

GAHC040002462023

2024:GAU-AP:1030



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

Case No. : CRL.A(J)/1/2023

Smti. Bajum Sidasow, w/o Late Govinda Regisow, Vill-Hussugo, Bomdila, PO/PS Rupa,
District Bomdila (Arunachal Pradesh), presently lodging at District Jail : Jilly, Itanagar.

.....Applicant/Convict

-Versus-

1. The State of Arunachal Pradesh, represented by the Public Prosecutor.
2. Shri Lambu Regisow, S/O Late Late Govinda Sidasow, Permanent resident of Village Hussugo, PO/PS- Rupa, District-West Kameng, Arunachal Pradesh.

..... Respondents

By Advocates:

For the applicant/convict: Mr. N. Danggen

For the respondents : Ms. T. Jini, Addl. P.P., Arunachal Pradesh

:::BEFORE:::
HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 27.05.2024
Date of Judgment & order: 21.11.2024

JUDGMENT & ORDER (CAV)
(N. Unni Krishnan Nair, J.)

Heard Ms. Nikita Danggen, learned amicus curiae, appearing on behalf of the appellant. Also heard Ms. Topi Jini, learned Addl. P.P., Arunachal Pradesh, appearing on behalf of the respondent No. 1.

2. The instant appeal has been instituted, assailing the judgment & order, dated 24.07.2020, passed by the learned District & Sessions Judge, West Kameng District, Bomdila, in Sessions Case No. 69/2015, arising out of Rupa Police Station Case No. 39/2014, convicting the appellant, herein, under Section 302 of the Indian Penal Code and sentencing her to undergo imprisonment for life, out of which, a period of 2(two) years was directed to be spent under rigorous imprisonment and a fine of Rs. 3,000/-. In default of payment of fine, the appellant, herein, was further directed to undergo further detention for 3 months in custody.

3. The brief facts leading to the institution of the present proceeding, is as under:

On 21.08.2014, at 16.30 hrs., a written First Information Report(FIR) was received from one Shri Lambu Regisow, to the effect that on 18.08.2014 at around 2130 hrs, there was a quarrel between his parents in his house and over that, his mother i.e. the appellant, herein, had assaulted his father with a local dao on his neck, mouth, upper and lower jaw for which his father late Govinda Regisow succumbed to his injuries. On receipt of the said First Information Report (FIR), the same was registered by the police as Rupa Police Station Case No. 39/2014 under Section 302 of the Indian Penal Code. On conclusion of the investigation in the matter, the I.O. proceeded to submit a charge sheet being charge sheet No.28/2014, against the appellant, herein. In the charge sheet, it was, *inter alia*, recorded that during the interrogation of the appellant, herein, she had stated on

18.08.2014 evening, there was a quarrel between her and her husband after drinking alcohol and she was reportedly, assaulted by the husband. It was further stated that as a result of the quarrel, which continued till late night, while the deceased had gone for toilet; the deceased fell down on the floor of the house and died. It was further recorded in the charge sheet that the injuries inflicted on the body of the deceased indicated that he was assaulted, resulting in his death. It was further noticed in the said charge sheet No.28/2014, that during investigation, one local dao and two nos. of bamboo sticks were seized from the place of occurrence on being produced from the complainant as weapons of offence.

The appellant, herein, was charged under Section 302 of the Indian Penal Code. The learned trial Court framed charge under Section 302 of the Indian Penal Code against the appellant, herein, and the charge on being read over and explained to the appellant, herein, she had pleaded not guilty and claimed to be tried.

During the trial, the prosecution had examined as many as 8(eight) witnesses and the appellant, herein, had also examined herself as defence witness. The learned trial Court on conclusion of the trial, proceeded vide its judgment & order, dated 24.07.2020, to convict the appellant, herein, under Section 302 of the Indian Penal Code. On the basis of the said conviction of the appellant, herein, under Section 302 of the Indian Penal Code, she was sentenced to undergo imprisonment for life and out of the said period of imprisonment; a period of 2(two) years was directed to be spent

under rigorous imprisonment and a fine of Rs. 3,000/-. In default of payment of fine, the appellant, herein, was further directed to undergo further detention for 3 months in custody.

4. Being aggrieved, the appellant, herein, has instituted the present proceeding before this Court.

5. Ms. Danggen, learned amicus curiae, at the outset, has submitted that there is no eye-witness to the incident forming the basis of the allegations levelled against the appellant, herein, and the learned trial Court basing on circumstantial evidence, proceeded to convict her.

