

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

Crl. A(J) No. 08 of 2022

1. Shri Papan Biswas, son of late Shantiram Biswas, resident of Krishnapur, P.S. Teliamura, District: Khowai Tripura.

.....Convict-appellant

-V E R S U S-

1. The State of Tripura (notice to be served through the learned Public Prosecutor) High Court of Tripura, Agartala

..... Respondent.

B_E_F_O_R_E

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE ARINDAM LODH

For Appellant(s)	:	Mr. J. Bhattacharjee, Advocate. Mr. S. Ghosh, Advocate.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of hearing and delivery of judgment and order	:	30.08.2023
Whether fit for reporting	:	YES

JUDGMENT & ORDER [ORAL]

[T. Amarnath Goud, J]

Heard Mr. J. Majumder, learned counsel assisted by Mr. S. Ghosh, learned counsel appearing for the appellant also heard Mr. S. Debnath, learned Addl. P.P. appearing for the respondent.

[2] This appeal has been filed under Section-374 of the Code of Criminal Procedure, 1973 against the impugned judgment and order of conviction and sentence dated 03-03-2022 passed by the learned Sessions Judge, Dhalai Judicial District, Ambassa in connection with Case No. S.T (T-1) 30 of 2017, whereby and whereunder, the appellant has been convicted under Sections-302/201 of the Indian Penal Code and thereby sentenced him to suffer Rigorous Imprisonment for life for the commission of offence punishable under Section-302 of the Indian Penal Code and also

liable to pay a fine of Rs. 10,000/- (Rupees ten thousands) only for the said offence and in default, to suffer Rigorous Imprisonment for a further period of one year, further sentenced to suffer three years Rigorous for the offence punishable under of Section-201 of the Indian Penal Code and also liable to pay a fine of Rs.5,000/- (Rupees five thousands) only for the said offence and in default of payment of fine, he is liable to undergo Rigorous Imprisonment for a further period of three months. Upon realization of fine, the same will be given to the legal heirs of the deceased. Both the sentences shall run concurrently.

[3] The factual backdrop of this case is that one Shri Nandalal Sarkar, Son of Late Sudarshan Sarkar of 60 Card, PS- Gandacherra under Dhalai District lodged a written “Ejahaar” with the Officer-in-charge of Gandacherra Police Station to the effect that on 28-05-2016, Saturday, at about 09.00/09.30 pm (at night) his younger brother Haripada Sarkar left the house with the FIR named accused Papan Biswas, Son of Late Satiram Biswas of Krishnapur, PS-Teliamura and since then he has been missing and that subsequently on 30-05-2016 in the afternoon at about 2 pm some fishermen of Dumbur lake found the dead body of the younger brother of the complainant floating in the river “Sarma” near Ramnagar Debendradaspara and informed the complainant about the same over mobile phone. On hearing the same the complainant accompanied by police went to the place of occurrence and identified the dead body of his younger brother. Thereafter, the dead body was recovered. There was bleeding injuries on the nose and mouth of his younger brother. It was alleged by the complainant that they have strong suspicion that the three FIR named accused persons namely, Papan Biswas, Akkarmani Chakma and Smti. Mallika Chakma committed the murder of his younger brother on 28-05-2016 in the night at about 10-30 pm after physical assault at Bangkarghat area and then threw the dead body into the river.

[4] On the basis of the aforesaid complaint Officer-in-Charge of Gandacherra Police Station registered Gandacherra Police Station case no. 2016 GNC 015, dated 30-05-2016 for the commission of offences

punishable under Section 302/201/34 of the Indian Penal Code against the accused persons namely, Papan Biswas, Akkarmani Chakma and Smti.Mallika Chakma and endorsed the case for investigation to Shri Rakesh Patari, Sub-Inspector of Police.

