

GAHC010160442020



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

Case No. : CRIMINAL APPEAL[I] NO. 77/2020

Bishnu Urangia, Dibrugarh, Assam.

.....Appellant

VERSUS-

The State of Assam, Represented by
Public Prosecutor, Assam.

.....Respondent

Advocates :

Appellant	:	Mr. A. Tewari, Amicus Curiae
Respondent	:	Ms. B. Bhuyan, Senior Counsel & Additional Public Prosecutor, Assam Ms. R. Das, Advocate.
Date of Hearing	:	12.06.2024, 14.06.2024 & 19.06.2024
Date of Judgment & Order	:	20.06.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER [ORAL]

[M. Choudhury, J]

The present criminal appeal from Jail under Section 383, Code of Criminal Procedure, 1973 is preferred by the accused-appellant to assail a Judgment and Order dated 06.12.2019 passed by the learned Sessions Judge, Dibrugarh in Sessions Case no. 14/2016. During the trial, the accused-appellant was charged for the offence of *uxoricide* and after the trial, he has been found guilty for the offence of *uxoricide* under Section 300 of Indian Penal Code ['IPC' or 'Penal Code', for short] and has been sentenced under Section 302, IPC. By the Judgment and Order, the accused-appellant has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default of payment of fine, to undergo rigorous imprisonment for another one month.

2. The genesis of the prosecution case is traceable to a General Diary Entry no. 88 dated 04.10.2015 registered at 12-27 p.m. in Namrup Police Station. It was at about 12-27 p.m. on 04.10.2015, the President of Village Defence Party [VDP] of Abhoypur Village, Mukut Gogoi [P.W.2] made a telephone call to Namrup Police Station to inform about the killing of Mrinali Urangia by the accused, after he came to know about it from the villagers. On receipt of the telephonic information, the General Diary Entry no. 88 dated 04.10.2015 [Ext.-13] was registered and the charge of investigation was entrusted to Deepak Sutradhar [P.W.9], a Sub-Inspector of Police attached to Namrup Police Station by the Officer In-Charge, Namrup Police Station. As the place of occurrence

[P.O.] was the house of the accused and the deceased, the I.O. [P.W.9] proceeded to the P.O. immediately thereafter by registering a General Diary Entry no. 89 dated 04.10.2015 at 12-40 p.m. As the deadbody of the deceased, Mrinali Urangia was found lying in a vegetable garden in the backside of the house of the accused and the deceased, the inquest on the deadbody was held at the P.O. itself by the Circle Officer & Executive Magistrate, Naharkatia Revenue Circle. After completion of the inquest proceeding, an Inquest Report [Ext.-1] was prepared wherein the prosecution witness, Rajendra Urangia [P.W.1], Mukut Gogoi [P.W.2], Tankeswar Gogoi [P.W.3] and Deepak Sutradhar [P.W.9] signed as witnesses. In the Inquest Report [Ext.-1], it was reported that the approximate date and time of death was 11-00 a.m. on 04.10.2015. In the Inquest Report [Ext.-1], it was further recorded that the deadbody was found covered with blood stains, with grievous injuries over the cheek and neck, right hand and over the abdomen, allegedly with sharp weapon. After holding inquest, the deadbody of the deceased was sent to the Assam Medical College & Hospital [AMC&H], Dibrugarh for post-mortem examination.

3. It was the son of the accused, P.W.1, Rajendra Urangia who brought the allegation of *uxoricide* against the accused formally by appearing in person in Namrup Police Station at 06-30 p.m. on 04.10.2015. On the basis of information given by P.W.1 - Rajendra Urangia, the Officer In-Charge, Namrup Police Station registered and entered another entry in the General Diary vide General Diary Entry no. 98 dated 04.10.2015 [Ext.-9]. As per the said General Diary Entry, the P.W.1 had *inter alia* informed that at around 10-30/11-00 a.m. on that day, the accused chased his mother, Mrinali Urangia to the backyard of the house and dealt cut blows on several parts of her body. Due to severe injuries, his

mother, Mrinali Urangia died at the P.O. itself. The General Diary Entry no. 98 was followed by a written First Information Report [FIR] from the informant-P.W.1, Rajendra Urangia stating the similar facts. On receipt of the written FIR, the Officer In-Charge, Namrup Police Station registered the same as Namrup Police Station Case no. 151/2015 for the offence under Section 302, IPC on 04.10.2015. As noted above, the investigation of the case was already entrusted to Deepak Sutradhar [P.W.9], Sub-Inspector of Police attached to Namrup Police Station.

4. It is the case of the prosecution that the accused on the date of the incident itself, appeared at Namrup Police Station with a blood stained *dao* and at the time of his appearance, a number of private persons including his informant – son [P.W.1], Rajendra Urangia, were present in the Police Station. The further case of the prosecution was that in the Police Station, the accused confessed before those witnesses and the Police personnel that he had cut his wife with the said *dao*. The accused was taken into custody on 04.10.2015 and the *dao* was seized and thereafter, he was arrested. The investigation proceeded further with the recording of statements of witnesses under Section 161, CrPC and under Section 164, CrPC.

5. The post-mortem examination was performed in the AMC&H on 05.10.2015 by P.W.6, Dr. Nayanmoni Pathak, Assistant Professor, Department of Forensic Medicine, AMC&H. After the autopsy, P.W.6 recorded his findings in a Post-Mortem Examination [PME] Report [Ext.-6]. In the PME Report [Ext.-6], the Autopsy Doctor [P.W.6] reported that the death was instantaneous following the neck injuries sustained. It was opined that all injuries were ante-mortem in

nature and were caused by a sharp cutting heavy weapon. The death was stated to be homicidal in nature and the time since death was 24-36 hours [approx.].

6. In the PME Report [Ext.-6], the followings were recorded :-

I - External Appearance

1. Condition of subject stout emaciated, decomposed etc:

Female deadbody of average build, dark brown complexion, wearing a mekhela chador, yellow blouse and a gamocha. Body and wearing garments are stained with dried blood. Greenish discolouration of abdominal walls seen. Body found cold both externally and internally. Rigor mortis passing off and present partially over lower limbs.

2. Wounds-position and character:

Injuries:

[1]Chop wound of size 15 x 3 cm x bone deep, horizontal over left side of face, extending from left ear lobule [cutting it], upto left side of nose, cutting underlying tissues including bones.

[2]Chop wound of size 12 x 3 cm x spinal cord deep, over upper part of back of neck, horizontal, and downward direction, cutting underlying tissues, vertebrae and spinal cord.

