

GAHC010077662020



2024:GAU-AS:8913

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

Case No. : CRL.A(J)/25/2020

DHANIRAM GOUR
S/O. SRI RAMCHARAN GOUR, VILL. NO.1 UTTAR DIMAKUCHI (SADHU
BASTI), P.S. DIMAKUCHI, DIST. UDALGURI.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocates :

Appellant : Mr. A. Kalita, Amicus Curiae
Respondent : Ms. B. Bhuyan, Senior Counsel & Additional Public Prosecutor, Assam
Ms. R. Das, Advocate
Date of Hearing : 17.07.2024
Date of Judgment & Order : 06.09.2024

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

[M. Choudhury, J]

The present criminal appeal from Jail under Section 383, Code of Criminal Procedure, 1973 [‘CrPC’ or ‘the Code’, for short] is preferred by taking exception to a Judgment and Order dated 31.07.2019 passed by the Court of learned Sessions Judge, Udalguri in Sessions Case

no. 80 of 2017, which arose out of G.R. Case no. 821 of 2017 and Dimakuchi Police Station Case no. 60 of 2017. Finding guilty of the offence of murder under Section 300, Indian Penal Code [IPC], the Court of learned Sessions Judge, Udalguri, by the afore-mentioned Judgment and Order, has sentenced the accused-appellant under Section 302, IPC to undergo imprisonment for life. It has been observed in the Judgment and Order of conviction and sentence that there is no need to award fine in the given circumstances of the case.

2. The investigation into the case, Dimakuchi Police Station Case no. 60 of 2017 was commenced on lodgement of a First Information Report [FIR] by one Ram Charan Gour [P.W.1] as the informant before the Officer In-Charge, Dimakuchi Police Station at 08-30 a.m. on 10.07.2017. In the FIR, the informant – Ram Charan Gour [P.W.1] stated inter alia to the effect that when at around 02-20 a.m. on 10.07.2017 his daughter-in-law, Champawati Gour was sleeping, his son – Dhaniram Gour, that is, the accused killed her by inflicting blows on her neck by a *dao*. The informant mentioned that his son, that is, the accused was having mental disturbance from a few days earlier. On receipt of the FIR [Ext.-1], the Officer In-Charge, Dimakuchi Police Station [P.W.8] registered the same as Dimakuchi Police Station Case no. 60 of 2017 for the offence under Section 302, IPC and took up the investigation of the case as its Investigating Officer [I.O.] as he had already undertaken preliminary investigation of the case in reference to general diary entry, already registered as Dimakuchi Police Station General Diary Entry no. 185 dated 10.07.2017.

3. During the course of investigation, the I.O. [P.W.8] visited the place of occurrence [P.O.] on 10.07.2017 itself and prepared a Sketch Map of the P.O. [Ext.-5]. An inquest proceeding on the deadbody of the deceased was performed on 10.07.2017 by the Executive Magistrate in presence of the I.O. [P.W.8] and the Executive Magistrate prepared an Inquest Report [Ext.-3] recording the findings therein. After the inquest proceeding, the deadbody of the deceased was sent to Udalguri Civil Hospital on 10.07.2017 itself for post-mortem examination and the Medical & Health Officer, Udalguri Civil Hospital performed the post-mortem examination on the deadbody of the deceased on 10.07.2017 and prepared a Post-Mortem Examination [PME] Report [Ext.-4] recording his findings therein. The I.O. [P.W.8] also recorded the statements of a number of witnesses under Section 161, CrPC. The accused

after arrest, was produced before the Court of learned Chief Judicial Magistrate [CJM], Udalguri on 10.07.2017 along with the arrest memo, the forwarding report and other relevant documents. The I.O. [P.W.8] also produced a *dao*, seized by him, before the learned CJM, Udalguri on that day and the learned CJM, Udalguri after having seen the seized *dao*, signed the Seizure List, M.R. no. 13/2017 [Ext.-2] and returned the seized *dao* back to Police custody for further investigation.

4. A prayer was also made for recording the confessional statement of the accused on that day [10.07.2017] and in view of such prayer, the accused was remanded to custody by the learned CJM, Udalguri for reflection. The CJM, Udalguri directed production of the accused before him again on 11.07.2017. When on 11.07.2017 the accused was produced before the learned CJM, Udalguri from judicial custody, the confessional statement [Ext.-10] of the accused under Section 164, CrPC was recorded.

5. After completing investigation into the case, Dimakuchi Police Station Case no. 60 of 2017, the I.O. [P.W.8] laid a charge sheet under Section 173[2], CrPC vide Charge Sheet no. 24/2017 on 31.07.2017 against the accused finding a *prima facie* case against him well established for the offence under Section 302, IPC.

6. On receipt of the Charge Sheet, the Court of learned CJM, Udalguri secured the appearance of the accused from Jail custody on 01.09.2017. Upon such appearance, the learned Court complied with the procedure prescribed in Section 207, CrPC by furnishing copies of the relevant documents to the accused. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the case records of G.R. Case no. 821 of 2017, arising out of Dimakuchi Police Station Case no. 60 of 2017, stood committed to the Court of Sessions, Udalguri by an Order of Commitment dated 01.09.2017 by the learned CJM, Udalguri. The learned Public Prosecutor was notified accordingly. The concerned Jail authority was directed to produce the accused before the Court of Sessions, Udalguri on 08.09.2017.

7. On receipt of the case records of G.R. Case no. 821 of 2017, the Court of Sessions, Udalguri [‘the trial court’, for short] registered the same as Sessions Case no. 80 of 2017. On

appearance of the accused before the learned trial court, the case of the prosecution was opened by the learned Public Prosecutor. After hearing the learned Public Prosecutor and the learned defence counsel and after perusal of the materials available in the case records, the trial court framed the following charge against the accused, on 25.10.2017, :-

That you on or about 02-30 a.m. on 10.07.2017 at Village - No. 1 Uttar Dimakuchi under Dimakuchi Police Station committed murder intentionally causing the death of Champawati Gour and, thereby, committed an offence punishable under Section 302, IPC and within my cognizance.

After framing the charge, the particulars of the charge were read over and explained to the accused, who abjured guilt and claimed to be tried.