[5] That during investigation the Investigating Officer visited the place of occurrence and prepared hand sketch map with separate index of the two different place of occurrence, recovered the dead body, prepared inquest report, shifted the dead body of the deceased-victim to Gandacherra Sub-Divisional Hospital, arranged postmortem examination over the dead body, examined the complainant and some other witnesses and recorded their statements under Section 161 of the Cr.P.C., arrested the accused persons namely, Papan Biswas and Akkarmani Chakma and thoroughly interrogated them and prepared their interrogation reports, also prepared the disclosure statements and pointing out memorandum of the arrested accused persons in presence of an Executive Magistrate, seized five numbers of mobile phones, forwarded the accused persons before the Court and on completion of investigation submitted charge sheet in the instant case against the accused persons namely, Papan Biswas for the commission of offences punishable under Section 302/201/120(B) of the Indian Penal Code and against Smti. Mallika Chakma for the commission of offences punishable under Section 120(B) of the Indian Penal Code read with Section 302/201 of the Indian Penal Code.

[6] After hearing both the parties and having gone through the material evidence on record, the learned Court below has observed as under:

“Thus, considering all the aspects in the given case this court sentenced the convict Papan Biswas, Son of Late Shantiram Biswas of village- Krishnapur, Police Station- Teliamura, District- Khowai to suffer rigorous imprisonment for life for the commission of offence punishable under Section 302 of the Indian Penal Code and also liable to pay a fine of Rs. 10, 000/- (Rupees Ten thousand) only for the said offence and in default of payment of such fine he is liable to undergo rigorous imprisonment for a further period of 1 (one) year.

This court further sentenced the convict Papan Biswas, Son of Late Shantiram Biswas of village- Krishnapur, Police Station- Teliamura, District- Khowai to suffer rigorous imprisonment for 3 (three) years for the commission of offence punishable under Section 201 of the Indian Penal Code and also liable to pay a fine of Rs. 5000/- (Rupees five thousand) only for the said offence and in default of payment of such fine he is liable to undergo rigorous imprisonment for a further period of 3 (three) months.

Upon realization of fine, the same be given to the legal heir of the deceased Haripada Sarkar.

Both the sentences shall run concurrently.

From the case record it is revealed that convict Papan Biswas was in custody since 31-05-2016 to 03-06-2016 i.e., for 4 (Four) days and 04-06-2016 to 07-09-2016 i.e., for 96 (Ninety six) days, in total 100 (One hundred) days during the investigation and trial of this case and so this period of his detention will be set off against his term of imprisonment imposed under this Judgment and order of conviction as per the provision of section 428 of the Code of Criminal Procedure, 1973.”

[7] The appellant herein, being aggrieved by and dissatisfied with the impugned judgment and order of conviction dated 03.03.2022, has preferred this present appeal for ends of justice.

[8] Mr. J. Bhattacharjee, learned counsel appearing for the convict appellant has submitted that the alleged date of occurrence was on 28-05-2016 at about 21.00 hours and the date of information at the police station was on 30-05-2016 at about 21.36 hours when the dead body was recovered i.e. after lapse of two days. Before recovery of dead body, no G.D Entry for missing Haripada Sarkar and the wife of Haripada Sarkar (P.W-4) namely Smt. Parbati Das did not lodge any complaint against any of the accused persons.

[9] The F.I.R was filed against three accused persons and after completion of investigation, the charge sheet was filed against two accused persons namely Shri Papan Biswas, the convict appellant herein and Smt. Mallika Chakma and another accused person of this case namely Akkarmani Chakma committed suicide during the investigation of this case. It would be evident from the evidences of this case that the F.I.R of this case was not proved as the complainant of this case namely Shri Nanda Lal Sarkar, the elder brother of deceased was not examined and recorded his evidence due

to his death. The scribe of F.I.R and the Recording Officer (in short, R/O) of F.I.R were also not examined and recorded their evidences and as such, the alleged F.I.R of this was not properly exhibited during trial of this case.

[10] After plain reading contents of impugned judgment and order of conviction and sentence dated 03-03-2022 passed by the learned Court below, it has been crystal clear and found only evidence of P.W-3 Shri Jatindra Chandra Roy and P.W-7- Shri Binanda Roy on account of last seen together, he was convicted though the learned Court below did not consider the vital aspect that none of the prosecution witnesses stated that they have seen the accused person Shri Papan Biswas, the convict appellant herein committed murder of the deceased. On the basis of such type of weak piece of evidence, a person cannot be convicted.