[3]Chop wound of size 9 x 3 cm x muscle deep, over left side of neck, 3 cm below injury no. [2], horizontal, extending from angle of mandible upto 2 cm left to midline; cutting underlying skin, muscles & vessels.

[4]Chop wound of size 11 x 3 cm x muscle deep, over left side lower thoracic wall, cutting underlying tissues and exposing

the lower two ribs, laterally.

[5] Incise wound of size 18 x 1 cm, sub cutaneous deep over left abdominal wall, antero laterally, 7 cm above umbilicus, with tailing of the wound towards medial aspect.

[6] Chop wound of size 7 x 2 cm x tendon deep over anterior aspect of right forearm 7 cm above wrist, cutting skin, and some of vessels, nerves and tendons.

N.B.: Blood samples collected in clotted of NaF vials as handed over to escorting police as requested by the I.O. in his forwarding letter.

7. In the PME Report [Ext.-6], it was further mentioned by the Autopsy Doctor [P.W.6] that blood samples were collected in vials and handed over to the Police personnel, as requested by the I.O. [P.W.9]. After collecting the blood samples in vials, the said samples were forwarded to the Directorate of Forensic Science [FSL], Guwahati for serological examination. The alleged weapon of assault, the *dao* which was stated to have been seized in the Police Station on 04.10.2015 was also sent to the FSL for serological examination. The Scientific Officer, Serology Division, FSL [P.W.10] had recorded in a Report dated 22.11.2015 [Ext-11] that the following articles were received for examination :-

DESCRIPTION OF ARTICLES

	<u>Your No.</u>	<u>My No.</u>
1. One wooden handle mit Dao alongwith cover contains stain of suspected blood. Marked as 'A'. MR No. 72/15. Mit Dao heavily rusted. The cover wrapped with plastic rope [blue & yellow] coloured. Total length app. 45.5 cm.	1	Sero-3603/A

2. Two nos. of air tight vial [EDTA] vial 2 Sero-3603/B
contains blood Sample. Marked as 'B'
[There is not found any cotton in the
time of opening]. P.M. No. 1100/15.

In Ext.-11, P.W.10 had also reported the results of examination as under :-

RESULT OF EXAMINATION

1. Exh No. Sero-3603/A and Sero-3603/B gave positive test for human
blood of group 'A'.

8. The I.O. [P.W.9] had, in the meantime, produced three witnesses before the Court on 08.10.2015 for recording of their statements under Section 164, CrPC and the said three prosecution witnesses were Rajendra Urangia [P.W.1], Mukut Gogoi [P.W.2] and Tankeswar Gogoi [P.W.3] and their statements [Ext.-4, Ext.-5 & Ext.-6] respectively] under Section 164, CrPC were recorded on 08.10.2015.

9. After completion of investigation into the case, Namrup Police Station Case no. 151/2015 [corresponding G.R. Case no. 2769/2015], the I.O. [P.W.9] laid a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 128/2015 [Ext.-12] on 31.12.2015 finding a *prima facie* case well established for the offence of murder under Section 302, IPC against the accused. In the Charge-Sheet [Ext.-12], the I.O. [P.W.9] listed twelve nos. of witnesses stating that they would adduce evidence in support of the prosecution case.

10. On submission of the charge-sheet, the Court of the learned Judicial Magistrate, First Class, Dibrugarh secured the appearance of the accused from

custody on 25.01.2016. The accused was represented by a learned Legal Aid Counsel on that day. As the copies were ready, the same were furnished to the accused as per the procedure laid down in Section 207, CrPC. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Dibrugarh by an Order of Commitment dated 25.01.2016, committed the case records of G.R. Case no. 2769/2015 to the Court of Sessions, Dibrugarh [‘the trial court’, for short] as per the procedure prescribed in Section 209, CrPC, by notifying the learned Public Prosecutor and the Superintendent of Jail for necessary steps from their end. On receipt of the case records of G.R. Case no. 2769/2015, the Court of Sessions registered the same as Sessions Case no. 14/2016.

11. On appearance of the accused before the learned trial court and after hearing the learned Public Prosecutor and the learned defence counsel and perusal of the materials available in the case records, the learned trial court framed the following charge against the accused on 08.02.2016 :-

That on 04.10.2015 at Abhaypur Gaon under Namrup Police Station, you committed murder of your wife Mrinali Urangia by assaulting her with a dao, and thereby committed an offence punishable u/s 302 of the Indian Penal Code and within the cognizable of the Court of Sessions.

12. In the Order framing charge, the learned trial court had recorded that when the charge was read over and explained to the accused, the accused pleaded guilty to the act of killing his wife stating that due to ill health, he could not go to work. Because of such situation, his wife and his son used to mistreat him and did not provide him food. As he had lost his temper on one day, he

assaulted his wife with a *dao* and killed her. The accused stated before the Court that nobody used to come to Jail to meet him. However, the learned trial court had observed that considering the seriousness of the offence and severity of the punishment, it deemed it fit not to exercise the discretion under Section 229, CrPC accepting the plea of guilty of the accused and to convict him at that stage. The learned trial court had used the discretion to proceed with the trial.

13. During the course of the trial, the prosecution side examined ten nos. of witnesses and exhibited twelve nos. of documents. The prosecution side also exhibited a material exhibit, Mat. Ext.-1, a *dao*. After closure of the evidence of the prosecution side, the accused was examined under Section 313, CrPC and his place was denial. The defence did not adduce any evidence. After hearing the learned counsel for the parties and after appreciation of the evidence/materials on record, the learned trial court has delivered the impugned Judgment and Order of conviction and sentence, as mentioned hereinabove.