6. Ms. Danggen, learned amicus curiae, has further submitted that the learned trial Court for the purpose of convicting the appellant, herein, had taken recourse to the provisions of Section 106 of the Indian Evidence Act, 1872, and holding that no explanation was given by the appellant, herein, for the injuries caused to the deceased; had proceeded to conclude that the chain of circumstantial evidence were complete and the appellant, herein, had committed the offence, in question, leading to her conviction.

7. Ms. Danggen, learned amicus curiae, has also submitted that the prosecution had failed to establish the requisite foundational facts for invoking the presumption under Section 106 of the Indian Evidence Act, 1872, and the prosecution having failed to establish the case

against the appellant, herein, beyond reasonable doubt and considering the explanation provided by the appellant, herein, for the cause of death of her deceased husband; the appellant, herein, could not have been convicted in the matter.

8. Ms. Danggen, learned amicus curiae, has further submitted that the facts purportedly established, is not consistent with the guilt of the accused and she having raised a plea that the death of her deceased husband, had so occasioned on account of falling down on the floor of the house; the same not being negated by bringing on record, conclusive evidence, the conviction of the appellant, herein, would not be sustainable. In this connection, Ms. Danggen, learned amicus curiae, has taken us through the depositions so recorded by the prosecution witnesses and has submitted that none of the prosecution witnesses have implicated the appellant, herein. Ms. Danggen, learned amicus curiae, has further submitted that the prosecution had miserably failed to impute any motive upon the appellant, herein, for committing the offence.

9. Ms. Danggen, learned amicus curiae, has also questioned the manner in which the purported weapon utilized for the offence was so seized by the I.O. and has submitted that such seizure was not so made on the same being produced by the appellant, herein. Accordingly, the presumption under Section 27 of the Indian Evidence Act, 1872, would not be attracted to the facts of the present case.

10. Ms. Danggen, learned amicus curiae, has further submitted that

the I.O. had not prepared any site map of the place of occurrence and had only prepared a general map of the area.

11. Ms. Danggen, learned amicus curiae, has also submitted that the I.O. as PW-8, in his deposition, had submitted that he had found bloods spattered over the place of occurrence. However, he could not find use of any sharp weapon and had recovered bamboo sticks and a dao. During cross-examination, the PW-8 had further stated that the villagers had produced the seized articles claiming that the appellant, herein, had used the same to assault the deceased. The learned amicus curiae has also submitted that neither, the seized articles, nor, the apparel worn by the deceased and the appellant, herein, were sent for any forensic serological examination.

12. Ms. Danggen, learned amicus curiae, by referring to the statements made by PW-6, namely, Vijay Sasusow, has submitted that the seized articles were shown to him by the I.O. and the said PW-6 had signed as a seizure witness in the seizure memo. The learned amicus curiae has submitted that the appellant, herein, in her examination under Section 313 of the Code of Criminal Procedure, 1973; had denied knowledge about the recovery of bamboo sticks in her house. The learned amicus curiae has also submitted that the appellant, herein, during her deposition as DW-1, had stated that her dao was kept in a basket and she had no knowledge about the lathi purportedly used as a weapon of offence.

13. Ms. Danggen, learned amicus curiae, accordingly, has submitted

that the prosecution had miserably failed to establish that the purported weapon of offence seized by the I.O. and mentioned in the seizure memo; was the actual weapon used for inflicting the injuries upon the deceased by the appellant, herein, and in such view of the matter; the chain required to be completed for convicting the appellant, herein, on account of circumstantial evidence, was not complete and a doubt having arisen in the matter; the benefit of doubt should be extended to the appellant, herein.

14. Per contra, Ms. Jini, learned Addl. P.P., Arunachal Pradesh, has submitted that at the time of the commission of the offence; the appellant, herein, and the deceased husband were the only persons present in the house. The learned trial Court appreciating the said position and finding that the appellant, herein, had no explanation as to how the incident had taken place in her presence in the house, had rightly invoked the provisions of Section 106 of the Indian Evidence Act, 1872, and proceeded to conclude that the prosecution has been able to bring home, the charge against the appellant, herein, as alleged in the First Information Report (FIR) and charge sheet No.28/2014, through circumstantial evidence. Accordingly, it is submitted that the conviction of the appellant, herein, in the circumstances involved, under Section 302 of the Indian Penal Code, would not call for any interference.

