

GAHC010173272016



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

Case No. : CRL.A(J)/82/2016

NIMAI BARMAN

VERSUS

THE STATE OF ASSAM

2:SMTI. ANITA BALA BARMAN

W/O-LT. AMINDRA BARMAN
VILL-BORO KURSHAKATI
P.S.-BASUGAON
DIST.-KOKRAJHAR BTAD
ASSAM

Advocate for the Petitioner : MR.K K BHATTA

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR JUSTICE SONGKHUPCHUNG SERTO

JUDGMENT (CAV)

28/02/2023

(M.R. Pathak, J)

1) This jail appeal is by the appellant, Sri Nimai Barman, Son of Late Amindra Barman, challenging the judgment dated 08.07.2016 passed by learned Sessions Judge, Kokrajhar in Sessions Case No. 70/2012, corresponding to G.R. Case No. 102/2013, arising out of Basugaon Police Station Case No. 79/2011, whereby he has been convicted under Sections 302/201 of the Indian Penal Code and sentenced for Life Imprisonment and fine of Rs. 10,000/-, in default to undergo Rigorous Imprisonment for one year, for the offence under Section 302 IPC for committing murder of his wife and minor daughter and Rigorous Imprisonment for five years and fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for six months for the offence under Section 201 IPC for causing disappearance of evidence of offence as he buried dead bodies of his wife and minor daughter inside his house.

2) The prosecution's case, as emerges from the First Information Report (FIR) of the case (Exhibit-2), is that one Anita Bala Barman on 26.07.2011 around 07:30 pm lodged a written *ejahar* before the In-Charge of Salakati Out Post stating that while she was sleeping in her house on the night of 25.07.2011, on hearing hue and cry in the house of her son Nimai Barman (the appellant), she woke up around 01:00 / 02:00 a.m. (at night) and went there and saw that her son, Nimai Barman killed his wife Sushila Brahma @ Sushila Barman, aged 34 years and his daughter, Fulmati Barman, aged 3 years by hacking their necks with 'khukri'. In her said *ejahar*, the informant also stated that said Nimai Barman later buried the dead bodies in the floor of his house, locked his house, gave her its key, asking to hand over it to police if they come there and went out with the 'khukri' in his hand saying that he would go to the Police Station. By the said *ejahar*, the informant requested the police to take necessary action in that regard. Said written *ejahar* (Exhibit-2) was registered as Salakati Out Post General Diary Entry No. 440 dated 26.07.2011 and was forwarded to the Officer-in-Charge of Basugaon Police Station where it was registered as Basugaon Police Station Case No. 79/2011 under Sections 302/201 IPC, corresponding to G.R. Case No. 822/2011.

3) It is to be noted herein that prior to the filing of said written *ejahar* by the informant

(PW.1) on 25.07.2011, said accused Nimai Barman surrendered before Kokrajhar Police Station in the morning and handed over (i) one Nepalee 'Khukri' about 18 inches long, of which iron portion was of 12 inches long with black colour and 6 inches long handle, fitted with a brass ferrule in its front and a palette fitted in its lower part; (ii) one cover of 'Khukri', entwined with leather and a brass cap on the top and (iii) one written letter on a white sheet of paper, that were seized vide Seizure Memo under No. Kokrajhar MR No. 102/2011 by registering Kokrajhar Police Station GDE No. 835 dated 26.07.2011 in presence of seizure witnesses (Exhibit-3).

4) On 26.07.2011 in the morning, police personnel of Salakati Out Post after being informed went to the place of occurrence. On being led by the accused Nimai Barman and as showed by him, from his house, on 26.07.2011 itself recovered (i) one spade with 3½ feet length bamboo handle; (ii) one old *Gamosa* (bath towel) with red print and (iii) one lock and key (bunch of keys), seized vide Seizure Memo under No. Salakati Out Post MR No. 15/2011 by registering Salakati Out Post GDE. No. 437 dated 26.07.2011 in presence of seizure witnesses (Exhibit-1).

