



**Serial No.01
Supplementary List**

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.14/2021

Reserved on: **12.03.2026**

Pronouncement on: **18.03.2026**

Smti. Porthmi Bthuh, aged about 51 years, D/o (L) Shri Laldi Lamurong, R/o Amsohrhong village, PS: Amlarem, West Jaintia Hills Meghalaya.

Represented by her maternal uncle, Shri Kaldione Bthuh, S/o (L) Jasper Shylla, R/o Jowai, Tredienlin, Jowai. Appellant

Vs.

The State of Meghalaya, represented by the Chief Secretary, Government of Meghalaya. Respondent

Coram:

Hon'ble Mrs. Justice Revati Mohite Dere, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. S.P. Mahanta, Sr.Adv with
Ms. L.D.N. Thangkhiew, Adv
Mr. D. Das, Adv
Mr. K. Deb, Adv
Ms. D. Ray, Adv

For the Respondent : Mr. K. Khan, AAG with
Mr. S. Sengupta, Addl.PP
Mr. A.H. Kharwanlang, Addl.PP

- | | | |
|-----|--|-----|
| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes |



JUDGMENT: (per the Hon'ble, the Chief Justice)

By this appeal, the appellant has impugned the judgment and order dated 31st August, 2021, passed in Session Case No.13 of 2013 by the learned Additional Deputy Commissioner (Judicial), West Jaintia Hills District, Jowai, convicting and sentencing the appellant to life imprisonment for both the offences under Sections 302 and 326 of the IPC i.e. for causing the death of Kor (appellant's husband) and for causing grievous hurt to her daughter aged 2 years eight months. The appellant was however acquitted of the offence under Section 302 for allegedly causing the death of her son, aged four years.

Brief facts are as under:

According to the prosecution, the incident took place on 28th March, 2003, at about 7:45 am. It is alleged that the appellant, after a quarrel with her husband, assaulted him with a dao and also her son, aged four years, as a result of



which, both succumbed to the injuries. The appellant is also alleged to have assaulted her minor daughter, aged about two years and eight months, with a dao after which, the appellant is stated to have inflicted injuries to herself, also with a dao.

2. Pursuant to the said incident, PW8- the headman of village Amlari lodged an FIR being P.S. Case No.9(03) of 2003 with the Jowai Police Station, alleging offences punishable under Sections 302 and 326 of the IPC as against the appellant. After investigation, police filed chargesheet in the said case. Since the case was Session triable, the case was committed to the Court of Sessions for trial. The court framed charges against the appellant for the offences punishable under Sections 302 and 326 of the IPC i.e. for causing the death of her husband and son and for causing injuries to her daughter. The appellant pleaded not guilty to the same and claimed to be tried.

3. The prosecution in support of its case, examined eight witnesses:



- (1) Shri Nicholas Bora- PW1
- (2) Smti. Brian Sama- PW2
- (3) Dr. P. Syngkon (Doctor)- PW3
- (4) Smti. Phibi Supoh- PW4
- (5) Shri Hunmon Bthuh- PW5
- (6) Dr. S. Rani (Doctor)- PW6
- (7) Shri Birendra Ch. Marak (Investigating Officer)-PW7
- (8) Shri Jarly Pohplet (Headman/Complainant)-PW8.

4. The appellant claimed to be innocent. She did not adduce any evidence in support of her case.

5. After hearing the parties, the trial court convicted and sentenced the appellant as stated aforesaid. Hence, this appeal.

6. Mr. Mahanta, learned Senior Counsel for the appellant submitted that the conviction of the appellant cannot be sustained in the absence of any evidence to connect the appellant with the crime. He submitted that the prosecution case rests on circumstantial evidence and that the prosecution had miserably failed to prove any of the circumstances so



relied upon, by legal, cogent and admissible evidence. He further submitted that the trial court despite observing in the impugned judgment and order that there was no evidence qua the appellant, convicted the appellant solely on the basis of a confession allegedly made by the appellant. He further submitted that the said confession relied upon by the trial court suffers from several infirmities/illegalities, including non-supply of the said confession and non-exhibiting of the same during trial. Mr. Mahanta, learned Senior Counsel relied upon the following judgments, in support of his submission;