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

15. Mr. Tewari, learned Amicus Curiae appearing for the accused-appellant has submitted that the prosecution has relied upon the circumstance of appearance of the accused in the Police Station on the date of occurrence with a *dao* in hand. The prosecution has further relied upon an alleged confession made by the accused in the Police Station in the presence of the prosecution witnesses –

P.W.1, P.W.2, P.W.3 & P.W.9. It is his submission that neither such alleged confession is admissible in law nor the evidence regarding the factum of seizure of the *dao*, the alleged weapon of assault was properly brought on record. He has further contended that the testimony of the prosecution witness, P.W.8 is doubtful as there was no apparent reason for informing him about the incident by Police. It is not the case of the prosecution that the accused and the deceased were last seen together. Since it is a case of circumstantial evidence only there being no eye-witness, it was the duty of the prosecution to complete the chain of circumstances by admissible and legal evidence. He has contended that the alleged weapon of assault, *dao* was not shown to the Autopsy Doctor, P.W.6 who would have been in the best position to depose as to whether the injuries sustained by the deceased were possible by such kind of weapon. He has stressed on such aspect on the premise that the forensic evidence indicated that the *dao* was heavily rusted. It is further contended that one of the material witnesses, that is, the younger son of the deceased was not examined by the prosecution. Moreover, no witness from the neighbourhood was examined by the prosecution. The prosecution has relied simply on the forensic evidence of presence of human blood of a particular group on the *dao* which was also the blood group of the deceased. These circumstances, according to him, are not sufficient for completing the chain of circumstances to bring home the charge of murder against the accused and the learned trial court had based its decision on the basis of surmises and conjectures. It is his further submission that when the circumstances of not seen together is not the case of the prosecution, there is no requirement on the part of the accused to provide any explanation under Section 313, CrPC. Merely on basis of hearsay testimony to the effect that the accused was adversely disposed towards the deceased and his younger son, the

prosecution cannot prove the case against the accused.

16. Ms. Bhuyan, learned Additional Public Prosecutor appearing for the State has submitted that the appearance of the accused with a *dao* in the Police Station on the date of the occurrence itself is a pointer towards involvement of the accused with the alleged murder of his wife. The P.O. was the premise belonging to the accused and the deceased. The blood group taken from the deceased during the post-mortem examination had matched with the blood group found in the alleged weapon of assault, that is, the *dao* seized from the accused in the Police Station on the date of occurrence itself. From the PME Report, it is clearly demonstrated that the deceased met a homicidal death. It is submitted that the accused had confessed about committing the crime before the prosecution witnesses – P.W.1, P.W.2, P.W.3 & P.W.9 – in the Police Station. Further, the accused had disclosed about committing the crime to the prosecution witness, P.W.8 also. Ms. Bhuyan has submitted the prosecution made efforts to summon Moina Urangia, the younger son of the deceased and the accused. Notwithstanding his non-examination, the evidence led by the prosecution during the trial are sufficient to bring home the charge of murder against the accused. It has been contended that the chain of circumstances was not broken anywhere, as alleged by the defence. Ms. Bhuyan has, thus, submitted that from the evidence on record, only one conclusion can be drawn and the same is regarding the guilt of the accused.

17. The learned counsel for the parties have referred to a number of decisions in support of their respective contentions and those decisions would be adverted to in the later part of the order at the appropriate places.

18. The learned counsel for the parties have fairly submitted that the plea of guilt, which appeared to have been made by the accused at the stage contemplated in Section 229, CrPC, has not been taken into consideration by the learned trial court to return the finding on guilt on the charge of murder against the accused and the instant appeal is only to be considered on the basis of the evidence/materials on record, notwithstanding such situation.

19. We have duly considered the submissions of the learned counsel for the parties and have also gone through the evidence/materials including the testimonies of the witnesses, available in the case records of Sessions Case no. 14/2016, in original. We have also considered the decisions cited by the learned counsel for the parties.

20. It is necessary to advert to, at first, the evidence/materials regarding the discovery of the deadbody of the deceased, Mrinali Urangia.

20.1. P.W.4, Sanjib Sonowal @ Bhai is a co-villager of the accused and the deceased. On the matter of discovery of the deadbody, P.W.4 stated that at about 12-00 noon on the date of the incident, he was playing football in a playground of Abhaypur village, which was near the house of the accused and the deceased. When the game was over at about 12-30 p.m., he had gone to the house of Moina Urangia, that is, the younger son of the accused and the deceased, to bring water. When he went to the back of the house of Moina Urangia to urinate, he saw a body of a women lying in the backside of the house. Noticing the body, he immediately informed Moina Urangia. Moina

Urangia then came to the place and told him that the body was of his mother. According to P.W.4, blood was oozing out from the hand of Mrinali Urangia. Then, Moina Urangia informed the neighbours about the incident.

20.2. P.W.2, Mr. Mukut Gogoi was the President of Village Defence Party [VDP] of Avoypur Gaon. In his testimony, P.W.2 stated that he was informed by the villagers about the alleged killing of Mrinali Urangia by the accused in his house. On receipt of information, he proceeded to the house of the accused and saw the deadbody of Mrinali Urangia lying in the house compound of the accused. Then, he [P.W.2] immediately informed the matter to Namrup Police Station.

20.3. The General Diary Entry no. 88 dated 04.10.2015, exhibited as Ext.-13, was recorded at 12-27 p.m. on 04.10.2015. As per the Ext.-13, General Diary Entry no. 88, P.W.2 – Mukut Gogoi informed telephonically to the Police Station that the accused had killed his wife by hacking her with a *dao*. Upon receipt of the information, the same was entered into the General Diary and the charge of investigation was entrusted to the I.O. [P.W.9]. As mentioned earlier, the prosecution had also exhibited another entry, General Diary Entry no. 89 of even date recorded at 12-40 p.m. As per the said General Diary entry, the I.O. [P.W.9] along with staff proceeded to the P.O. in Abhaypur village to investigate into the matter, as recorded in General Diary Entry no. 88.

20.4. P.W.3, Tankeswar Gogoi who is also an inhabitant of Abhaypur Gaon, deposed to the effect that he got the information regarding assault and killing of Mrinali Urangia from P.W.2, Mukut Gogoi.

20.5. P.W.5, Pallabi Sonowal deposed to the effect that she got the information about the death of Mrinali Urangia from Moina Urangia at about 01-00 p.m. on the date of occurrence. On receiving the information, she [P.W.5] stated to have informed about the incident to P.W.3, Tankeswar Gogoi.

20.6. From the above evidence/materials, it goes to establish it was in between 12-00 noon and 12-30 p.m. on 04.10.2015, the factum of death of Mrinali Urangia came to the knowledge of P.W.2 and Moina Urangia, the younger son of the accused and the deceased. From Ext.-13, General Diary Entry no. 89, it is noticed that the Police personnel proceeded to the place of occurrence [P.O.] at 12-40 p.m. on 04.10.2015. P.W.5 also stated that it was after an hour from 01-00 p.m., the Police personnel arrived at the P.O.