8. In the course of the trial, the prosecution side examined nine nos. of prosecution witnesses and exhibited ten nos. of documents in order to bring home the charge of murder against the accused. The prosecution witnesses examined were – [i] P.W.1 – Ram Charan Gour; [ii] P.W.2 – Smti. Fulmati Gour; [iii] P.W.3 – Debajit Das; [iv] P.W.4 – Basanta Nirala; [v] P.W.5 – Dr. Arup Kumar Kalita; [vi] P.W.6 – Miss Babita Gour; [vii] P.W.7 – Sarat Das; [viii] P.W.8 – Dilip Mili; and [ix] P.W.9 – Smti. Geetali Rabha. The documentary evidence exhibited during the trial were – [i] Ext.-1 : FIR dated 10.07.2017; [ii] Ext.-2 : Seizure List, M.R. no. 13/2017; [iii] Ext.-3 : Inquest Report; [iv] Ext.-4 : Post-Mortem Examination [PME] Report; [v] Ext.-5 : Sketch Map of the P.O.; [vi] Ext.-6 : Extract copy of G.D. Entry no. 185 dated 10.07.2017; [vii] Ext.-7 : Charge Sheet dated 31.07.2017; [viii] Ext.-8 : Order dated 10.07.2017; [ix] Ext.-9 : Order dated 11.07.2017; and [x] Ext.-10 : Statement of the accused recorded under Section 164, CrPC.

9. After closure of evidence from the prosecution side, the accused was examined under Section 313, CrPC by bringing to his notice the incriminating evidence emerging against him from the prosecution evidence. The plea of the accused was denial. When the accused was asked to adduce evidence in his defence, the accused declined to adduce any evidence in his support. After hearing the submissions of the learned counsel for the contesting parties and

upon appreciation of the evidence/materials on record, the learned trial court on finding the accused guilty of uxoricide, has convicted him under Section 300, IPC. After hearing him on the point of sentence under Section 235[2], CrPC, the accused has been sentenced under Section 302, IPC in the manner, indicated above. Aggrieved thereby, the accused as the appellant has opted to prefer the instant appeal.

10. We have heard Mr. A. Kalita, learned Amicus Curiae for the accused-appellant and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor for the respondent State, assisted by Ms. R. Das, learned counsel.

11. Mr. Kalita, learned Amicus Curiae appearing for the accused-appellant has contended that admittedly, the case is based on circumstantial evidence. The wife of the accused was found lying dead on a bed inside a room in the house where the deceased and the accused used to reside together and there was no eye-witness to the occurrence. Mr. Kalita has contended that the alleged confessional statement of the accused, recorded under Section 164, CrPC, has to be excluded out of consideration as the accused could not be said to be out of police influence for a sufficient period of time. He has contended that the prosecution has not been able to prove all the circumstances by reliable and credible evidence and as a result, there were many missing links in the prosecution case. In view of breaks in the chain, the accused is clearly entitled to the benefit of innocence. By referring to the contents of the FIR [Ext.-1], Mr. Kalita has contended that it is clearly evident from the FIR that the accused was suffering from mental illness at the relevant point of time and such fact was mentioned by none other than the father of the accused, who was the informant and who deposed as P.W.1. But the prosecution did not take cognizance about the mental illness of the accused at the relevant point of time. He has, thus, canvassed that when the general burden of proof in a case resting on circumstantial evidence was not discharged by the prosecution and the accused was entitled to the benefit of exception under Section 84, IPC, the learned trial court had erred in convicting the accused for the offence of murder. Learned Amicus Curiae has contended that the accused being clearly entitled to the benefit, the Judgment and Order of the learned trial court, impugned herein, needs to be set aside and the accused should be acquitted from the charge of murder.

12. Strenuously opposing the contentions advanced by the learned Amicus Curiae, Ms. Bhuyan, learned Additional Public Prosecutor appearing for the State has submitted that the prosecution was able to establish all the possible circumstances satisfactorily in the case. It has been submitted that the statement of the accused was recorded in strict compliance of the procedure laid down in Section 164, CrPC. Ms. Bhuyan has contended that the occurrence took place in the middle of the night and within the confines of the room where the deceased and the accused used to stay together, separately from the other inmates of the house. Thus, the standard of evidence required ordinarily in cases resting on circumstantial evidence is not *stricto sensu* applicable in the present case. The principle contained in Section 106 of the Evidence Act has applicability in the present case in the face of the reliable and credible evidence led by the prosecution and the failure on the part of the accused to offer any explanation to the circumstances adverse to him, had completed the chain establishing clearly that it was none other than the accused who had committed the crime of uxoricide. In a case of this nature, the other inmates of the house usually testify only on the unavoidable aspects and do not directly point fingers on a close relative, even if they had knowledge about the crime. Therefore, in such cases, the handicap suffered by the prosecution is also to be kept in mind apart from the normal human tendency on the part of the relatives to shield the accused, a close relative of theirs, while evaluating the evidence. Learned State counsel has referred to a line of decisions to contend that the onus had clearly shifted to the accused here under Section 106 of the Evidence Act and his failure to offer any kind of explanation had completed the chain regarding his authorship of the crime. In so far as the plea of insanity is concerned, learned State counsel has contended that the accused had miserably put even a *prima facie* case on that front. There was not an iota of evidence/materials on record to even consider such plea. With such contentions, Ms. Bhuyan has contended that the present appeal has no merits and it deserves dismissal.

13. The learned counsel for the parties to buttress their respective submissions, have referred to and relied upon the decisions in : [i] *Deonandan Mishra vs. the State of Bihar*, AIR 1955 SC 801; [ii] *Trimukh Maroti Kirkan vs. State of Maharashtra*, [2006] 10 SCC 681; [iii] *Devidas Loka Rathod vs. State of Maharashtra*, [2018] 7 SCR 767; [iv] *Kalu @*

Laxminarayan vs. State of Madhya Pradesh, [2019] 10 SCC 211; [V] Prakash Nayi @ Sen vs. State of Goa, [2023] 5 SCC 673; [Vi] Wazir Khan vs. State of Uttarakhand, [2023] 8 SCC 597; and [vii] Anees vs. The State Government of NCT, [2024] 6 SCR 164 : 2024 INSC 368.