15. In this connection, Ms. Jini, learned Addl. P.P., Arunachal Pradesh, has placed her reliance on the decision of the Hon'ble Supreme Court in the case of **Trimukh Maroti Kirkan v. State of**

Maharashtra, reported in **(2006) 10 SCC 681**, and has submitted that under similar circumstances; the Hon'ble Supreme Court having found that the accused therein, having not furnished a plausible explanation for the death of the deceased therein, when he was the only person available in the house along with the deceased at the time of the commission of the offence, proceeded to uphold the conviction of the accused, therein, under Section 302 of the Indian Penal Code.

16. Ms. Jini, learned Addl. P.P., Arunachal Pradesh, has further submitted that the learned trial Court having found that the foundational facts requisite for invocation of the provisions of Section 106 of the Indian Evidence Act, 1872, to have been so established by the prosecution; had proceeded to conclude that no explanation having been furnished by the appellant, herein, with regard to the death of her deceased husband, the chain required to be completed in a case which involves only circumstantial evidence, was complete and accordingly, the conviction of the appellant, herein, under Section 302 of the Indian Penal Code, in the facts and circumstances involved, would not call for any interference.

17. We have heard the learned counsels appearing for the parties and also perused the materials coming on record.

18. Before proceeding to examine the facts involved in the present proceeding; a reference is required to be made to a decision of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra**, reported in **(1984) 4 SCC 116**. The relevant

conclusions as arrived at in the said decision, being relevant, is extracted hereinbelow:

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh and Ramgopal v. State of Maharashtra. It may be useful to extract what Mahajan, J. has laid down in Hanumant case:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

155. *It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges in King v. Horry, thus:*

Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.

156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry case was approved by this Court in Anant Chintaman Lagu v. State of Bombay. Lagu case as also the principles enunciated by this Court in Hanumant case have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases Tufail case, Ramgopal case, Chandrakant Nyalchand Seth v. State of Bombay, Dharambir Singh v. State of Punjab. There are a number of other cases where although Hanumant case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration, Mohan Lal Pangasa v. State of U.P., Shankarlal Gyarsilal Dixit v. State of Maharashtra and M.G. Agarwal v. State of Maharashtra, a five-Judge Bench decision.

158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar, to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

"But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation,.... such absence of explanation or false explanation would itself be an additional link which completes the chain."

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the

court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case, where this Court observed thus: [SCC para 30, p. 43 : SCC (Cri) p. 322]

Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused."

19. The Hon'ble Supreme Court in the above-noted decision, had also referred to the decision in the case of **Kaliram v. State of Himachal Pradesh**, reported in **(1973) 2 SCC 808**, and had concluded that in the event, there are two views possible i.e. one in favour of the accused and the other against him; the view in favour of the accused, is to be accepted.

20. The decision of the Hon'ble Supreme Court rendered in the case of **Sharad Birdhichand Sarda**(supra), was noted with approval in a recent decision of the Hon'ble Supreme Court in the case of **Ravinder Kumar v. State of NCT of Delhi**, reported in **2024 SCC Online SC 347**, and the Hon'ble Supreme Court had drawn the following conclusions:

"9. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.

10. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt."

21. Having noticed the said decision of the Hon'ble Supreme Court in the cases of **Sharad Birdhichand Sarda**(supra) and **Ravinder Kumar**(supra); we now proceed to examine the materials available on record with regard to the conviction of the appellant, herein.

22. The prosecution, as noticed hereinabove, had produced as many as 8(eight) prosecution witnesses.

23. The PW-1 who is the son of the deceased and the appellant, herein, had, in his deposition, deposed that he could not gather evidence as regards the reason for the death of his father as there was no any family member present during the night of the incident at home. The said PW-1 had also deposed that he had found multiple injuries on mouth, upper and lower jaw, neck, head, etc., on the body of his deceased father and on 20.08.2014. He also deposed that he had informed the Rupa Police Station of the incident and thereafter, on 21.08.2014; the dead body of his father was taken over by the police for post-mortem examination. The statements made by the PW-1 being contrary to the statements so made by him before the police during his examination under Section 161 of the Code of Criminal Procedure, 1973, as well as in the First Information Report(FIR) and he having turned hostile; the learned P.P. had sought permission of the learned trial Court to cross-examine him. During cross-examination of the said PW-1, he had deposed that he had never stated that on 18.08.2014, the appellant, herein, had quarrelled with the deceased and she had attempted to kill the deceased at any point of time prior to 18.08.2014. The said PW-1 had further deposed that the appellant,

herein, had not killed the deceased and further, he had not seen any dao at the place of occurrence. During his cross-examination, the PW-1, had further deposed that the deceased might have suffered from Pressure Stroke and had fallen over boulder or any other hard objects of the house and that, he had lodged the First Information Report(FIR) against the appellant, herein, only on suspicion and on inputs from the villagers. The said PW-1 had also deposed in his cross-examination that the villagers had not told him about hearing of any unusual noise from his house on the night of 18.08.2014.

