

GAHC040014812023

2024:GAU-AP:855-DB



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

Case No. : CRL.A(J)/33/2023

Tade Nalo
S/o Lt. Tapor Nalo, Vill Page Nalo, PO/PS Taliha, District Upper Subansiri,
Arunachal Pradesh.

VERSUS

THE STATE OF AP
Through the Public Prosecutor

Advocate for the appellant : Mr. J. Jini, Id. A.C.

Advocate for the respondents : Ms. T. Jini, Addl. P.P.

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

HON'BLE MR. JUSTICE KARDAK ETE

Date of hearing : 13.06.2024

Date of Judgment & Order : 18.09.2024

JUDGMENT & ORDER (CAV)

(M. Thakuria, J)

Heard Mr. J. Jini, learned Legal Aid Counsel for the appellant. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State respondent.

2. This jail appeal, under Section 374(2) of the Code of Criminal Procedure, 1973, is preferred against the judgment & order dated 06.04.2022, passed by the learned Additional Sessions Judge, West Sessions Division, Basar, Leparada District, Arunachal Pradesh, under Section 302//201 of the Indian Penal Code, whereby the accused/appellant has been sentenced to undergo imprisonment for life with a fine of Rs. 2,000/- (Rupees two thousand) only and in default, to undergo further imprisonment for 1 (one) year for the offence under Section 302 IPC and further sentenced to undergo imprisonment of 2 (two) years with a fine of Rs. 1,000/- (Rupees one thousand) only and in default, to undergo further imprisonment for 3 (three) months for the offence under Section 201 IPC.

3. The prosecution case, if brief, is that on 23.07.2019, one Inspector A. K. Tanti lodged an F.I.R. before the Officer-In-Charge, Dumporijo Police Station, to the effect that on the same day, a telephonic information was received from one Shri Payir @ Mayir Riddi, Krishna Colony Dumporijo that one dead body of an unknown person has been found in the cultivation field of SE RWD Mr. Kamdak, Dumporijo. On receipt of the said information, a police team rushed to the place of occurrence and found one dead body of a woman floating in the pond near the aforesaid cultivation hut. Accordingly, the Officer-In-Charge, Dumporijo

Police Station registered a *suo moto* case being DMJ P.S. Case No. 19/2019, under Section 302/201 IPC and endorsed Inspector A. K. Tanti to take up the investigation.

4. During investigation, the I.O., who visited the place of occurrence, prepared rough sketch map, seized one wood measuring 1 meter having blood stains and human hair (suspected weapon of offence) along with some other articles, recorded the statement of witnesses and also sent the dead body for post-mortem. The deceased was identified by Miss Somi Riamuk/PW-cum-Inquest Witness No. 1 as her mother Lt. Yapak Raimuk. The accused was also arrested on 24.07.2019.

5. Thereafter, on completion of investigation, the I.O. laid charge-sheet against the present accused/appellant, along with one Shri Loma Nguki, under Sections 302/201/34 of the Indian Penal Code, vide Charge-Sheet No. 18/2019, dated 05.12.2019, before the Court of learned Chief Judicial Magistrate, Daporijo, Upper Subansiri District, Arunachal Pradesh and the learned Chief Judicial Magistrate accordingly took cognizance of the offence and committed the case before the Court of learned Additional Sessions Judge, Basar, being one of the charged penal Section 302 IPC exclusively triable by the Court of Session. Accordingly, learned Additional Sessions Judge, Basar, after considering the materials available on record and also finding *prima facie* case, framed charge against the present accused/appellant under the aforesaid Sections. The charges were read over and explained to the accused/appellant, to which he pleaded not guilty and claimed to be tried.

6. During the trial of the case, the prosecution examined as many as 6 (six) numbers of witnesses including the I.O., 2 (two) inquest witnesses and 2 (two) seizure witnesses. The prosecution also exhibited some documents and material exhibits. The accused was also examined under Section 313 Cr.P.C. Thereafter, the learned Additional Sessions Judge, West Sessions Division, Basar, Leparada District, Arunachal Pradesh, after hearing the parties and on perusal of the materials available on records, vide judgment & order dated 06.04.2022, convicted the accused/appellant under Sections 302//201 of the Indian Penal Code and sentenced him, as aforesaid.

