

GAHC010165592018



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

Case No. : Crl.A./182/2020

SMTI SABITRI DEHINGIA
D/O- LATE LAL CH. DEHINGIA,
R/O- BORPATHAR RANGI GAON, P.S.- BARBARUAH, DISTRICT-
BARBARUAH, DIBRUGARH, ASSAM.

VERSUS

STATE OF ASSAM AND ANR
REPRESENTED BY PP, ASSAM.

2. SMTI. DEPANJOLI DEHINGIA
W/O- LT. HITENDRA DEHINGIA
R/O- RANGI GAON
P.S.- BARBARUAH
DIBRUGARH
ASSAM. PIN- 786004

Advocate for the Petitioner : Mr. P. Bora, Senior Counsel,
Ms. K. Sarma.

Advocate for the Respondent : PP, ASSAM,
Mr. D. Talukdar, Amicus Curiae (R-2).

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

JUDGMENT & ORDER (CAV)

20.08.2024

[Robin Phukan, J.]

Heard Mr. P. Bora, learned Senior Counsel, assisted by Ms. K. Sarma, learned counsel for the appellant; Ms. A. Begum, learned Additional Public Prosecutor for the respondent No. 1, State of Assam; and Mr. D. Talukdar, learned Amicus Curiae for the respondent No. 2.

2. This appeal, under the proviso of Section 372 of the Code of Criminal Procedure ('Cr.P.C.', for short) is preferred by Smti Sabitri Dehingia, the informant, against the Judgment and Order dated 22.05.2018, passed by the learned Additional Sessions Judge, Dibrugarh ('trial court', for short) in Sessions Case No. 288/2013, under Section 302 of the Indian Penal Code ('IPC', for short). It is to be noted here that vide Judgment and Order dated 22.05.2018, the learned trial court had acquitted the accused/respondent No. 2, Smti. Depanjoli Dehingia of the charge under Section 302 of the IPC.

3. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

“The deceased, Hitendra Dehingia was an inhabitant of Rangi Gaon, under Barbaruah Police Station ('P.S.', for short) and the accused/respondent No. 2, Smti. Depanjoli Dehingia was his wife. She was torturing the deceased for 2 years, both physically and mentally, before his death and in addition, she also subjected the elder sister and younger sister of the deceased, namely, Sabitri Dehingia and Moina Dehingia to physical and mental torture. On 22.08.2012, a complaint was lodged with the Women Cell, Dibrugarh Sadar Police Station to that effect and on 24.08.2012, deceased-Hitendra Dehingia had filed a divorce case also for the torture being meted out to him by his wife, accused/respondent No. 2. Thereafter, on 25.08.2012, at about 07:30 a.m., following a quarrel, the accused/respondent No. Depanjoli Dehingia pulled out the plug connection of the inverter of their house and thrown it to her husband and thereby, she

caused his death by electrocution and her mother, Laboinya Khanikar is also involved in the same.

Stating above *inter-alia* amongst others, Smti. Sabitri Dehingia, the elder sister of the deceased (appellant herein) lodged one FIR with the Officer In-Charge ('O.C.', for short), Barbaruah P.S. on 25.08.2012. Upon the said FIR, the O.C., Barbaruah P.S. had registered a case, being Barbaruah P.S. Case No. 103/2012, under Section 302 of the IPC and endorsed Sub-Inspector ('S.I.', for short), Sri Sanjeeb Kumar Roy to investigate the same. Then the Investigating Officer ('I.O.', for short) visited the place of occurrence, examined the witnesses and prepared the sketch map (Ext.-6) and held inquest report on the dead body of the deceased by Executive Magistrate and collected the report (Ext.-4) and thereafter, sent the dead body for post-mortem examination and thereafter, collected the post-mortem report (Ext.-5). He also seized one inverter with connected switch board, Mat.Ext.-1 and Mat.Ext.-2 respectively preparing seizure list, Ext-3. Then on completion of the investigation, he laid charge sheet (Ext.-7) against the accused/respondent No. 2 to stand trial under Section 302 of the IPC, before the court of learned Chief Judicial Magistrate, Dibrugarh. Then the learned Chief Judicial Magistrate, Dibrugarh complied with the provision of Section 207 of the Cr.P.C. and being the offence under Section 302 of the IPC exclusively triable by the court of Sessions, committed the case to the court of learned Sessions Judge, Dibrugarh ('trial court', for short) and directed the accused/respondent No. 2 to appear before learned trial court.

On appearance of the accused/respondent No. 2 before the court of learned trial court, the learned trial court after hearing both the parties, had framed charge against the accused/respondent No. 2, under Section 302 of the IPC and on being read over and explained over the charge to the accused/respondent No. 2, she pleaded not guilty and claimed to be tried.