24. The PW-2 who is also a daughter of the deceased and the appellant, herein, had only deposed that the dead body of the deceased was lying on the bed and none of the villagers had told her of the cause of the death of her father. She had further deposed that on the day of the incident, the deceased and the appellant, herein, were at home. During the cross-examination, the PW-2 had deposed that she had never witnessed the appellant, herein, and the deceased, ever fighting or quarrelling and that it was possible that the accident occurred in the absence of the appellant, herein.

25. PW-3, who is a neighbor of the appellant, herein, had deposed that he does not know any reason about why the appellant, herein, was standing on the dock and had not seen any police personnel in the village on 18.08.2024. The said PW-3 having resiled from his statements while being examined under Section 161 of the Code of Criminal Procedure, 1973; the learned P.P. had sought permission to cross-examine him and during such cross-examination, he had

deposed that he had come to learn about the death of the deceased from one of his friends in the morning of 19.08.2014 and he had never heard of the appellant, herein, and the deceased ever quarrelling or fighting before 18.08.2014. The said PW-3 had denied the fact that the appellant, herein, had killed the deceased on the night of 18.08.2014.

26. The PW-4 who also happens to be a daughter of the deceased and the appellant, herein, had during her deposition, submitted that the appellant, herein, was implicated in the case because on the day of the incident, she was with her deceased at home.

27. The PW-5 is the Doctor who had conducted the post-mortem examination of the deceased on 21.08.2014. The PW-5, during his cross-examination, had deposed that he did not mention the age of the injuries found on the body of the deceased in his post-mortem examination report. The PW-5 had further deposed that the weapon used in inflicting the wounds/injuries, would be of a blunt object. The PW-5 had further deposed that the injuries sustained by the deceased, did not suggest that the deceased had died falling on some hard surface.

28. The PW-6 who is a villager and also a seizure witness, in his deposition, had deposed that during the mid-night, the appellant, herein, had shouted "margaya, margaya" and ran all around the village and he, accordingly, along with other residents of the village, rushed to her house and found the deceased, dead. The PW-6 had also deposed that the appellant, herein, was alone in her house. The said

PW-6 had deposed that he did not know who killed the deceased and the appellant, herein, neither, assigned any reason as to how the deceased had died, nor, attributed any overt act to any person. The said PW-6 had also deposed that as there was no third person available in the house of the appellant, herein, therefore, he had doubted that the appellant, herein, had killed the deceased. The said PW-6 admitted to his signature in the seizure memo but he had deposed that the I.O. had shown him a piece of bamboo recovered from the house of the appellant, herein. During the cross-examination, the PW-6 had deposed that it was possible that a burglar while attempting to steal properties from the house of the appellant, herein, had assaulted the deceased resulting in his death. The said PW-6 had further deposed that the piece of bamboo seized by the I.O. was not found in the premises of the Court.

29. The PW-7, namely, Shri Soju Sasusow, had not deposed anything material.

30. The PW-8 is the I.O. of the case. The relevant deposition as made by him, is extracted hereinbelow:

“7. I have seized Dao & Bamboo stick suspected to be used in the crime in presence of some witnesses. I have examined and recorded the statement of the accused.

8. During investigation, I found that accused used to assault the victim with objects like spade, blunt object, etc. Their neighbors were aware of this incident. On the relevant date, the children of accused and victim were not at home. The evidence of the children revealed that accused would constantly assault the deceased.

9. In the course of investigation, I took help of the villagers to locate the PO which is inside the dwelling house of the accused and deceased. I found blood scattered over the PO, however could not find use of any sharp weapon. I have recovered bamboo stick and Dao.

10. The deceased succumbed to his injuries due to excessive bleeding. Therefore, I laid the charge sheet against the accused under Section 302, IPC.