7. On being aggrieved and dissatisfied with the aforesaid impugned judgment & sentence dated 06.04.2022, passed by the learned Additional Sessions Judge, West Sessions Division, Basar, Leparada District, Arunachal Pradesh, the present appeal has been preferred by the accused/appellant from jail.

8. Mr. J. Jini, learned Legal Aid Counsel for the accused/ appellant, submitted that the entire case is based on circumstantial evidence and there is no direct witness in the prosecution case. More so, it is claimed by the I.O. that one wooden stick with blood stain was seized from the place of occurrence, but it is seen that the said stick was never sent for any FSL examination to ascertain as to whether the blood stain is of the deceased or whether the same is a human blood. He further submitted that the reasons which have been discussed by the learned Sessions Judge in his judgment in regards to the dying declaration of the deceased cannot be considered as a dying declaration to base conviction on the same. There may be a circumstance under which the accused/appellant may threaten the deceased, but there is no other sufficient evidence to support the

version of the prosecution that the accused/ appellant committed the murder of the deceased only out of the grudge or the quarrel. More so, the incident had happened after 4 (four) days of the occurrence of threatening and there is no evidence to show that the out of the said threatening only, the accused/appellant committed the murder of the deceased, who happened to be his first wife. The learned Court below did not consider all the evidences in its true perspective and arrived at a wrong decision without any believable evidence against the accused/appellant nor there is any evidence to complete the chain of circumstance to convict the accused/appellant. Accordingly, he submitted that the interference of this Court is necessary and the judgment & order passed by the learned Court below is liable to be set aside and quashed.

9. Mr. Jini, learned Legal Aid Counsel for the appellant, also relied on a decision of Division Bench of this Court passed in **Md. Zakaria Mazumder Vs. The State of Assam & Anr. [(2021) 0 Supreme(Gau) 314]** and emphasized on paragraph Nos. 14, 25 & 26 of the judgment, wherein this Court has discussed in detail regarding the principles of circumstantial evidence.

10. He also relied on a decision of Hon'ble Apex Court passed in **Asar Mohammad & Ors. Vs. The State of U.P. [2018 0 Supreme(SC) 1075]**, wherein the Hon'ble Apex Court has expressed the view that for conviction on circumstantial evidence, the circumstances must be established, form a chain and point to the guilt of the accused and the accused only. He further emphasized on paragraph Nos. 8 & 9 of the said judgment, which reads as under:

“8. Before proceeding to consider the rival submissions, be it noted that in the present case, no direct evidence has been produced by the prosecution regarding the involvement of the appellants in the commission of the crime. The prosecution rests its case solely on circumstantial evidence. The legal position as to how such matter should be examined has been expounded in Padala Veera Reddy Vs. State of Andhra Pradesh and Ors., (1989) Supp. (2) SCC 706 in the following words:-

“10. 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](#) ; [AIR 1982 SC 1157](#).)*

11. See also Rama Nand v. State of Himachal Pradesh, [\(1981\) 1 SCC 511](#) ; [AIR 1981 SC 738](#) Prem Thakur v. State of Punjab, [\(1982\) 3 SCC 462](#) ; [\(1983\) 1 SCR 822](#) ; [AIR 1983 SC 61](#) Earabhadrapa alias Krishnappa v. State of Karnataka, (1983) CrLJ 846 ; [\(1983\) 2 SCC 330](#) Gian Singh v. State of Punjab, 1986 Supp (1) SCC 676 ; [AIR 1987 SC 1921](#) Balwinder Singh v. State of Punjab, [\(1987\) 1 SCC 1](#) ; [AIR 1987 SC 350](#).”

9. In Mulakh Raj & Ors. Vs. Satish Kumar & Ors., [\(1992\) 3 SCC 43](#) the Court succinctly restated the legal position in paragraph 4 as under:

“4. Undoubtedly this case hinges upon circumstantial evidence. It is trite to reiterate that in a case founded on circumstantial evidence, the prosecution must prove all the circumstances connecting unbroken chain of links leading to only one inference that the accused committed the crime. If any other reasonable hypothesis of the innocence of the accused can be inferred from the proved circumstances, the accused would be entitled to the benefit. What is required is not the quantitative but qualitative, reliable and probable circumstances to complete the chain connecting the accused with the crime. If the conduct of the accused in relation to the crime comes into question the previous and subsequent conduct are also relevant facts. Therefore, the absence of ordinary course of conduct of the accused and human probabilities of the case also would be relevant. The court must weigh the evidence of the cumulative effect of the circumstances and if it reaches the conclusion that the

accused committed the crime, the charge must be held proved and the conviction and sentence would follow.” (emphasis supplied)”