[11] It is admitted fact that no forensic expert was cited witness and recorded evidence as because during the investigation of this case in the State Forensic Sciences Laboratory (in short, SFSL) test was not done for determination of actual cause of death. So, the opinion given by P.W-1 Dr. Anish Majumder, Medical Officer of this case is found incomplete preliminary opinion and not conclusive opinion regarding the actual cause of death. According to Medical Jurisprudence, unless the forensic expert opinion obtained conclusive opinion of cause of death is not permissible.

[12] P.W-1 Dr. Anish Majumder, the Medical Officer of this case, who conducted the post mortem of the deceased also clearly stated in his evidence that the cause of death may be 'asphyxia' due to drowning in river water which acted simultaneously and the injury was homicidal in nature. So, it appears that he was not confirmed about the actual cause of death. Unless conclusive opinion of cause of death ascertain in homicidal in nature, a person cannot be convicted. In this case, this vital aspect totally failed to establish by supporting the evidences but the learned Court miserably failed to appreciate this vital aspect and as such, it is liable to be interfered with.

[13] According to evidence of prosecution witnesses, it is a clear a case of accidental death due to sudden fell down into the speedily blowing

river with sufficient drunken condition and floating the speedily blowing water and dashed with hard substances and death. According to evidence of P.W-6, Shri Dinaram Chakma and P.W-9 Shri Rakesh Patari, Haripada Sarkar (now deceased) before death consumed country made alcohol and as such, it is a clear case of asphyxia drowning into the speedily river water with drunken condition and it was an accidental death.

[14] It is admitted fact that no eye witness of this case. No complaint against the accused person Shri Papan Biswas, the convict appellant herein or any other accused persons of this case prior to death of deceased rather as per evidence of P.W 4 Smt. Parbati Das, (the wife of the deceased), it has been crystal clear that prior to alleged incident was found cordial relation in between the present appellant and the deceased on the relevant date of occurrence and no enmity at any point of time for committing any such alleged murder in between them.

[15] In the impugned judgment and order also, the learned Court below at the time of appreciation of evidences clearly opined that no cogent evidence and eye witness of this case but unfortunately at the end of the trial mechanically convicted the appellant. It is also admitted fact that the dead body of deceased Haripada Sarkar was recovered by fishermen from the river water with full decomposed swelled up due to putrefaction in river water and formation of gas inside the body. The fishermen who recovered the dead body was also not cited witness of this case during trial.

[16] The disclosure statement of accused person Shri Papan Biswas, the convict appellant herein which marked as Exhibit-P-13, P-13/1 and the disclosure statement of another accused person Akkarmoni Chakma (now deceased) which marked as Exhibit-P-11,P-11/1. Both the statements were recorded by the police and as such, it is inadmissible as per under Sections- 25, 26 and 27 of Evidence and before recording such disclosure statements, the dead body of deceased already recovered with decomposed condition from the river water.

[17] The learned Executive Magistrate was not examined as witness of this case because by using magisterial power, no statement was recorded and it is also evident from the record that no confessional statement of any of the accused person under Section-164(2) of the Code of Criminal Procedure, 1973 was recorded. It is settled principle in the Criminal Jurisprudence on the basis of interrogation report of any accused persons which prepared by the police during investigation only, a person cannot be convicted.

[18] According to evidence of P.W-3, Shri Jatindra Chandra Roy and P.W-7, Shri Binanda Roy, they are closed relatives of deceased Haripada Sarkar which fact both the witnesses stated at the time of recording their evidences. Other witnesses of this case have not supported and the learned Court below only relied the evidence of these two witnesses and mechanically convicted the appellant and more particularly the learned Court below did not consider all these vital points with regard to this case at the time of pronouncement of judgment and convicted the appellant. Ultimately, it appears that without any cogent, trustworthy and chain up circumstances, the appellant was convicted and as such, it is liable to be interfered with.

