

GAHC010091912022



2024:GAU-AS:11836

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

Case No. : Crl.A./181/2022

MAINUL HUSSAIN @ MAINUL ALI
S/O- MUSTAFA ALAM, R/O- VILL.- BOHA PAHAR, P.S. MAYONG, DIST.
MORIGAON, ASSAM, PIN- 782001.

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:PANKAJ DEBNATH
S/O- BENULAL DEBNATH
R/O- GHUNUCHA HABI
P.S. JAGIROAD
DIST. MORIGAON
ASSAM
PI- 782001

Advocate for the Petitioner : MR P SHARMAH, MR P SONOWAL

Advocate for the Respondent : PP, ASSAM,

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Advocate for the appellant : Shri P. Sharmah, Advocate
Advocate for the respondents: Ms. S. Jahan, Addl. PP, Assam.

Dates of hearing : 14.11.2024, 20.11.2024 & 21.11.2024
Date of judgment : 29.11.2024

JUDGMENT & ORDER

(S.K. Medhi, J)

The present appeal has been preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgment and order dated 14.03.2022 passed by the learned District & Session Judge, Morigaon in Session Case No. 148/2015. By the aforesaid judgment, the learned Sessions Judge has sentenced the accused/appellant under Section 302 of IPC and sentencing him to rigorous imprisonment (RI) for life and also to pay a fine of Rs.1,00,000/- in default further simple imprisonment of 3 years and also convict under Section 307 R/W 323 of IPC and convict under Section 201 of IPC the rigorous imprisonment for 3 years and also to pay a fine of Rs. 10,000/- in default further simple imprisonment of 3 months and convict under Section 120 (B) of IPC the rigorous imprisonment for 3 years and also to pay a fine of Rs.10,000/- in default further simple imprisonment of 3 months and convict under Section 379 of IPC the rigorous imprisonment for 2 years and also to pay a fine of Rs.10,000/- in default further simple imprisonment of 3 months.

2. The criminal law was set into motion by lodging of an *Ejahaar* by PW2 on 22.07.2014 wherein, it was alleged that on 20.07.2014, at about 3.30 pm, the accused had hired an Alto 800 vehicle of his friend Abhimanyu Biswas (deceased) from Jagiroad Taxi Stand to go to Nagaon. On the way, the deceased had also picked up the informant from his home and after completion of the work, they had come back to Jagiroad at 9:00 pm. Thereafter, the accused persons had asked to drop them at Boha market. On the way to Boha, the accused persons had picked up two more unknown persons in the vehicle and on reaching Na-Bohotia, the informant saw the accused person no. 2 dealing blows on the head of the deceased with a glass bottle and the informant, out of fear had opened the car door and jumped from the moving vehicle. Thereafter, the accused persons had tried to strangulate him and he had become unconscious. After regaining his senses, the informant had made a phone call to his home from a house nearby situated and informed about the incident whereafter, the family members had rescued him and on the next day i.e. 21.07.2014, at about 9:00 am, the body of the deceased was recovered from Nukora forest. It has also been alleged that the accused persons had fled away taking the vehicle with them. In the aforesaid FIR, 3 (three) nos. of accused persons have been named, including the present appellant as accused no. 3.

3. After registration of the FIR, investigation was made including recovery of the body of the deceased and also the vehicle and a mobile phone, allegedly belonging to the deceased. Thereafter, the Charge-sheet was filed. After framing of the charges and denial thereof, the trial had begun in which the prosecution had adduced evidence through 13 (thirteen) nos. of Prosecution Witnesses. There were also 2 (two) nos. of Court Witnesses who were police officers. PW1

is the person from whose house the phone call was made by the informant. The said PW1 had however turned hostile and in his chief examination, he did not support the version of the informant PW2.

