

GAHC010029292021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/11/2021

REJINA KARMAKAR
DIBRUGARH, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

2:SHRI SUJIT KARMAKAR
S/O LATE MUKUL KARMAKAR
R/O SEPON BORTANI LINE
P.S. MORAN
DIST- DIBRUGARH
ASSAM

– B E F O R E –

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellant : Mr. A. Tewari, Amicus Curiae.

For the Respondent : Ms. B. Bhuyan, Additional Public
Prosecutor for respondent No. 1.

Date of Hearing : 22.06.2023

Date of Judgment : 28.06.2023

JUDGMENT & ORDER (cav)

(M. Zothankhuma, J)

Heard Mr. A. Tewari, learned counsel for the petitioner. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, appearing for the State of Assam.

2. This appeal has been preferred against the judgment dated 08.07.2020, passed by the court of the learned Additional Sessions Judge, Dibrugarh in Sessions Case No. 184/2018, by which the appellant has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life with a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for another three months.

3. The prosecution case in brief is that an FIR dated 09.08.2018 was submitted by Prosecution Witness No. 2, (in short PW-2) before the Officer-In-Charge, Moran Police Station, Dibrugarh stating that at around 1:00pm, on 09.08.2018, he saw his uncle, namely, Haradhan Karmakar lying dead in his house. That his uncle had been living with the appellant, who was his live-in partner, as no marriage had been solemnised between them. The FIR also states that PW2 came to know that his uncle and the appellant used to quarrel with each other often and that on the night of 08.08.2018, a quarrel took place between them, whereafter the appellant left the house and stayed in the house of some other person. PW-2 stated that seeing injuries on the head

and other parts of the dead body of his uncle, it appeared that the appellant had killed his uncle. Consequent to the FIR, Moran Police Station Case No. 219/2018 under Section 302 IPC was registered.

4. After investigating the case, the Investigating Officer submitted the charge-sheet, wherein he found a *prima facie* case under Section 302 IPC against the appellant. Charge under Section 302 IPC was framed by the learned Trial Court against the appellant on 05.02.2019, to which the appellant pleaded not guilty and claimed to be tried.

5. Subsequent to the recording of the evidence of the six prosecution witnesses (PWs) and examination of the appellant under Section 313 Cr.PC, the learned Trial Court convicted the appellant under Section 302 IPC and sentenced her to undergo rigorous imprisonment for life with a fine of Rs.1,000/-, in default rigorous imprisonment for another three months.

6. The learned counsel for the appellant submits that a perusal of the time of examination of the body of the deceased by the Doctor (PW1) and his opinion that the death had occurred between 12-18 hours earlier, proved that the death of the deceased could not have occurred during the night of 08.08.2018, as the death would have occurred between 8 p.m of 09.08.2018 to midnight of 09.08.2018. Further, the explanation given by the appellant under Section 313 Cr.PC showed that the appellant was not present in the house of the deceased on the said night, as she had been driven out from the said house by the deceased who

had drunk liquor. He also submits that in matters of circumstantial evidence, the conditions laid down by the Apex Court in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra***, reported in ***(1984) 4 SCC 116***, has to be present, to prove the guilt of the accused on the basis of circumstantial evidence, which is absent in the present case. He also submits that as the appellant has given her explanation with regard to the circumstances under which she had parted company with the deceased on the night of 08.08.2018 in terms of Section 106 of the Evidence Act, the prosecution was required to prove the guilt of the appellant beyond all reasonable doubt, which had not been done. He accordingly submits that as the learned Trial Court has convicted the appellant without there being any circumstantial evidence to prove the guilt of the appellant, the impugned judgment should be set aside.

7. The learned counsel for the appellant submits that the circumstantial evidence relied upon by the learned Trial Court to convict the appellant does not point towards the guilt of the appellant. Further, the last seen together theory is not applicable in the facts of this case, as the deceased had died on the night of 09.08.2018 in terms of the evidence given by PW1. Further, as the explanation given by the appellant with regard to what had happened on the night of 08.08.2018, had not been discussed by the learned Trial Court, there was no ground for the learned Trial Court to come to a finding that no explanation or *alibi* had been

made/given by the appellant.