[19] In support of his case, has placed his reliance in a case of the Apex Court in *Chandrapal v. State of Chhattisgarh (Earlier M.P.)*, [Crl. A. No.378 of 2015] wherein, the Court has held as under:

“5. The learned counsel Mr. Akshat Shrivastava appearing for the appellant taking the Court to the evidence of the witnesses examined by the prosecution. more particularly of PW-2, PW-4, PW-5 and PW-6, submitted that there were major contradictions in their evidence as regards the alleged extra judicial confession made by the accused Videshi before them. Relying upon various decisions of this Court, he submitted that conviction cannot be based on the extra judicial confession made by the co-accused, which is of a very weak kind of evidence. Repelling the theory of 'Last seen theory', he submitted that the statement of PW1 Dhansingh who had allegedly last seen Kanhaiya, having been called by the present appellant, was recorded after 4 months of the incident. Even as per the case of the prosecution, the said incident of calling Kanhaiya by the appellant was 10 days prior to the date on which the dead bodies were found in the Kajubadi, and there being long time gap between the day the deceased was allegedly last seen with the appellant and the day when his dead body was found, it was very risky to convict the

appellant solely on such evidence. He further submitted that the doctor who had performed the postmortem had also opined that the cause of death was asphyxia as a result of hanging and the nature was suicidal. Thus, in absence of any clear or cogent evidence against the appellant, both the courts had committed gross error in convicting the appellant.

6. However, the learned counsel appearing for the respondent State submitted that there being concurrent findings recorded by the Sessions Court as well as High Court with regard to the guilt of the appellant, the Court may not interfere with the same. While fairly agreeing that an extra judicial confession would be a weak piece of evidence, he submitted that there was other corroborative evidence adduced by the prosecution which conclusively proved the entire chain of circumstances leading to the guilt of the present appellant. According to him, after the alleged incident on 02.12.1994, till the dead bodies were recovered on 11.12.1994, nobody had seen the deceased Brinda and Kanhaiya in the village, and therefore the evidence of PW-1 Dhansingh who had seen Kanhaiya lastly with the present appellant was required to be believed, as believed by the courts below. According to him, the concerned doctor who had carried out the postmortem had also opined that the death of the deceased could be homicidal death also.

7. At the outset, it may be stated that undisputedly the entire case of the prosecution rested on the circumstantial evidence, as there was no eye witness to the alleged incident. The law on the appreciation of circumstantial evidence is also well settled. The circumstances concerned 'must or should be established and not 'may be' established, as held in Shivaji Sahabrao Bobade & Anr. Vs. State of Maharashtra, (1973) 2 SCC 793. The accused 'must be' and not merely 'may be' guilty before a court can convict him. The conclusions of guilt arrived at must be sure conclusions and must not be based on vague conjectures. The entire chain of circumstances on which the conclusion of guilt is to be drawn, should be fully established and should not leave any reasonable ground for the conclusion consistent with the innocence of the accused. The five golden principles enumerated in case of Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116 laid down in para 152 may be reproduced herein for ready reference:

152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793: 1973 SCC (Cri) 1033: 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] 'Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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.

8. It is also needless to reiterate that for the purpose of proving the charge for the offence under Section 302, the prosecution must establish 'homicidal death' as a primary fact. In order to convict an accused under Section 302, the court is required to first see as to whether the prosecution has proved the factum of homicidal death. So far as the facts of present case are concerned, the evidence of PW-13 Dr. R.K. Singh, who had carried out the post-mortem of the deceased Brinda and Kanhaiya, would be most relevant in this regard. He had stated in his deposition before the court, inter alia, that on 12.12.1994, he had carried out the post-mortem of Kumari Brinda, daughter of Bhagirathi, and of Kanhaiya alias Chandrashekhar Gaur. The dead bodies of both the deceased were in decomposed state. He had further stated that the knot mark present on the neck of the deceased Brinda was ante-mortem, and that the cause of death appeared to be Asphyxia due to hanging. The death had taken place within 8 to 10 days and the nature of death was Suicidal. The said Doctor had stated similar facts for Kanhaiya that the dead body of Kanhaiya was found bent towards left side from his neck and a ligature mark having size 10' x 5' was present on the neck. The cause of death appeared to be Asphyxia due to hanging and the death appeared to have taken place within 8 to 10 days. He had further stated that there was neither fracture found on the dead bodies of the deceased, nor any blood clots were found, nor any injuries were found, and therefore he had opined that the cause of death was hanging which normally is found in case of suicide. He specifically stated that as the dead bodies were decomposed, he could not express any opinion whether it was a homicidal death. In the cross-examination by the learned counsel for the accused, he had categorically admitted that he did not find any symptom of homicidal death, nor he had opined in his report given on 12.12.1994 that the deaths of the deceased were homicidal. Of course, he had stated that on the basis of the report submitted on 30.04.1995, an inference could be drawn that the deaths could be homicidal deaths.