4. PW2 is the informant, who clarifies that the deceased was his friend and he had seen the appellant and another accused Saddam Hussain on the date of the occurrence and rest were not known to him. He has given a vivid description of the sequence of events which had taken place on the fateful day. He has stated that on the said date, he had received a telephone call from the deceased and was informed that he was going to drop three persons at Nagaon and since on his return he would be alone, the informant was requested to accompany the deceased. Accordingly, the informant had accompanied the deceased along with the three persons in the car amongst whom, the appellant was also there. After completion of the job at Nagaon and reaching back Jagiroad, the accused had requested to drop them at Boha and on the way, on the direction of the accused persons, two more persons were picked up in spite of objections. On the way, the accused, Saddam had assaulted the deceased on his head by a bottle whereby blood had come out and out of fear and panic, the informant had jumped out of the running vehicle whereafter all the persons had got down and attacked him by sitting on his chest and strangulating his neck. It was also deposed that one of the accused had shouted for cutting off his neck whereafter they thought that the informant was dead and had left him. The informant claims to have regained his senses after about 2-2½ hours and after walking for some distance, he had gone to a house and narrated the incident and also called his home through a mobile phone. Thereafter, his uncle Ajit Debnath (PW3), along with others had come to fetch him and all of them had made a search for the deceased, who could not be found. He had accordingly lodged

the Ejahar which was proved as Ext.-1 and the dead body of the deceased was found on the following date of the incident. In his cross-examination, he had however clarified that though he had seen the bottle in the hands of Saddam, he had not noticed if Saddam had hit the bottle on the head of the deceased. He had further clarified that no blood was spilled on his body. He has also clarified that in the FIR, he had named three persons and apart from the name of Saddam, the names of the other two accused were told by the police.

5. PW3 is the uncle of the informant, who was telephonically informed by the PW2 (informant) regarding the incident and the assault made to him. In his chief examination, though, he had stated that he had recovered the informant from the house of particular person, PW1, as such, was not named. In his cross-examination, he had also clarified that though the mobile number from which he had received the call was not belonging to the informant, he had not informed the police regarding the said mobile number.

6. PW4 is the Gaonburah of Kacharimuri village, who claims that he had led the police to the house of Baharul when he was arrested and thereafter, he had led them to the house of Ruhul and he was arrested. He is also a Seizure Witness so far as the Alto car which was found near the boundary wall of the Mohmara LP School. He had also deposed that the police personnel also found one mobile phone near the seat of the driver which was also seized and was marked as Material Exhibit No. 1. In the cross-examination however, he had clarified that while putting his signature in the Seizure List, the same was a blank paper and nothing was written on it.

7. PW5 is another Seizure Witness, who however deposes that so far as the mobile phone is concerned, the same was seen under the back seat of the vehicle which was recovered. PW6 is another Seizure Witness. The said PW

however clarifies that he had only witnessed the seizure of the vehicle and in his cross-examination, he has clarified that he did not find any mobile phone recovered by the police. PW7 is the mother of the deceased. In her deposition, she however submits that on the next morning of the date of occurrence at about 8 am when the police had brought the body of the deceased, she could see many cut marks on his body and blood was oozing out of the wounds of her son.

8. PW8 is the brother-in-law of the deceased. He had stated that the PW2 had called his father over phone at about 9:30 pm on the fateful day and described the incident of his strangulation and throwing him out of the vehicle. PW8 had also accompanied the persons, who had gone to rescue PW2 and had thereafter taken him for treatment to the hospital. He had also deposed that a search was made for the deceased, who could not be traced out and only in the next morning, they could come to know from the villagers that a dead body was found on the paddy field which was identified to be of the deceased.

9. PW9 is the Doctor, who had examined PW2. He had deposed that on 21.07.2014, while he was posted at the Nokhola Model Hospital, Jagiroad, he had examined PW2 and found 3 (three) injuries which were simple in nature and caused by blunt weapon. The injury report was exhibited as Ext.- 5.

10. PW10 is the wife of the deceased, who had also deposed of witnessing injury marks on the dead body of her husband.

11. PW11 had deposed of witnessing a vehicle on that night, which was raining and there was flood. He testifies that due to flood water, the vehicle got stuck and one person from the vehicle had come to his house and asked for a *kur* (spade) and with the help of the said *kur*, the vehicle was rescued. He also

testifies that on the next morning, some boys who had come for fishing had discovered a dead body whereupon people had collected and police were informed.