11. On the other hand, Ms. T. Jini, learned Additional Public Prosecutor, submitted that the learned Sessions Judge rightly passed the judgment of conviction on the basis of circumstantial evidence and also considering the declaration made by the deceased prior to her death regarding the threatening made by the accused/appellant, who was her first husband. She further submitted that the learned Sessions Judge had considered all the evidence on record in its true perspective, analyzed the same properly and on the basis of which, passed the order of conviction. Thus, there cannot be any reason to make any interference in the judgment passed by the learned Additional Sessions Judge, West Sessions Division, Basar. However, she admitted that the learned Public Prosecutor, who dealt with the case before the learned Trial Court, had admitted that the prosecution could not prove the case beyond reasonable doubt. But, from the circumstantial evidence brought by the prosecution, it is seen that the case is well established against the accused/appellant. She further submitted that the evidence of PW-1, who is the daughter of the deceased, could not be rebutted by the defence by cross-examining her and as per her, the deceased went on missing since 21.07.2019 and the alleged incident had happened only after 4 (four) days from last threat given by the accused/appellant to her deceased mother. However, she submitted that it is a fact that there is no eye witness to the prosecution case nor there is any direct evidence, but considering the entire circumstances, i.e. the threatening part of the accused/appellant and the death of the deceased soon after the 4 (four) days of last threat given by the accused/appellant, it is sufficient to prove the case on circumstantial evidence.

12. After hearing the submissions made by the learned counsels appearing on behalf of the parties and before arriving at any decision, let us scrutinize the evidences of the prosecution witnesses.

13. PW-1/Miss Somi Riamuk (Witness No. 1) is the daughter of the deceased and she deposed that her deceased mother was a vegetable vendor who used to collect vegetable from their own garden at Kuporijo in early morning everyday and used to sell it in Daporijo Market. On 21.07.2019 also, in usual course, she collected the vegetables and left for Daporijo market to sell the same. But, as her mother did not return home in the evening time, she tried to make enquiry over telephone with probable persons, but she could not get any information regarding the whereabouts of her mother. On the next day, i.e. on 22.07.2019, she went to Taliha to meet his father and on her return to Daporijo in the evening hours, she came across with a news in Social Media that a dead body of a lady was found at Kuporijo area. She again tried to call her mother, but she could not contact her. Thereafter, finding no other alternative, she went to the police station of Daporijo for help, but they also could not help her because of jurisdictional issues and thereafter she went to Dumporijo Police Station along with her brother, but this time also, the police was not ready to help them. Though they attempted to find the body of her deceased mother in the intervening night of 22-23 July, 2019, but they could not find her. On 23.07.2019 only, they received information from the Dumporijo Police regarding discovery of a dead body from a fish pond like area near their vegetable garden at Kuporijo and when they arrived, they could identify the body and could see mark injuries on the forehead and backside of the head of her deceased mother

which was caused by some wooden stick. She also saw some blood in the garden as well as near the fish pond and then she could understand that the body of the deceased mother was dragged from the agricultural hut to the fish pond after killing her. Thereafter, the body of her mother was shifted to District Hospital for Post-Mortem. Inquest was also done and she put her signature in the Inquest Report, which was exhibited as P.Ext.-1.

14. She further deposed that her deceased mother was the first wife of the accused/appellant- Tade Nalo and they even begotten one child, though it was expired. She also came to know from her deceased mother that the accused/appellant had deserted her for no reason and in the month of December, 2017-January, 2018, the appellant had entered into the rented house of her deceased mother and attempted to sexually assault her. On self defence, her deceased mother caused injury on the right hand of the accused/appellant with a local dao and chased him away. Because of the injury sustained, the accused/appellant kept on threatening her mother to take revenge against her and also threatened to kill her. At the time of examining the body of her deceased mother, the accused/appellant also arrived there at spot, wherein she saw the human bloods on his cloths and long pant and thus, she deposed that she believed that her mother was murdered by the accused/appellant. Her deceased mother had no enmity with any other person who may be suspected in the death of her mother.