21. The prosecution witnesses had also testified about the place where the deadbody of Mrinali Urangia was found. According to P.W.3, the deadbody was lying in the house compound of the accused and he saw cut injuries on the face and several parts of the body of the deceased. P.W.2 and P.W.4 testified to the effect that the body of Mrinali Urangia was lying at the back of the house of Moina Urangia, the accused and the deceased. The informant-P.W.1 deposed that the deadbody of his mother was lying in the corner of the courtyard of their house.

21.1. From the testimonies of the afore-mentioned prosecution witnesses, it is established that the deadbody of Mrinali Urangia was found in the courtyard of the house of the accused and the deceased wherein their younger son, Moina Urangia also used to live.

22. The informant-P.W.1 deposed to the effect that his mother, Mrinali Urangia and his younger brother, Moina Urangia used to stay in the same house of his father, that is, the accused. He further deposed that his mother and younger brother used to report to him that the accused used to say that he would cut his wife and his younger son and would go to jail. As per his [P.W.1] testimony, it was at about 02-00 p.m. on the date of the incident, he [P.W.1] received a phone call whereby he was informed that his mother, Mrinali Urangia was hacked by the accused resulting into her death. He [P.W.1] did not disclose the identity of the caller. On receiving the information, he came to his paternal house and found the deadbody of his mother. He further stated that the Police personnel came to the P.O. before his arrival there. He further stated that when the Police personnel took the deadbody to the Police Station, he also went along with the deadbody to the Police Station. When he was present in the Police Station, the accused came to the Police Station with a blood stained *dao* in his hand and confessed that he had cut his wife with the said *dao*. P.W.1 further testified that Police seized the *dao* in his presence vide a Seizure List [Ext.-2] and he identified his signature therein as Ext.-2[1]. It was thereafter, he lodged the FIR [Ext.-3], which was written by a person in the Police Station. P.W.1 further stated that his statement was recorded under Section 164, CrPC and his such statement was exhibited as Ext.-1. He also identified the material exhibit, Mat. Ext.-1 as the *dao*, which the accused had produced in the Police Station and which was seized by the Police from the accused in his presence.

22.1. During cross-examination, P.W.1 stated that he did not state before the I.O. that his father arrived in the Police Station with a blood stained *dao* and

confessed that he had cut his mother with the said *dao*. He denied a suggestion that his father did not confess before the Police that he had cut his mother. P.W.1 also claimed ignorance about the contents of Ext.-2, Seizure List by which the *dao* was seized. He stated that he put his signature on Ext.-2 at Namrup Police Station when the paper was blank.

23. The prosecution witnesses – P.W.2 and P.W.3 – had deposed to the effect that after recovery of the deadbody, they also went to the Police Station. In their testimonies, they had deposed that when they were in the Police Station, the accused came to the Police Station along with the *dao* in his hand. P.W.2 deposed to the effect that the accused stated that he had cut and killed his wife. P.W.3 did not state about the accused making any kind of confession. They [P.W.2 & P.W.3] had further stated that the Police seized the *dao* from the accused in their presence vide Seizure List, Ext.-2 wherein they gave their signatures as seizure witnesses. Both P.W.2 & P.W.3 in their examination-in-chief, stated that the material exhibit, Mat. Ext.-1, the *dao* was seized by Police from the accused.

23.1. During cross-examination, P.W.2 stated that he did not see the alleged occurrence and he had no personal knowledge about the alleged incident. He further stated that he did not know who was involved in the crime. He further stated that he did not state before the Police that the accused came to the Police Station with a *dao* in his hand. He further stated that he did not state before the Police that the accused had admitted his guilt before the Police. He further stated that he did not know the contents of Ext.-2, Seizure List. He further testified that he could not say firmly that Mat. Ext.-1, *dao* was exactly

the weapon used in the crime and further stated that this kind of *dao* was available in the market. P.W.3 deposed that he did not state before the Police that the accused came to the Police Station with a *dao* in his hand. He also stated that he did not state before the Police that the accused admitted his guilt before the Police. P.W.2 stated that he did not know the contents of Ext.-2 and there were similar *daos* available in the market. He stated that he could not say exactly that the weapon in the alleged incident and the weapon shown to him in the court were same or not. P.W.3 further stated that he did not have any personal knowledge about the alleged incident and who was involved in the crime.

24. It needs iteration that the prosecution has relied on the circumstances of appearance of the accused in the Police Station with a *dao* in hand and his confession of guilt that he had cut his wife with the *dao* as two strong circumstances to bring home the charge of murder against the accused.

25. First on the point of admissibility of the confession allegedly made by the accused in the Police Station on the date of occurrence, that is, on 04.10.2015. As per Section 25 of the Evidence Act, no confession made to a Police Officer shall be proved against a person accused of any offence. Section 26 of the Evidence Act has put a prohibition to the effect that no confession made by any person while the accused is in the custody of a Police Officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person.

26. A Constitution Bench in *Kartar Singh vs. State of Punjab*, reported in

[1994] 3 SCC 569, has considered the provisions contained in Section 24 to Section 30 of the Evidence Act, 1872 and it has been observed therein as under :-

382....Sections 24 to 30 of the Evidence Act deal with provability or relevancy of a confession. A confession made by an accused person is irrelevant if it appears to the court to have been caused by inducement, promise or threat having a reference to the charge proceeding from a person in authority. By Section 25 there is an absolute ban at the trial against proof of a confession to a police officer, as against a person accused of any offence. The partial ban under Section 24 and total ban under Section 25 applied equally with Section 26 that no confession made to any person while the accused is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person. Section 27 makes an exception to Sections 24, 25 and 26 and provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. The provisions in Sections 28 to 30 are not relevant for discussion. The fascicule of Sections 24 to 30 aim to zealously protect the accused against becoming the victim of his own delusion or the mechanisation of others to self-incriminate in crime. The confession, therefore, is not received with an assurance,

if its source be not omni suspicious mojes, above and free from the remotest taint of suspicion. The mind of the accused before he makes a confession must be in a state of perfect equanimity and must not have been operated upon by fear or hope or inducement. Hence threat or promise or inducement held out to an accused makes the confession irrelevant and excludes it from consideration. A confession made to a police officer while the accused is in the custody or made before he became an accused, is not provable against him on any proceeding in which he is charged to the commission of the said offence. Equally a confession made by him, while in the custody of the police officer, to any person is also not provable in a proceeding in which he is charged with the commission of the offence unless it is made in the immediate presence of the Magistrate. Police officer is inherently suspect of employing coercion to obtain confession. Therefore, the confession made to a police officer under Section 25 should totally be excluded from evidence. The reasons seem to be that the custody of police officer provides easy opportunities of coercion for extorting confession. Section 25 rests upon the principle that it is dangerous to depend upon a confession made to a police officer which cannot extricate itself from the suspicion that it might have been produced by the exercise of coercion or by enticement. The legislative policy and practical reality emphasise that a statement obtained, while the accused is in police custody, truly be not the product of his free choice. So a confessional statement obtained by the law enforcement

officer is inadmissible in evidence.