12. PW12 is the Doctor, who had proved the Post-Mortem report as Ext.-6. PW12 however clarifies that the Post-Mortem was done on 21.07.2014 by one Dr. R. P. Bora and not by him. As per the report, there was a transverse ligature mark around the neck and it was continuous. In the opinion, it was stated that the death was due to asphyxia caused by strangulating leading to cardio-respiratory failure which was ante-mortem in nature.

13. PW13 is the IO who deposed that on the fateful evening, he had received an information and accordingly made a GD entry whereafter he had gone to the residence of Rajen Bora at Na-Bahatia and recovered PW2 with some injuries. Thereafter, he had gone to the place where PW2 was allegedly thrown out and had prepared the sketch map. He also deposes that on the next day at about 9:00 am, the Officer-in-Charge, Jagiroad PS had received an information regarding recovery of a dead body and accordingly, PW13 along with the Officer-in-Charge had gone to the said location and found the dead body which was identified to that of the deceased in question, who was a driver of an Alto vehicle. He testifies of preparing sketch maps which were exhibited as Exts. 7, 8 & 9. He has also deposed that the present appellant had confessed of taking the Alto vehicle on hire from Jagiroad and also picking up two more persons in the vehicle. He also states that the appellant had confessed that accused, Saddam had hit a beer bottle on the head of the driver whereafter another accused, Sajahan had taken the steering vehicle and PW2 had jumped out of the vehicle whereafter accused, Saddam and he had chased PW2 and presuming him to be dead, they boarded the vehicle. He also deposes of recovering a mobile handset

of the deceased from accused Riful Amin.

14. Based on the aforesaid materials on record and the depositions, the learned Session Judge, Morigaon, after hearing the parties, had passed the impugned judgement, which is the subject matter of appeal.

15. We have heard Shri P. Sharmah, learned counsel for the appellant. We have also heard Ms. S. Jahan, learned Addl. Public Prosecutor, Assam.

16. Shri Sharma, the learned counsel for the appellant, has formulated his arguments in the following manner:-

i. The evidence on record would not be sufficient to come to a guilt of the appellant.

ii. Based on the same evidence, benefit of doubt has been given to two persons, and therefore, the same could not have been a basis of conviction of the appellant, as the aspect of parity would play a role.

iii. There is no eye-witness to the actual occurrence, and the present being a case of circumstantial evidence, the prosecution is under a bounden duty to establish an unbroken chain of events which leads and pinpoints to only one conclusion of involvement of the appellant with the offence at hand.

iv. The evidence on record are full of inconsistencies, and in view of the same, the prosecution version is not trustworthy and lacks credence.

17. Elaborating his arguments, Shri Sharma, the learned counsel, has submitted that PW2, though cited by the prosecution as an eye-witness, his version is not at all consistent. It is submitted that while PW2 had deposed that he had seen one of the accused, Saddam hitting the head of the deceased with

a bottle whereafter he had jumped out of the vehicle, in the medical evidence, there was no marks of any injury on the body of the deceased and to the contrary, the death was said to be caused by strangulation. He has also highlighted the aspect that PW2 had not only stated about witnessing the deceased being hit by a beer bottle, but also regarding oozing of blood profusely. As regards the injuries said to be sustained by PW2, the alleged eyewitness, he submits that the same are not matching with the medical evidence. While PW2 had deposed that the accused persons had given him blows and sat on his chest and tried to strangle him, the injuries found on his body, which were 3 (three) in nos. were all simple in nature caused by blunt weapon.

18. Shri Sharmah, the learned counsel submits that PW1, who according to the prosecution story is the person to whom PW2 had approached in the fateful night when he had gained senses had turned hostile and did not support the case of the prosecution. With regard to the aspect of recovery and seizure, the learned counsel for the appellant has submitted that such seizure is not supported by the prosecution witness as there are number of inconsistencies. It is submitted that though the aspect of recovery of the vehicle in question may not be a matter of controversy, which otherwise would also not be of much relevance, the versions of PW4, PW5 and PW6 with regard to the seizure of the mobile phone allegedly of the deceased is wholly inconsistent. It is also submitted that though PW7- the mother of the deceased and PW10- the widow of the deceased, had indicated presence of injury marks on the dead body, the medical evidence adduced by PW12- the doctor, as well as the Post-Mortem report which was exhibited as Ext.-6 do not support the said version as the said PM report, in clear terms lays down that there were no injury marks noted on

the body of the deceased.