- (i) ***Babubhai Udesinh Parmar v. State of Gujarat: (2006) 12 SCC 268; (2007) 1 SCC (Cri) 702; 2006 SCC OnLine SC 1277 (paragraphs 3, 10, 11, 12, 13, 17, 18 & 19)***
- (ii) ***State of Punjab v. Harjagdev Singh: (2009) 16 SCC 91 (paragraphs 16 & 17);***
- (iii) ***Philip v. State of Karnataka: 1980 Cri LJ 171 (paragraphs 3, 8, 10 & 11);***
- (iv) ***Shivappa v. State of Karnataka: (1995) 2 SCC 76 (paragraphs 3 to 8);***
- (v) ***Mahabir Singh v. State of Haryana: (2001) 7 SCC 148 (paragraphs 20 & 22);***



- (vi) ***Dagdu & ors v. State of Maharashtra: (1997) 3 SCC 68 (paragraphs 49 to 52 and 98);***
- (vii) ***Kehar Singh v. Delhi State Administration: (1998) 3 SCC 609 (paragraphs 117, 119, 121, 124);***
- (viii) ***Sarwan Singh Rattan Singh v. State of Punjab: 1957 SCC OnLine SC 1 (paragraph 10);*** and
- (ix) ***State of Sikkim v. Suren Rai in Crl.A.No.17 of 2016.***

7. Mr. Khan, learned Additional Advocate General submitted that no interference was warranted in the impugned judgment and order, inasmuch as, the trial court had rightly convicted the appellant after considering the confession recorded under Section 164 CrPC of the appellant. He submitted that the confession so recorded by the learned Magistrate suffers from no infirmities, inasmuch as, the learned Magistrate was satisfied that the confession of the appellant was made spontaneously by her, which reflects its voluntariness.

8. Before we proceed to analyse the evidence qua the appellant, it is pertinent to note that the prosecution case



rests entirely on circumstantial evidence. The law relating to circumstantial evidence is well settled and is no longer *res integra*. The Apex Court in the landmark case of ***Sharad Birdhichand Sarda v. State of Maharashtra*** reported in **(1984) 4 SCC 116** laid down five golden principles to be followed in a case based on circumstantial evidence;

“(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 only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

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

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

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

9. Keeping in mind the aforesaid principles, we now proceed to deal with the facts in hand.



10. At the outset, we may note that the prosecution case rests entirely on circumstantial evidence, i.e. mainly on a confession allegedly made by the appellant under Section 164 CrPC. According to the prosecution, the said confession of the appellant recorded under Section 164 CrPC by the learned Magistrate, is true and voluntary and that the same is duly corroborated by the evidence of PW1, PW2, PW5 and PW7 i.e. with respect to the presence of the appellant at the spot with a dao, soon after the incident.

11. We may also note, that the fact, that Kor (appellant's husband) and Donmi Bthuh's (appellant's son) death was homicidal, is not seriously disputed by the appellant. Nor, has the appellant seriously disputed the injuries sustained by Miss Lanosha Bthuh (appellant's daughter). Thus, the question that arises for consideration, is, whether the appellant is the author of the same? and whether the prosecution has proved beyond reasonable doubt that it is the appellant who caused the deaths/injuries?



12. Before we proceed to discuss the confession allegedly made by the appellant under Section 164 CrPC, it would be necessary to discuss the evidence of the witnesses, as has come on record.

13. PW1 – Shri Nicholas Bora has in his evidence stated that he knew the appellant, as the village where the appellant was staying was adjacent to his village in Jaintia Hills. He has deposed that he learnt of the incident when he had gone to a shop situated near the appellant's house, to buy tymphew; that he saw a crowd near the place which is used for washing clothes; that when he went near the spot, he saw the body of a person lying there i.e. of Kor (deceased); and that he did not see the appellant there. The said witness although had further deposed that he saw the brother of the appellant snatching the dao from the appellant's hand, has deposed that he did not know who killed Kor.



14. PW2 – Smt. Brian Sama has stated that she knew the deceased, as he was also a resident of her village; that on the day of the incident, she was washing clothes at a public tap near the house of the deceased; that when she was washing the clothes, she suddenly heard the deceased screaming; that when she looked, she saw the deceased coming out of his house and collapsing just outside his house; that she saw the appellant (wife of the deceased) coming out of the house holding a dao in her hand and threatening with the dao. PW2 has further deposed that the neighbours gathered at the spot soon after the incident, where the deceased had collapsed.

15. PW4 – Smti. Phibi Supoh has in her evidence deposed that the deceased was her elder brother and the appellant, her sister-in-law and that from the said marriage, the couple had two children, a son and a daughter. She has further deposed that on the day of the incident, she was washing clothes at the village tap near her brother's house, where many other villagers were also washing clothes; that she heard shouts and



cries, that her brother had died, upon which she collapsed and became unconscious; that on regaining consciousness, she found herself at her residence and was told by her parents that her brother had died. PW4 - Smti. Phibi Supoh has further deposed that subsequently, the villagers told her that her brother was murdered by the appellant; and that she and her family had not lodged any FIR after the incident, as the matter was compromised between them, and that it was the village authority, i.e., the headman who lodged an FIR. In her cross-examination, she deposed that she would not be in a position to state whether any of the villagers had witnessed the incident or not.

16. PW5 - Shri Hunmon Bthuh has deposed that the appellant is his elder sister and that the deceased was his brother-in-law and that they stayed close to the appellant's house. PW5 - Shri Hunmon Bthuh has further deposed that on the day of the incident, he heard screams coming from the house of the appellant, pursuant to which he went to his



sister's house; that he saw the appellant coming out of the house holding a dao and putting it on her neck cutting herself, pursuant to which he ran towards his sister and snatched the dao from her; that his sister (appellant) collapsed and that he too received injuries on his hand, whilst snatching the said dao. He has stated that he went home to apply medicine to his wound and when he returned, he learnt that the appellant's son had died due to a neck injury and that the appellant's husband body was found near the village road outside the house. He has further stated that the police had seized two daos, however, he was unable to state whether they were the same daos. In his cross-examination, he had stated that the deceased had an affair with another woman and the entire village was aware of it.

17. The Investigating Officer Shri B.C. Marak was examined as PW7. He has deposed that he received the information from PW8 - Shri Jarly Pohplet about an incident that had taken place in village Amlarem, pursuant to which, he went to the



said village; that on reaching the village, he found a large number of village people on the spot; that he found a dead body lying on the footpath and one dead body of a minor child inside the room; that he conducted an inquest and spot panchnama and sent the bodies for postmortem examination to Jowai Civil Hospital. He has further stated that he arrested the appellant and conducted the investigation in the said case. In his cross-examination, PW 7 has deposed that the daos i.e., exhibit-I and exhibit-II lying near the dead body were stained with blood and that the seized articles were kept in a Malkhana, however, were not sent to the FSL.

18. Shri Jarly Pohplet was examined as PW8. He has stated that at the relevant time, he was the headman of Amlari Model village. He also stated that he along with the Secretary of the village lodged an FIR on learning of an incident that had taken place. The said FIR was exhibited as exhibit '6(1)'. In his cross-examination, he has admitted that he did not read the contents of the FIR before putting his signature on the same.



19. Having perused the evidence of the witnesses as stated aforesaid, it is apparent that none of the witnesses had last seen the appellant with the deceased and children alone. There is absolutely no evidence to show, what happened inside the house and who all were there in the house. There is not a whisper about the children being injured or seen lying at the spot. Infact, even the learned Judge has in the impugned judgment observed that there was no evidence to show what happened inside the house and that there was nothing on record, except the confession of the appellant recorded under Section 164 CrPC. The learned Judge has further, while convicting the appellant, observed that there was also no evidence to show who had caused the injuries or who had started the fight. The learned Judge only relying on the statement under Section 164 CrPC allegedly made by the appellant (though not exhibited) relied on the same while convicting the appellant as stated aforesaid.



20. It is in this context, that it would be apposite to consider the alleged confession of the appellant that was relied upon by the learned Judge. From a perusal of the confession, it appears that the appellant was arrested on 28th March, 2003 and was produced before the learned Magistrate on 29th March, 2003 at 2:30 pm from police lockup. A perusal of the alleged confession recorded under Section 164 CrPC suffers from several infirmities, making it impossible for us to place implicit reliance on the same for the following reasons:

(i) that there is nothing to indicate from the confession so recorded, that the appellant was given any time to reflect as to whether she wanted to make the confession;

(ii) that there are blanks in columns 3 and 4, i.e., in column 3, as to where the appellant/accused was kept, in order to give her time, to reflect, before making the statement; and in column 4, the Magistrate's satisfaction that there was no police officer in the place, from where the proceeding could



be heard. Interestingly, column 3 of the confession categorically states as under:

“3. Magistrate shall not, except under circumstances which render delay impossible, record the confession of an accused person immediately the police bring him into court. He shall be given at least three hours for reflection during which period he shall not be in contact with any police officer and shall not be permitted to hold converse with any person.”