27. The I.O. [P.W.9], in his evidence-in-chief, stated that it was at around 06-30 p.m. on 04.10.2015, the informant-P.W.1 lodged the FIR [Ext.-3] at Namrup Police Station regarding the incident and the same was registered as Namrup Police Station Case no. 151/2015 under Section 302, IPC. The I.O. [P.W.9] stated that he had already taken up investigation of the case pursuant to General Diary Entry no. 88 as he was endorsed to do so by the Officer In-Charge, Namrup Police Station after registration of General Diary Entry no. 88 dated 04.10.2015. The I.O. [P.W.9] in his evidence-in-chief, had further stated that it was at around 06-45 p.m., the accused, Bishnu Urangia appeared in the Police Station along with a *dao*. Thus, at the time when the accused allegedly appeared in the Police Station, there was already two General Diary Entries, bearing nos. 88 & 89, both dated 04.10.2015, and a formal written FIR lodged against him for the charge of murder of his wife.

28. It is a settled principle of law that any confession made to a Police Officer is not admissible under Section 25 of the Evidence Act and that is further stretched through Section 26 to the confession made to any other person also if the confessor was then in Police custody. It has been explained that 'custody' need not necessarily be post-arrest custody. The word 'custody' used in Section 26 is to be understood in a pragmatic sense. If any accused is within the ken of surveillance of the Police during which his movements are restricted then it can be regarded as custodial surveillance for the purpose of the Section. If he makes any confession during that period to any person be he not a Police Officer, such confession would also be hedged within the banned contours

outlined in Section 26 of the Evidence Act. It also covers a confession when he was free and not in Police custody, as also a confession made before any investigation has begun. It has been held that the expression 'accused of any offence' covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. A formal accusation is not necessary to bring in the applicability of Section 25 and Section 26 of the Evidence Act. [Ref : *Aghnoo Nagesia vs. State of Bihar*, AIR 1966 SC 119; *State of Andhra Pradesh vs. Gangula Satya Murthy*, [1997] 1 SCC 272; and *Toofan Singh vs. State of Tamil Nadu*, [2021] 4 SCC 1].

29. Here, the confession was allegedly made by the accused in the Police Station on 04.10.2015, which was after registration of two General Diary Entries against him and after filing of the FIR [Ext.-3] by the informant – P.W.1 at 06-30 p.m. alleging that his mother was killed by his father, that is, the accused. The confession was allegedly made before the prosecution witnesses, P.W.1 & P.W.2, as they were also inside the Police Station at the point of time and there was presence of Police Officer in the form of the I.O. [P.W.9] and others. It is, thus, evident that the confession was made within the ken of surveillance of Police. Therefore, in view of the provisions of Section 25 and Section 26 of the Evidence Act, such confession of the accused made in presence of Police personnel inside the Police Station that he had killed the deceased with the *dao* is not admissible in law and the said circumstance cannot be used by the prosecution to bring home the charge of murder against the accused. P.W.9, that is, the I.O. himself being a Police Officer, his testimony on the point that the accused made a confession before him is also inadmissible.

30. The I.O. [P.W.9] also deposed that immediately after the accused appeared in the Police Station with the *dao*, the *dao* was seized in presence of witnesses vide Seizure List [Ext.-2] wherein he identified his signature as Ext.-2[1]. He further stated that he recorded the statement of the seizure witnesses, who were – P.W.1, P.W.2, P.W.3 and P.W.7. P.W.7, Ajit Pegu was a Constable posted at Namrup Police Station on the relevant day. The I.O. [P.W.9] further stated that he recorded the statement of the accused person on the same day when the accused was arrested. The prosecution witness, the informant – P.W.1 did not wholly support the evidence of I.O. [P.W.9] on the Seizure List [Ext.-2] as he had stated that when he put the signature on the paper, the paper was blank and he put his signature on Ext.-2, as asked by the Police personnel. P.W.2 stated, in his cross-examination, to the effect that he did not go through the contents of Seizure List [Ext.-2] at the time of putting his signature therein and he did not know why the Police personnel obtained his signature on Ext.-2. In similar manner, P.W.3 also deposed that he did not know the contents of Ext.-2. The prosecution witness, P.W.7 deposed that he put his signature in the Seizure List [Ext.-2] when Police seized the *dao* vide the Seizure List [Ext.-2] and he identified his signature therein as Ext.-2[4]. P.W.7 testified that the I.O. [P.W.9] seized the *dao* which the accused was carrying. Thus, on one hand, the prosecution witnesses – P.W.1, P.W.2 & P.W.3 – when cross-examined, had deviated from what they had stated in their evidence-in-chief subtly on the aspects of seizure of the *dao* and subscribing of their signatures in the Seizure List [Ext.-2]. Noticeably, no entry from the General Diary was exhibited in support of the seizure of the alleged weapon of assault, that is, the *dao*.

31. It is noticed that when the prosecution witnesses, P.W.1 & P.W.2 had

deviated from their previous statements and depositions made earlier made in the evidence-in-chief, in their cross-examination on the aspects of confession, seizure and preparation of the Seizure List [Ext.-2], the prosecution side did not choose to confront the said prosecution witnesses thereafter, on the aspects of seizure and preparation of the Seizure List [Ext.-2]. It was open for the prosecution even at or after the stage of cross-examination by the defence to confront these prosecution witnesses when, apparently, they seemed to have deviated in such manner.

32. In this connection, it is apt to refer to the following observations made by the Hon'ble Supreme Court of India in *Dahyabhai Chhaganbhai Thakkar vs. State of Gujarat*, reported in *AIR 1964 SC 1563*, :-

8. ... Section 137 of the Evidence Act gives only the three stages in the examination of a witness, namely, examination-in-chief, cross-examination and re-examination. This is a routine sequence in the examination of a witness. This has no relevance to the question when a party calling a witness can be permitted to put to him questions under Section 154 of the Evidence Act : that is governed by the provisions of Section 154 of the said Act, which confers a discretionary power on the court to permit a person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the

court to exercise the power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice. A clever witness in his examination in-chief faithfully conforms to what he stated earlier to the police or in the committing court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, permit the person calling him as a witness to put questions to him which might be put in cross-examination by the adverse party. To confine the operation of Section 154 of the Evidence Act to a particular stage in the examination of a witness is to read words in the section which are not there. We cannot also agree with the High Court that if a party calling a witness is permitted to put such questions to the witness after he has been cross-examined by the adverse party, the adverse party will not have any opportunity to further cross-examine the witness on the answers elicited by putting such questions. In such an event the court certainly, in exercise of its discretion, will permit the adverse party to cross-examine the witness on the answers elicited by such questions. The court, therefore, can permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any stage of the examination of the witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination-in-chief.