5) During such search on 26.07.2011 both the dead bodies of the deceased person were exhumed from the house of the accused in presence of the Circle Officer & Executive Magistrate, Kokrajhar and police personnel from Kokrajha Police Station. On being exhumed, inquest on both the dead bodies were conducted in presence of the Circle Officer & Executive Magistrate, Kokrajhar as well as police personnel from Kokrajha Police Station and Salakati Out Post and in presence of personnel of Village Defence Party, Village Headman, local Villagers. Accordingly, Inquest Reports of the two deceased persons were prepared. Thereafter, on being forwarded postmortem examinations on the dead bodies of Fuleswari Barman, aged 3 years, daughter of Nimai Barman and Sushila Brahma Barman, aged 26 years, wife of Nimai Barman were conducted on 26.07.2011 itself at Rupnath Brahma (R.N.B.) Civil Hospital, Kokrajhar and their Post Mortem Reports were made (Exhibits - 4 and 5, respectively) in said Salakati Out Post GDE. No. 437 dated 26.07.2011. Subsequently, dead bodies were handed over to their relatives.

6) The Investigating Officer of the case formally arrested the accused person on 26.07.2011 itself, visited the place of occurrence, made the above noted seizures as led and shown by the accused by preparing the Seizure Memos in presence of witnesses, drawn the sketch map of the place of occurrence, recorded the statements of the witnesses acquainted with the incident under Section 161 CrPC, forwarded the informant (P.W.1) of the case to the Court of the Judicial Magistrate, First Class at Kokrajhar to record her statements under Section 164 CrPC. On

completion of the investigation of the case, after collecting the 164 CrPC statements of the informant as well as the Post Mortem Examination Reports of the deceased, Fuleswari Barman and Sushila Brahma Barman, daughter and wife of the accused Nimai Barman from R.N.B. Civil Hospital, Kokrajhar, finding prima facie material, the Investigating Officer of the case on 31.05.2012 vide No. 57/2012 submitted the Charge Sheet in said Basugaon P. S. Case No. 79/2011 (Exhibit-6) against the accused/appellant herein under Sections 302/201 IPC.

7) As Sections 302/201 IPC is exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate, Kokrajhar by order dated 25.06.2012 committed the said G. R. Case No. 822/2011, arising out of said Basugaon P.S. Case No. 79/2011, to the Court of learned Sessions Judge, Kokrajhar. wherein it was registered and numbered as Sessions Case No. 70/2012. On 30.07.2012, learned Sessions Judge, Kokrajhar framed charge under Sections 302/201 IPC against the accused/appellant, allegedly for killing his daughter Fuleswari Barman and wife Sushila Brahma Barman and for causing disappearance of evidence by hiding their dead bodies burying in the floor of his house, that were read over and explained to him, to which the accused pleaded not guilty and claimed to be tried. Accordingly, trial of said Sessions Case No. 70/2012 commenced. As the accused person stated that he had no lawyer and does not have capacity to engage a lawyer, on his prayer, the Trial Court appointed a panel lawyer of District Legal Aid to defend the said accused.

8) To prove the guilt of the accused, prosecution examined eleven witnesses, including the autopsy doctor, who conducted the post-mortem examinations of both the dead bodies, the investigating officer of the case and others. The defence did not adduce any evidence, but cross-examined the prosecution witnesses. After completion of recording of evidence of prosecution witnesses, the Trial Judge on 03.05.2016 recorded the statement of the accused under Section 313 CrPC, wherein the accused denied all the accusations made against him by the prosecution witnesses and also denied to adduce any defence evidence.

9) During the trial of the case considering that Basugaon Police Station is under the territorial jurisdiction of Chirang District, pursuance to the letter from this High Court dated 23.03.2015, said case was forwarded to the learned Sessions Judge, Chirang by orders dated 25.03.2015 and 02.04.2015. In the Court of Sessions Judge, Chirang, it was registered as Sessions Case No. 147 (Basugaon)/2015. After reorganization of jurisdiction of Kokrajhar Police Station under Kokrajhar District by the Home Department of the State, as the place of occurrence

was found to be under the jurisdiction of Kokrajhar Police Station, and finding that the said Court does not have the jurisdiction, the learned Sessions Judge, Chirang by order dated 04.06.2015 accordingly sent back the matter to the Court of learned Sessions Judge, Kokrajhar, directing to produce the accused before the said Court at Kokrajhar on 18.06.2015. On such remand it was re-registered in the Court of learned Sessions Judge, Kokrajhar as Sessions Case No. 70/2012.