8. Ms. B Bhuyan, the learned Additional Public Prosecutor submits that the presence of the appellant in the house of the deceased is proved by the evidence and as such, it was only the appellant who could have caused the death of the deceased. The evidence of PW3 is to the effect that he had heard a quarrel between the appellant and the deceased on the night of 08.08.2018 and in view of the fact that the evidence of the other witnesses showed that the deceased and the appellant lived together, proved the fact that it was only the appellant who could have been the perpetrator of the crime. She also submits that the appellant's admission to having had a quarrel with the deceased was also a chain in the circumstantial evidence, pointing to the fact that she was the perpetrator of the crime. She also submits that the post-mortem examination report did not make any report with regard to whether the deceased had any alcohol in his stomach and as such, the appellant's statement made under Section 313 Cr.P.C. was not proved, with regard to whether the deceased had consumed alcohol or not.

9. The learned Additional Public Prosecutor submits that though the appellant had stated in her examination under Section 313 Cr.PC that she had been driven out of the house by the deceased and taken shelter in the residence of one Mohesh Bowri, the said Mohesh Bowri was never examined as a defence witness. Further, though appellant had stated that she had found Meghnath

Rajput on the way and asked him to wait beside her husband while she went to call the President of the village, the said Meghnath Rajput was never made a defence witness.

10. The learned Additional Public Prosecutor also submits that the opinion given by a Medical Doctor cannot be the last word on a subject and such an opinion has to be tested by the Court. In this respect, she has relied upon the judgment of the Apex Court in the case of ***Veerendra vs. State of Madhya Pradesh***, reported in ***(2022) 8 SCC 668***. She also submits that where an offence like murder is committed in the secrecy of a house, the initial burden to establish the case of murder would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. In view of Section 106 of the Evidence Act, a corresponding burden would fall on the occupants of the house in which the offence took place, to give a cogent explanation as to how the crime was committed. In support of the above submission, she relies upon the judgment of the Apex Court in the case of ***Trimukh Maroti Kirkan vs. State of Maharashtra***, reported in ***(2006) 10 SCC 681***. She accordingly submits that as no cogent explanation has been given by the appellant in her examination under Section 313 Cr.PC, as to where she was at the time when the offence took place, the said fact pointed to the involvement of the appellant in the death of the deceased. She also submits that though the

appellant has an *alibi*, as can be seen from her explanation given under Section 313 Cr.PC, no defence witness has been produced by her to prove the alibi. She accordingly submits that the circumstantial evidence having pointed to the guilt of the appellant, the impugned judgment passed by the learned Trial Court should not be interfered with.

11. We have heard the learned counsels for the parties.

12. The learned Trial Court has convicted the appellant basically on three grounds. Firstly, that the circumstantial evidence pointed towards the guilt of the appellant. Secondly, in view of the last seen together theory, wherein it was known and proved that the appellant and the deceased were living together and as such, seen last in each other's company. Thirdly, no reasonable explanation had been given by the appellant with regard to what she was doing at the relevant point of time of the death of the deceased, by giving an explanation as required under Section 106 of the Evidence Act.

13. As per the evidence given by PW-1 (Doctor), the injuries on the body of the deceased was as follows:

- “1. Abrasion of 1cm X 1cm over the frontal region.*
- 2. Abrasion of 2cm X 2cm over left frontal of the eye brow.*
- 3. Abrasion 1cm X 1cm over the left ala of nose.*
- 4. Abrasion of 5cm X 3cm over left clavical reason.*
- 5. Abrasion of 2cm X 2cm over the right clavical.*

- 6. Abrasion of 1cm X 1cm over right tip of shoulder.*
- 7. Abrasion of 3cm X 1cm over right deltoid.*
- 8. Abrasion of 3cm X 1cm over right forearm posterioly.*
- 9. Abrasion of 1cm X 1cm over the right elbow.*
- 10. Stab wound of 2cm X 1cm over right forearm lateral side, 6cm below elbow.*
- 11. Contusion of 6cm X 5cm over right thigh. 7cm below illiac-crest.*
- 12. Stab wound of 2cm X 1cm above the right knee, 5cm and contusion with haematoma of 6cm X 5cm muscle deep.*
- 13. Contusion over the right knee 6cm x 3cm, 3cm above the knee.*
- 14. Abrasion of 6cm X 1cm over right arm, anterior aspect, reddish in colour.*
- 15. Stab wound of 2cm X 1cm, elliptical over right arm muscle deep, 6cm below tip of the shoulder.*
- 16. Abrasion of 15 cm X 3cm over left thigh anterior aspect.*
- 17. Stab wound of 3cm X 1cm over left temporal, obliquely placed, brain deep."*