14. We have given due consideration to the submissions of the learned counsel for the parties and have also gone through the evidence/materials on record, including the testimonies of the prosecution witnesses and the documentary evidence, available in the case records of Sessions Case no. 80 of 2017, in original. We have also taken note of the decisions cited by the learned counsel for the parties in support of their respective submissions and they would be referred to at appropriate places in the later part of this judgment.

15. It appears necessary, at first, to refer to the testimonies of the prosecution witnesses and the documentary evidence led during the trial, before their evaluation.

16. P.W.1, Ram Charan Gour who is the father of the accused and the father-in-law of the deceased, deposed to the effect that in the night intervening 09.07.2007 and 10.07.2007, he was sleeping in his house, which was separate from the house of the accused, but in the same courtyard. P.W.1 deposed that in the morning, the daughter of the accused, Babita Gour [P.W.6] went to her mother's [the deceased] room to wake her up and when she [P.W.6] noticed a wound on the person of her mother, she [P.W.6] raised hue and cry. Then, he [P.W.1] saw the deadbody of his daughter-in-law [the deceased], which was lying on a bed inside the house. At that time, he [P.W.1] did not find his son [the accused] as he [the accused] had gone to the Police Station to surrender. Police personnel came to their house and took the deadbody for post-mortem examination. P.W.1 deposed that his son [the accused] assaulted his daughter-in-law [the deceased] with a dao resulting into her death. P.W.1 exhibited the FIR [Ext.-1] lodged by him and his signature therein as Ext.-1[1]. P.W.1 also exhibited the Seizure List, M.R. no. 13/2017 as Ext.-2 and the photocopy of the Inquest Report as Ext.-3 along with his signatures therein Ext.-2[1] and Ext.-3[1] respectively. P.W.1 also identified the dao which was seized vide the Seizure List [Ext.-2], as Mat. Ext.-1.

16.1. During cross-examination, P.W.1 stated that the incident took place on 10.07.2017 but

he did not witness the incident. It was the Police who asked him to lodge the FIR and he lodged the FIR after getting it written by one Pankaj. P.W.1 stated that he wrote in the FIR that for a long time his son [the accused] was suffering from mental illness. P.W.1 further stated that he went to sleep at about 08-00/09-00 p.m. P.W.1 stated that though the accused did not confess before him but he heard from other persons regarding confession. P.W.1 further stated that the accused had two daughters and one son and they were residing with them. P.W.1 also stated that the houses of Bilo Das and Basanta Das were situated near their house and he and the neighbouring persons did not hear any sound during the relevant night. P.W.1 denied suggestions that his son did not kill his wife; and that his son was not present on the relevant night.

17. P.W.2, Fulmati Gour is the mother of the accused and the mother-in-law of the deceased. As about the incident, P.W.2 deposed that the occurrence took place about 6/7 months earlier and at the time of occurrence, she was sleeping. P.W.2 stated that in the morning, her granddaughter [P.W.6] informed her [P.W.2] that her mother [the deceased] was not waking up. Then, she [P.W.2] went to the house of her son [the accused]. Going there, P.W.2 found her daughter-in-law [the deceased] lying on bed. Later on, she [P.W.2] came to know that her daughter-in-law [the deceased] had expired.

17.1. In cross-examination, P.W.2 stated that she did not know how her daughter-in-law [the deceased] died.

18. P.W.3, Debajit Das is a neighbour of the accused and he knew the accused. P.W.3 deposed to the effect that it was heavily raining on the day of the occurrence. P.W.3 deposed that on that day, he was in his house and the daughter of the accused [P.W.6] coming to his house, informed him that her mother [the deceased] was lying dead. P.W.3 further stated that when he went to the house of the accused, Police personnel also arrived there. P.W.3 stated that he saw injury on the neck of the deceased. P.W.3 further stated that the accused had surrendered before the Police.

18.1. When cross-examined, P.W.3 stated that he did not know how the deceased had died

and who killed the deceased.

19. P.W.4, Basanta Nirala who is also a neighbour, stated that he knew the informant, the deceased and the accused. P.W.4 deposed that the occurrence took place one year earlier. On the date of the occurrence, it was heavily raining. P.W.4 further stated that when he was in his house in the morning hours, the daughter of the accused [P.W.6] came and informed him that her mother [the deceased] was lying dead. Then, he [P.W.4] went to the house of the accused and saw the deadbody of the deceased. Then, the daughter of the accused [P.W.6] told him [P.W.4] that her mother [the deceased] had died and her father [the accused] was absent. P.W.4 stated that Police also came at the place of occurrence.

19.1. In cross-examination, P.W.4 admitted that he did not know how the deceased had died.

20. P.W.6, Babita Gour is the granddaughter of the informant-P.W.1. The accused is her father and the deceased was her mother. In evidence-in-chief, P.W.6 deposed to the effect that the occurrence took place at about 06-00 a.m. on 10.07.2017. P.W.6 stated that when at the material point of time she went to her mother's [the deceased] room where her mother was sleeping with her father [the accused], she found that her father [the accused] was not in bed at that time and her mother [the deceased] did not respond when she [P.W.6] tried to wake her up from sleep. P.W.6 claimed to have noticed a cut mark injury on the neck of her mother [the deceased]. Then, she [P.W.6] informed her grandfather [P.W.1]. Then her grandfather [P.W.1] coming there, tried to wake up her mother [the deceased] but there was no response from her mother. It was then her grandfather [P.W.1] confirmed to them that her mother [the deceased] died as a result of the injury on her neck. The persons from the neighbourhood were duly informed thereafter and on being informed, they came to the house. P.W.6 further stated that she came to know that her father [the accused] who was sleeping with her mother [the deceased] in the previous night, went to the Police Station. P.W.6 also stated that her grandfather [P.W.1] lodged the FIR regarding the death of her mother [the deceased] in the previous night. P.W.6 further stated that with regard to the death of her mother [the deceased], her grandfather, P.W.1 lodged an FIR with the Police.

The Police personnel after coming to their house, seized one dao vide the Seizure List, Ext.-2 from their house in her presence and therein, P.W.6 gave her signature vide Ext.-2[1].