33. It is trite to say that the only purpose of cross-examination of a witness is not to discredit him. Another equally important purpose of cross-examination is to elicit admission of facts to help building the case of the cross-examiner. For example, when the prosecution with the leave of the court, confronts its witness with his previous statement, one of the purpose is to get the witness reverting back to what he had stated in his previous statement. If the departure of the witness from the previous statement is not deliberate, but due to failing memory or for any other reason, there is always the possibility that the said witness might revert back to his previous statement. If the witness admits about the manner in which he stated previously, his evidence would be more fully given and the truth more effectively extricated. In this connection, a reference can be made to the case title *Sat Paul vs. Delhi Administration*, [1976] 1 SCC 727. In the present case, when the prosecution witnesses, P.W.1 & P.W.2 were seen to have deviated deftly from their earlier stance made in the evidence-in-chief, during their cross-examination on the aspect of seizure and preparation of the Seizure List [Ext.-2] the prosecution could have confronted these prosecution witnesses by cross-examining them, albeit with the permission of the Court. However, the prosecution did not avail such opportunity.

34. The injuries, reported in the PME Report [Ext.-6], were, according the Autopsy Doctor [P.W.6], caused by a sharp cutting heavy weapon. In his cross-examination, he [P.W.6] stated that the alleged weapon of assault was not shown to him. He deposed to the effect that the death was instantaneous following the neck injury sustained by the deceased. The defence has raised an issue that the Report given by the Serologist vide Ext.-11, had reflected that the alleged weapon of assault [*meat dao*] was heavily rusted. In such situation, it

was necessary on the part of the prosecution to show the alleged weapon of assault to the Autopsy Doctor [P.W.6] to have his opinion whether the injuries found on the deadbody of the deceased, as reflected in the PME Report [Ext.-6], were possible to be caused by such kind of rusted *dao*.

34.1. The facts of the case in *Sudha Renukaiah and others vs. State of Andhra Pradesh*, reported in [2017] 13 SCC 81, placed by the learned Additional Public Prosecutor, were that the weapon was neither shown to the Autopsy Doctor nor in the cross-examination, his attention was invited towards the weapon. It was observed therein that mere fact that the weapon was not shown to the Autopsy Doctor was not of much consequence in the facts of the said case as there was clear medical evidence that the injuries could be caused by knife, axe and battle axe. The eye-witnesses therein – P.W.1, P.W.2, P.W.3 and P.W.5 – had clearly mentioned about the weapons used by the accused and the eye-witnesses accounts' were in accordance with the medical evidence. It was in such backdrop, it was held that non-showing of the weapons to the Autopsy doctor at the time of his deposition in the court was inconsequential and did not weaken the prosecution case.

34.2. Reverting back to the facts of the present case, it is noticed that the alleged weapon of assault, Mat. Ext.-1 was shown to the prosecution witnesses – P.W.1, P.W.2, P.W.3, P.W.7 & P.W.9 – when they were examined in the court, but Mat. Ext.-1 was not shown to the Autopsy Doctor when he was examined as P.W.6. The prosecution witnesses – P.W.1, P.W.2, P.W.3, P.W.7 & P.W.9 – were not eye-witnesses to the alleged incident of assault. The prosecution witnesses – P.W.1, P.W.2 & P.W.3 – had expressed doubt on the *dao* shown to them in the

manner, mentioned above. In view of the Report of the Serologist [P.W.10] given vide Ext.11 that the Mat. Ext.-1, *dao* was heavily rusted, it was necessary for the prosecution to show it to the Autopsy Doctor [P.W.6] to have his opinion whether the injuries sustained by the deceased were possible to be inflicted by Mat. Ext.-1, *dao*, or not.

34.3. In *Kartarey and others vs. the State of U.P.*, reported in [1976] 1 SCC 172, the weapon recovered from one of the accused was neither shown to the medical witness nor his opinion was invited as to whether any or all of the injuries on the deceased could be caused with that weapon. It was in such context, the Hon'ble Supreme Court of India emphasizing on the issue, has observed about the importance of eliciting the opinion of the medical witness, who had examined the injuries of the victim, more specifically on the point, for the proper administration of justice, particularly in a case where injuries found are forensically of the same species, and the problem before the court was whether all or any of those injuries could be caused with one or more kind of weapon. It has been held that it was the duty of the prosecution, and not less of the court, to see that the alleged weapon of the offence, if available, should be shown to the medical witness and his opinion invited as to whether that injury or any of the injuries on the victim could be caused with that weapon. It was further observed that failure to do so might, sometime, cause aberration in the course of the justice.

34.4. In the present case, the alleged weapon of assault, that is, Mat. Ext.-1, *dao* was not shown to the Autopsy Doctor [P.W.6] by the prosecution for the reason best known to them. The alleged weapon of assault, *dao*, was not

recovered from the P.O. or any other place as it was allegedly produced by the accused in the Police Station on the date of the incident itself. As the non-official seizure witnesses – P.W.1, P.W.2 & P.W.3 – did not unambiguously depose about the seizure the cause of the prosecution would have been better served if such alleged weapon of assault, *dao* was shown to the Autopsy Doctor [P.W.6] at the time of recording his evidence. Not showing the alleged weapon of assault, *dao* which was found to be heavily rusted at the time of its serological examination, can be considered to be a gap in the case of the prosecution based on circumstantial evidence.

35. The informant-P.W.1 testified to the effect that at the relevant point of time, he was not staying with his parents, that is, the accused and the deceased. It was his mother and his younger brother, Moina Urangia who used to stay in the same house with his father, that is, the accused. From the testimony of P.W.4, it has emerged that P.W.4 was the first person who saw the deadbody of Mrinali Urangia lying dead in the backside of the house compound [P.O.]. The said witness, P.W.4 had immediately informed about the same to Moina Urangia, the younger son of the deceased and the accused, and the younger brother of the informant-P.W.1. From the evidence of P.W.4, it has further emerged that Moina Urangia came immediately to the spot and identified the deadbody to be of his mother. P.W.4 stated that the deadbody came to notice when after a football match, he went to the house of Moina Urangia. P.W.5 deposed that it was Moina Urangia who informed her that his mother had been cut. From the testimonies of P.W.4 and P.W.5, it has also emerged that the younger son of the deceased, Moina Urangia was either in the P.O. or in the vicinity of the P.O. when the deadbody of the deceased, Mrinali

Urangia was found by P.W.4. It was Moina Urangia who used to stay in the same house with his parents, that is, the deceased and the accused. In such scenario, Moina Urangia was an important material witness to depose about the events which had occurred in the house of the accused and the deceased on the relevant day, preceding the discovery of the deadbody of his mother. Conspicuously, the prosecution did not examine Moina Urangia as a witness during the trial despite citing him as a witness in the list of witnesses in the Charge-Sheet [Ext.-12]. When the I.O. [P.W.9] was examined, he admitted that he had recorded the statement of Moina Urangia during the course of investigation. In the facts and circumstances obtaining in the case, we are of the considered view that Moina Urangia was one of the vital and material witness to depose about the occurrence as the deadbody of the deceased was found inside the house campus of the accused and the deceased wherein he also used to reside.

35.1. On the point of non-examination of a material witness by the prosecution, the following observations made in the case of *Takhaji Biraji vs. Thakore Kubersing Chamnsing and others*, reported in [2001] 6 SCC 145, appear to be of relevance :-

19. ... It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and

withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself – whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses.

35.2. We have found that the prosecution case is based on circumstantial evidence. None of the prosecution witnesses had deposed that prior to the deceased meeting her death, the deceased was in the company of the accused. The prosecution witness, P.W.4 had testified that it was in between 12-00 noon and 12-30 p.m. on 04.10.2015, he noticed the deadbody of the deceased lying in the backside of the house on the relevant day. Obviously, the deceased had met her death at an anterior point of time. As per the PME Report [Ext.-12] which was carried out at about 12-45 p.m. on 05.12.2015, the approximate time

of death was 24 hours-36 hours earlier. If such approximate time of death, as reflected in the PME Report [Ext.-12], is considered, the death of the deceased had occurred possibly in between the midnight of the day intervening 03.10.2015 and 04.10.2015 and prior to 12-00 noon/12-30 p.m. on 04.10.2015, when the deadbody was first seen by P.W.4.

35.3. It is settled that ordinarily, the circumstance of last seen together is considered as vital for finding an accused guilty of the offence with which he has been charged, if it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased would completely be ruled out. The time gap between the point of time when the accused and the deceased were last seen alive and the point of time when the deadbody of the deceased was found is a material consideration for appreciation of the evidence and to take it as a circumstance against the accused. It is not the case of the prosecution here that the accused Bishnu Urangia and his deceased wife, Mrinali Urangia were seen together at a specific point of time in between the midnight of the day intervening 03.10.2015 and 04.10.2015 and at any point prior to 12-00 noon/12-30 p.m. on 04.10.2015, when the deadbody of the deceased, Mrinali Urangia was first discovered. The prosecution has not brought anything on record to the effect that the accused was in his house in the night intervening 03.10.2015 and 04.10.2015. The prosecution has not also brought anything on record that Moina Urangia was not in the house during the period when his mother, Mrinali Urangia was possibly assaulted to death. From such standpoints, it clearly transpires that Moina Urangia was the most vital and

material witness for the prosecution to testify about any circumstance regarding last seen together and also on the aspect whether he, the accused and the deceased stayed in their house during the ill-fated night. Non-examination of the vital and material witness, Moina Urangia during the trial, despite recording of his statement by the I.O. [P.W.9] during the investigation and despite listing him as a prosecution witness in the Charge-Sheet [Ext.-12], had left a number of gaps in the prosecution case. Thus, there is no evidence on the point of last seen together.

36. It has been elicited from the Autopsy Doctor [P.W.6] by cross-examining him that there was possibility of screaming on the part of the deceased immediately after sustaining the injuries. It was further elicited that the victim might have tried to save her life. From the testimony of P.W.5, it has emerged that the households of Premeswar Urangia and Jiban Sonowal were in the immediate and adjacent vicinity of the P.O. But no person from the said two households was examined by the I.O. [P.W.9] during the investigation. As the victim might have possibly screamed at the time of murderous assault on her, the investigating authority would have been better positioned if it had investigated the fact from anyone from the said two households, which were in the near vicinity of the P.O.

37. We now turn to the testimony of P.W.8, Samuel Beg. He [P.W.8] told before the court that he was a tea garden employee and was a resident of Village – Hapjan under Namrup Police Station. In his testimony, P.W.8 deposed that he knew the accused and the deceased as they were neighbours but he did not know the informant-P.W.1, who is the son of the deceased and the accused.

P.W.8 deposed to the effect that at about 06-30 p.m. on the day of occurrence, he was returning from Joypur Police Station. He stated that while he was heading to Joypur Police Station, he received a phone call from Namrup Police Station informing him that the accused had killed his wife. P.W.8 further stated that while he was returning home, he met the accused with a *dao* in his hand. P.W.8 stated to have asked the accused where he [the accused] was proceeding. In reply, the accused told him [P.W.8] that he [the accused] was going to Namrup Police Station and asked P.W.8 to accompany him to Namrup Police Station. P.W.8 further stated that the accused had told him that he had killed his wife and for that reason, he wanted to go to the Police Station. It was then, P.W.8 taking the accused along with him, went to the Police Station. In his cross-examination, he had stated that the distance between Namrup Police Station and Joypur Police Station was about 10 kilometres. He had admitted that he did not state before the Police that while he was proceeding towards Joypur Police Station, he got a phone call from Namrup Police Station that the accused killed his wife. Thus, his [P.W.8] testimony as regards receipt of a phone call from Namrup Police Station was clearly an embellishment from his previous statement, if any. He further admitted that he did not state to Police that while returning, he met the accused on the way and the accused asked him to accompany to Namrup Police Station and hence, this part of his evidence-in-chief was an embellishment from his previous statement, if any. He has, however, denied a suggestion that he did not meet the accused carrying a *dao* and the accused did not ask to accompany him to Namrup Police Station. P.W.8 further stated that Police did not record his statement, thereby, making his whole testimony as a doubtful one. It has not emerged with clarity as to how P.W.8, an inhabitant of Village – Hapjan could be neighbours of the accused and

the deceased, who are inhabitants of another Village – Abhoypur. In the absence of any convincing material, the alleged extra-judicial confession, which is otherwise, a very weak piece of evidence, allegedly made by the accused to P.W.8, does not inspire any kind of confidence for acceptance.