10) Upon appreciation of the evidence adduced by the prosecution and the materials available on record, the learned Sessions Judge, Kokrajhar on 08.07.2016 recorded the impugned judgment of conviction and sentence as aforesaid and hence, the present appeal.

11) We have heard Mr. Kamal Kumar Bhatta, learned *Amicus Curiae* for the appellant, Mr. H. K. Sharma, learned Additional Public Prosecutor, Assam for the State respondent No.1. None appeared for the informant respondent No. 2.

12) Learned *Amicus Curiae*, Mr. Bhatta for the appellant assailing the impugned judgment submitted that the testimonies of the prosecution witnesses are far from convincing. Mr. Bhatta also submitted that prosecution failed to prove the guilt of the accused appellant beyond all reasonable doubt and since the impugned judgment of conviction and sentence suffers from serious infirmities, therefore, he urged to set aside the impugned judgment of conviction and sentence passed by the Trial Court and to acquit the accused appellant. Second limb of argument of Mr. Bhatta is that the accused did not take any undue advantage and for such act, at best, the assailant can be guilty of the offence of culpable homicide not amounting to murder and to that extent he prayed that the impugned conviction and sentence of the appellant/accused should be converted to Exception 4 of Section 302 IPC.

13) On the other hand, Ms. B. Bhuyan, learned Additional Public Prosecutor for the State respondent contended that the judgment of the learned Trial Court is based on well established facts and figure, evidence and materials available on record and the same has been rendered in accordance with law and therefore submits that the impugned judgment does not call for any interference as far as conviction and sentence of the accused of offence under Sections 302/201 is concerned.

14) Perused and considered the judgments cited by learned *Amicus Curiae*. After hearing the arguments advanced by the parties, we find it necessary to peruse and discuss the evidence on record in brief so as to ascertain the correctness of the impugned judgment.

15) PW.10, Dr. Jitendra Kumar Nath, the concerned autopsy doctor deposed before the Court that on 26.07.2011, he was serving as Senior Medical and Health Officer at RNB Civil Hospital, Kokrajhar and that he conducted the Post Mortem of Fuleswari Barman, 3 years female and found cut through the neck from right side to the left and also found left side of the neck hanging by some muscles and skin. He opined that the cause of death of the said deceased was due to haemorrhage and neurologic shock and brain stem injury done by heavy weight and metallic sharp weapon, that was homicidal and ante mortem in nature and that time of death was more than 24 hours. He proved the post-mortem examination report of said deceased, Exhibit - 4 and his signature on it.

He further stated that on the same day he also conducted postmortem of Sushila Brahma Barman, 26 years Female, found cut through the right side of the neck from and its left side was found hanging by some neck muscles and skin. Cut through the base of the skull and the cervical vertebrae from right side and left side was partially hanging on muscle and skin. He opined that the cause of death of the said deceased was due to haemorrhage and neurologic shock and spinal cord bisection done by heavy sharp cutting weapon, that was homicidal and ante mortem in nature and that time of death was more than 24 hours. He proved the post-mortem examination report of the said deceased, Exhibit-5 and his signature on it.

The defence declined to cross examine the said prosecution witness.

16) Said evidence of the concerned autopsy doctor, PW.10, Dr. Jitendra Kumar Nath remained un-rebutted by the defence, which proves the death of the victims were ante-mortem and homicidal in nature.

17) Now let us examine whether the prosecution could prove the guilt of the accused appellant beyond all reasonable doubt or not.

18) PW.1, Soilen Singh Roy, a cultivator and a co-villager in his evidence, identifying the accused, deposed that on the following day of the incident when police from Salakati police station called him to the house of the accused, he went there and found the accused with other police personnel and that the accused exhumed the dead bodies of his wife Sushila Barman and daughter Fulmati Barman from the floor, beneath the bed, inside the house of the accused. Said PW.1 also deposed that the accused thereafter confessed before him and other public gathered therein that he had killed his wife Sushila Barman and daughter Fulmati Barman and kept their

dead bodies buried. Said PW.1 recognised one of the dead bodies to be of Sushila Barman and the other to be of Fulmati Barman and he further stated that police took away the accused and both their dead bodies.