20.1. During her cross-examination, P.W.6 stated that she used to sleep with her grandmother [P.W.2] in a separate room in the same house whereas her father [the accused] and her mother [the deceased] used to sleep in a different room of the house. On the previous night, all of them including her father [the accused] and mother [the deceased] were watching TV serial in her grandfather's [P.W.1] room. As in the meantime she [P.W.6] fell asleep in that room, she was not aware as to when her father [the accused] and mother [the deceased] went out together for their room to sleep. P.W.6 deposed that when in the next morning she went to wake up her mother there was light outside as the sun had already risen. P.W.6 stated that she did not know as to how her mother [the deceased] sustained the injury on her neck which resulted into her death.

21. P.W.7, Sarat Das, a co-villager, used to know the informant, the deceased and the accused. In his examination-in-chief, P.W.7 deposed to the effect that when in the morning hours on the date of occurrence, which was about one year earlier, he in order to go for his duties, came out of his house he heard from the local boys that the wife of the deceased had been murdered. In the meantime, the Office In-Charge, Dimakuchi Police Station asked him [P.W.7] to take them to the house of the accused. It was raining at that point of time. He [P.W.7] then proceeded, at first, to the house of the accused and thereafter, went for his duties. P.W.7 stated that it was later on he came to know that the accused after killing his wife, surrendered before the Police.

21.1. During cross-examination, P.W.7 admitted that he did not witness the incident and also did not know as to how the incident had taken place. It was only from his neighbour, he came to know that the accused had killed his wife and surrendered before the Police. P.W.7 further stated that he did not know as to who had committed the murder. P.W.7 stated that when he went to the house of the accused along with the Officer In-Charge, he did not see any other person there except the Police personnel and he did not also see the deadbody of the deceased.

22. It was on the basis of the testimony of the Autopsy Doctor, P.W.5 and the Post-Mortem Examination [PME] Report, Ext.-4, the prosecution side had sought to establish that the death of the deceased, Champawati Gour was a homicidal death and it was the accused who had murdered her. Therefore, it is apt, at this juncture, to refer to the testimony of P.W.5 and the PME Report [Ext.-4].

22.1. P.W.5, Dr. Arup Kumar Kalita deposed to the effect that, on 10.07.2017, he was serving as the Medical & Health Officer at Udalguri Civil Hospital. He testified that it was on 10.07.2017 he performed the post-mortem examination on the deadbody of Champawati Gour in connection with Dimakuchi Police Station Case no. 60 of 2017, on being identified by UBC, Imran Hussain, Ram Charan Gour [P.W.1], Babu Ram Gour and Dilip Gour. P.W.5 deposed that on conducting the autopsy, he found the following on the deadbody :-

EXTERNAL APPEARANCE :-

An average built female body wearing Sari and red blouse.

A deep cut injury just below the chin in left side 10 cm x 2 cm x 2 cm.

A deep cut injury on the neck left side 12 cm x 3 cm x 3 cm.

Larynx cut.

CRANIUM AND SPINAL CANAL :-

All organs are intact.

THORAX :-

Walls ribs and cartilages - intact.

Pleurae - intact, Larynx - Larynx cut and full of clots, Trachea - intact,

Contested, lungs - intact, vessels - intact. Heart - intact.

ABDOMEN :-

Walls, Peritoneum - intact, mouth, pharynx, oesophagus, small intestine and its contents, large intestine and its contents - all are intact.

INJURY :-

Two cut injury on the neck.

More details description :-

A cut injury of 10 cm x 2 cm x 2 cm just below middle of mandible in the left side.

A cut injury of 12 cm x 3 cm x 3 cm at the neck just over clavicle in the left side.

Larynx cut.

Fracture C4 vertebrae seen.

P.W.5 stated that he found that the death was due to hypovolemic shock which was a homicidal injury. He opined that the approximate time since death was 12-18 hours. P.W.5 exhibited the PME Report as Ext.-4 and his signature therein as Ext.-4[1].

22.1. When cross-examined, P.W.5 reiterated that the time since death was approximately 12-18 hours.

22.2. In the PME Report [Ext.-4], it was recorded that it was at 02-35 p.m. on 10.07.2017, the post-mortem examination was done. In the PME Report [Ext.-4], the followings findings were recorded :-

I- EXTERNAL APPEARANCE

1. Condition of subject stout emaciated, decomposed, etc.:

An average built female body wearing Sari and red blouse.

2. Wounds - position, and character :

A deep cut injury just below the chin in left side 10 cm x 2 cm x 2 cm.

A deep cut injury on the neck left side 12 cm x 3 cm x 3 cm.

Larynx cut.

*** * * * ***

THORAX :-

1. Walls ribs and cartilages : Intact

2. Pleurae : Intact

- | | |
|-----------------------|--|
| 3. Larynx and trachea | : Trachea intact. Larynx
Through and through full of clots. |
| 4. Right lung | : Intact |
| 5. Left lung | : Intact |
| 6. Pericardium | : Intact |
| 7. Heart | : Intact |
| 8. Vessels | : Intact |

V - MUSCLES, BONES AND JOINTS

- | | |
|-------------------------|-------------------------------|
| 1. Injury | : Two cut injury on the neck. |
| 2. Disease or deformity | : - |
| 3. Fracture | : #C4 |
| 4. Dislocation | : - |

MORE DETAILED DESCRIPTION OF INJURY OR DESEASE

- A cut injury of 10 cm x 2 cm x 2 cm just below middle of mandible in the left side.
- A cut injury of 12 cm x 3 cm x 3 cm at the neck just over clavicle in the left side.
- [illegible] cut thing injury seen.
- #C4 vertebrae seen.

OPINION OF ASSISTANT SURGEON AS TO CAUSE OF DEATH

SUB - ASSISTANT SURGEON

In my opinion death is due to Hypovolemic shock which is homicidal injury. Time since death - 12-18 hours.

REMARKS BY CIVL SURGEON

I agree with the opinion.

23. From the above medical evidence, it is evident that the deceased had met a homicidal death. We find ourselves in agreement with the learned trial court that the cut injuries on the neck including cut of the larynx were sufficient to cause the death of the deceased instantaneously or almost instantaneously. The issue which has, therefore, arisen is who was

the person responsible for the homicidal death of the deceased.