19. Shri Sharmah, the learned counsel for the appellant has also highlighted the aspect of the inconsistency of the sequence of arrest. He submits that as per PW 4, the police had arrested Baharul first followed by the arrest of Ruhul. On the other hand, by drawing the attention of this Court to the deposition of the IO as PW 13, he submits that Ruhul has been said to be arrested first followed by the arrest of Baharul. It is submitted that such inconsistency would be material and relevant in coming to a conclusion regarding the complicity or otherwise of the accused persons.

20. The learned counsel has also elaborated on the aspect of parity in holding the appellant guilty whereas on the set of same evidence accused nos. 1 & 2 were acquitted. In this connection, he has relied upon the judgment of **Javed Shaukat Ali Qureshi vs State of Gujrat** reported in **(2023) 9 SCC 164** in which the following has been laid down:-

“15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination.”

21. The learned counsel for the appellant has submitted that it is the duty of the prosecution to first establish the chain of events before the burden under Section 106 of the Evidence Act can be put upon an accused. He has submitted that the prosecution has failed to establish a complete chain of events and in this connection, he has relied upon the case of **Nagendra Sah vs State of**

Bihar reported in **(2021) 10 SCC 725** wherein the following has been laid down:-

“20. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.

21. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.”

22. With regard to the aspect that there was no Inquest Report, the learned counsel has relied upon the judgment of this Court in the case of **Kalyan Barman vs State of Assam and Anr.** reported in **2023 (4) GLT 760** and has submitted that in absence of such Inquest Report the conviction cannot be sustained. Reliance has also been placed upon the case of **R. Sreenivasa vs State of Karnataka** reported in **2023 0 AIR(SC) 4301** on the aspect of the application of the doctrine of “last seen together”. He submits that the said doctrine cannot be the sole basis for a conviction. He accordingly submits that the present is a fit case for interference and the appellant is liable to be acquitted. He has informed this Court that since March, 2022 the appellant is in

jail.

23. *Per contra*, Ms. S. Jahan, learned APP, Assam has submitted that the prosecution has been fully successful in establishing the chain of events which pinpoints the complicity of the appellant in the instant case. She has submitted that apart from the fact that PW2 was all along present throughout the starting of the journey from Jagiroad to Nagaon and back, he himself was injured by the accused person for which he had to jump out of the vehicle out of fear. She has submitted that it is established that 3 (three) persons had initially hired the vehicle of the appellant, namely, Saddam (Juvenile), Sahjahan (absconding) and the present appellant. She has also highlighted the aspect that when the vehicle had stopped at Akashiganga, Sahjahan and Mainul had got down and Saddam was in the vehicle by which the informant could know the name and other details of Saddam. After coming back to Jagiroad, they had again gone to Boha and in the meantime had picked up two more persons on the way in spite of resistance by the deceased. She has submitted that there is evidence on record to show that after commission of the offence of murder, the vehicle was initially given to Ruhul and subsequently, Ruhul had given the vehicle to Baharul.

24. With regard to the aspect of inconsistencies in the description of the injuries, the learned APP, Assam has submitted that the ocular evidence led by PWs 7 and 10 are to be given credence over the doctor's evidence. She has submitted that the charge was also under Section 120 B of the IPC and considering the same, the chain of events appears to be complete. On the aspect of the inconsistencies of the versions of the seizure witnesses, the learned APP has submitted that the inconsistency is only with regard to the

mobile phone of the appellant and not to the vehicle. She has also highlighted the aspect that the use of the vehicle was also proved by PW7. The learned APP has laid stress on the aspect that the recovery of the body was on the immediate morning and taking into event the proximity of time, the chain is complete, whereby the complicity of the appellant is proved beyond all reasonable doubt.

25. On the aspect of parity, it is submitted that the conclusion of guilt would depend on the facts and circumstances appearing against the particular accused person and therefore it cannot be a universal principle of application of the doctrine of parity.