Thereafter, the prosecution side had examined as many as 8 witnesses and also exhibited as many as 7 documents and two materials, the inverter and switch board and after closing of the prosecution evidence, the learned trial court had examined the accused/respondent No. 2 under Section 313 of the Cr.P.C. The accused/respondent No. 2 also examined herself as D.W.1. Thereafter, the learned trial court, after hearing the arguments of both the parties, found that the prosecution side has failed to prove the charge against the accused/respondent No. 2 beyond all reasonable doubt and consequently, acquitted her of the same."

4. Being highly aggrieved and dissatisfied with the aforesaid judgment and order of acquittal, the appellant/informant has preferred this present appeal and contended to allow the appeal, by setting aside the impugned judgment and order of acquittal, on the following grounds :-

- (i) That, the learned trial court erred in law as well as in facts in acquitting the accused/respondent No. 2 on extraneous grounds;
- (ii) That, the learned trial court had most arbitrarily acquitted the accused/respondent No. 2 of the charge under Section 302 of the IPC, by misconstruing and misinterpreting the evidence of the prosecution witnesses and the relevant documents on record;
- (iii) That, the judgment and order of acquittal, so passed by the learned trial court, is perverse as it was based on wrong appreciation of evidence;
- (iv) That, the learned trial court had erred in law as well as in facts by holding in the judgment and order dated 22.05.2018, that from the evidence of the appellant it appears that at the time of the incident there was none, inasmuch as the appellant in her evidence clearly stated that she was present at the time of the incident and the said

evidence could not be rebutted in cross-examination also;

(v) That, even though the learned trial court made a specific observation in the judgment and order dated 22.05.2018 that the evidence of P.W.3, P.W.4, P.W.5 and P.W.6 reveals that they were present at the time of the occurrence, the learned trial court had erred in law and facts by failing to consider the above evidences and also, failed to assign any reason, whatsoever, for not considering the evidence of P.W.3, P.W.4, P.W.5 and P.W.6;

(vi) That, the learned trial court had erred in law and facts in failing to consider the evidence of P.W.6 merely on the ground that P.W.3 and P.W.4 did not mention about his presence at the time of occurrence;

(vii) That, without any reasonable basis and without stating any reason(s) whatsoever, the learned trial court had erred in law and facts by holding in the judgment and order dated 22.05.2018, to the effect that "it also appears from the evidence of the witnesses that the witnesses made improvements at the time of deposing before the court during trial";

(viii) That, the learned trial court, in the judgment and order dated 22.05.2018, had erred in law and facts by holding that since there was no injury sustained by the deceased in his stomach, as revealed in the post mortem report, the accused/respondent No. 2 cannot be held guilty for the offence, by completely ignoring the fact that the evidence of P.W.-1 reveals that at the time of occurrence, the accused/respondent No. 2 was quarrelling with the deceased and the appellant and that the cause of death, as revealed in the post mortem report, of the deceased, is electrocution;

(ix) That, the statement of P.W.1 before the Court is the same as the

statement made by her under Section 164 of the Cr.P.C. wherein she clearly stated that the deceased was subject to cruelty by the accused/respondent No. 2 and this piece of evidence was, however, not shaken in her cross-examination also, but, the learned trial court had completely overlooked the statement made under Section 164 of the Cr.P.C.;

(x) That, the learned trial court, in the judgment and order dated 22.05.2018, had erred in law and facts inasmuch as the learned trial court had failed to take into consideration the post mortem report which clearly reveals that death of the deceased is due to syncope as result of Ventricular fibrillation consequent to ante mortem electrocution and as such the impugned judgment is liable to be interfered with;

(xi) That, the learned trial court while passing the impugned judgment and order had failed to consider the petition filed the appellant against the accused/respondent No. 2 under the provisions of Protection of Women from Domestic Violence Act, 2005, being registered as Case No. 355C of 2011, before the Chief Judicial Magistrate, Dibrugarh. As stated earlier, the said petition was filed as the appellant, her sister Smti. Moina Dehingia and the deceased and the appellant and her sister were victims of physical and mental torture caused to them by the accused/respondent No. 2, which indicates violent behavior of the accused/respondent No. 2, towards the appellant, the deceased brother and her family members, being a material aspect and a vital piece of evidence, which the learned trial court had failed to consider;

(xii) That, the learned trial court, while passing the impugned judgment failed to consider the Domestic Incident Report dated

11.04.2012, issued by the District Social Welfare Officer and the Protection Officer, Dibrugarh, wherein the incidents of Domestic Violence caused by accused/respondent No. 2 upon the appellant and her family members and the threatening and violent behavior of the accused/respondent No. 2 are vital piece of evidence so as to consider the motive, intention conduct and preparation of the accused/respondent No. 2 under Section 8 of the Evidence Act, but the learned trial court had failed to consider the same;

(xiii) That, the learned trial court while passing the impugned judgment and order without considering the material aspect, ignored the evidence adduced by the witness and acquitted the accused/respondent No. 2 on non-substantial ground; and

(xiv) That, the learned trial court had ignored the material facts and evidence on records and came to a perverse finding, by holding that the accused/respondent No. 2 cannot be booked for offence under Section 302 of the IPC.