As per the evidence of PW1, death was due to coma, as a result of head injury. All the injuries were ante mortem and caused by blunt force except injury no.10, 12, 15 & 17, which were caused by a sharp cutting pointed weapon. PW1 also states that the injury no.17 was sufficient to cause death in ordinary course of nature. He also stated that the death is homicidal in nature and the time since the death of the deceased was 12 to 18 hours. In this respect, the Post Mortem Report which was exhibited as Exbt.- 1 shows that the dead body had arrived in the hospital on 10.08.2018 at 1:30 p.m. and that the examination of the dead body had been done at 2:00 p.m. of the same day.

14. The evidence of PW2 (informant) is to the effect that the VDP Secretary of his village informed him that his uncle had expired. On receiving the information, he went to the house of his uncle and saw the dead body of his uncle lying inside the house. He also states that his uncle and the appellant were having a living relationship and resided together in the said house. He also came to know from the villagers that the appellant and the deceased quarreled regularly.

In his cross-examination, PW2 states that he does not know whether any conflict had taken place between the appellant and the deceased on the fateful day. He also states that he did not know the contents of the FIR as he does not know how to read and write properly. He had put his signature on the FIR as per the directions of the villagers and he did not know why he had lodged the FIR.

15. PW3 states that the appellant resides near his house and that the deceased was the husband of the appellant. On the fateful night, he heard sound of quarrel taking place between the appellant and the deceased. As they often quarreled, he did not give much interest to the same. The next morning, the appellant informed all the neighbors that her husband did not get up from the bed and that he bore an injury mark on his forehead. He along with other neighbours went to the house of the deceased and found him lying on the bed with an injury mark on his forehead. Thereafter, the VDP informed the Police about the incident and the

Police came. He also stated that in the residence of the deceased, only the appellant and the deceased resided.

In his cross-examination, PW3 states that he did not know of any incident of assault having taken place between the appellant and Mohesh Karmakar. He also did not know about the relationship between them. He also state that he did not know the cause of quarrel between the appellant and the deceased. He also state that he did not know who murdered the deceased.

16. The evidence of PW4 is to the effect that the informant and the appellant were his neighbours, inasmuch as, the deceased was his elder brother. He had come to learn from one Meghnath that his brother had expired. On reaching the residence of his brother, he saw the dead body of his brother lying on the bed. He further states that he did not know how his brother expired. However, he knew that his brother and his wife quarreled often and that at the time of the incident, his brother was staying in his residence along with his wife (appellant). No other person resided with them.

17. The evidence of PW5 is to the effect that the informant and the appellant are his neighbours. He states that early one morning, he came to know that the deceased had been murdered. The dead body of the deceased was lying in his bed room and that the appellant was the wife of the deceased. They often quarreled and he also came to know that the appellant had murdered her husband. At the time of occurrence, there was no other family

member, in the residence. Only the appellant and the deceased were staying in their residence.

In his cross-examination, PW5 states that he did not know who was present in the residence of the appellant on the fateful night. He also states that he did not know what happened and only came to know about the incident on the next morning.

18. The evidence of PW6, who is the Investigating Officer of the case is to the effect that after receiving the FIR, he took up the investigation of the case and proceeded towards the place of occurrence. He found the dead body on the floor of a room, shrouded by cloth and also noticed that the floor of the house was besmeared. He also noticed a wound on the head of the deceased. As the Circle Officer was not present, he made the inquest over the dead body. After recording the statement of witnesses who resided near the house of the appellant, he came to know that the appellant and the deceased were having a live in relationship and that they were the only two persons living in the house. He also came to learn that on the previous night, a quarrel had taken place between the appellant and the deceased, after which the appellant left the house and returned on the next day. At around 1 pm (noon), she informed the neighbours about the death of the deceased. As the appellant was suspected of having committing the murder, she was interrogated. Having found sufficient materials against the appellant, charge-sheet was filed under Section 302 IPC.