24. P.W.8, Dilip Mili was, on 10.07.2017, posted as the Officer In-Charge of Dimakuchi Police Station and he was the Investigating Officer [I.O.] of the case. In his testimony, P.W.8 deposed that at 03-30 a.m. on 10.07.2017, the accused came to the Police Station for surrender and orally informed him that he had killed his own wife, Champawati Gour [the deceased] by inflicting blows on her neck by a dao while she was sleeping with him. On getting the said information, he [P.W.8] arrested the accused and proceeded to the place of occurrence [P.O.], that is, the house of the accused and the deceased after recording a general diary entry, General Diary Entry no. 185 dated 10.07.2017. At the P.O., they found the deadbody of the deceased in the house of the accused on the bed of the accused in a pool of blood with cut mark injury on her neck. As it was complete dark at that point of time, he [P.W.8] returned to the Police Station after keeping deadbody under the charge of UBC, Chandan Debnath. P.W.8 further stated that the father of the accused, Ram Charan Gour lodged the FIR at the Police Station at 08-30 a.m. on that day. On receipt of the FIR, he [P.W.8] registered the case, Dimakuchi Police Station Case no. 60 of 2017 for the offence under Section 302, IPC and took up the investigation of the case himself as he had already taken up the preliminary investigation of the case on the basis of General Diary Entry no. 185. P.W.8 stated that on 10.07.2017, he again went to the P.O. and conducted inquest on the deadbody of the deceased. After conducting inquest, the deadbody was sent for post-mortem examination. He [P.W.8] stated to have recorded the statements of witnesses available at the P.O. under Section 161, CrPC and prepared a Sketch Map of the P.O. P.W.8 further stated that he seized the dao by which the accused inflicted cut injuries on the neck of the deceased which resulted into her death, in presence of witnesses. P.W.8 deposed that he had sent the accused for recording his confessional statement before the Magistrate and he [P.W.8] thereafter, collected such confessional statement. P.W.8 stated that after completing investigation into the case, he submitted the Charge-Sheet finding a prima facie case against the accused under Section 302, IPC. P.W.8 exhibited the Seizure List, M.R. no. 13/2017 as Ext.-2, the Sketch Map of the P.O. as Ext.-5, the General Diary Entry no. 185 dated 10.07.2017 as Ext.-6 and the Charge-Sheet dated 31.07.2017 as Ext.-7.

24.1. In his cross-examination, P.W.8 stated that he did not send the seized dao for FSL examination. He also stated that before recording the confessional statement, the accused was in Police custody at the Police Station. P.W.8 further stated that he met the informant [P.W.1] and other local persons when he proceeded to the P.O. for investigation of the case. P.W.8 deposed that when the accused came to the Police Station, the accused was in proper dress. P.W.8 denied a suggestion that the accused did not surrender before the Police Station and did not narrate about the incident of causing death of his wife by inflicting blows by dao. P.W.8 also denied a suggestion that accused did not commit the murder of his wife and the accused was mentally unsound at the time of commission of the offence.

25. P.W.9, Smti. Geetali Rabha was serving as the Chief Judicial Magistrate, Udalguri on 10.07.2017. P.W.9 deposed that on 10.07.2017 the accused, Dhaniram Gour was produced before her court for recording his confessional statement by the I.O., Dilip Mili [P.W.8] in connection with Dimakuchi Police Station Case no. 60 of 2017 under Section 302, IPC. On being so produced, P.W.9 stated to have sent the accused for reflection till 11.07.2017. P.W.9 deposed that the accused was again produced by the I.O. at about 04-00 p.m. on 11.07.2017 before her court for recording the confessional statement of the accused. P.W.9 deposed to the effect that on being so produced, she [P.W.9] complied with the procedure prescribed in Section 164, CrPC and Section 281, CrPC and explained to the accused that he was not bound to make confession and that if he did so, it might be used as evidence against him. P.W.9 further stated that the accused then replied that he was willing to give his confessional statement voluntarily. P.W.9 deposed that on being satisfied that the accused was in a fit state of mind and prepared to make his confessional statement voluntarily, the confessional statement of the accused was recorded as per procedure and kept with the case record. P.W.9 stated that after recording the confessional statement, she had given a certificate that the confessional statement of the accused made before her was voluntary and true and the same was read over and explained to the accused and admitted by him to be correct. It was after the accused admitted the statement so recorded as correct, the accused put his signature in the confessional statement. P.W.9 exhibited the Order passed on 10.07.2017 as Ext.-8 and her signature therein as Ext.-8[1]. P.W.9 also exhibited the confessional statement of the accused as Ext.-10 and her signatures therein as Ext.-10[7] and Ext.-10[8] and the

signatures of the accused which were put before her, as Ext.-10[1] to Ext.-10[6]. P.W.9 further exhibited the Order passed on 11.07.2017 as Ext.-9 with her signature therein as Ext.-11[1].

25.1. During cross-examination, P.W.9 reiterated that the confessional statement of the accused was recorded on 11.07.2017 and denied a suggestion that the accused did not make his confessional statement before her.

26. When the accused was examined under Section 313, CrPC he was asked about recording of his confessional statement by P.W.9 and his reply was that he was innocent.

27. It is a settled proposition that a court can act upon a confessional statement if the court is satisfied that the confession is voluntary and true. To be acted upon a confessional statement, such confessional statement has to meet the twin test : [i] it must be perfectly voluntary; and [ii] apart from being perfectly voluntary, it should be true and trustworthy. The learned trial court elaborately discussed on the aspect of admissibility or otherwise of the confessional statement of the accused, Ext.-10 in the backdrop of the preceding, attending and succeeding fact situation. The learned trial court for such consideration, had referred to the decisions in [i] *Pyare Lal vs. State of Assam*, AIR 1957 SC 216; [ii] *Shankaria vs. State of Rajasthan*, [1978] 3 SCC 435; [iii] *State of Rajasthan vs. Raja Ram*, [2003] 8 SCC 180; [iv] *State [NCT of Delhi] vs. Navjot Sandhu*, [2005] 11 SCC 600; [v] *Parmanand Pegu vs. State of Assam*, [2004] 7 SCC 779; [vi] *Bishnu Prasad Sinha vs. State of Assam*, 2008 [2] GLT [SC] 1; [vii] *Sarwan Singh Rattan Singh vs. State of Punjab*, 1957 SCR 953. The learned trial court after going through the procedure laid down in Section 164, CrPC and the ratios of the afore-mentioned decisions, reached a view that the confessional statement [Ext.-11] was recorded by following the necessary safeguards and the confessional statement [Ext.-11] was not made voluntarily by the accused.

