that she was at field at 08.00 a.m. and she was working, when Dutami Bhengra came and told her that a commotion is going in their house. On hearing this information, she went to her home where she saw her brother-in-law Sanjay Kujur assaulting Mukesh Kujur on his neck and back with an axe. Thrice he was assaulted and blood was oozing out from the body of the injured. The entire incident occurred in the courtyard. Thereafter, her husband became unconscious and fell down. He was taken to Simdega Hospital, wherefrom he was referred to Rourkela, where he died. There was land dispute between the parties. She admits that on her statement, First Information Report was registered, which was marked as Exhibit 3. She also identified the signature of her mother-in-law on the fardbeyan, which was marked as Exhibit 3/1. She admits that axe was seized and blood smeared soil was also seized and seizure lists were prepared. Police had sent the body for postmortem. In cross examination, she stated that there was oral partition amongst the brothers. She stated that no one was present on the place of occurrence. She stated that in the morning she had gone for work and she was alone. The distance from her house to field is 250300 meters. House of the appellant and the deceased were adjacent to each other. She stated that Dutami Bhengra is her sister-in-law (Bhabhi) and she is a teacher in Russa Tola Secondary School. The School is just adjacent to informant's field. She was next to the school when Dutami Bhengra called her. She rushed to her house, where both her mother-in-law and brother-in-law were present. In cross examination, she further states that she saw her husband lying in the courtyard. She stated that she tried to save her husband, but, villagers forbade her stating that if she goes, she will also be assaulted. She has stated that she has seen the deceased being assaulted. Mother-inlaw was inside, but she did not make any hue and cry. Police reached the place of occurrence after half an hour. She admits that she had called the police. The police had first recorded her statement and thereafter arrested the appellant. She stated that only after the police had reached, they had taken the deceased in injured state to the hospital. Police also came on the second day when the soil and the axe were seized. She also stated that the appellant was arrested on the very first day. Her statement was recorded by the police.

P.W.4 is Fulkumari Kujur. She also stated that she was in field for the purpose of plantation of crops. She happens to be the mother-in-law of the informant and mother of both the deceased and the appellant. She states that when she

returned at about 02.30 p.m. to her house from the field, she could come to know that Mukesh Kujur in an injured condition was taken to Sadar Hospital, Simdega. Before she came to home, Mukesh Kujur was taken to the hospital. She heard that Mukesh Kujur had sustained injuries. Police had recorded the fardbeyan of the informant, wherein she had put her signature, which was marked Exhibit 3/2.

P.W.5 is Sishir Kumar Singh. He stated that he was Police Inspector. He stated that the First Information Report was registered by the Officer-in-Charge, Mahendra Das. On 18.09.2018, Nawal Kishore Singh was entrusted with the investigation and on 29.09.2018 same was entrusted to him. He received the Postmortem Report and after order from the Court, he sent the blood smeared soil for examination. He submitted chargesheet, which was marked as Exhibit 4. He admitted that he did not go to the place of occurrence nor recorded statement of any witness.

P.W.6 is Dr. Sujit Kumar Murmu. He had conducted the postmortem on the dead body of the deceased. He found the following: -

General Examination : Average built, Average nutrition, Rigor mortis present in all four limbs, Body not decomposed, eyes closed, mouth closed, tongue inside the mouth. External Injury : (i) sharp cutting wound 3”x1”x deep 1” over back of neck and same wound and size 2 cm away from this wound (ii) A sharp cutting wound 3”x1” x deep 1” over parietal bone and occipital lobe over left side of skull. Internal examination: (i) Blood collected in parietal-occipital region of cranial cavity, All viscera are pale Time elapsed since death : within 24 hours of duration. Object used : Hard, heavy & sharp cutting object
Cause of death : Severe haemorrhage & head injury lead to shock and death.

Postmortem report has been marked as Exhibit 5.

P.W. 7 Mahendra Das is the investigating officer of this case. He has stated on 16.08.2018, upon receiving information that a person was injured who was being treated at Sadar Hospital, Simdega, he proceeded to Sadar Hospital, Simdega. When he reached there he found that Mukesh Kujur, in an injured condition, was under treatment. He stated that he recorded the fardbeyan of the informant which has been marked Exhibit 3/3. He proved his signature on the registration endorsement made in the fardbeyan, which was marked as Exhibit 3/4. He has proved his signature on seizure list for blood stained soil which has been marked as Exhibit 1/1. He has proved the memo of arrest, which has been marked as Exhibit 6. He has further proved seizure list for blood stained tangi, which has been marked as Exhibit 2/1. He has proved

his signature on confessional statement of appellant, which has been marked as Exhibit 7. He proved his signature on the carbon copy of inquest report, which has been marked as Exhibit 8.