26. In support of her submission regarding discrepancy between medical and ocular evidence, the learned APP has relied upon the case of ***Gangabhavani vs Rayapati Venkat Reddy*** reported in ***AIR 2013 SC 3681*** wherein it has been laid down as follows:-

“7. It is a settled legal proposition that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and unless it is reasonably explained may discredit the entire case of the prosecution. However, the opinion given by a medical witness need not be the last word on the subject. Such an opinion is required to be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all an opinion is what is formed in the mind of a person regarding a particular fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts, it is open to the Judge to adopt the view which is more objective or probable.

Similarly, if the opinion given by one doctor is not consistent or probable, the court has no liability to go by that opinion merely because it is given by the doctor. "It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant' ". Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive.

The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility."

27. On the aspect that failure to prove the Inquest Report would not make the prosecution case fatal, the learned APP has relied upon the case of ***Brahm Swaroop and anr. vs State of UP*** reported in ***(2011) 6 SCC 288***, wherein the following has been laid down:-

"7. The whole purpose of preparing an inquest report under Section 174 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating as in what manner, or by what weapon or instrument such wounds appear to have been inflicted. For the purpose of holding the inquest it is neither necessary nor obligatory on the part of the Investigating Officer to investigate into or ascertain who were the persons responsible for the death. The object of the proceedings under Section 174 Cr.PC is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and, if so, what was its apparent cause. The question regarding the details of how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of such proceedings i.e. the inquest report is not the statement of any person wherein all the names of the persons accused must be mentioned. Omissions in the inquest report are not sufficient to put the prosecution out of court. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or by some machinery etc. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. Evidence of eyewitnesses cannot be discarded if their names do not figure in the inquest report prepared at the earliest point of time. The inquest report cannot be treated as substantive evidence but may be utilised for contradicting the witnesses of inquest.'

28. In this connection, she has also relied upon a judgment of the Division Bench of this Court dated 25/08/2023 in CrI.A(J) 1 of 2020 (***Charua Kachua @ Sushil Kujur vs the State of Assam***).

29. On the aspect of the application of Sections 120 B and 302 of the IPC, reliance has been made upon the case of ***Neeraj vs State of UP*** [(2009) 0 supreme (All) 62] in which a Division Bench of the Hon'ble Allahabad High Court has laid down that if a person has been convicted for the offence under Section 120 B read with section 302, I. P. C., then he cannot be sentenced to lesser imprisonment less than life imprisonment. It has been held that even for an offence of criminal conspiracy one is to be punished as provided in Section 120 B, I. P. C and 109, I. P. C. of the Indian Penal Code and the person, who is involved in the criminal conspiracy will be treated as abettor of the offence and he will be punished with the same sentence as provided for the offence, for the commission of which conspiracy has been made.

30. The learned APP, Assam accordingly submits that the prosecution has been successful in proving the case beyond all reasonable doubt and therefore the instant appeal is liable to be dismissed.

31. In his rejoinder, Shri Sharmah, the learned counsel for the appellant has submitted that on the aspect of conviction under Section 307 of the IPC *qua* the PW2, the nature of injuries would be of significant importance. He submits that the doctor, who had treated the PW2 was examined as PW9 and the report was also exhibited as per which there were three number of injuries which were simple in nature caused by blunt weapon. He has submitted that there is no instance of any repeated blows which may give an indication towards an

attempt to murder.

32. The learned Counsel has also submitted that in a criminal case where two views are possible, the view which is favourable to the accused is to be taken into consideration and in this connection, he has relied upon the case of ***Pradeep Kumar vs State of Chattisgarh*** reported in **(2023) 5 SCC 350** . He has also relied upon the case of ***Sivamani and Anr. vs State Represented by Inspector of Police*** [2023 INSC 1027].

33. The rival submissions have been duly considered and the materials placed before this Court including the LCRs have been carefully perused.