During his cross-examination by the defence, PW.1 stated that when the accused made confession that he killed his wife and daughter, he hard it by himself. He stated about the apparels worn by the deceased and reiterated that the accused kept the two dead bodies inside his house in two different pits. He denied the suggestion that he did not tell police that the accused had not confessed in presence of public and him that he had killed his wife and daughter and kept their dead bodies buried. PW.1 also denied of giving false evidence.

19) PW.2 Gouranga Barman, who is also a cultivator and a co-villager in his evidence, identifying the accused, deposed that on being called by police he went to the house of the accused and found him along with public and police there and the accused in presence of public confessed that in the previous night he had killed his wife and daughter and kept their bodies buried inside his house. PW.2 also deposed dead the accused then should the two places of the house where he had kept the dead bodies buried and exude them by digging the land with hoe. PW.2 recognised those dead bodies to be the wife and daughter of the accused. He also deposed that police seized the hoe with which the accused exhumed the dead bodies as well as a *Gamocha* and identified his signatures in the seizure list Exhibit-1 including the Material Exhibits 1 and 2, that of the hoe and *Gamocha*. He further deposed that police took away the dead bodies and the accused.

In his cross-examination by the defence, PW.2 stated that he did not see where from police brought the accused and that the depths of the pits were about two cubits and that there was a bed in between those two pits when the accused made confession that he killed his wife and daughter, he hard it by himself. PW.2 denied the suggestion that the accused had not confessed that he had killed his wife and daughter and kept their dead bodies buried inside the house and also denied the suggestion that the accused did not exhume the dead bodies of his wife and daughter from inside of his house. PW.2 also denied of giving false evidence.

20) PW.3 Sunil Barman, a cultivator and a co-villager is a hearsay witness.

21) PW.4 Md. Hasmat Ali Pramanik, a M.E. School teacher who knew the accused as well as the informant Anita Bala Barman, deposed that while he was coming from Basugaon, he saw a

gathering in front of the house of the accused and he went there, where mother of the accused Anita Bala Barman told him that the accused had killed his wife and three years old daughter by hacking them in the neck with 'Khukri'. He also deposed that he did not see that the dead bodies and on being asked by said Anita Bala Barman he wrote the *ejahar* as per her version and read its content to her, and then said Anita Bala Barman put her thumb impression therein. PW.4 identify the thumb impression of said Anita Bala Barman and his signature in the said *ejahar*, Exhibit-2.

In his cross examination by the defence, PW.4 stated that the said *ejahar*, Exhibit doesn't be his endorsement certifying that it was obtained by him. However, he denied the suggestion that he did not write the *ejahar*, as per the versions of said Anita Bala Barman, mother of the accused.

22) PW.5, Satyen Roy, a police personnel, who was on Sentry Duty at Kokrajhar Police Station on 26.07.2011 from 08:00 am to 11:00 am. He deposed that after he started attending his duty as a Sentry, the accused carrying a 'Khukri' entered the police station telling him that he had killed people and asked him to call the officer. Then he called the O/C to the police station from his quarter and told him the incident and that the O/C took him inside the police station. He also deposed that ASI Nagar Ali seized the 'Khukri' that was brought by the accused. He identified his signature in the Seizure list Exhibit-3 and also identified the 'Khukri', Material Exhibit-3 that was brought by the accused.

During his cross-examination said PW.5 stated that while he was attending the duty as Sentry she was inside the police station and denied the suggestion that the accused did not come to the police station with the 'Khukri'. He further denied a suggestion that the accused did not tell him that he had killed people and that an officer was to be called.