38. It has not been explained by the prosecution as to why a phone call would have been made from Namrup Police Station to the witness, P.W.8 who was neither a member of a Police force nor even a member of the VDP, to inform him that the accused had killed his wife. The version of P.W.8 was that he took the accused who was allegedly wielding a *dao* in his hand, to the Police Station. P.W.7, Ajit Pegu was posted as a Constable at Namrup Police station on the relevant day. In his testimony, P.W.7 stated that at around 07-00 p.m., the accused person accompanied by a VDP person of Udaypur village came to the Police Station on a bike and the VDP person told him that the person who was with him, had killed his wife. P.W.7 further testified that he saw the accused person carrying a *dao* in his hand. When the testimony P.W.7 and P.W.8 are read together, it has not emerged clearly that it was P.W.8 who had accompanied the accused, who was allegedly wielding a *dao*, to the Police Station as P.W.7 did not disclose the name of the VDP person and P.W.8 did not disclose himself to be a VDP person.

39. The case led by the prosecution through the witnesses is for the purpose of casting the culpability on the accused by a chain of circumstances, but without the last seen together alive theory. The prosecution has not been able to bring anything on record even to suggest that the deceased was lastly seen alive with the accused. The last seen theory is applicable in a crime based on

circumstantial evidence when the crime was committed secretly and in absence of witnesses. It is a settled proposition that when the time gap between the last seen and time of occurrence is long, it is unsafe to base conviction solely on the last seen theory and in such circumstance, it is always safe to look for corroboration from other circumstances and evidence adduced by the prosecution. As the case in hand is not the one of last seen together theory with the other circumstantial evidence, the question of shifting the onus on the accused to explain how the incident occurred and what had happened to the victim who was not seen with him lastly, is not applicable. In a case based on circumstantial evidence together with the last seen theory, failure on the part of the accused to furnish explanation in this regard or furnishing false explanation gives rise to a strong presumption of guilt against him if the time-gap is less and it could provide an additional link in the chain of circumstances. It is also settled that in the absence of proof of any circumstances, the only circumstance of last seen theory together and absence of satisfactory explanation cannot be made basis of conviction. When the prosecution does not put forward the last seen theory, non-explanation on the part of the appellant by itself cannot be the basis of proof of guilty against the appellant. The failure on the part of the accused to offer any explanation in his statement under Section 313, CrPC alone is not sufficient to establish the guilt against the accused. It has been held in *State of Goa vs. Sanjay Thakran and another*, reported in [2007] 3 SCC 755, that in absence of any evidence on the point of last seen together the accused person not giving any explanation in the examination under Section 313, CrPC could not be taken be a circumstance pointing towards irresistible conclusion that he is involved in the commission of the crime. Here, when his explanation was asked for during cross-examination under Section 313, CrPC, the accused

stated that he did not know about his wife's death as he was taking care of the cattle on the date of the incident. He stated that as soon as he heard about the incident, he immediately went to the Police Station along with the *dao*.

40. The deposition of the informant-P.W.1 who did not stay together with the accused, the deceased and Moina Urangia, on the point that the accused was not favourably disposed towards the deceased and Moina Urangia cannot be taken into consideration as it is of hearsay nature and Moina Urangia would have been the best person to depose on such aspect. It is settled that in a case of direct evidence, proving the motive for the crime is not relevant. But, in a case of circumstantial evidence, motive is one of the links to complete the chain of circumstance. With the above scanty material, the prosecution had failed to prove the motive on the part of the accused for committing the alleged crime of *uxoricide*.

41. It is a settled proposition that in a case based on circumstantial evidence, the obligation is cast on the prosecution to prove each of the circumstances, beyond reasonable doubt, as well as the links between all the circumstances. It must be possible to reach a view that the circumstances, taken together, have formed a complete chain wherefrom it can be concluded that in all probability, the alleged crime was committed by none other than the accused. The facts proved should be such that they should unerringly point towards the guilt of the accused. In order to return a finding of conviction, the circumstantial evidence must be complete and inescapable of explanation from any other hypothesis than that of the guilt of the accused and the circumstantial evidence should not only be consistent with the guilt of the accused but should also be inconsistent

with the innocence of the accused. The law regarding a case of circumstantial evidence has been elucidated in the case of *Sharad Birdhichand Sarda vs. State of Maharashtra*, reported in [1984] 4 SCC 116, in the following manner :-

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

[1] the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] where the observations were made : [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

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

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

[4] they should exclude every possible hypothesis except the one

to be proved, and

[5] there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

42. It is true that the blood group found on the seized *dao* matched with the blood group found in the sample taken out of the body of the deceased at the time of post-mortem examination for serological test as the serological test gave positive result for human blood of a particular group. But, the same could only be taken as a link in the chain of circumstances. Even if it is accepted that the accused had appeared in the Police Station with a blood stained *dao*, the same is also not such a circumstance which can be treated as a proof of the fact that it was he and he only, who had killed the deceased. On appreciation of the evidence/materials on record in its entirety and for the reasons mentioned above, we are of the considered view that the chain of circumstances is not found to be complete to establish the hypothesis of guilt that it was, in all probability, the accused who had committed the crime, as the prosecution had left too many gaps in the chain of circumstances resulting in breaks at too many points. In the absence of cogent, reliable and concrete evidence to link all the circumstances, it is unsafe to return a finding of guilt against the accused.

43. In the above fact situation obtaining in the case, we are of the considered view that the evidence/materials on record was not sufficient enough to hold

that it was none but the accused-appellant who had killed the deceased. In such situation, we are of the considered view that the accused-appellant ought to have been accorded, at least, the benefit of doubt. As a result, we are of the considered view that the impugned judgment and order of conviction and sentence passed against the accused-appellant is not sustainable in law. Consequently, the appeal is required to be allowed. It is accordingly ordered by setting aside the conviction and sentence passed against the accused-appellant.

44. The accused-appellant is to be released forthwith from custody, if his detention is not required in connection with any other case.

45. Before parting with the record, we wish to place our appreciation on record as regards the services rendered by Mr. Tewari, 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. The records of the trial court are to be sent back forthwith.

JUDGE

JUDGE

Comparing Assistant