28. It has been laid down in *Navjot Sandhu* [supra] that the voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The law is made clear in *Raja Ram*

[supra] that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question in regard to which the court has to be satisfied with is, whether when the accused made confession, he was a free man or his movements were controlled by the Police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before the court reaches the satisfaction and opinion that the influence likely to be caused by the inducement, threat or promise, if any, has been fully removed. In *Sarwan Singh* [supra], the Hon'ble Supreme Court has observed as under :-

“That there can be no doubt that, when an accused person is produced before the Magistrate by the investigating officer, it is of utmost importance that the mind of the accused persons should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case. However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded.”

29. When keeping the afore-mentioned principles in mind the evidence/materials on record is revisited, we find from Ext.-6, General Diary Entry no. 185 dated 10.07.2017 that the

accused appeared at the Police Station at around 02-30 a.m. on 10.07.2017. From the Order dated 10.07.2017 [Ext.-8], it is noticed that when the accused was produced before the Court of learned CJM at 04-00 p.m. on 10.07.2017, the learned CJM remanded the accused, without mentioning the nature of custody, and ordered to produce him on 11.07.2017 after reflection. In the confessional statement [Ext.-10], the learned CJM had recorded that before being brought to the court on 10.07.2017, the accused was detained at the Police Station up to 03-30 p.m. The I.O. [P.W.8] in his cross-examination, deposed to the effect that before recording the confessional statement the accused was in Police custody at the Police Station. The learned CJM while testifying as P.W.9, deposed to the effect that when the accused was produced before the court on 10.07.2017, the accused was sent for reflection till 11.07.2017 and it was the Investigating Officer who again produced the accused at about 04-00 p.m. on 11.07.2017. In the Order dated 11.07.2017 [Ext.-9], the learned CJM recorded that the accused was produced before the court from judicial custody after reflection of about 18 hours and he was kept isolated in a room for a period of 5 hours from 10-30 a.m. to 03-30 p.m. on 11.07.2017 for reflection.

30. The primary object behind keeping the accused in judicial custody is give him sufficient time for reflection so that the accused after freeing himself from the pressure and influence of police, gets sufficient time for reflection before he makes his confessional statement and so as to remove all doubts that he is under any fear or threat or promise before appearing in the court to make the confession. Before proceeding to record the confessional statement, a searching enquiry is to be made from the accused as to the custody from which he was produced in order to ensure that there is no scope for doubt of any sort of pressure or influence proceeding from a source like police, interested in the prosecution. From the testimony of the learned CJM [P.W.9], it is clear that on 11.07.2017 the accused was produced before the court by the I.O. of the case and the said fact is reinforced by the testimony of the I.O. [P.W.8]. The learned trial court in its Judgment had also recorded that at about 04-00 p.m. on 11.07.2017, the Investigating Officer [I.O.] produced the accused for recording his confessional statement. The confessional statement was recorded on 11.07.2017. In our considered view, at least 24 hours of jail custody, as insisted in *Sarwan Singh Rattan Singh* [supra], means continuous and uninterrupted jail custody of 24 hours

and there cannot be any interruption, even for a few minutes, for custody under the Police. A total period of 24 hours of judicial custody, in our considered view, means 24 hours of continuous and uninterrupted judicial custody. It has emerged from the evidence/materials on record of the present case that the recording of the confessional statement [Ext.-10] was not preceded by a period of 24 hours of continuous and uninterrupted judicial custody. Such fact situation has relegated the confessional statement [Ext.-10] in the arena of doubt from the standpoint of its voluntariness in true and real sense. Any custody other than judicial custody in the 24 hours preceding recording of a confessional statement puts a doubt about the voluntariness of the confessional statement. In such facts and circumstances obtaining in the present case, we find ourselves in disagreement with the learned trial court as regards admissibility of the confessional statement [Ext.-10] of the accused and therefore, excluding the confessional statement [Ext.-10] of the accused out of consideration, we decide to proceed with the remaining evidence/materials on record.

31. From General Diary Entry no. 185 [Ext.-6], registered at 03-30 a.m. on 10.07.2017, it has emerged that the accused appeared at Dimakuchi Police Station at 02-30 a.m. on 10.07.2017. As per the testimony of the informant, P.W.1 who is the father of the accused and the father-in-law of the deceased, he went to bed at 08-00/09-00 p.m. and the incident occurred thereafter. It was elicited by defence from the daughter of the accused and the deceased, P.W.6 that on the previous night, that is, on 09.07.2017, all of them including her mother [the deceased] and her father [the accused] were watching TV serial in her grandfather's [P.W.1] room. As she [P.W.6] felt asleep in the room itself she was not aware as to when her parents [the deceased and the accused] went out together to their room for sleeping. It was also elicited by defence from P.W.6 that her parents used to sleep in a different room and she [P.W.6] used to sleep in a separate room. From the testimony of P.W.1, it has emerged that the deceased and the accused used to reside in a separate house within the same compound. It can be noticed from the Sketch Map of the P.O. [Ext.-5] that the house where the deceased and the accused used to reside is close to the house where P.W.1 and P.W.6 used to reside and the two houses are in the same courtyard. The defence did not challenge or controvert the above facts in any manner whatsoever. Thus, it is established that the homicidal death of the deceased had occurred at a time between 08-

00/09-00 p.m. on 09.07.2017 and prior to 02-30 a.m. on 10.07.2017, taking into account the time required for the accused to travel the distance from P.O. to the Police Station.

32. The post-mortem examination on the deadbody of the deceased was performed at 02-35 p.m. on 10.07.2017, as recorded in the PME Report [Ext.-4]. The medical evidence is to the effect that the approximate time of the death was 12 hours to 18 hours from 02-35 p.m. If such medical evidence is considered, then the death of the deceased had occurred approximately in between 08-35 p.m. on 09.07.2017 and 02-35 a.m. on 10.07.2017. Thus, the medical evidence as regards the time of death of the deceased is found in conformity substantially with the time of death, which has emerged from the oral evidence.