23) PW.6 Md. Sukur Ali SK, a cultivator and Secretary of the Village Defence Party of Boro Kurshakati Village, a co-villager is accused. He deposed that one of his co-villager came to his house and told him that police had come to house of the accused and he was asked to go there. On reaching the house of the accused is saw police personnel from Basugaon police station as well as from Salakati outpost. When he enquired mother of the accused, she told him that after killing his wife and daughter the accused had kept the dead bodies buried inside his house. He also deposed that mother of the accused told him that the accused lock his house and gave the keys to her so that she can give it to police. He further deposed that during his presence police personal from Kokrajhar PlayStation and a Magistrate arrived at the house of the accused taking

the accused along with them and then police took the key from the mother of the accused, opened the door of the house of the accused and then entered the house taking the accused along. PW.6 deposed that with the assistance of other persons, the accused kept the bed aside that was inside his house and then exhumed the dead body of his wife from the place where the bed was kept. He further deposed that the accused exhumed the body of his daughter from another spot over which the bed was kept and that the Magistrate was present during such time. He deposed that police took away the dead bodies by taking his signature.

During his cross-examination, PW.6 stated that the accused dug the pits inside his house and brought out the two dead bodies and while digging, another person helped the accused. He stated that he did not enter the house of the accused. PW.6 denied the suggestion that the mother of the accused did not tell him about the incident of killing his wife and daughter by the accused and about keeping the dead bodies buried inside his house and that the accused had locked his house, gave its keys to her to hand over it to police on their arrival. He also denied the suggestion that he did not tell police that taking a longer accused police personal from Kokrajhar police station and Magistrate had gone to the house of the accused. He further denied the suggestion that the accused did not exhumed the bodies of his wife and daughter from inside his house.

24) PW.7 Binode Barman, a cultivator and a co-villager, Headman of Village Kurshakati deposed that when he went to the house of the accused, police called him being the village headman and he entered the house of the accused along with police and the accused. Then the accused showed the two spots inside his house and he stated that after killing his wife and child he kept their dead bodies buried in those two spots. Thereafter, the accused exhumed the dead bodies, one of which was his wife and other the other his daughter and then police took away the accused along with the dead bodies.

During his cross-examination, PW.7 stated that he did not tell police that had shown the spots inside his house where he had kept the dead bodies of his wife and daughter buried after killing them and also stated that he did not tell police that the accused had exhumed the two dead bodies. However, he denied the suggestion that he did not go to the place of occurrence, denied the suggestion that his deposition was based on hearsay and further denied that he had adduced false evidence.

25) PW.8 Golap Hussain another police personnel, who was also on Sentry Duty at Kokrajhar

Police Station on 26.07.2011 deposed that around 08:30 pm the accused arrived the police station, he appeared to be tired and on being asked, he took out a 'Khukri' by unbuttoning his shirt and told him that he had killed his wife and daughter, and also told him that he came to the police station to surrender. Accordingly, he took the accused and handed him to the attached officer. He also deposed that ASI Nagar Ali Sarkar seized the 'Khukri'. He identified his signature in the Seizure list Exhibit-3 as well as the Material Exhibit the 'Khukri'.

In his cross-examination by the defence, he stated that he handed over the accused to ASI Nagar Ali Sarkar and that police did not record his statement.

26) PW.9 Md. Nagar Ali, ASI of Police deposed that on the relevant day he was on duty at Kokrajhar police station and around 08:00 am on that day the accused appeared in the police station, stated before him that his name is Nimai Barman and that he had hacked his wife and child. He had a 'Khukri' in his hand that was seized by him, where Exhibit-3 is the Seizure List any identified his signature on it.

During his cross-examination, PW.9 stated that at that time the O/C of the Kokrajhar police station was at the police station itself and he denied the suggestion that the accused did not say that he had murdered his wife and child.

27) PW.11 Manoj Narzary, S.I. of Police, Investigating Officer of the case deposed that the accused on the night of 25.07.2011 surrendered himself at Kokrajhar Police Station and he was informed about it. He went to the place of occurrence and at that time the O/C of Kokrajhar police station accompanied by police staff along with the accused arrived at the place of occurrence. The accused confessed that he had killed his wife and daughter and kept their dead bodies buried inside his house. The accused showed the place where he had kept the dead bodies buried inside his house and that the two dead bodies were exhumed from there in presence of Magistrate who had also conducted the inquest. Then both the dead bodies were sent for post-mortem examination. One hoe, one *Gamocha*, and one lock and key were seized. He identified his signature in the Seizure List Exhibit-1. He deposed as the accused appeared before Kokrajhar police station taking the 'Khukri', it was seized at Kokrajhar police station and that he submitted the Charge Sheet of the case Exhibit-6 and identified his signature on it.