34. In the instant case, though it would appear that there was an eyewitness in the form of PW2, his evidence is only up to the stage when he had jumped out of the vehicle on witnessing that the deceased was hit on his head by a bottle. However, considering that the death was not by any injuries sustained on the head by such an assault but by strangulation coupled with the fact that no injuries of any nature were found on the body of the deceased, the said witness cannot be termed as an eye-witness. Therefore, the present case is one of circumstantial evidence wherein the prosecution is under an obligation to establish an unbroken chain of events which pinpoints only to one conclusion of guilt of the appellant in commission of the offence.

35. In the instant case, we have noted that PW1 was declared hostile as he did not support the case of the prosecution. The version of PW2 is very significant as he claims to be with the deceased from the starting of the journey from Jagiroad until he had jumped out of the vehicle when he had seen the deceased being hit on his head by a bottle. The subsequent deposition that he was attacked and assaulted with an intention to kill also does not find support in

the medical evidence which was led by PW9, the doctor who had examined him. As observed above, the injuries found on his body were three in numbers which were simple in nature. That being the position, it has to be seen whether the other materials on record would establish an unbroken chain leading to the guilt of the accused/appellant and none else.

36. As per PW2, the assault on the deceased was by a bottle on his head which however is not supported by the medical evidence. Though PW7 (mother) of the deceased and PW10 (widow) of the deceased had deposed of noticing injury marks on the body of the deceased, the same is also not supported by the medical evidence which was adduced by PW12, who had proved the Post-Mortem report. The PM report, as noted above, in clear terms states that the death was by strangulation and it is significant to note that such report does not speak about any injuries on any part of the body of the deceased.

37. This brings us to the aspect of the recovery of the vehicle and the mobile phone. There are 3 (three) witnesses on the aforesaid aspect of recovery and seizure, namely, PW4- the Gaonburah, PW5 and PW6. While recovery of the vehicle cannot be a conclusive material to implicate the appellant, the versions of the aforesaid three witnesses with regard to the recovery of the mobile phone is not consistent at all. The place of recovery of the mobile phone from the vehicle as per the versions of PW4 and PW5 are not matching. On the other hand, PW6 does not even talk about recovery of any mobile phone. We have also noticed that in the cross-examination, it has been stated that the Seizure Witnesses had signed on blank papers. Therefore, it becomes very difficult to rely on the aforesaid Seizure List prepared during the investigation.

38. On the aspect of parity, the learned Addl. PP, Assam has submitted that accused Ibrahim and Saidul were given the benefit of doubt as they were not

identified and therefore it is submitted that the said aspect cannot be regarded to be relevant to the contention of parity. This Court therefore is required to examine as to whether the materials would otherwise justify in leading to a conclusion of complicity of the accused. As observed above, the present case is one of circumstantial evidence in which there is a preliminary obligation on the part of the prosecution to establish an unbroken chain of events.

39. In the celebrated case of the ***Sharad Biridhichand Sarda vs State of Maharashtra*** reported in (1984) 4 SCC 116, the Hon'ble Supreme Court has laid down the following 5 principles while dealing with a case of circumstantial evidence:

“7. 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 Sahebrao Bobade v. 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

(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.

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

40. As has been laid down it is not only an unbroken chain but such unbroken chain of events has to lead to only one conclusion of involvement of the accused and none others. Applying the aforesaid test with the materials at hand, we are of the view that those would not be sufficient to have only one view regarding the involvement of the appellant. It is a settled principle of law which has also been cited in the case of ***Pradeep Kumar*** (supra) that where two views are possible the view which is favourable to the accused is liable to be accepted as the same is based on the elementary principles of criminal jurisprudence that an accused is presumed to be innocent until proved guilty beyond all reasonable doubt. In the instant case, the involvement of the appellant cannot be conclusively related to the death caused to the deceased. Though we are unable to accept that not proving of the Inquest Report would itself be fatal to the prosecution we are of the view that the evidence and the relevant materials would not justify holding the appellant to be guilty under the offence in hand.

41. In view of the aforesaid facts and circumstances, we give the benefit of doubt of the appellant and accordingly allow the appeal. The appellant stands acquitted and is directed to be set at liberty forthwith unless required in any other case.

42. Send back the records.

JUDGE

JUDGE

Comparing Assistant