11. M/Ext. 1 is two pieces of solid bamboo stick and dao which I have recovered from the PO. I did not send these exhibits for scientific opinion as I did not find any blood on these articles.

12. Accused did not admit her guilt during interrogation rather she suggested the deceased might have sustained injuries falling down from the house (PO).

XXX by defence:

7. When I arrived at the PO some villagers were already gathered and produced M/Ext. 1 claiming that the accused had used these weapons to assault the deceased.

8. believe that the accused had cleaned the blood stained floor before my arrival.

9. On my query accused stated that on the relevant time the C deceased fell down on the floor and succumbed to his injuries but I did not find any trace of blood or any other evidence of deceased falling on the floor. Therefore, I did not draw the separate PO showing the toilet.

10. The deceased seemed to be a well built up body. On the other side, I found the accused and very aggressive and restlessness.

11. I do not find any motive as such however she seems to have had grudges.”

31. Thereafter, the learned trial Court had examined the appellant, herein, under Section 281/313 of the Code of Criminal Procedure, 1973. The relevant part of such examination, is extracted hereinbelow:

“Q.1 PW-1 deposed that on 18.08.2014 his father met with a fatal accident at Hugasow. He was informed by Mr. Sadin Desisow on mobile phone at 1.15 AM on 19.08.2014. Accordingly, he reached on 19.08.2014 at 6 p.m and found his father dead on his bed. He found injury on tooth and gums of the deceased father. On 20.08.2014, he informed Rupa PS and dead body was taken by the Police on 21.08.2014 for conducting PM. He also found swelling on neck face & left wrist. He lodged the FIR against you to know the cause of the death of deceased father, as you were the only person present at home at the time of incident. Do you want to say anything on this?

Ans. The deceased was always under influence of alcohol and tortured me time to time. Also, he used to allege me for committing adultery with other person. I was present in the kitchen at the time of death of the deceased. The deceased chased me away from the house.

Q.4 PW-8 deposed that he recovered a bamboo stick from the PO in presence of witnesses. He also deposed that a written FIR was received from PW-1 that on 18.08.2014 the deceased quarreled with you at the home for which you assaulted the victim resulting to death of the deceased. He filed the charge sheet and found prima facie case against her registered under Section 302, IPC. Do you have anything to say?

Ans. I do not know about the recovery of bamboo stick from my house. I am denying to committing the offence but admittedly, I had threatened him to kill for torturing and unnecessary allegation to have been committed adultery out of anger. The deceased never helped me in working and beat me.

Q. 6 Do you want to adduce evidence in defence?

Ans. Yes.”

32. The appellant, herein, had also examined herself as DW-1 before the learned trial Court. In her deposition, she had deposed that on the day of the incident, the deceased was under influence of alcohol and had threatened her. The deceased and she were alone in the house. She had seen the dead body of the deceased and she had told the villagers that she had not killed the deceased. She had further deposed that her dao was kept in the basket and she had no knowledge about the lathi, the weapon of offence. In her cross-examination, the DW-1 had deposed that she and her deceased husband slept on different beds and she had not heard any sounds of hitting the deceased by lathi.

33. A perusal of the depositions of the prosecution witnesses as well as the appellant, herein; this Court is to now consider as to whether the conviction of the appellant, herein, basing on circumstantial evidence by the learned trial Court, was proper.

34. As noticed hereinabove, the purported weapon of offence seized by the I.O. was not so seized on the same being produced and/or caused to be discovered by the appellant, herein.

35. The depositions of the I.O. as well as of the PW-6, who is the seizure witness, does not indicate as to the manner in which the said weapon of offence was so seized by the I.O.. The I.O., while deposing as PW-8, in his deposition, had admitted that the seized articles were not sent for forensic serological examination as he had not found any blood stains on those articles.

36. The weapon of offence having not been connected to the incident so occasioning, resulting in the death of the deceased person and the same not having been proved to have been so recovered from the possession of the appellant, herein, and/or discovered at her instance; the discovery of the purported weapon of offence and the absence of any material connecting the same to the incident so occasioning, we are of the considered view that the prosecution had miserably failed to establish the fact that the weapon of offence seized, was actually the weapon of offence used by the appellant, herein, for inflicting blows and injuries to the deceased resulting in his death.

37. The prosecution witnesses deposing before the learned trial Court had not implicated the appellant, herein, in any manner with the commission of the offence, involved. The prosecution witnesses had denied any knowledge of their being any quarrel between the appellant, herein, and her deceased husband prior to 18.08.2014, i.e. the day of the incident. The informant i.e. PW-1 was declared hostile and permission was granted to cross-examine the said witness. The cross-examination of the PW-1 by the prosecution as recorded in no way dislodges the deposition made by him during his examination-in-

chief. The PW-1, admittedly, was not examined in the manner required with regard to the statements made by him before the police as well as in the First Information Report(FIR).

38. It is a settled position of law that the statement made by a witness before the police under Section 161(1) of the Code of Criminal Procedure, 1973, can be used only for the purpose of contradicting such witness on what he had deposed at the trial as laid down in the proviso to Section 160(1) of the Code of Criminal Procedure, 1973. The statements under Section 160(1) recorded during investigation, are not substantive pieces of evidence and can be used, inter alia, primarily for the limited purpose of contradicting such witness by an accused under Section 145 of the Indian Evidence Act, 1872.

39. The Hon'ble Supreme Court in the case of **Anees v. State Government of NCT**, reported in **2024 SCC OnLine SC 757**, had drawn the following conclusions:

“63. Section 162 Cr. P.C. bars the use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated therein. The statement made by a witness before the police under Section 161(1) Cr. P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) Cr. P.C. The statements under Section 161 Cr. P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose : (i) of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re-examination of the witness if necessary.

64. The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words ‘if duly proved’ used in Section 162 Cr. P.C. clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can be looked into, but they must be duly proved for the purpose of contradiction by eliciting admission from the

witness during cross-examination and also during the cross-examination of the Investigating Officer. The statement before the Investigating Officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.

65. Section 145 of the Evidence Act reads as under:

“145. Cross-examination as to previous statements in writing. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

66. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need of further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when the Investigating Officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the Investigating Officer who, again, by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.” [See : V.K. Mishra v. State of Uttarakhand : (2015) 9 SCC 588]

67. In the case at hand, not only proper contradictions were not brought on record in the oral evidence of the hostile witnesses, but even those few that were brought on record, were not proved through the evidence of the Investigating Officer. Does the State expect Section 106 of the Evidence Act to come to its aid in every criminal prosecution. At times, such procedural lapses may lead to a very serious crime going unpunished. Any crime committed against an individual is a crime against the entire society. In such circumstances, neither the public prosecutor nor the presiding officer of the trial court can afford to remain remiss or lackadaisical in any manner. Time and again, this Court has, through its judgments, said that there should not be any element of political consideration in the matters like appointment to the post of public prosecutor, etc. The only consideration for the Government should be the merit of the

person. The person should be not only competent, but he should also be a man of impeccable character and integrity. He should be a person who should be able to work independently without any reservations, dictates or other constraints. The relations between the Public Prosecution Service and the judiciary are the very cornerstone of the criminal justice system. The public prosecutors who are responsible for conducting prosecutions and may appeal against the court decisions, are one of judges' natural counterparts in the trial proceedings and also in the broader context of management of the system of criminal law.

68. A criminal case is built upon the edifice of evidence (whether it is direct evidence or circumstantial evidence) that is admissible in law. Free and fair trial is the very foundation of the criminal jurisprudence. There is a reasonable apprehension in the mind of the public at large that the criminal trial is neither free nor fair with the Prosecutor appointed by the State Government conducting the trial in a manner where frequently the prosecution witnesses turn hostile.

69. Over a period of time, we have noticed, while hearing criminal appeals, that there is practically no effective and meaningful cross-examination by the Public Prosecutor of a hostile witness. All that the Public Prosecutor would do is to confront the hostile witness with his/her police statement recorded under Section 161 of the Cr. P.C. and contradict him/her with the same. The only thing that the Public Prosecutor would do is to bring the contradictions on record and thereafter prove such contradictions through the evidence of the Investigating Officer. This is not sufficient. The object of the cross-examination is to impeach the accuracy, credibility and general value of the evidence given in-chief; to sift the facts already stated by the witness; to detect and expose the discrepancy or to elicit the suppressed facts which will support the case of the cross-examining party. What we are trying to convey is that it is the duty of the Public Prosecutor to cross-examine a hostile witness in detail and try to elucidate the truth & also establish that the witness is speaking lie and has deliberately resiled from his police statement recorded under Section 161 of the Cr. P.C. A good, seasoned and experienced Public Prosecutor will not only bring the contradictions on record, but will also cross-examine the hostile witness at length to establish that he or she had actually witnessed the incident as narrated in his/her police statement.”

40. Applying the conclusions drawn by the Hon'ble Supreme Court in the case of **Anees**(supra) to the facts of the present case, it is found that the prosecution miserably failed to elicit proper contradictions in the deposition as made by PW-1. The contradictions in the deposition of PW-1 even if assumed to have been brought on record, were not proved through the evidence of the I.O.(PW-8). As held by the Hon'ble Supreme Court in the case of **Anees**(supra) in respect of a hostile witness; the learned trial Court is duty bound to ensure that the part

of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination; the attention of the witness is drawn to that part; and this must reflect in his cross-examination by reproducing it. It further proceeds to hold that if the witness admits the part, intended to contradict him, it stands proved and there is no need for further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when the Investigating Officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the Investigating Officer who, again, by referring to the police statement will depose about the witness having made that statement.

41. In the case on hand, it is clear that no such process of establishing the contradictions in the deposition of PW-1 before the learned trial Court and that so made in his statement under Section 161 of the Code of Criminal Procedure, 1973, as well as in the First Information Report(FIR) was brought on record and the contradictions so involved in the depositions of PW-1 was not so proved through the depositions of the I.O.(PW-8). A perusal of the deposition of the I.O. (PW-8) would go to show that he was not confronted with the contradictions in the statement so made by the PW-1 before the I.O. during the investigation of the matter.

42. In that view of the matter, the reliance placed by the learned trial Court with regard to the evidence of PW-1 and PW-8 to hold that the said statements were corroborating each other and the fact of the incident and bad relation between the appellant, herein, and the deceased husband, was established; cannot be accepted.

43. A further conclusion of the learned trial Court that the contents of the First Information Report(FIR) relating to the quarrel between the appellant, herein, and the deceased was conclusively proved on account of the admission of the appellant, herein, in her defence and the same is binding to the guilt of the appellant, herein, without having any break of the chain of circumstantial evidence, on consideration, is found to be not correct, in-as-much as, the statement of the appellant, herein, as DW-1, had not even indicated any such quarrel between the appellant, herein, and her deceased husband, prior to 18.08.2014. The deposition of the DW-1 in her cross-examination to the extent that in the evening of the day of the incident, she and her deceased husband had a quarrel with each other, was further qualified that they had slept on different beds. The statements of the appellant, herein, in her examination under the provisions of Section 313 of the Code of Criminal Procedure, 1973, also does not support the conclusions drawn by the learned trial Court. The conclusions of the learned trial Court that the deposition of the PW-8 i.e. I.O. to the effect that blood of the deceased was found spattered on the floor of the house and the deceased had died on the bed with injuries and the conclusion drawn that the deceased was sleeping in his bed while the incident took place, hence, the blood was

found spattered at the place of occurrence, leading the Court to conclude that the appellant, herein, had attacked some time after the quarrel while the deceased was either resting or sleeping on his bed, is not supported by the evidence brought on record.

44. It is to be noted that the blunt weapon purportedly used to cause injuries to the deceased as already concluded hereinabove, by us, has not been established by the prosecution.

45. The learned trial Court had concluded that the quarrel had happened in the evening time and the deceased had died at around 11.30PM, in the mid-night. Basing on the said conclusions; the learned trial Court had concluded that it was a cold blooded murder by the appellant, herein, after having a quarrel with her deceased husband in the evening and attacked him while he was, either, resting, or, sleeping. The said conclusion has been so made ignoring the deposition of PW-6 who had deposed that the appellant, herein, during the mid-night of the day of the incident, had run around the village shouting "margaya, margaya". This when considered in the context of the lapse on the part of the I.O. in not sending for forensic serological examination, the purported weapon of offence and the apparel worn by the appellant, herein, and of her deceased husband; such a conclusion was not permissible to be drawn by the learned trial Court.

46. Accordingly, we are of the considered view that the statements of the prosecution witnesses made before the I.O. as well as those made by the PW-1 in the First Information Report(FIR), could not have been

taken note by the learned trial Court in the matter.

47. Accordingly, a criminal case being built up on the edifice of evidence whether it is direct evidence or circumstantial evidence that is admissible in law and free and fair trial being the very foundation of the criminal jurisprudence; we are of the considered view that the prosecution had miserably failed to establish the contradictions available in the depositions of the prosecution witnesses and their previous statements recorded during the investigation of the matter.

48. In view of the above position; we are of the considered view that the learned trial Court has, in respect of the appellant, herein, failed to draw a distinction between "may have" committed the crime, or, "must have" committed the crime, as has been held by the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda**(supra).

49. It is settled law that suspicion, however, strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter, how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

50. The learned trial Court for the purpose of convicting the appellant, herein, had taken recourse to the provisions of Section 106 of the Indian Evidence Act, 1872, and by concluding that the appellant, herein, has no explanation as to how the incident involved which had taken place in her presence in the house, had proceed to

conclude that the prosecution has been able to bring home, the charge so framed against the appellant, herein, through circumstantial evidence.

51. However, what is relevant to be noticed in view of the foregoing discussions is that the foundational facts requisite for invoking the principles enshrined under Section 106 of the Indian Evidence Act, 1872, admittedly, was not established in the present case, for the following reasons:

(1). There exists a doubt with regard to the purported weapon of offence seized by the I.O. on account of the manner in which it was so seized. The said weapon of offence having not been produced and/or discovered at the instance of the appellant, herein, no material has been brought on record, to connect the said weapon of offence to the actual injuries caused to the deceased.

(2). The plea as taken by the appellant, herein, since the initiation of the criminal proceeding against her that the deceased had sustained the said injuries on his body on having fallen down after being drunk resulting in the said injuries which led to his death, being a possible eventuality and the same when considered with the fact that the learned trial Court had also held the death of the deceased had occasioned at around 11.30 hrs. of the intervening night of 18th and 19th of August, 2014; the PW-6 having deposed that the appellant, herein, had run around

the village at around mid-night on the day of the incident, shouting "margaya, margaya", negates in absence of further relevant evidence that the appellant, herein, had committed the offence and had, thereafter, cleaned the spots of blood stains so as to obliterate its presence even in traces.

(3). The weapon of offence along with the apparel worn by the appellant, herein, at the time of the commission of the offence, were not subjected to forensic serological examination. Further, there is no material available on record to demonstrate seizure of any clothes and/or any other material that might have been used by the appellant, herein, for cleaning the blood stains from the house of the appellant, herein.

52. Accordingly, we are of the considered view that the foundational facts requisite for invoking the provisions of Section 106 of the Indian Evidence Act, 1872, is clearly absent in the present case. Accordingly, the appellant, herein, could not have been convicted of an offence under Section 302 of the Indian Penal Code by the learned trial Court only basing on the conclusion that the appellant, herein, had not explained as to how the incident involved, had taken place in her presence in the house.

53. In view of the above discussions, we are of the considered view that the prosecution had failed to prove any incriminating circumstances beyond reasonable doubt and in any case, failed to establish a chain of evidence intertwined with each other which leads

to no other conclusion than the guilt of the appellant, herein.

54. In view of the distinguishing factors noticed in the present case, the decision as relied upon by Ms. Jini, learned Addl. P.P., Arunachal Pradesh, in the case of ***Trimukh Maroti Kirk*** (supra), in our considered view, would not advance the case of the prosecution.

55. Accordingly, the judgment & order, dated 24.07.2020, passed by the learned District & Sessions Judge, West Kameng District, Bomdila, in Sessions Case No. 69/2015 arising out of Rupa Police Station Case No. 39/2014, would call for an interference and accordingly, we are of the considered view that the conviction of the appellant, herein, by the learned trial Court under Section 302 of the Indian Penal Code, is not sustainable in law.

56. In view of the above; the judgment & order, dated 24.07.2020, passed by the learned District & Sessions Judge, West Kameng District, Bomdila, in Sessions Case No. 69/2015 arising out of Rupa Police Station Case No. 39/2014, is hereby set aside. Consequently, the sentence imposed upon the appellant, herein, under Section 302 of the Indian Penal Code, is also set aside.

57. The appellant, herein, is acquitted of the charge under Section 302 of the Indian Penal Code. The appellant, herein, having been granted bail by this Court vide order, dated 22.03.2024, in IA(Crl.)19/2024 in Crl.A.(J)01(AP)2023; the bail bond stands

discharged.

58. With the above directions and observations, the instant appeal, accordingly, stands allowed.

59. Send down the LCRs to the Court below forthwith.

60. Before parting with the records, in appreciation of the assistance rendered by Ms. Danggen, learned amicus curiae appearing for the appellant, herein; appropriate fee payable to her, be paid by the Arunachal Pradesh State Legal Service Authority.

JUDGE

JUDGE

Comparing Assistant