11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this court has consistently held that an extra-judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra-judicial confession. As held in case of State of M.P. Through CBI & Ors. Vs. Paltan Mallah & Ors., (2005) 3 SCC 169, the

extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused.

12 in Sahadevan & Anr. Vs. State of Tamil Nadu, (2012) 6 SCC 403, it was observed in para 14 as under:

14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.'

The said ratio was also reiterated and followed by this court in cases of Jagroop Singh Vs. State of Punjab, (2012) 11 SCC 768, S.K. Yusuf Vs. State of West Bengal, (2011) 11 SCC 754 and Pancho Vs. State of Haryana, (2011) 10 SCC 165, wherein it has been specifically laid down that the extra judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution. It should be truthful and should inspire confidence. An extra judicial confession attains greater credibility and evidentiary value if it is supported by chain of cogent circumstances and is further corroborated by other prosecution evidence. In the instant case it is true that the coaccused Videshi had allegedly made self-inculpatory extra judicial confession before the PW-4 Bhola Singh, and had made extra judicial confession before the other witnesses i.e., PW-5 Chandrashekhar, PW-6 Baran Singh Thakur and PW-7 Dukaluram stating, inter alia, that the other three accused i.e., Bhagirathi, Chandrapal and Mangal Singh had committed the murder and he (i.e. Videshi) was asked to assist them in disposing the dead bodies and concealing the evidence. However, the High Court, considering the inconsistency between the said two extra judicial confession made by the co- accused Videshi, did not find it safe to convict the other accused i.e., Bhagirathi, Mangal Singh and Videshi himself, and the High Court surprisingly considered the said extra judicial confession made by Videshi as an incriminating circumstance against the appellant Chandrapal for convicting him for the offences charged against him. In our opinion if such weak piece of evidence of the co-accused Videshi was not duly proved or found trustworthy for holding the other co-accused guilty of committing murder of the deceased Brinda and Kanhaiya, the High Court could not have used the said evidence against the present appellant for the purpose of holding him guilty for the alleged offence.

13. This takes the court to examine the theory of Last seen together propounded by the prosecution. As per the case of prosecution, PW-1 Dhansingh had seen the accused Chandrapal calling the deceased Kanhaiya and taking him inside his house on the fateful night. Apart from the fact that the said Dhansingh had not stated about the time or date when he had lastly seen Kanhaiya with Chandrapal, even assuming that he had seen Chandrapal calling Kanhaiya at his house when he was sitting at the premises of village

panchayat, the said even had taken place ten days prior to the day when the dead bodies of the deceased were found. The time gap between the two incidents i.e., the day when Dhansingh saw Chandrapal calling Kanhaiya at his house and the day Kanhaiya's dead body was found being quite big, it is difficult to connect the present appellant with the alleged crime, more particularly when there is no other clinching and cogent evidence produced by the prosecution.

16. In *Jaswant Gir Vs. State of Punjab*, (2005) 12 SCC 438, this court held that in absence of any other links in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of 'Last seen together', even if version of the prosecution witness in this regard is believed.

17. In *Arjun Marik & Ors. Vs. State of Bihar*, 1994 Supp (2) SCC 372, It was observed that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused, and therefore no conviction on that basis alone can be founded.