In his cross-examination, the PW-6 states that the witnesses that he examined during investigation did not state where the appellant had gone after the quarrel had taken place the previous night. He also denied the suggestion that the appellant was not connected with the alleged offence.

19. On a perusal of the evidence, it is clear that there are no eyewitnesses to the crime. There is also no direct evidence to connect the appellant with the crime. Accordingly, we have to see whether the circumstantial evidence and the last seen together theory can prove the guilt of the appellant, in causing the death of the deceased, as has been held by the learned Trial Court. The evidence of the prosecution witnesses only establishes the fact that the appellant and the deceased had been living together in their house. As per the evidence given by the PW-6, a quarrel had taken place on the night of 08,08.2018, after which the appellant left the house and returned only on the next day. There is also no weapon recovered by the police.

20. In the examination of the appellant under Section 313 Cr.P.C., the appellant denies the question that there was a quarrel between her and the deceased on the previous night. She however states that as her husband was drunk, she had been driven out from the said house by her husband, due to which she had to seek shelter in the residence of one Mohesh Bowri. On returning the next morning, to her house she found her husband in an injured state and that he was unable to say anything. He

was under the influence of alcohol. Thereafter she called the other villagers. She also states that she does not know how her husband died. She also states that she found the floor the house besmeared. She also states that when she returned the next morning, she found her husband lying on the ground with injury marks on his forehead as well as shoulder. She found Meghnath Rajput on the way and asked him to wait besides her husband, while she went to call the president. Thereafter, her husband died.

21. The learned Trial Court in the impugned judgment had come to a finding that the appellant had failed to discharge her burden under Section 106 of the Evidence Act, in offering an explanation regarding the circumstances leading to the death of the deceased. On considering the finding of the learned Trial Court, we find that the learned Trial Court has not at all discussed the explanation given by the appellant in her examination under Section 313 Cr.P.C., wherein she had stated that she had left the house on the night of 08.08.2018, on being driven out from the said house by her deceased husband and had returned the next morning. When the appellant has taken the stand that she was not present in the house on the night of 08.08.2018, it was the duty of the learned Trial Court to discuss as to whether the said explanation was plausible and whether it could have been accepted. However, the learned Trial Court has completely failed to discuss the said issue and immediately jumped the gun, by holding that no explanation had been given by the appellant. This

approach by the learned Trial Court is not correct. As such, the alibi made by the appellant cannot be said to be true or untrue, without any discussion having been made on the same by the learned Trial Court. Further, it is settled law that when two views are possible, the view favourable to the accused should be taken. In this case, we do not see any reason to doubt the explanation given by the appellant, especially when the statement given by the appellant under Section 161 Cr.PC was the same as given in her examination under Section 313 Cr.PC. The said explanation could have been investigated by the I/O to contradict the appellant, if it was false. The same not being done, we find the appellant's explanation to be plausible.

22. The learned Trial Court has convicted the appellant on circumstantial evidence due to the following reasons mentioned in paragraph-32 of the impugned judgment, which are as follows :

(a) that on the following day of the night of occurrence the dead body of Haradhan Karmakar was found inside his house;

(b) that there were multiple injuries on the body of the deceased, including the fatal head injury (as mentioned in the post-mortem examination report);

(c) that as per the post-mortem examination report, the injuries were ante mortem and homicidal in nature;

(d) that the floor of the house was found besmeared (I have already highlighted the significance of this piece of circumstantial evidence in paragraph 23 of this judgment);

(e) that only the deceased and the accused used to reside together in that house as Husband and wife;

(f) that on the intervening night of 08-08-2018 and 09-08-2018 also the accused was found present in the house with the deceased;

(g) that quarrels often used to take place between the accused and the deceased;

(h) that on the intervening night of 08-08-2018 and 09-08-2018 also there was a quarrel between the deceased and the accused and one of their immediate neighbours (PW-3) had heard the noise of their quarrel; and

(i) that the accused has failed to discharge her burden under Section 106 of the Evidence Act in offering her explanation regarding the circumstances leading to the death of the deceased.