15. In her cross-evidence, she stated that they did not lodge any complaint before local kebang or police after the threat was given to her deceased mother by the accused/appellant, because they did not expect that the accused or any

of his family member or relative to come forward to discuss/negotiate the matter properly. She further stated in her cross-evidence that the incident took place after 4 (four) days of the last threat and she stated that they did not lodge any complaint against the accused/appellant even after the threat on various occasion as they wanted to avoid any untoward incident with the accused/appellant.

16. SW-1 cum Inquest Witness-2/Tare Riamuk (Witness No. 2), son of the deceased, narrated the same story corroborating his sister (PW-1/Witness No. 1). He also deposed that his deceased mother used to return home in the evening from Daporijo market. But on that day, when she did not return, his sister (PW-1/Witness No. 1) made an enquiry telephonically, but she could not get any information regarding the whereabouts of her deceased mother. On the next day only, they came to know the news in the social media that one dead body of a lady was found at the place before reaching Dumporijo from Daporijo. Accordingly, he along with his sister and cousin went to the police station seeking help. But they were also not ready to provide any help and subsequently, on the next day morning, they came to know about the dead body of their mother which was floating in a pond like area at Kuporijo and accordingly they went there. On his closure examination, he could identify the body of his deceased mother and found mark injury on the backside of the head of his mother which was caused by a wooden stick and he also suspected that the body of his mother was dragged from the agricultural hut to the fish pond. Police accordingly shifted the dead body of his mother for Post-Mortem and he also put his signature in the Inquest Report as well as in the Seizure Memo wherein one wooden stick was seized by the police. He also exhibited the

M.Ext.-1, the photographs of his deceased mother, M.Ext.-2, one pair of chappal, M.Ext.-3 one red mala, M.Ext.-4, one steel tiffin box, M.Ext.-5, one plastic bottle, M.Ext.-6, one piece of bamboo measuring about one feet.

17. On his cross-evidence, it reveals that he did not give his statement in detail before police as he was a student at a relevant period of incident.

18. SW-2 is one Taji Riamuk (Witness No. 3) and as per him, he received an information from the Witness No. 1 and Witness No. 2, i.e. the children of the deceased, regarding missing of their mother and on 23.07.2019 he was also informed about the discovery of a dead body near Kuporijo area. Accordingly, on the next day morning, he also went to the place of occurrence and found a dead body floating on the pond and saw human blood all over the agricultural land as well as near to the pond and accordingly, he suspected that the deceased was murdered by someone and dragged her body from agricultural field towards pond. He also saw mark injuries on the backside of the head of the deceased and accordingly he exhibited the other material exhibits and the seizure list. He also confirmed in his cross-evidence that all material exhibits were seized at the place where the dead body was found and he also admitted that he did not give any formal evidence before the police as he was not summoned by the police to give his statement.

19. PW-2/Lingya Riamuk (Witness No. 4) is the husband of the deceased and as per him also, his deceased wife informed him before her death regarding the quarrel with the accused/ appellant who also warned her with dire consequences. But, in the meanwhile, he had to leave for Taliha as GB to attend

the call of HMLA and taking that advantage of his absence and old age, the accused/appellant, along with the help of other co-accused, had murdered his wife in a pre-planned manner as he was also aware about the work place of his wife, i.e. at the garden where she grow vegetables.

20. He stated in his cross-evidence that the present accused/appellant, along with the co-accused, committed murder of his wife as the co-accused also had love affairs with the sister of the accused/appellant.

21. PW-3 (Witness No. 5) is the Doctor who conducted the Post-Mortem over the body of the deceased on 24.07.2019. During the examination of the body of the deceased, he found that the body including the internal organs of the deceased was fully decomposed, but on examination of her head by unfolding the foreskin of the skull, he found multiple fractures on the left side of the occipital region of the skull and accordingly he opined that the injuries must have been caused with a blunt weapon. However, he did not find any other injury on the dead body as it was already decomposed. Accordingly, he opined that the death of the deceased was caused by multiple fractures on the skull of the deceased. Apart from that, the present accused/appellant, along with the co-accused, was also produced at CHC Daporijo for necessary medical examination on 24.07.2019 and accordingly, after examination, he issued fitness certificates for the accused persons. However he found cut injury of 1 inch length and ½ inch breadth over the right on the eyebrow of the accused/person which might have accused with a blunt weapon.

22. In his cross evidence, he stated that as the body was already

decomposed, the death of the deceased might caused 2-3 days prior to his Post-Mortem Examination. Further he admitted that he did not record any exact date of death of the deceased in his report. However, a human body takes 42 hours to decompose partially. He further stated that such kind of multiple fracture injury may also caused if someone fall or hit with heavy object like tree, stone etc. He further stated that if a body remains in a water or marshy area, the complete decomposition will took place within 3 (three) days as the body gets decomposed faster on water or marshy area in comparison to dry and cold area.

23. PW-4 (Witness No. 6) is the I.O. of this case and he deposed that in the year 2019, he was posted as Officer-In-Charge in Dumporijo Police Station. On 23.07.2019, he was informed telephonically by ASI B. Tadu that he got the information from another person telephonically that one dead body of an unknown person was found in a pool of water in between Dumporijo and Daporijo. Accordingly, he visited the place of occurrence along with the team of police and saw a dead body of a woman floating on a pond of agricultural garden. Accordingly, a case was registered under Dumporijo Police Station and he also took up the investigation as there was no other competent police officer to investigate the case. In the next morning, they along with the medical team also went to the place of occurrence, drawn the sketch map and photographs of the place of occurrence, conducted inquest over the dead body and thereafter handed over the dead body to the doctor of CHC, Dumporijo for conducting Post-Mortem Examination. He also seized weapon of offence, namely, one wooden piece measuring 1 meter in length (approx) having blood stain and human hair, one pair of hawai chappal/slipper, one mala/bead read in colour,

one steel tiffin box, one plastic bottle containing blood stain and one piece of bamboo with one foot in length approximately in presence of seizure witnesses. He also examined the accused persons and out of whom, one is found to be the ex-husband of the deceased. The other PWs, including the daughter of deceased, were also examined and after investigation, finding *prima facie* case established against the present accused/ appellant along with other co-accused person under Sections 302/201/34 of the Indian Penal Code, he filed the charge-sheet.

24. In his cross-evidence, he stated that he had no knowledge as to the actual time of the death of the deceased. The deceased was also identified by his daughter. But no family members of the deceased were initially accompanied with the police team while the dead body was first found at the place of occurrence in the evening of 23.07.2019. He further stated that he is the informant and the I.O. of the case and he clarified that he had to take up the investigation as there was no competent police officer at the relevant time though, it was within his knowledge that if the same person act as the informant and the Investigating Officer that may affect the prosecution case. He further admitted in his cross-evidence that he did not send the seized exhibits to FSL Expert for analysis as he did not find it relevant to get the FSL report to substantiate/corroborate the incriminating materials against the accused person. He did not find any beer bottle near the place of occurrence, though the present accused/appellant had stated before him that he had a beer at the place of occurrence with the deceased. Further he deposed that as per investigation, he also came to know that the relationship between the deceased and her ex-husband, i.e. the accused/appellant, was also not cordial. More so, he stated

that on the next day, i.e. on 24.07.2019, none of the accused persons were present at the place of occurrence. He admitted that if any witnesses have deposed that the accused/appellant were also present at the place of occurrence, it may be considered as a false or wrong statement. He also deposed that he did not find any blood stain on the wearing apparels of the accused/appellant at the time of his arrest and interrogation or detention in police custody. He also admitted that there is no direct or eye witness to the commission of offence and he filed the charge-sheet only on the circumstantial evidence as collected by him during investigation. As per him, the main circumstantial evidence against the accused/appellant is the statement of the daughter and husband of the deceased.

25. He also replied on the question put by the Court and stated that he had suspicion on the other co-accused person as the main accused/appellant had no proper strength on his right hand after it was injured by the deceased on earlier occasion and hence he might not have the capacity to drag the deceased body from agricultural field to the pond without the help of the co-accused. More so, as per his investigation, both the accused persons were also involved in threatening the deceased.

26. While recording the statement of the accused/appellant under Section 313 Cr.P.C., he took the plea of denial and also stated that he has not committed the murder of the deceased and rather the deceased assaulted him with a dao causing injuries on his right hand. It is further stated that at the relevant time, he along with the co-accused were roaming on the road at Kuporijo, Dumporijo and when one unidentified woman had informed them that one body of a

woman is lying dead in the nearby agricultural field, he accordingly went there and while was coming towards the place of occurrence, the daughter of the deceased (PW-1/Witness No. 1) was also calling "mummy mummy". He further stated that before reaching to the place of occurrence, one barricade had to be crossed and while he along with PW-1/Witness No. 1 was crossing through the barricade, he accidentally got hurt on his left eyebrow with the nail of the PW-1/Witness No. 1, wherefrom the blood also came out and he had some blood stain on his long pant and thereafter they proceeded towards the dead body and found the dead body floating on a pond nearby the agricultural field. In the meantime, he was apprehended by the police on the allegation of murder.

27. So, from the discussion of the above witnesses, it is seen that as per the medical evidence, the Doctor found multiple fracture injury on the backside head of the deceased which he opined to have been caused by blunt object and accordingly as per his opinion, the death was due to head injury near the skull. However, the other parts of the body could not be examined as it was already decomposed. But from the nature of injury as described by the Doctor, it can be held that the death was homicidal in nature and recovery of a wooden stick with blood stain and human hair also indicates that it was homicidal death. Now the question arises as to who caused the death of the deceased.

28. It is the case of the prosecution that the deceased was the ex-wife of the accused/appellant and on several occasion, he used to threaten the deceased with dire consequences which was revealed by the Witness No. 1, daughter of the deceased, and as per her, she was also reported by her deceased mother that on one occasion, the accused/appellant tried to sexually assault her and for

her self defence, she gave a blow on the hand of the accused/appellant wherein he sustained injury. From the evidence of the I.O. also, it is seen that he did not find any other circumstantial evidence, but the charge-sheet was filed only on the basis of the statement made by the PW-1, i.e. the daughter of the deceased, and the Witness No. 4, i.e. the husband of the deceased, who also stated before him that his wife was threatened by the accused/appellant, who was her ex-husband. Thus, except the statement of these 2 (two) witnesses, there is no other circumstantial evidence to complete the chain of the circumstances to point the guilt of the accused and the accused only.

29. Thus, from the discussion made above, it is seen that the other witness, i.e. the Witness No. 2, who is also the son of the deceased, had not deposed anything in regards to the circumstances or the threatening by the accused/appellant to his deceased mother. He did not bring any other circumstances except that he along with his sister saw the dead body of his mother who had injury on the backside of the head. Similarly, the other witness, i.e. the Witness No. 3 (SW-2), is also a seizure witness and he was present at the time of seizure of material exhibits. Apart from that, he has no other knowledge or he did not depose of any incriminating circumstances against the accused/ appellant. Only material witness of the prosecution case are the Witness No. 1, daughter of the deceased; Witness No. 4, husband of the deceased; Medical Officer who conducted the Post-Mortem Examination of the deceased; and the I.O., who conducted the investigation and filed the charge-sheet accordingly. It is the only evidence of the Witness No. 1 that it was reported by her deceased mother prior to her death or when she was alive that on several occasion, the accused/appellant used to come and threatened her

with dire consequences and in one occasion, he also tried to sexually assault her and for her self defence, she gave a blow with a local dao which caused injury to the accused/appellant. But there is no other evidence that the deceased was last seen together with the deceased or he was accompanied the deceased to the agricultural field (place of occurrence) on the day of incident.

30. As per the Witness No. 1 and Witness No. 2, their mother used to collect vegetable from their garden at Kuporijo in early morning everyday and used to sell it in Daporijo Market. Thus, it is the case that their mother usually went in the morning time to the agricultural field to collect vegetables and used to sell the same in the market. But during the entire period, there is no witness who saw the accused in the said agricultural field or near the pond along with the deceased to have suspicion on the accused/appellant that he committed the murder of the deceased out of previous grudge as he was assaulted by her on the earlier occasion. As per PW-1 (Witness No. 1), her mother made declaration before her that the accused/appellant used to threatened her, but the said declaration cannot be considered as an oral dying declaration under Section 32 of the Evidence Act.

31. Section 32(1) of the Indian Evidence Act, 1872 provides as under:

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.- Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :

(1) When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

32. Dying declaration is the last statement that is made by a person as to the cause of his imminent death or the circumstances that had resulted in that situation, at a stage when the declarant is conscious of the fact that there are virtually nil chances of his survival on an assumption that at such a critical stage, a person would be expected to speak the truth, courts have attached great value to the veracity of such a statement. when a statement is made by a person as to the cause of death, or as to any of the circumstances which resulted in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing made by the deceased victim to the witness, is a relevant fact and is admissible in evidence. The said provision is an exception to the general rule contained in Section 60 of the Evidence Act that 'hearsay evidence is inadmissible' and only when such an evidence is direct and is validated through cross-examination, is it considered to be trustworthy.

33. In Kundula Bala Subrahmanyam & Anr. Vs. State of Andhra Pradesh, (1993) 2 SCC 684, the Hon'ble Apex Court had highlighted the significance of a dying declaration in the following words :

“18. Section 32 the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not creditworthy. Under Section 32, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration.....”

34. In another case which was reported vide (2012) 7 SCC 569 (Shudhakar Vs. State of Madhya Pradesh), the Hon'ble Apex Court also expressed the view that dying declaration is reliable and it can also be the basis of conviction and in that context, following observations were made:

“20. The "dying declaration" is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the

courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration."

35. In the case of **Sher Singh & Anr. Vs. State of Punjab, (2008) 4 SCC 265**, the Hon'ble Apex Court has held thus :

*"16. Acceptability of a dying declaration is greater because the declaration is made in extremity. When the party is at the verge of death, one rarely finds any motive to tell falsehood and it is for this reason that the requirements of oath and cross-examination are dispensed with in case of a dying declaration. Since the accused has no power of cross-examination, the court would insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court should ensure that the statement was not as a result of tutoring or prompting or a product of imagination. It is for the court to ascertain from the evidence placed on record that the deceased was in a fit **state** of mind and had ample opportunity to observe and identify the culprit. Normally, the court places reliance on the medical evidence for reaching the conclusion whether the person making a dying declaration was in a fit **state** of mind, but where the person recording the statement **states** that the deceased was in a fit and conscious **state**, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of mind of the declarant, the dying declaration is not acceptable. What is essential is that the person recording the dying declaration must be satisfied that the deceased was in a fit **state** of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement without there being the doctor's opinion to that effect, it can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certificate by the doctor is essentially a rule of caution and, therefore, the voluntary and truthful nature of a statement can be established otherwise."*

36. But, here in the instant case, from the circumstances discussed above, it is seen that there is no such declaration made before the Witness No. 1 and Witness No. 4, the daughter and the husband of the deceased, respectively, that there is virtually nil chances of her survival and there is also no such evidence

that the statement was made before these witnesses on her verge of death or there was an imminent danger of the death of the deceased. From the statement of the witnesses, it is seen that some days prior to the death of the deceased, it was reported to PW-1/Witness No. 1 that the accused/appellant, who was the former husband of the deceased, had threatened her with dire consequences and it is also the case of the prosecution that the deceased also assaulted the accused/appellant with a dao when he tried to sexually assault her. But the said Witness No. 1 did not mention any date or time as to when she made such statement before them. More so, it cannot be considered that there was an imminent danger of his life and as on the day of her missing also, she went for collecting vegetables from her garden with a view to sell the same in the Daporijo Market. Thus, it cannot be considered that there was any threat of imminent danger of death of the deceased to consider the statement stated to be made by her before her daughter and the husband as dying declaration. It is a settled position that the dying declaration oral or writing also can be the basis of conviction if it is believable and trustworthy. But in the present circumstances of this case, it cannot be considered that the said statement made by the deceased before the Witness No. 1 and Witness No. 4, i.e. the daughter and husband of the deceased, respectively, is a dying declaration.

37. Coming to the circumstantial evidence of the prosecution case, it is seen that the only circumstance brought by the prosecution is that prior to her death or the incident, the accused/appellant threatened her with dire consequences. Except that statement there is no other circumstances nor there is any evidence that the deceased was seen with the accused/ appellant together prior to the said incident.

38. It is well settled proposition of law that in cases where the evidence is of circumstantial in nature, circumstances from which the conclusion of the guilt is to be drawn are required to be established by reliable and credible evidence so as to exclude any hypothesis consistent with the innocence of the accused.

39. The Hon'ble Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra**, reported in **(1984) 4 SCC 116**, has provided five numbers of principles for proving a case based on circumstantial evidence, which are extracted hereinbelow:

“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. vs. State of Maharashtra, [1973] 2 SCC 793 where the following observations were made :

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

[2] The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

[3] the circumstances should be of a conclusive nature and tendency.

[4] they should exclude every possible hypothesis except the one to be proved, and

Page No.# 10/27 [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.

40. More so, the circumstances of last seen together theory generally taken into consideration when the entire case is based on circumstantial evidence and when it is established by the prosecution that the time gap between the points of time when the accused and the deceased were seen together with the deceased alive and when the deceased was found of homicidal death to rule out the possibility of presence of any other person with the deceased. But this kind of evidence is also not found in the present case to prove the chain of circumstances or to prove the last seen theory with the accused/appellant. It is admitted fact that there is no eye witness to the prosecution case and the only circumstance brought in the prosecution case, i.e. the threatening by the accused/appellant, also could not be proved by the prosecution nor the theory of last seen together is applicable in the instant case. More so, it is not a case of the prosecution that the accused/appellant was residing with the deceased at the relevant point of time, rather it is the case of the prosecution that the accused/appellant was her former husband and she was residing separately from him.

41. In case of **Deonandan Mishra Vs. The State of Bihar**, reported in **AIR 1955 SC 801**, the Hon'ble Apex Court has held in paragraph No. 9 of the judgment, which reads as under:

“9. ... It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. 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, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain.”

42. But, here in the instant case, as discussed above, there is no such circumstances established by the prosecution to complete the chain or even any plausible evidence to point guilt towards the accused.

43. From the judgment passed by the learned Session Judge, it is seen that the statement of the co-accused was relied upon which he made at the time of recording his statement under Section 313 Cr.P.C. As per his statement, the present accused/appellant was asked about the whereabouts of the weapon of murder/dao, to which the present appellant replied that he had thrown the same into Subansiri river and thereafter, the police also tried to search out the dao but could not find it and he also saw the blood stain on the cloth of the accused. But from the Post-Mortem report, it is seen that except blunt injury on the backside of the head of deceased with multiple fracture, no other injury could be detected by the autopsy doctor at the time of examination as her body was already decomposed. More so, as per the prosecution case, one wooden stick was recovered from the place of occurrence, wherein human blood stain along with hair was found. But there is no mention about the use of any dao nor the medical report speaks about any cut injury on the body of the deceased. So,

the statement of the co-accused, which was made at the time of recording his statement under Section 313 Cr.P.C., cannot be taken into consideration unless there is any corroborative evidence to support the case of the prosecution. Further, if the blood stain was found on the wearing apparels of the accused/appellant, the question arises as to why the I.O. did not sent the cloth of the appellant for FSL examination and it is also surprising that the weapon of murder, which is wooden stick, was also not sent for FSL examination, though it was claimed that the said wooden stick had human blood stain along with human hair.

44. So, from the entire discussion made above, we find that the prosecution has failed to prove the case against the appellant beyond all reasonable doubt and it is found that there is no cogent and reliable evidence nor there is any circumstantial evidence to prove the case against the accused/appellant beyond all reasonable doubt. Accordingly, the appeal stands allowed. The judgment & sentence dated 06.04.2022, passed by the learned Additional Sessions Judge, West Sessions Division, Basar, Leparada District, Arunachal Pradesh, under Section 302//201 of the Indian Penal Code, stands set aside. The appellant is acquitted of all the charges. Bond, if any, shall stand discharged. The appellant shall be released from jail forthwith if not required in connection with any other case.

45. Before parting, we put on record the appreciation for the valuable assistance rendered by Mr. J. Jini, learned Legal Aid Counsel for the appellant, and we recommend that he is entitled to a fee, as per the notified rate, to be paid by the State Legal Services Authority.

46. Send back the case record of the Trial Court along with a copy of this judgment and order.

47. Let a copy of this judgment and order be also sent to the jail authority for necessary compliance.

48. In terms of above, this criminal appeal stands disposed of.

JUDGE

JUDGE

Comparing Assistant