33. From the prosecution witnesses – P.W.1, P.W.2 and P.W.6 – it has clearly emerged that the deadbody of the deceased was found lying on the bed inside the room of the house where the deceased and the accused used to reside together. From the evidence on record, it has also emerged that the I.O. [P.W.8] was the first person who received the information from the accused at 02-30 a.m., as revealed from General Diary Entry no. 185 [Ext.-6], that Champawati Gour was dead.

34. It has been contended on behalf of the accused that if the accused had any role in killing his wife by blows from a dao, the parents and the daughter of the accused and the neighbours who reside close to them might have been aware as it was natural for them to hear commotion. Such contention does not appear to be of much substance as the prosecution witnesses – P.W.3, P.W.5 and P.W.7, who are close neighbours, had testified that it was heavily raining on the date of the incident. If there was heavy raining on the date of the incident, it was quite natural that nobody had heard anything from the house where the deceased and the accused used to reside. In case the deceased was given the blows when she was asleep there might not be any reaction like cry from the deceased.

35. When the mother and the daughter accused, that is, P.W.2 and P.W.6 were cross-examined by the defence, no plea, even by way of suggestion, was taken to the effect that the deceased and the accused did not use to reside together in the room where the

deadbody of the deceased was found or that the deceased and the accused did not stay together in that room in the fateful night. A suggestion was, however, put to the informant-father of the accused, P.W.1 and P.W.1 denied the suggestion that the accused was not present on the relevant night. Though a feeble plea in the nature of alibi was taken by the defence only at the stage of cross-examination of P.W.1 but the accused did not take any such plea of alibi when he was examined under Section 313, CrPC. Ordinarily, it is the obligation of the accused, who adopts a plea of alibi, to establish it with certainty so as to exclude the possibility of his presence at the place of occurrence. If the evidence presented by the accused is of a quality which has the capacity of entertaining a reasonable doubt regarding the presence of the accused at the place of occurrence when the occurrence took place, the accused is, undoubtedly, entitled to the benefit of that reasonable doubt. It is to be remembered that the burden on the accused, if he takes the plea of alibi, is heavy. In the case in hand, in view of failure on the part of the accused to discharge the burden fallen on him, in respect of the plea of alibi, such plea remained as a mere suggestion only.

36. In *Wazir Khan vs. State of Uttarakhand*, [2023] 8 SCC 597; and *Anees vs. The State Government of NCT*, [2024] 6 SCR 164 : 2024 INSC 368; the Hon'ble Supreme Court has found that cases are frequently coming before the courts where the husband, due to strained marital relations and doubt as regards the character, has gone to the extent of killing his wife. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. In such cases, no member of the family, even if he is a witness of the crime, would come forward to depose against another family member. If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at a time and in the circumstances of his choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused. The Hon'ble Supreme Court has observed that it is to resolve such a situation that Section 106 of the Evidence Act exists in the statute book. The decision in *Trimukh Maroti Kirkan vs. State of Maharashtra*, [2006] 10 SCC 681, has also been referred to in this connection.

37. In *Trimukh Maroti Kirkan* [supra], the Hon'ble Supreme Court has held that the law

does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. When the accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence had taken place in the dwelling home where the husband also normally resided, it has been observed to be consistently held that if the accused does not offer any explanation how the wife received the injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. Such obligation is cast in view of the rule of evidence embodied in Section 106 of the Evidence Act for which there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. It has been held that the inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

38. In *Wazir Khan* [supra], the Hon'ble Supreme Court has observed in the following manner :-

24. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show, like in the present case, that shortly before the commission of the crime they were seen together or the offence took place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not dispute his presence at home at the relevant time and does not offer any explanation how the wife received injuries or offers an explanation which is found

to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.

38.1. We may also refer to the decision in *Kalu @ Laxminarayan vs. State of Madhya Pradesh*, reported in [2019] 10 SCC 211, wherein after discussing the rule of evidence embodied in Section 106 of the Evidence Act and the failure to offer any explanation by the accused, the following observations have been made :-

16. In view of our conclusion that the prosecution has clearly established a prima facie case, the precedents cited on behalf of the appellant are not considered relevant in the facts of the present case. Once the prosecution established a prima facie case, the appellant was obliged to furnish some explanation under Section 313, Cr.P.C. with regard to the circumstances under which the deceased met an unnatural death inside the house. His failure to offer any explanation whatsoever therefore leaves no doubt for the conclusion of his being the assailant of the deceased.

38.2. The following passage, quoted in the three-Judge decision in *Deonandan Mishra vs. the State of Bihar*, reported in AIR 1955 SC 801, and made in the context of failure of the accused to offer any explanation for circumstances appearing in evidence against him in a case resting on circumstantial evidence, is also of import and relevance :-

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.

39. Reverting back to the facts of the present case, it is already established from the evidence/materials on record that the wife of the accused was found dead on the bed in the room of the house where only the accused and the deceased used to reside. The deceased was lying dead with [i] a cut injury of size : 10 cm x 2 cm x 2 cm just below middle of mandible in the left side; and [ii] a cut injury of size : 12 cm x 3 cm x 3 cm at the neck just over clavicle in the left side. Apart from these two cut injuries, larynx of the deceased was found cut and there was fracture of C4 vertebrae. It is never the case of the accused that there was possibility of presence of any third person in that room during the relevant night. The prosecution is found to have led satisfactory evidence, firstly, at least up to the point of time, 08-00/09-00 p.m. on 09.07.2017 when the deceased and the accused left the immediate adjacent house of P.W.1 after watching television, for their adjoining separate house for sleep; and secondly, on and from 02-30 a.m. on 10.07.2017 when the accused appeared in Dimakuchi Police Station. We are of the considered view that the prosecution has been able to establish that the homicidal death of the deceased had occurred at a time between 08-00/09-00 p.m. on 09.07.2017 and sometime prior to 02-30 a.m. on 10.07.2017, taking into account the time required for the accused to travel the distance from the P.O. to the Police Station. In such obtaining fact situation, the accused clearly owed explanations as to how his wife, that is, the deceased received those injuries on her person; and as to how she met the homicidal death; during the intervening period. The accused also owed an explanation as to when he last saw his wife alive; and when how he parted company from his wife to reach the Police Station at 02-30 a.m. on 10.07.2017.

40. At this stage, it is apposite to refer to the rule of evidence embodied in Section 8 of the Evidence Act. Under Section 8, Evidence Act, the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto. The conduct of the accused, in order to be admissible under Rule 8 of the Evidence Act, must be one which has close nexus with a fact in issue or relevant fact. It could be either a previous

conduct or a subsequent conduct. It is true that any previous or subsequent conduct, by itself, cannot be a ground to hold an accused person guilty for a serious offence, yet, the conduct of an accused can be relevant fact and like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the remaining evidence/materials on record, be it direct evidence or circumstantial evidence. In the present case, it is established from General Diary Entry no. 185 [Ext.-6] that the accused in the wee hours of 02-30 a.m. on 10.07.2017 appeared at the Police Station to confess allegedly that he killed his wife by dealing dao blows on her neck. Though the part of the said General Diary Entry no. 185 in respect of the accused confessing about killing of his wife by dao blows on her neck is not admissible in evidence but his appearance at the Police Station at 02-30 a.m. on 10.07.2017 when his wife was found dead on the bed inside the room of his house is a relevant fact under Section 8 of the Evidence Act and such subsequent conduct on the part of the accused can be taken as one of the circumstances along with the other circumstantial evidence brought on record. When the I.O. [P.W.8] had categorically asserted that the accused came to Dimakuchi Police Station at 03-30 a.m. on 10.07.2017, it was only elicited by defence from P.W.8 that when the accused came to the Police Station the accused was in proper dress. The I.O. [P.W.8] denied a suggestion that the accused did not surrender at the Police Station and did not narrate about the incident causing death of his wife.

41. The accused in his statement under Section 313 of the Code had plainly denied all the incriminating circumstances appearing in the evidence against him without furnishing any explanation. The accused only replied that he was innocent. When the accused was asked whether he would want to adduce evidence in his defence, he replied in the negative. In such circumstance, the failure on the part of the accused to present evidence on his behalf or to offer any explanation, much less any cogent explanation, regarding the recovery of the deadbody of his wife on the bed in a room inside his house by virtue of his special knowledge leads to a reasonable adverse inference, by application of the rule of evidence embodied under Section 106 of the Evidence Act, and the same is to be taken as an additional link in the chain of circumstances affirming the conclusion of guilt, as has been evidently appearing from the prosecution evidence with reasonable certainty.

42. It is in our unhesitant view, the observations made in the decisions, quoted in the preceding paragraph 38, apply *proprio vigore* with force to the facts and circumstances of the present case. Having considered the evidence/materials on record, in its entirety, we are of the firm view that the prosecution had led satisfactory and credible evidence on all the circumstances which were possible to be led in the fact situation obtaining in the case and non-explanation on the part of the accused on the afore-mentioned vital aspects had completed the chain pointing unerringly towards the accused as the only possible assailant.

43. As per the prescription contained in Section 84, IPC, nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. The existence of an unsound mind is a condition precedent for applicability of the provision contained in Section 84, IPC. It has been explained in *Prakash Nayi* [supra] that a mere unsound mind per se would not suffice and it should be to the extent of not knowing the nature of the act. Such a person should be incapable of knowing the nature of the act. A number of decisions have been referred to in *Prakash Nayi* [supra] wherefrom it emerges that an accused who seeks exoneration from liability of an act under Section 84, IPC is to prove legal insanity and not medical insanity. Expression 'unsoundness of mind' has not been defined in the Penal Code and it has mainly been treated as equivalent to insanity. But the term 'insanity' carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not *ipso facto* exempted from criminal liability. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. The burden of proof does lie on the accused to prove to the satisfaction of the court that one is insane while doing the act prohibited by law. Such a burden gets discharged based on a prima facie case and reasonable materials produced on his behalf. The extent of probability is one of preponderance of probabilities. It has been held that the provision contained in Section 84, IPC has to be read along with Section 8 of the Evidence Act, 1872. The better way to reconcile the aforesaid provisions would be to have a look into the behavior and conduct before, during and after the occurrence. The decision in *Devidas Loka Rathod*

[supra] has been referred to in **Prakash Nayi** [supra]. From the aforesaid decisions, it is clear that the onus has to be discharged by the accused by producing before the court all the relevant evidence – oral, documentary or circumstantial as to his conduct shortly prior to the offence and at the time or immediately afterwards the offence. Save and except a mention in the FIR by P.W.1 to the effect that the accused was mentally disturbed for some time, there is not an iota of evidence brought on record by the accused, wherefrom an inference regarding legal insanity of the accused at any point of time can even be remotely inferred. During the course of the trial, there was not a plea to that effect and the learned trial court had, therefore, no occasion to deal with the issue in the Judgment and Order of conviction and sentence. When we consider the evidence/materials on record qua the plea raised by the learned Amicus Curiae during the course of his submissions regarding unsoundness of mind, we find that such plea after consideration, is to be rejected for want of any evidence/materials on record and we accordingly hold so.

44. In the light of the discussion made above and for the reasons assigned therein, we find that there is no merit in the instant criminal appeal and the same is liable to be rejected. Therefore, affirming the Judgment and Order dated 31.07.2019 of conviction and sentence passed by the learned trial court, the instant criminal appeal is dismissed.

45. Before parting with the records, we wish to place our appreciation on record as regards the serves rendered by Mr. A. Kalita, learned Amicus Curiae appearing for the accused-appellant and direct the Registry to make available to him just remuneration as per the notified fee structure applicable to the Amicus Curiae.

46. As it is found from the Judgment and Order dated 31.07.2019 of the learned trial court the deceased had left behind two children, the jurisdictional District Legal Services Authority shall initiate appropriate enquiry for award of compensation under Section 357A, CrPC and the extant Victim Compensation Scheme, 2012, as amended, to the victims with utmost expediency and thereafter, to award and disburse appropriate compensation thereunder to the victims entitled upon conclusion of such enquiry.

47. The records of the trial court are to be sent back forthwith.

JUDGE

JUDGE

Comparing Assistant