23. The pieces of circumstantial evidence referred to above, would have to form a chain pointing unerringly to the guilt of the appellant, to enable the learned Trial Court to have come to a finding of guilt. Though there were multiple injuries on the body of the deceased, it is surprising that no weapon has been recovered.

There is also nothing recorded in the evidence of any of the witnesses and especially the evidence of PW-6, to the effect that any attempt had been made to find out the kind of weapon that had been used on the deceased and the whereabouts of the same. It should have been one of the first endeavour of the Investigating Officer to ask the appellant as to what weapon had been used and where it was kept. The evidence of the I.O. is however conspicuously silent on the said issue.

24. PW-3 has stated in his evidence that on the fateful night, he heard the appellant and the deceased quarreling. All the neighbours were informed by the appellant the next morning that the deceased did not get up from bed and that he bore an injury mark on his forehead. Further, PW-3 states that the floor of the house was besmeared. If PW-3 had heard the sound of a quarrel taking place, he should have, in all probability, heard the sound of some scuffle, fight or assault having taken place in the said house, inasmuch as, the evidence of the doctor is to the effect that there were 17 injuries on the deceased. Four out of the seventeen injuries were stab wounds. One stab wound was below the elbow, one was above the right knee, one below the tip of the shoulder and the fourth one on the head, which was brain deep. For a person to have suffered 17 injuries implies that the injuries occurred over some period of time and in which case, there could have been some sort of scuffle or noise being made. However, PW-3 had only heard the sound of a quarrel and not any other

sound, regarding any scuffle or assault being made on the deceased on the night of 08.08.2018. Keeping the above facts in view, the doctor's evidence goes to show that the Post Mortem examination of the deceased had been done on 10.08.2018 at 2:00 p.m. and it has been stated by the doctor that the death occurred between 12 hours – 18 hours earlier. In that case, the death could have not occurred prior to 8:00 p.m of 09.08.2018. However, the FIR had been filed on 09.08.2018 at 4:00 p.m., showing the occurrence of the offence as the night of 08.08.2018.

25. In the case of ***Veerendra (supra)***, the Apex Court has held that like any other evidence, the evidence of the medical expert also requires proper appreciation at the hands of the Court, though the opinion of the doctor given with the support of post-mortem report carries great weight, for arriving at the rightful conclusion as to the question whether the death involved was homicidal or not. The above judgment is basically to the effect that the evidence given by a doctor, as to whether the death was homicidal or not, would have to be tested by the Court. The issue here is slightly different. The issue here is as to when the deceased died and not whether the death was homicidal or not. Though the doctor opined the approximate time of the death was between 12 to 18 hours from the time of his examination of the dead body, the same cannot be correct as the FIR was filed 22 hours before the examination of the dead body had been made by the Doctor. As such, there can be cases where there is some

difference in time. Accordingly, we have to consider as to whether the time of death of the deceased could be stretched as far back as the night of 08.08.2018, i.e. by another 16 to 24 hours, besides the 18 hours stated by the Doctor. On considering the fact that the opinion of the Doctor (PW-1) is not accurate regarding the time of death, we are of the view that the deceased could have died beyond the 12 to 18 hours time period given by the Doctor. However, that by itself does not prove that the appellant is the perpetrator of the crime.

26. Though the witnesses have not clarified as to how the floor of the house was besmeared, it implies that the floor of the house had become dirty, which could have been due to any number of reasons. The fact that the deceased and the appellant resided together as husband and wife and that they had a quarrel on the night of 08.08.2018, which was quite a common occurrence as per the evidence of the witnesses, does not in our view, point to the guilt of the appellant as being the perpetrator of the crime in the absence of any other accentuating circumstances.

27. Further, the explanation by the appellant that she did not stay in the house of the deceased on 08.08.2018 and had only returned the next morning, where she had found the appellant with an injury on his head, does not show that the last seen together theory could be applied to the facts of this case, especially when no discussion on the same has been made by the learned Trial Court to disprove the alibi made by the appellant.