P.W.8 Nageshwar Singh is the formal witness who produced the material exhibits. The material exhibits, blood stained iron Kulhari with bamboo handle and blood smeared soil were marked as MO 1 and MO 2. He proved the application and challan related to material exhibits which have been marked Exhibit 9 and Exhibit 9/1.

14. After closure of the evidence, the statement of this appellant was recorded under Section 313 of the Code of Criminal Procedure. The appellant did not chose to adduce any evidence in his defence.

15. The Trial Court, after hearing the arguments of the parties and after going through the evidence, by Judgment of Conviction and Order of Sentence dated 24th July, 2023 passed in Sessions Trial No.01 of 2019, has held the appellant guilty and convicted him for the offence punishable under Sections 302 of the Indian Penal Code and has sentenced him to undergo rigorous imprisonment for life and fine of Rs.10,000/- for the offence under Section 302 of the Indian Penal Code and in default of making payment of fine,
the appellant has been further sentenced to undergo simple imprisonment of six months.

16. Challenging the aforesaid conviction and sentence, the appellant has preferred this appeal.

17. We have gone through the evidence and the entire records.

18. From perusal of the entire evidence, we find that all the other witnesses except P.W.3 (who posed herself as an eye witness), are hear-say witnesses. Even the mother-in-law of the informant, who is the mother of the deceased and appellant, examined as P.W.4, has stated that she reached her home at 02.30 p.m. and only then she heard that the deceased in injured condition was already taken to the hospital.

The only witness based on whose deposition, prosecution has based conviction is P.W.3. Now the question whether this P.W.3 is actually an eye witness and whether what she is stating is believable or not.

19. If we go through the fardbeyan as narrated above, therein P.W.3, who is the informant, has categorically stated that she received the information through her Bhabhi Dotami Bhengra that this appellant has assaulted the deceased with an axe and the deceased is lying in injured condition in pool of blood in the courtyard. On receiving such information, she reaches the place of occurrence and sees her husband lying in pool of blood. Thus, from her

statement in the fardbeyan, it is clear that she is not an eye witness to the assault. Surprisingly, when she comes to the Court to depose as P.W.3, she states that Dotami Bhengra informed her that some commotion is going on in their house and on receiving such information when she reached her house, where she saw the appellant assaulting the deceased on his neck and motherin-law was also present there, who told that because of land dispute, this incidence had taken place.

There is huge contradiction in the statement of P.W.3 in her Fardbeyan and her statement before the Court as P.W.3. From her statement in the Fardbeyan it is clear that she is not an eye witness, whereas in her deposition before the Court as P.W.3, she becomes an eye witness. From her statement, one can understand that P.W.4 was also present there, but P.W.4 in her deposition states that she reached home after the deceased in an injured condition was taken to the hospital. This major contradiction leads to the only conclusion that P.W.3 is not an eye witness and she had developed the story and made herself as an eye witness, which actually she was not. Further, the claim of P.W.3 to be an eye witness is demolished by her evidence in cross examination where she states that she saw the deceased lying in pool of blood in the courtyard. Thus, we hold that this P.W.3 is not an eye witness to the occurrence.

20. Since we hold that she is not an eye witness to the occurrence, the fact remains that there are no other eye witness to the entire occurrence. The best witness, who could have stated about the assault was Dotami Bhengra. As per the First Information Report and evidence of P.W.3, it is she who had informed the informant (P.W.3) about the commotion or the assault upon the deceased, but surprisingly, this star witness has been withheld by the prosecution as she has not been examined. Her non-examination is fatal for the prosecution case.

21. Thereafter, the only circumstance, which remains is recovery of murder weapon on confessional statement on pointing out by the appellant. In our opinion a conviction cannot be based solely on the recovery of a murder weapon. There must be some corroborative evidence to establish the guilt of the accused beyond all reasonable doubt. Confessional statement leading to recovery of weapon, stand alone, cannot be a ground of conviction. There must be other credible corroborative evidence. Even if the murder weapon is recovered and it is blood stained also, that does not prove the guilt of the accused. This single circumstance by no means can be a ground to convict the appellant. The other circumstance, except the recovery should also be

looked into and there must be some chain and corroboration to convict the appellant. In this case there are no other corroborative material, rather no evidence at all.

22. The Hon'ble Supreme Court in the case of ***Raja Naykar versus State of Chhattisgarh*** reported in ***(2024) 3 SCC 481*** at paragraph 29 thereof while referring to the judgment rendered in the case of ***Mustkeem versus State of Rajasthan*** reported in ***(2011) 11 SCC 724*** has held as under: -

"29. It can thus be seen that, the only circumstance that may be of some assistance to the prosecution case is the recovery of dagger at the instance of the present appellant. However, as already stated hereinabove, the said recovery is also from an open place accessible to one and all. In any case, the blood found on the dagger does not match with the blood group of the deceased. In Mustkeem v. State of Rajasthan, this Court held that sole circumstance of recovery of bloodstained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. Thus, we find that only on the basis of sole circumstance of recovery of bloodstained weapon, it cannot be said that the prosecution has discharged its burden of proving the case beyond reasonable doubt."

23. We have already held that the informant is not an eye witness and admittedly there are no eye witness when the prosecution has withheld the star witness, namely, Dotami Bhengra. The Trial Court has heavily relied upon the statement of P.W.3 and some forensic report and recovery, which could not have been done. The Trial Court has also relied upon Section 106 of the Evidence Act, but on the facts of the case, there is no application of Section 106 of the Indian Evidence Act in the instant case. The evidence, which has been led is very fragile, based upon which conviction cannot be sustained. Since the prosecution has failed to complete the chain of circumstance in this case, Section 106 of the Evidence Act cannot be applied.

24. The Hon'ble Supreme Court in the case of ***Sabitri Samantaray versus State of Odisha*** reported in ***2022 SCC OnLine SC 673*** held that Section 106 of the Indian Evidence Act applies to cases where the chain of evidence has been successfully established by the prosecution. Paragraphs 18 and 19 of the said judgment read as under: -

"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].”

25. The Hon’ble Supreme Court in the case of ***Rajinder Singh versus State of Haryana*** reported in ***(2013) 15 SCC 245*** held that Section 106 of the Evidence Act does not relieve the burden of the prosecution to prove guilt of the accused beyond reasonable doubt. Paragraph 18 of the said judgment reads as under: -

“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.”

26. The Hon’ble Supreme Court in the case of ***Satye Singh versus State of Uttarakhand*** reported in ***(2022) 5 SCC 438*** has held that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to the circumstantial evidence that all circumstances must lead to the conclusion that the accused is the only one

who has committed the crime and none else. Reliance on Section 106 of the Evidence Act is also misplaced, inasmuch as Section 106 of the Evidence Act is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused. Paragraphs 18, 19, 20 and 21 of the said judgment read as under: -

"18. Again in Majenderan Langeswaran v. State (NCT of Delhi), this Court having found the material relied upon by the prosecution inconsistent and the infirmities in the case of the prosecution, considered number of earlier decisions, and held that the conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to the circumstantial evidence that all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else.

19. Applying the said principles to the facts of the present case, the Court is of the opinion that the prosecution had miserably failed to prove the entire chain of circumstances which would unerringly conclude that alleged act was committed by the accused only and none else. Reliance placed by learned advocate Mr Mishra for the State on Section 106 of the Evidence Act is also misplaced, inasmuch as Section 106 is not intended to relieve the provision from discharging its duty to prove the guilt of the accused.

20. In Shambhu Nath Mehra versus State of Ajmer, this Court had aptly explained the scope of Section 106 of the Evidence Act in criminal trial. It was held in para 11 : (AIR p. 406)

"11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are preeminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the

very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. Emperor and Seneviratne v. R. All ER at p.49."

21. In the case on hand, the prosecution having failed to prove the basic facts as alleged against the accused, the burden could not be shifted on the accused by pressing into service the provisions contained in Section 106 of the Evidence Act. There being no cogent evidence adduced by the prosecution to prove the entire chain of circumstances which may compel the Court to arrive at the conclusion that the accused only had committed the alleged crime, the Court has no hesitation in holding that the trial court and the High Court had committed gross error of law in convicting the accused for the alleged crime, merely on the basis of the suspicion, conjectures and surmises."

27. Thus, in view of what has been held hereinbefore, we are inclined to allow this appeal and acquit the appellant. The impugned Judgment of Conviction and Order of Sentence dated 24th July, 2023 passed by the Sessions Judge, Simdega in Sessions Trial No.01 of 2019 are hereby set aside. The appellant is acquitted of the charges against him. He is directed to be released from custody forthwith if not wanted in any other case.

28. This appeal is, accordingly, allowed. Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

I.A. No. 1775 of 2024

29. This interlocutory application has been filed, praying for suspension of sentence and releasing the appellant on bail.

30. Since, after hearing the counsel for the appellant and the State and after going through the records of the case, since we have already acquitted the appellant by our judgment, this interlocutory application has lost its force. Thus, this interlocutory application (I.A. No.1775 of 2024) is dismissed as infructuous.