During his cross-examination by the defence, PW.11 stated that he received the *ejahar* in the morning on 26.07.2011 and went to the place of occurrence in the morning itself. After

making GD Entry police from Kokrajhar police station recorded the statement of the witnesses and he did not seize the 'Khukri'. He also studied that he did not record the statements of the police personnel of Kokrajhar police station and did not submit a copy of the GD Entry along the case diary.

28) Section 25 of the Indian Evidence Act 1872 provides that *Confession to police officer not to be proved* and it reads as — *No confession made to a police-officer shall be proved as against a person accused of any offence.* Further Section 26 of the Indian Evidence Act 1872 stipulates that *Confession by accused while in custody of police not to be proved against him* and it reads as — *No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.* *Explanation — In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the power of a Magistrate under the Code of Criminal Procedure, 1882.*

29) As per Sections 25 and 26 of the Evidence Act confessions whenever and wherever made to the police or while in the custody of the police to any person whosoever unless made in the immediate presence of a Magistrate that is prescribed under CrPC, shall be presumed to have been obtained under the circumstances caused by any inducement, threat or promise as mentioned in Section 24 of the Evidence Act and therefore, the same is inadmissible except so far as provided by section 27 of the said act. Section 26 of the evidence act makes admissible confession by a person made in immediate presence of a Magistrate while in the custody of the police - it may be to the Magistrate himself or to any other person, where the Magistrate is defined under CrPC. But under Section 25 a confession to the police in all circumstances is inadmissible.

30) It is settled that "Custody" has the same meaning in Sections 26 and 27 of the Evidence Act. It is also settled that Custody does not necessarily mean custody after formal arrest, but includes a state of affairs in which the accused can be said to have come into the hands of a police officer or have been under some form of police surveillance or restriction on his movements by the police. If the accused person is present before the police and cannot depart at his free will, it is sufficient custody.

31) The Investigating authorities did not forward the 'Khukri' that was handed over by the accused and seized by police for forensic examination, to find out whether it was used by the

accused while committing the crime. The prosecution has also failed to find out the weapon used in the crime. Moreover, the prosecution could not adduce the evidence of the informant. It is also seen that confession made by the accused Nimai Barman about killing of his wife and daughter in the police station as well as in his house before the witnesses and public gathered there were in presence of police personnel. Therefore, such confession made by the accused cannot be used against him. All these generally appear in favour of the defence and against the prosecution.

32) However, we have seen that the defence could not invalidate the evidence of the PWs - 1 and 6 Sailen Singh Roy and, Md. Sukur Ali SK, respectively, that the accused exhumed the dead bodies of his wife and daughter from two different pits, made in the floor, beneath the bed, inside his house remained un-rebutted.

33) We have also found that the evidence of the PW.2, Gauranga Barman, PW.7, Binode Barman and PW.11, Manoj Narzary, Investigating Officer of the case that the accused Nimai Barman showed the two places where he had kept the dead bodies of his wife and daughter buried inside his house, wherefrom the said accused exhumed the dead bodies in presence of witnesses, could not be proved wrong or refute by the defence.

34) From the recording of his Section 313 CrPC statement, we have seen that the Trial Court specifically brought those evidence of the prosecution to the knowledge of the accused and also asked him questions to the accused in that regard, but the accused Nimai Barman answered those as 'False Deposition'.

35) Section 27 of the Evidence Act pertains to — *How much of information received from accused may be proved* and it stipulates that — *Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.*

36) In the case in hand, it is seen that admittedly wife of the accused Sushila Barman and his daughter Fulmati Barman used to reside in the same house with the accused Nimai Barman and the dead bodies of his said wife and daughter were found buried in two different places inside the house of the accused. The dead bodies of his wife and daughter were recovered after being exhumed from those places inside the house of the accused on being disclosed by him and as shown by him in presence of witnesses. Said fact was discovered in consequence of the

information furnished and/or disclosure made by the accused Nimai Barman, which fact was known only to the said accused. Moreover, recovery of the dead bodies of his wife and daughter were from the pits made in the floor of the house of the accused and not from public place. Further, the accused appellant has failed to explain as to how his wife Sushila Barman and his daughter Fulmati Barman died a homicidal death in his house due to grievous injuries of cut injuries on their necks.