The law with regard to the appreciation of evidence when the case of the prosecution hinges on the five golden principles of circumstantial evidence, laid down by the Apex Court in the case of ***Sharad Birdhichand Sarda (supra)*** and which is reproduced in paragraph-22 of the judgment of the Apex Court in ***Mohd. Firoz vs. State of Madhya Pradesh***, reported in ***2022 3 SCC (Cri) 165***, is as follows:-

“153. 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. 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."

28. The Apex Court in the case of ***Mohd. Firoz*** (supra) has held that once the theory of last seen together is established, the accused is expected to offer some explanation as to under what circumstances the accused had parted the company of the victim. It further held that the entire burden of proving the guilt of an accused rest on the prosecution in criminal jurisprudence. Nonetheless, if the accused does not throw any light upon the facts which has been proved to be within his special knowledge in view of Section 106 of the Evidence Act, such failure on the part of the accused may provide an additional link in the chain of circumstances required to be proved against him. It further held that Section 106 of the Evidence Act does not shift the burden of the prosecution on the accused, nor requires the accused to furnish an explanation with regard to the facts, which are especially within his knowledge. Nonetheless, furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when the theory of last seen together as profounded by the prosecution is proved against him, to know as to how and when the accused parted the company of the victim.

29. In the case of ***Rajender vs. State (NCT of Delhi)***, reported in ***(2019) 10 SCC 623***, the Apex Court has held that the reasonableness of the explanation offered by the accused as to how and when he or she parted company with the deceased

having bearing on the effect of last seen in a case. In the present case, the appellant has given an explanation that she had left the house of the deceased on 08.08.2018 at night after the deceased had pushed her out from the house. The reasonableness of the explanation offered by the appellant with regard to the explanation given by has not being gone into by the learned Trial Court at all. It has not made any finding as to whether the appellant had left the house of the deceased on the night of 08.08.2018. However, it has without taking a decision on the same, presupposed the presence of the appellant in the said house on the night of 08.08.2018 and as such, has held that the theory of last seen together would be applicable for convicting the appellant under Section 302 IPC.

30. In the present case, the evidence adduced by the parties do not establish the guilt of the appellant, inasmuch as the circumstantial evidence does not exclude every possible hypothesis that the appellant is guilty of the crime. The evidence adduced do not form a complete chain and there are reasonable grounds for concluding the innocence of the appellant, given the fact that the investigation and the evidence adduced by the witnesses is woefully lacking in substance. On considering the evidence of the witnesses, we are of the view that the five golden principles laid down by the Hon'ble Apex Court for appreciating the evidence against the appellant are not conclusive in showing that the appellant was the perpetrator of the crime resulting in the

death of the deceased. Besides the above, no motive has been sought to be established by the prosecution, for the appellant to have committed the crime against the deceased, especially when there is no eye-witness to the crime. There is also nothing to show that any attempt was made to find out what weapon had been used and that an attempt had been made to recover the same. In ***NJ Suraj vs. State represented by Inspector of Police***, reported in ***(2004) 11 SCC 346***, the prosecution case was based entirely upon circumstantial evidence and the motive. Having discussed the circumstances relied upon by the prosecution, the Supreme Court rejected the motive, which was the only remaining circumstance relied upon by the prosecution, stating that the presence of a motive was not enough for supporting a conviction, for it is well settled that in a case of circumstantial evidence, the circumstances should be such so as to lead to only one irresistible conclusion, which is incompatible with the innocence of the accused. However, in the present case, not only does the circumstantial evidence not form a complete chain, but there is no motive being attempted to be attributed to the appellant to have killed the deceased.

31. We are thus of the view that the Prosecution/State has not been able to prove the guilt of the appellant beyond all reasonable doubt. The appellant is accordingly acquitted of the charge under Section 302 IPC. As the impugned judgment dated 08.07.2020 passed by the Court of the learned Additional Sessions Judge,

Dibrugarh in Sessions Case No.184/2018 is not found to be sustainable, the same is accordingly set aside. The appellant should accordingly be released from judicial custody, if not involved in any other criminal case.

32. In appreciation of the assistance provided by Mr. A. Tewari, learned Amicus Curiae, his fees as per the fee structure should be paid by the Assam State Legal Services Authority.

33. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant