



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

Case No. : CRL.A(J)/13/2023

Hongro Ngotan
S/o Late Pongwa Ngotan,
Resident of Village New Sumlam Village, PO/PS Changlang, District Changlang
(Arunachal Pradesh),
Presently lodging at District Jail, Tezu, Lohit District, (Arunachal Pradesh)

VERSUS

THE STATE OF AP
through the Public Prosecutor.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

For the Appellant : Ms. N. Anju, Amicus Curiae.

For the respondent : Ms. L. Hage, Additional Public Prosecutor, Arunachal Pradesh.

Date of Hearing : 21.03.2024.

Date of Judgment : 09.04.2024.

Judgment & Order (CAV)

[Vijay Bishnoi, CJ]

Heard Ms. N. Anju, learned Amicus Curiae appearing for the appellant and Ms. L. Hage, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This Criminal Appeal (Jail) is filed by the appellant being aggrieved with the judgment dated 09.03.2020 passed by the learned District and Sessions Judge, Tirap, Changlang and Longding, at Khosa, Arunachal Pradesh (hereinafter to be referred as “the Trial Court”) in Khonsa Sessions Case No.25/2019, whereby the learned Trial Court has convicted the appellant for the offences punishable under Sections 302/436 and 201 of Indian Penal Code (IPC) read with Section 25(1B)(a) of Arms Act and sentenced him vide order dated 16.03.2020 in the following manner:

<i>Under Section</i>	<i>Sentence</i>
<i>302 IPC</i>	<i>To undergo rigorous imprisonment for life and pay a fine of Rs.10,000/- for the offence under Section 302 IPC and in default in payment of the fine, the appellant was directed to undergo further imprisonment for 2(two) months.</i>
<i>436 IPC</i>	<i>To undergo rigorous imprisonment for 14 years and pay a fine of Rs.10,000/- for the offence under Section 436 IPC and in default in payment of the fine, the appellant was directed to undergo further simple imprisonment for two months.</i>
<i>201 IPC</i>	<i>To undergo rigorous imprisonment for 07 years and pay a fine of Rs.5,000/- for the offence under Section 201 IPC and in default in payment of the fine, the appellant was directed to undergo</i>

	<i>further simple imprisonment for 1(one) month.</i>
25(1B)(a) of Arms Act	<i>To undergo rigorous imprisonment for 03 years and pay a fine of Rs.3,000/- for the offence under Section 25(1B)(a) of Arms Act and in default in payment of the fine, the appellant was directed to undergo further simple imprisonment for 15 days.</i>

3. The brief facts of the case are that PW-1, Smt. Ponglung Ngotan, had lodged a written complaint at Police Station Changlang on 06.03.2014 alleging that on 05.03.2014, at about 7:20 P.M., the appellant had brutally assaulted his father, Shri Pongwa Ngotan and on account of that his father succumbed to the injuries on the spot. It was further alleged that after the beating incident, the appellant set fire to his house due to which the house was completely burnt and damaged. It was prayed that the appellant be apprehended immediately.

4. On receiving the said complaint, the police registered Changlang Police Station FIR No.07/2014 under Sections 302/436/201 IPC against the appellant and started investigation. After completion of the investigation, the police filed charge-sheet against the appellant for the offences punishable under Sections 302/436/201 IPC read with Section 25(1B)(a)/28 of Arms Act.

5. The learned Trial Court framed charges against the appellant for the offences punishable under Sections 302/436/201 IPC read with Section 25(1B)(a) of Arms Act.

6. During the course of trial, the prosecution produced as many as 13 witnesses and also exhibited certain documents. The appellant was examined under Section 313 of Code of Criminal Procedure, 1973, wherein he pleaded innocence but did not produce any evidence in defence.

7. The learned Trial Court, after analyzing the evidence available on record, convicted the accused/appellant vide impugned judgment dated 09.03.2020 and sentenced him vide order dated 16.03.2020, as described in the earlier part of this

judgment.

8. Ms. N. Anju, learned Amicus Curiae appearing for the accused/appellant has vehemently argued that the learned Trial Court has grossly erred in convicting and sentencing the accused/appellant vide the impugned judgment though the prosecution has failed to prove the charges against the accused/appellant. It is argued that the prosecution case was based on circumstantial evidence only. However, the said evidence is not conclusive.

It is submitted that the circumstantial evidence produced by the prosecution has failed to form a chain of events so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant and none else. It is contended that the circumstantial evidence produced by the prosecution was not complete to prove the guilt of the accused/appellant.

9. Learned Amicus Curiae has invited our attention towards the statements of the prosecution witnesses, more particularly, PW1-Smt. Ponglung Ngotan, PW-2, Shri Somdan Ngotan, PW-3, Shri Rangkong Ngotan, PW-4, Shri Dihang Diben, PW-5, Shri Wangpok Diben, PW-7, Shri Samhong Sawen, PW-8, Shri Wangdam Jomai and has argued that none of the above prosecution witnesses deposed before the learned Trial Court that they had seen the appellant assaulting the deceased or setting fire to the house. It is contended that the learned Trial Court has grossly erred in relying on the evidence of PW-2, PW-3, PW-4 and PW-5 though none of them had supported the prosecution story and, in fact, they were declared hostile.

10. It is contended that PW-1 in her cross-examination specifically deposed that she had not seen the appellant going inside the old house. She further deposed that the deceased used to stay in another old house whereas the appellant did not use to visit that house. She also admitted that there was a good number of dry fire woods over the fire place, which used to keep burning, and as the deceased was in drunken state on the day of incident, the fire wood kept near the fire place could have caught the fire.

11. It is further stated that though the learned Trial Court has placed reliance on the

statement of PW-8, Shri Wangdam Jomai, who happened to be the brother-in-law of the appellant, but from his evidence also it can be gathered that he reached on the spot only on the next morning after the incident. It is submitted that though PW-8 in his evidence stated that PW-1 informed him that the accused person had killed his father but PW-1 in her statement before the Court nowhere stated that she had informed PW-8 that the appellant had killed his father and set fire to the residential house.

12. Learned Amicus Curiae has, therefore, submitted that in the absence of any credible evidence, the learned Trial Court has grossly erred in convicting and sentencing the appellant for the offences punishable under Sections 302/436/201 of IPC.

It is further argued that the learned Trial Court has also grossly erred in convicting and sentencing the accused/appellant for the offence punishable under Section 25(1B)(a) of Arms Act. It is submitted that the recovery of the gun and ammunition from the huts situated in the agricultural field of the accused/appellant is highly doubtful. It is also submitted that the charge against the appellant of firing gunshot on the police party is also not corroborated by any independent witness.

It is submitted that the learned Trial Court has placed reliance on the evidence of PW-9, Shri Wanghun Tangjang, PW-10, Shri Nokwang Khetey, PW-11, Shri Wangjut Kakho, PW-12, Dr. Minsing Ngemu and PW-13, Shri Gesap Ronya to conclude that the appellant is guilty of the offence punishable under Section 25(1B)(a) of Arms Act. However, the evidence of the said witnesses is not sufficient to prove the guilt of the accused of the aforesaid charge.

13. Learned Amicus Curiae has placed reliance on the decisions of the Hon'ble Supreme Court rendered in ***Sharad Birdhichand Sarda Vs. State of Maharashtra***, reported in ***(1984) 4 SCC 116***; ***Majenderan Langeswaran Vs. State (NCT of Delhi) & Anr.***, reported in ***(2013) 7 SCC 192*** and ***Sujit Biswas Vs. State of Assam***, reported in ***(2013) 12 SCC 406*** and has argued that the Hon'ble Supreme Court, in relation to a case based on the circumstantial evidence, has held that some conditions must be fulfilled before a case against an

accused is proceeded with on the basis of circumstantial evidence. However, the said conditions have not been fulfilled in the present case and therefore, the conviction of the accused/appellant on the basis of the circumstantial evidence adduced by the prosecution cannot be sustained and is liable to be set aside.

14. *Per contra*, Ms. L. Hage, learned Additional Public Prosecutor, Arunachal Pradesh appearing for the respondent State has vehemently opposed the appeal and has argued that the prosecution produced cogent and reliable evidence against the accused/appellant to prove his guilt and the learned Trial Court has not committed any illegality in convicting and sentencing the accused/appellant vide the impugned judgment. It is submitted that the evidence produced by the prosecution forms a chain of events which leads to an inescapable conclusion that the crime has been committed by the appellant and therefore, in such circumstances, no case for interference is made out and the present appeal filed by the appellant is also liable to be dismissed.

15. To buttress her argument, learned Additional Public Prosecutor has placed reliance on the decision of the Hon'ble Supreme Court rendered in ***Vahitha Vs. State of Tamil Nadu***, reported in ***2023 LiveLaw (SC) 132 [Criminal Appeal No.762/2012, dated 22.02.2023]***.

16. We have heard the learned counsel appearing for the parties and have also carefully scrutinized the record of the learned Trial Court.

17. It is an admitted position that there was no eye-witness to the incident and the case of the prosecution rests on circumstantial evidence only.

18. The Hon'ble Supreme Court in ***Sharad Birdhichand Sarda*** (supra) has discussed about the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone and has held as follows:

“151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is

only this : where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

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. The State of Madhya Pradesh*, AIR 1952 SC 343. 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*, (1969) 3 SCC 198 and *Ramgopal v. State of Maharashtra*, (1972) 4 SCC 625. It may be useful to extract what Mahajan, J. has laid down in *Hanumant's* case (*supra*):

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 & Anr. v. State of Maharashtra*, (1973) 2 SCC 793 where the following 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 *The King v. Horry*, 1952 NZLR 111, 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 up on 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's case (supra) was approved by this Court in *Anant Chintaman Lagu v. The State of Bombay*, AIR 1960 SC 500. Lagu's case, as also the principles enunciated by this Court in *Hanumant's case* (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases *Tufail's case* (supra), *Ramgopal's case* (supra), *Chandrakant Nyalchand Seth v. The State of Bombay* (Criminal Appeal No. 120 of 1957 decided on 19.2.58), *Dharmbir Singh v. The State of Punjab* (Criminal Appeal No. 98 of 1958 decided on 4.11.1958). There are a number of other cases where although *Hanumant's case* has not been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed v. Delhi Administration*, (1974) 3 SCC 668. *Mohan Lal Pangasa v. State of U.P.*, (1974) 4 SCC 607, 609,*

Shankarlal Gyarsilal Dixit v. State of Maharashtra, (1981) 2 SCC 35, 39 and M.C. Agarwal v. State of Maharashtra, AIR 1963 SC 200-a five-Judge Bench decision.”

19. In ***Majenderan Langeswaran*** (supra), the Hon’ble Supreme Court has held as follows:

“16. Now, we have to consider whether the judgment of conviction passed by the trial court and affirmed by the High court can be sustained in law. As noticed above, the conviction is based on circumstantial evidence as no one has seen the accused committing murder of the deceased. While dealing with the said conviction based on circumstantial evidence, the circumstances from which the conclusion of the guilt is to be drawn should in the first instance be fully established, and all the facts so established should also be consistent with only one hypothesis i.e. the guilt of the accused, which would mean that the onus lies on the prosecution to prove that the chain of event is complete and not to leave any doubt in the mind of the Court.

17. In the case of Hanumant Govind Nargundkar vs. State of M.P., AIR 1952 SC 343, this Court observed as under: (AIR pp. 345-46, para 10)

“10.....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.”

18. In the case of *Padala Veera Reddy vs. State of A.P.*, 1989 Supp (2) SCC 706, this Court opined as under: (SCC pp.710-11, para 10)

“10. Before adverting to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly

pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir v. State of Maharashtra*, (1982) 2 SCC 351)”

19. In the case of *C. Chenga Reddy & Ors. vs. State of A.P.*, (1996) 10 SCC 193, this Court while considering a case of conviction based on the circumstantial evidence, held as under: (SCC pp. 206-07, para 21)

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence.”

20. In the case of *Ramreddy Rajesh Khanna Reddy vs. State of A.P.*, (2006) 10 SCC 172, this Court again considered the case of conviction based on circumstantial evidence and held as under: (SCC p. 181, para 26)

“26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See *Anil Kumar Singh v. State of Bihar*, (2003) 9 SCC 67 and *Reddy Sampath Kumar v. State of A.P.*, (2005) 7 SCC 603).”

21. In the case of *Sattatiya vs. State of Maharashtra*, (2008) 3 SCC 210, this Court held as under: (SCC pp.214-15, para 10)

“10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can

draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.”

This Court further observed in the aforesaid decision that : [Sattatiya v. State of Maharashtra, (2008) 3 SCC 210, SCC p. 217, para 17]

“17. At this stage, we also deem it proper to observe that in exercise of power under [Article 136](#) of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court—Bharat v. State of M.P., (2003) 3 SCC 106. In the light of the above, we shall now consider whether in the present case the prosecution succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the appellant had committed the crime.”

22. *In the case of [State of Goa vs. Pandurang Mohite](#), (2008) 16 SCC 714, this Court reiterated the settled law that where a conviction rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.*

23. *It would be appropriate to consider some of the recent decisions of this Court in cases where conviction was based on the circumstantial evidence. In the case of [G. Parshwanath vs. State of Karnataka](#), (2010) 8 SCC 593, this Court elaborately dealt with the subject and held as under: (SCC pp.602-603, paras 23-24)*

“23. In cases where 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. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is

proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. 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, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.”

24. In the case of [Rajendra Pralhadrao Wasnik vs. State of Maharashtra](#), (2012) 4 SCC 37, while dealing with the case based on circumstantial evidence, this Court observed as under: (SCC pp. 41-42, paras 12-13)

“12. There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to leave any substantial doubt in the mind of the court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the accused and the only

possibility is that the accused has committed the crime.

13. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.”

25. Last but not least, in the case of *Brajendrasingh vs. State of M.P.*, (2012) 4 SCC 289, this Court while reiterating the above principles further added that: (SCC pp.299-300, para 28)

*“28. Furthermore, the rule which needs to be observed by the court while dealing with the cases of circumstantial evidence is that the best evidence must be adduced which the nature of the case admits. The circumstances have to be examined cumulatively. The court has to examine the complete chain of events and then see whether all the material facts sought to be established by the prosecution to bring home the guilt of the accused, have been proved beyond reasonable doubt. It has to be kept in mind that all these principles are based upon one basic cannon of our criminal jurisprudence that the accused is innocent till proven guilty and that the accused is entitled to a just and fair trial. (Ref. *Dhananjay Chatterjee v. State of W.B.*, (1994) 2 SCC 220; *Shivu v. High Court of Karnataka*, (2007) 4 SCC 713 and *Shivaji v. State of Maharashtra*, (2008) 15 SCC 269)”*

26. As discussed hereinabove, there is no dispute with regard to the legal proposition that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence as laid down by this Court. In such a case, all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else.”

20. In **Sujit Biswas** (supra), the Hon’ble Supreme Court has held as follows:

“13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence

produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: *Hanumant Govind Nargundkar & Anr. v. State of M.P.*, AIR 1952 SC 343; *State through CBI v. Mahender Singh Dahiya*, AIR 2011 SC 1017; and *Ramesh Harijan v. State of U.P.*, (2012) 5 SCC 777).

14. In *Kali Ram v. State of Himachal Pradesh*, AIR 1973 SC 2773, this Court observed as under:

"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence."

15. In *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, this Court held as under : SCC p. 185, para 153)

"153. (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused..... 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.

* * *

(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."

16. In *M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200, this Court held, that if the circumstances proved in a case are consistent either with the innocence of the accused, or with his guilt, then the accused is entitled to the benefit of doubt. When it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the

problem, benefit of doubt must be given to the accused, and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and is entirely consistent with his guilt.

17. Similarly, in *Sharad Birdhichand Sarda* (Supra), this Court held as under: (SCC pp. 127-28)

Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. The principle has special relevance where the guilt or the accused is sought to be established by circumstantial evidence.

18. Thus, in view of the above, the Court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. Inferences are drawn from established facts, as the circumstances lead to particular inferences. The Court must draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.”

21. Now, in view of the aforesaid settled legal propositions, we have to consider the case of the accused/ appellant which is purely based on circumstantial evidence.

22. PW-1, Smti Ponglung Ngotan, in her written complaint filed before the police on 06.03.2014, at 8:05 hrs, stated that on 05.03.2014 in the evening the accused/ appellant had assaulted his father who succumbed to injuries on the spot and thereafter, set fire to the residence which is completely destroyed.

In her deposition before the Court, PW-1 simply stated that on the day of the incident, she along with her husband were in the agricultural field and after some argument that took place between her and her husband, she came back to the house and saw that the deceased, i.e. her father-in-law, was inside the house near the fire place and he was a bit under the influence of alcohol. She further deposed that her husband came back to her village and was shouting. She ran towards the jungle side out of fear and in the next morning she came to know about the death of her father-in-law.

The deposition of PW-1 before the Court is reproduced hereunder:

“On Oath

The person standing on the dock is my husband he is Hangro Ngotan. My father-in-law name is Pongwa Ngotan, he is no more in this world. He expired one and half year back. On that day I alongwith my husband were at out agricultural field, where some argument took place between us. Thereafter I came back to our house, my father-in-law was there inside the house near the fire place, he was bit under the influence of alcohol. When my husband came back in my village and was shouting, therefore in fear I went out my house and ran towards the jungle side. There is no other house near our house, but there was a house bit away in the down side of our house, I cannot say the distance. Our house has been burnt down in fire in that evening itself. Everything has been burnt down. My father-in-law is also there inside the house. I have seen the fire of burning down of our house from nearby jungle. At that time my daughter five years old was with me. I came to know about the death of my father-in-law in next morning. Next morning I found the skeleton of my father-in-law, in the place where the house was burnt down. There was no any animal in that house. I have given my thumb impression in a paper before the police. P.Exh-1 is FIR and P.Exh-1(a) is my thumb impression. Police have seized the ash and the skeleton of deceased father-in-law in my presence. P. Exh-2(a) is my thumb impression in the seizure list.

X X X

CROSS BY THE DEFENCE

It is fact that my husband used to stay in a small hut constructed in the agricultural field and my father-in-law used to stay in another old house and my husband did not use to visit in that house. It is true over the fire place there was a good number of dry firewood which used to keep for burning.

Q. We used to keep firewood near the fire place also and that also some firewood was kept near the fire place?

Ans: Yes.

Suggestion: There also used to bamboo post near the fire place to make for keeping firewood?

Ans: Yes.

Suggestion: As the deceased was drunked on that day, fire can caught the firewood kept near the fire place, which can caught the bamboo post and thereafter to the firewood kept in the fire place?

Ans: Yes.

Suggestion: Thereafter fire could can fall down?

Ans: Yes.

Suggestion: You have seen the accused husband shouting and thereafter returning from there from the road towards the agriculture field?

Ans: I have not seen my accused husband going inside the old house."

23. PW-2, Shri Somdam Ngoton, in his deposition made before the Court stated that on the day of the incident, he was in his house and watching T.V. On hearing hue and cry in the area, he asked his daughter-in-law to go out and see the happenings. Then she told him that the house of the deceased was burning.

PW-2 was declared hostile. However, he was cross-examined by the Public Prosecutor as well as by the counsel for the defence. In the whole statement, PW-2 nowhere stated that he had seen the accused assaulting his father or setting fire to the house.

The deposition of PW-2 is reproduced hereunder:

"On Oath

The accused standing on the dock is Hangro Ngoton, my parental nephew, son of Pongwan Ngoton, who expired unnaturally in his house, date I don't remember, but it should be either February or Marach'2024. We are from same village and distance between my house his house will be about 300 meters. I am posted at Changlang itself and used to do my duty from my own resident. In that house, deceased, his accused son, daughter-in-law and the childrens of the accused were residing together at that time. The house is of OB type with concrete pillar. The house has been burnt down. I was available in my house at the time of burning down of that house. I was watching TV with my grand childrens, on hearing hue and cry in the area, I asked my daughter-in-law to go out and see the happenings, who told me about the fire, when I came out I saw that the house had already caught with full fire. I visited that place after burning down of that house and other villagers were also present. The childrens of that house were out of that house, but I don't know about the deceased. I have given my statement to the police.

WITNESS DECLARE HOSTILA

X X X

CROSS BY THE PP

It is fact that I have stated before the police that after drink accused used to be utter un-parliamentary words, used to intimate others like a criminal minded people. I have not stated before the police that accused used to beat and assault his father. It is also fact that I have stated before the police that the deceased had got treatment twice in the medical at Changlang on his injury caused by the accused own or assaulted by the accused. I have not seen the incident, as such, I have not stated before the police that I was told by the public of the village that they tried to enter the burning house, but accused did not allowed them to enter the house and was standing in the gate. It is fact I have stated before the police that I accompanied the complaint at PS to lodge the complaint.

X X X

CROSS BY DEFENCE

The complainant is a illiterate person. My house is in the down side and the house of deceased was in upper side. It is fact that after the deceased house my house falls and thereafter the house of others. There are numbers of house after my house. Nearest house to my house apartfrom the house of the deceased, will be located at about 70 meters. It is fact that we did not gone to that house nor other people. It is fact next day we went there and others also. It is fact nobody visit their house. It is fact that I cannot say how deceased was hit by what means, when deceased got medical treatment and there is no case of the same. It is fact we used to have a fire place in middle of the house. We used to keep firewood above the fireplace. It is also fact that because of falling down of firewood a fire can caught.

Q. Accused did not killed his father?

Ans: I don't know."

24. PW-3, Shri Rangkong Ngotan, who was the Gaonburah of New Sumlam village, in his deposition before the Court, has also not deposed that the accused/appellant had assaulted his father or set fire to the house. He admitted his signatures on Exhibit-3 and Exhibit-4 prepared in relation to seizure of the arms in the agricultural hut of the accused/appellant, seized from the said hut.

The deposition of PW-3 before the Court is reproduced hereinunder:

“ ON OATH

I am the Gaon Bura of New Sumlam village. The person standing dock is Hangro Ngoton, he is like my elder brother. I know the wife of the accused also. I don't know who lodged the complain. I also knew the deceased father of the accused. The distance between my house and the house of accused will be about 150 meters. Father of accused expired two years back, I don't remember date and month, but it was either in the year 2013 or 2014. He expired in his own house. Police came next day of incident in the village. I have given my statement to the police.

WITNESS DECLARED HOSTILE

X X X

CROSS BY THE PP

I have not stated before the police that accused killed his own father and burnt the house to destroy the evidence. I have also not stated before the police that I have seen the skeleton pieces at burnt down place. I don't remember, if I have stated before the police that I have seen the seizure of 8 pieces of skeleton from the place where the house was burnt down. I have not stated before the police that I went with the police in the farm house of accused for search of weapons. The P.Exh-3(a) is my signature in the seizure list, but I have not seen the bone. P.Exh-4(a) is my signature in the seizure list, I was shown the gun, dao by the OC stated to have been seized from the farm house of the accused.

X X X

CROSS BY DEFENCE

It is fact that I was shown the seized dao and gun on the way. It is fact that before putting signature in the seizure list I was not readover. I did not gone to that house when it was under fire. The distance between my house and Samdan Ngaton will be about 50-60 meters. It is fact that I have no idea how the deceased had died.”

25. PW-4, Shri Dihang Diben, who happened to be cousin of the accused/appellant also has not deposed that he had seen the accused assaulting his father and thereafter setting fire to his house.

The deposition of PW-4 before the Court is reproduced hereunder:

“ON OATH

The accused standing on the dock happens to be my cousin. I also knew his deceased father Lt. Pongwa Ngoton. I have seen the deceased just day before of the fire incident that took place in New Sumyam village. Police

recorded my statement and also obtained my signature in the seizure memo. They have recovered one bone from PO. P.Exh-2(c) is my signature on the seizure list.

WITNESS DECLARED AS HOSTILE

X X X

CROSS BY THE PP

It is true that I have stated before the police that on the night of incident on 05.03.2014 the accused came to his house in aggressive mood by shouting from the road side and accordingly his family members except his old aged father Lt. Pongwa Nogotan fled away from the house out of fear. I am not sure if I have said before the police that the accused after killing his father set ablaze his house. It is true that I have been the police recovering 8 small pieces of bones from the debris and accordingly I subscribed my signature as one of the seizure witnesses.

X X X

CROSS BY THE DEFENCE

During the incident the PO was at the distance of 300 meters from my house. It is true that I have not seen the incident, I just heard about the same on next morning. Police just asked to put my signature on a piece of paper they never asked me anything about the incident. The place of occurrence was SPT house. It is true that I without knowing the contents of the seizure memo have put my signature. It is also true that there was a fire place inside the PO. I cannot say how the incident took place.”

26. PW-5, Shri Wangpok Diben, did not state in his deposition before the Court that the accused appellant had assaulted his father or set fire to his house. He stated that he had only heard about the same.

The deposition of PW-5 before the Court is reproduced hereunder:

“ON OATH

I Know the accused Hongro Ngotan as we hails from my same village. I knew the deceased Pongma Ngotan also, he was about 70 years old at the time of his death. I only heard that the accused killed his father and set ablaze his house with the dead body. Police arrived at our village and recorded our statement.

WITNESS DECLARED AS HOSTILE

CROSS BY PP

It is true that on the night of incident I have seen the family members of the accused running away from his house out of fear. I have heard the accused creating nuisance in that night. It is not true to suggest that I have seen the accused killing his father and setting fire. It is true that I have seen the police recovering 8 pieces of human bone from the debris. P.Exh 2(d) is my signature on the seizure memo.

X X X

CROSS BY DEFENCE

I cannot say at what time this incident occurred. It is true that the accused and myself has separate route to our respective houses. I visited the PO on the next morning of the incident.”

- 27.** PW-6, Shri Samnam Jomai, did nowhere state that he had seen the accused assaulting his father and/or setting fire to his house.

The deposition of PW-6 before the Court is reproduced hereunder:

“ON OATH

I know the accused person Hangro Ngotan who is absent today. On the next date of incident I visited the PO and got to know that accused Hangro Ngotan set fire in his house. It was also told to us that the house set ablaze with the deceased father of accused.

X X X

CROSS BY THE DEFENCE

It is true that I have not seen the accused committing the alleged offence.”

- 28.** It is to be noted herein that PW-2, PW-3, PW-4 and PW-5 have been declared hostile by the prosecution.

- 29.** PW-7, Shri Samhong Sawen, in his deposition before the Court, did not state that he had seen the accused/appellant assaulting his father and setting fire to the house.

The deposition of PW-7 before the Court is reproduced hereunder:

“ON OATH

I know the accused Hangro Ngotan as he hails from my neighbouring village. On the night of incident I have seen the fire within the village of the accused. My village is at the distance of about 5 Kms from the village of the accused. I could have seen the fire from my village. On the same night after some time when we visited the village of accused we found his house

completely burnt down into ashes. We heard from the villagers that the accused himself set ablaze his house. We were also told that he burnt his house while his father was inside the same.

X X X

CROSS BY THE DEFENCE

I cannot give or mention the name of the villagers from whom I have heard about the incident of killing father of the accused person. My statement was not recorded by the police.”

30. PW-8, Shri Wangdam Jomoi, who happened to be the brother-in-law of the accused/appellant, also nowhere stated that he had seen the accused/appellant assaulting his father and setting fire to the house but specifically stated that he had received the information on the next morning and reached the P.O. after about three or four hours.

The deposition of PW-8 before the Court is reproduced hereunder:

“ON OATH

The accused person standing on the dock is known to me, he is Hangro Ngotan. The accused person standing on the dock is my brother in law as I married elder sister of the accused person. On 05-03-2014, the wife of the accused came to our resident and informed me that the accused person has killed his father. I rushed to the resident of my father in law who is the father of the accused person. There were police personnel and Doctor who also went to the resident of my father in law. I have seen that he entire resident of my father in law was gutted in fire. There was nothing except the ashes. We have searched for father in law but we had not found his dead body. We have found some residuary of bone materials which were already burnt down. Police has seized said materials and forwarded for FSL examination. On my arrival at the resident of father-in law, Hangro was not present there.

X X X

I received the information on the next morning. I reached the PO after about three or four hours.”

31. PW-9, Shri Wanghun Tangjang, PW-10, Shri Nokwang Khetey and PW-11, Shri Wangjut Kakho were the police personnel who admittedly reached at the spot after the incident on the next day and stated that the people present there told them that the accused/appellant had committed murder of his father and thereafter, set fire to his house. They also stated that when they tried to nab the accused/appellant, he fired

gunshot and ran away from there. The evidence of the above three prosecution witnesses, regarding the commission of offence by the accused/appellant, is only hearsay.

32. PW-12, Dr. Minsing Ngemu, is the doctor, who deposed that he was asked to conduct examination upon a fire victim. He also deposed that the entire house was gutted down and there was nothing except ashes. He found some pieces of charred bones, however, the same was not in a position to be examined and give opinion. The police seized the charred bones from the burnt house.

The evidence of PW-12 before the Court is reproduced hereunder:

“ON OATH

During the year 2014, I was posted at District Changlang Hospital as MO. During that time, I was asked to conduct examination upon a fire victim. The dead body was not in a position to take to the hospital for examination. After reaching the PO, I have seen that the entire house was gutted down. There was nothing except ashes. I have searched for any clue regarding death of human being and found small pieces of bones from the ashes. The bone was not in a position to be examined and given any opinion. Accordingly, the same was seized by Police for sending it to FSL.

Exhibit No.05 is the report submitted by me and 05(a) is my signature.

X X X

Cross examination declined.”

33. PW-13, Shri Gesap Ronya, is the officer, who upon receiving complaint from PW-1, Smti. Ponglun Ngotan, lodged the FIR and also conducted the investigation. From his evidence, it is clear that he also reached at the place of the incident on the next day. In his cross-examination he deposed that during investigation, he came to know that while the house was burning, the villagers came there to control/extinguish the fire but the accused/appellant restrained the villagers to douse the fire of the burning house. At the same time, he also admitted that there was no eye-witness who had seen the accused killing his father.

34. From the above piece of evidence, it is clear that none of the witnesses stated in their statements made before the learned Trial Court that they had seen the

accused/appellant killing his father and setting fire to the house.

35. Taking into consideration the above facts and circumstances of the case, we are of the opinion that the prosecution has failed to prove the charges against the accused/appellant for the offences punishable under Sections 302/436/201 IPC. It is also to be noticed that no *post-mortem* of the dead body of the deceased was conducted as no dead body was found on the place of the incident and only charred bones were recovered. However, the bones seized at the place of incident, were sent for DNA test but the same also remained inconclusive as evident from the Forensic examination report dated 17.03.2015 of the Central Forensic Science Laboratory, Kolkata, which is available on record.

However, so far as the charge of the accused/ appellant for committing offence under Section 25(1B)(a) of Arms Act is concerned, we are of the view that the same has been duly proved by the prosecution. The Investigating Officer seized country made SBML gun (Khaja)-2 Nos., gun powder (locally prepared) 15 Nos., Cartridge cap (locally made) 14 Nos., Bullet of Cartridge-13 Nos., *dao* with cover-01 No. from the agricultural hut of the accused/appellant on 13.03.2014.

PW-3, Shri Rangkong Ngoton, an independent witness admitted his signatures on P/Exhibit-3, the seizure memo of arms and P/Exhibit-4, the house search memo during which the above referred arms were recovered.

PW-13, Shri Gesap Ronya, also proved Exhibit-3, the seizure of the arms and house search memo, Exhibit-4.

36. The accused/appellant in his statement under Section 313 of Cr.P.C., in response to the question No.22, admitted the seizure of the arms and search of his agricultural hut.

The question No.22 put to the accused/appellant and the answer given by him is reproduced hereunder:

“Q.No.22: On 13.03.2014, he apprehended you from Changlang and took you to your agricultural hut where from two numbers of SBML gun with local gun powder, cartridge and bullet cartridges were recovered from your hut as

per your disclosure and lead. What do you have to say on this?

Ans : It is a fact.”

37. In view of the above discussion, we have no hesitation in holding that the prosecution has failed to prove the circumstances, taken cumulatively, forming a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused/appellant and none else. Hence, the conviction and sentence of the accused/appellant, awarded by the learned Trial Court for the offences under Sections 302/436/201 IPC, vide impugned judgment dated 09.03.2020 and order 16.03.2020 dated passed in Khonsa Sessions Case No.25/2019 is set aside. The accused appellant is acquitted from the aforesaid charges.

However, the conviction and sentence awarded to the accused/appellant for the offence punishable under Section 25(1B)(a) of Arms Act is maintained and the appellant is sentenced for a period already undergone in custody during trial and after passing of the impugned judgment by the learned Trial Court.

The accused/appellant shall be forthwith released from the custody/jail if he is not required in any other criminal case.

38. With the aforesaid observations, this Criminal Appeal (Jail) is partly allowed.

39. LCR be returned to the concerned Trial Court.

JUDGE

CHIEF JUSTICE

Comparing Assistant