18. As stated hereinabove, in order to convict an accused under Section 302 IPC the first and foremost aspect to be proved by prosecution is the factum of homicidal death. If the evidence of prosecution falls short of proof of homicidal death of the deceased, and if the possibility of suicidal death could not be ruled out, in the opinion of this Court, the appellant accused could not have been convicted merely on the basis of the theory of 'Last seen together'.

[20] Mr. S. Debnath, learned Addl. P.P. appearing for the respondent-State has submitted that the evidence of the prosecution witnesses is synchronized and very much trustworthy and furthermore there is no missing link in the series of act, one after another, from the very inception to the end. He has further submitted that evidences of all the witnesses are corroborative and it strengthened the prosecution case. Counsel appearing for the appellant has failed to rebut the evidence of the prosecution witnesses and there is nothing to disbelieve the prosecution evidence. According to learned Addl. P.P., accused Papan Biswas does not deserve any sympathy and he is not entitled to get any benefit under any beneficial legislation.

[21] It has been further added that the accused person committed a heinous crime like murder and the *mens rea* of committing the crime is very much clear in the given case and thus he deserves to be handled very carefully to protect the society and in this case the chain of circumstances is interlinked by threads and it left no iota of doubt in the commission of crime by the accused. As such, learned Addl. P.P. finally argued that the

prosecution is proved beyond all reasonable shadow of doubt and thereby the accused Papan Biswas deserves an order of conviction and severe and exemplary punishment.

[22] In view of the above discussions and observation, we are of the view that the pin pointed discussion would be on the point of last seen theory and the circumstantial evidence. Absence of any other links in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of last seen together, even if version of the prosecution witness in this regard is believed, last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible in order to convict and accused under Section-302 IPC the first and foremost aspect to be proved by the prosecution falls short of proof of homicidal death of the deceased and if the possibility of suicidal death could not be ruled out, in the opinion of this Court, the appellant accused could not have been convicted merely on the basis of the theory of last seen together.

[23] In our opinion, when the case of the prosecution rested on circumstantial evidence, it was imperative for the prosecution to prove beyond reasonable doubt that the death of the deceased was homicidal death and not suicidal. There is also no extra judicial confession from the accused person. It has also been contended that the motive behind the murder of the deceased was also not established. PW-1, the doctor who opined that the death of the deceased could be homicidal death also. The law on the appreciation of circumstantial evidence is also well settled. The circumstances concerned must or should be established and not may be established, as held in *Shivaji Shabrao Bobade and Another v. State of Maharashtra*, reported in (1973) 2 SCC 793. The accused must be and not merely may be guilty before a Court can convict him. The conclusion of guilt arrived at must be sure conclusions and must not be based on vague conjectures. The entire chain of circumstances on which the conclusion of guilt is to be drawn, should be fully established and should not leave any

reasonable ground for the conclusion consistent with the innocence of the accused.

[24] It is worth noting that the Court below in the impugned judgment has not considered at all the evidence of the doctor to come to the conclusion whether the death was homicidal death, before confirming the conviction of the appellant for the offence punishable under Section-302 of IPC. This takes the Court to examine the incriminating evidence relied upon by the prosecution that is the pointing out of memorandum. As stated hereinabove, in order to convict an accused under Section-302 of IPC the first and foremost aspect to be proved by the prosecution is the factum of homicidal death. If the evidence of prosecution falls short of proof of homicidal death of the deceased and if the possibility of suicidal death could not be ruled out, in the opinion of this Court, the accused could not have been convicted merely on the basis of the theory of last seen together.

[25] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspicions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, we find it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant.

[26] In the backdrop of above analysis, we are of the view that the prosecution has failed to establish their projected case and consequently, the instant appeal is allowed. Accordingly, the order of conviction and sentence passed by the learned Sessions Judge, Dhalai Judicial District, Ambassa in Case No. S.T. (Type-1) 30 of 2017 vide judgment and order of conviction and sentence dated 03.03.2022 stands set aside. The convict-appellant shall

be released forthwith, if not wanted in connection with any other case.

[27] With the above observations and directions, the instant appeal stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

JUDGE

JUDGE

A.Ghash

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