37) The discovery of dead body as a result of the confession/disclosure of fact made by the accused as contemplated by Section 27 of the Evidence Act is an important factor which supports prosecution case regarding *corpus delicti*. Such facts discovered includes not only the recovery of the dead bodies/physical object produced but also the place from which it is produced since it is the accused only who have the special knowledge about such facts that is discovered and the place from where it is recovered. The offence took place in the house of the accused where he with his wife Sushila Barman and daughter Fulmati Barman resided and being the husband if the accused does not offer any explanation how his wife and daughter received injuries, it is a strong circumstance pointing that he alone was responsible for the commission of crime.

38) In the case in hand the testimony of the Investigating Officer of the accused reflects that police conducted the search of the house/residence of the accused in the presence of local witnesses and recovered the dead bodies as disclosed and shown by the accused and exhumed from the floor of the house of the accused.

39) The Hon'ble Supreme Court in the case of *Bijender -Vs- State of Haryana*, reported in (2022) 1 SCC 92 have held that –

“16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. We may hasten to add that circumstances such as : (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See : Tulsiram Kanu v. State, Pancho v. State of Haryana, State of Rajasthan v. Talevar and Bharama Parasram Kudhachkar v. State of Karnataka)

17. *Incontrovertibly, where the prosecution fails to inspire confidence in the manner and/or contents of the recovery with regard to its nexus to the alleged offence, the court ought to stretch the benefit of doubt to the accused. It is nearly three centuries old cardinal principle of criminal jurisprudence that "it is better that ten guilty persons escape, than that one innocent suffer". The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that "the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent".*

40) In *Shambhu Nath Mehra -Vs- State of Ajmer* reported in *AIR 1956 SC 404* the Hon'ble Apex Court have stated the legal principle thus—

"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 pre-eminently or exceptionally within his knowledge."

41) The Hon'ble Supreme Court in the case of *Trimukh Maroti Kirkan -Vs- State of Maharashtra* reported in *(2006) 10 SCC 681* has approved the well settled principle that when an incriminating circumstance is put to the accused and that accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

42) In the present case, the facts which the prosecution proved including the intention of the accused, as being considered in the light of the proximity of time within which the victims sustained fatal injuries and the proximity of the place within which the dead bodies were found are enough to draw an inference that victim's death was caused by the same accused. If any deviation from the aforesaid course would have been factually correct only the accused person of the case would know about it, because such deviation would have been especially within the knowledge of the accused only. Since the accused refused to state such facts in his Section 313 CrPC statements, though being pointed out by the Trial Court, the inference would stand undisturbed against the accused appellant. Moreover, the chain is also complete.

43) For the reasons above, the impugned judgment dated 08.07.2016 passed by learned Sessions Judge, Kokrajhar in Sessions Case No. 70/2012, arising out of Basugaon Police Station

Case No. 79/2011, corresponding to G.R. Case No. 102/2013, whereby the accused appellant has been convicted under Sections 302/201 of the Indian Penal Code and sentenced for Life Imprisonment and fine of Rs. 10,000/-, for committing murder of his wife and his minor daughter does not call for any interference.

44) Accordingly, this appeal, being devoid of merit, stands dismissed.

45) Before parting with the case, we appreciate the service rendered by Mr. Kamal Kumar Bhatta, learned *Amicus Curiae* for the appellant as well as by Mr. H. K. Sharma, learned Additional Public Prosecutor, Assam. We direct the Gauhati High Court Legal Services Committee to pay remuneration of Rs.7,500/- to Mr. Kamal Kumar Bhatta, learned *Amicus Curiae* for his assistance rendered to the Court, on his raising a bill.

46) Registry shall return the relevant records to the respective Courts along with a copy of this order.

47) A copy of this order be also furnished to the accused appellant, Sri Nimai Barman, Son of Late Amindra Barman, through the Superintendent, District Jail, Kokrajhar.

JUDGE

JUDGE

Comparing Assistant