However, there is nothing in the said column to indicate how much time was given to the appellant to reflect and where the appellant was kept to enable her to make the said reflection.

(iii) the endorsement at the end of the confession as contemplated under Section 164(4) CrPC is absent;

(iv) the appellant was administered oath, contrary to the provisions of law;

(v) the confession was admittedly not exhibited through any witness; and

(vi) there is nothing on record in the proceeding, to show whether the confession was opened and a copy of the said



confession was handed over to the appellant. According to the learned Senior Counsel for the appellant, the appellant was not aware of the said confession allegedly made by her and learnt of the same, only after the impugned judgment and order of conviction and sentence was passed. Learned AAG although disputes the same, is unable to show when the confession was opened or given or exhibited through which witness.

Learned AAG vehemently submitted that the confession was true and voluntary, inasmuch as, the Magistrate had recorded in the column of 'reason to believe' that "the said confession was spontaneous". Learned AAG also relied on Section 80 of the Evidence Act, 1872 and the judgment of the Apex Court in support thereof, in ***Madi Ganga v. State of Orissa*** reported in **(1981) 2 SCC 224**. It may be noted that reliance placed on the judgment in *Madi Ganga* (supra) is misplaced, inasmuch as in the said case, the arguments advanced by the appellant therein, was that the Court ought



to have examined the learned Magistrate who recorded the confession, as a witness. The said contention was rejected by the Court, by placing reliance on Section 80 of the Evidence Act. The Apex Court held that Section 80 of the Evidence Act makes the examination of the Magistrate unnecessary. In the said judgment, the Apex Court found the confession made by the accused therein, true and voluntary, having been duly recorded in accordance with law, while placing reliance on the same. The same is not the case in the present case.

21. As noted above, the alleged confession suffers from several infirmities and as such, implicit reliance cannot be placed on the same. It may also be noted that no question was put to the appellant while recording her statement under Section 313 CrPC vis-à-vis the alleged confession made by her.

22. If the aforesaid confession is ignored and which will have to be ignored for the reasons stated aforesaid, the other evidence on record i.e., the evidence of PW1, PW2, PW4, PW5, PW7 and PW8 is not sufficient to come to the conclusion that



it is the appellant and the appellant alone who was responsible for causing the death of her husband-Kor and the child. There is nothing on record to show that the appellant was alone with the deceased in the house and that there was none present, apart from the appellant. From the alleged confession relied upon by the learned AAG, it appears that the incident took place in the presence of a non-tribal person. However, admittedly, no investigation has been done in this regard.

23. Mr. Khan, learned AAG states that Section 106 of the Evidence Act would come into play, having regard to the fact, that the appellant ought to have offered some explanation with respect to what happened in the house on the day of the incident. He submits that the appellant had failed to discharge her burden, thus, showing her complicity in the alleged crime. This aforesaid submission of the learned AAG would have to be rejected. It may be noted that Section 106 of the Evidence Act would come into play only and only when the prosecution



has connected the dots of the circumstances on which the prosecution seeks to rely. It is well settled that the prosecution has to prove its case on its own steam and cannot take advantage of the weaknesses of the defence. Of course, false defence, false explanation and non-explanation under Section 106 of the Evidence Act would be additional circumstances, provided that the prosecution has been able to prove the chain of circumstances by leading cogent, legal and admissible evidence. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This Section cannot be used to support a conviction unless the prosecution has discharged the onus of proving all the elements necessary to establish the offence.



24. The Apex Court in ***Nagendra Sah v. State of Bihar*** reported in **(2021) 10 SCC 725** has in paragraph 23 observed as under:

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

25. We in the facts, find that the prosecution has miserably failed to prove its case i.e., the circumstances, against the appellant, by leading cogent, legal and admissible evidence and that the chain of evidence is far from complete.

26. Accordingly, the impugned judgment and order dated 31st August, 2021 passed by the learned Additional Deputy Commissioner (Judicial), West Jaintia Hills District, Jowai in



Session Case No.13 of 2013 is quashed and set aside and the appellant is acquitted of all the offences.

27. The appellant be set at liberty forthwith, if not required in any other case.

28. The appeal is allowed and disposed of on the aforesaid terms.

(W. Diengdoh)
Judge

(Revati Mohite Dere)
Chief Justice

Meghalaya
18.03.2026
"Lam DR-PS"