5. Mr. Bora, learned Senior Counsel, appearing for the appellant submits that the learned trial court had committed grave error in disbelieving the clear and cogent evidence adduced by the prosecution witnesses. Referring to the evidence of P.W.1; P.W.2; P.W.3; P.W.4; P.W.5; and P.W.6, Mr. Bora submits that all of them are the eye witnesses to the occurrence and they had supported the prosecution version. Mr. Bora referring to the Para No. 12 of the impugned judgment and order; submits that the learned trial court had heavily relied upon the evidence of the Doctor (P.W.7), who found injury over the left middle finger in the ventral aspects. Mr. Bora also submits that the prosecution witnesses had stated that they have seen throwing of the plug of the inverter by the accused/respondent No. 2 to the deceased, which hit the stomach of the deceased and when he caught hold of the same by his hand, he got

electrocuted and as such, sustaining injury over his finger is most natural and cannot be disbelieved. Mr. Bora further submits that though the learned trial court had observed that there is contradiction in the version of the witnesses, yet, in fact, those are not contradiction and all the witnesses are corroborating each other and the medical evidence also corroborated the same and their testimonies could not be shaken in the cross-examination by the accused/respondent No. 2. Mr. Bora, referring to the evidence of the accused/respondent No. 2, who examined herself as D.W.1, submits that the same is not at all believable. Mr. Bora also submits that the relationship between the deceased and the accused/respondent No. 2 was not cordial and that the deceased had filed one divorce case against the accused/respondent No. 2 for being harassed by her. Mr. Bora also submits that the learned trial court had failed to appreciate the evidence in its proper perspective and thereby, caused miscarriage of justice and therefore, Mr. Bora contended to allow the appeal by setting aside the judgment and order of acquittal, so passed by the learned trial court and to convict the accused/respondent No. 2 and sentence her adequately.

6. Per contra Mr. Talukdar, learned Amicus Curiae for the respondent No. 2 has supported the impugned judgment and order of acquittal, so passed by the learned trial court and submits that here in this case double presumption is available in favour of the accused/respondent No. 2, as the principle of innocence is available to her being an accused/respondent No. 2 in the case, being Sessions Case No. 288/2013 and after her acquittal of the charge under Section 302 of the IPC, the presumption becomes double and unless perversity is shown in the impugned judgment and order, the same cannot be interfered with. Mr. Talukdar further submits that the relation between the P.W.1 and P.W.2 with the accused/respondent No. 2 was not cordial and that they are the elder sister and younger sister of the deceased and that they had deposed inimically towards the accused/respondent No. 2. Mr. Talukdar also submits that the other prosecution witnesses also made improvement in their version from stage to stage and the I.O. has also confirmed the same that the P.W.1, P.W.2, P.W.3

and P.W.4 have not stated to him what they stated before the learned trial court and as such, the learned trial court had rightly arrived at a just finding and unless there is compelling reason to reverse the judgment and order of acquittal, no interference would be warranted and therefore, it is contended to dismiss the appeal and to affirm the judgment and order of acquittal, so passed by the learned trial court.

6.1. Mr. Talukdar, learned Amicus Curie for the respondent No. 2, to strengthened his submission, has referred a decision of Hon'ble Supreme Court in the case of **Kalamani Tex and Another vs. P. Balasubramanian**, reported in **(2021) 5 SCC 283**.

7. Whereas, Ms. Begum, learned Additional Public Prosecutor has supported the prosecution case and submits that the prosecution side has succeeded in bringing home the charge under Section 302 of the IPC against the accused/respondent No. 2 and therefore, it is contended to set aside the judgment and order of acquittal, so passed by the learned trial court and to convict the accused/respondent No. 2.

8. Having heard the submission of learned counsel for both the parties, we have carefully gone through the petition as well as the documents placed on record and the impugned judgment and order and also perused the record of the learned trial court.

9. Notably, this appeal is preferred against the judgment and order of acquittal, so passed by the learned trial court. Before delving a discussion into the merit of the appeal, as well as submission of learned counsel for both the parties, we deemed it appropriate to understand the governing principles, presently occupying the field, in respect of approaching/dealing with the appeal against acquittal.

10. The principle of governing appeal against acquittal has succinctly been dealt with by Hon'ble Supreme Court in the case of **Chandrappa vs. State of Karnataka**, reported in **(2007) 4 SCC 415**. In the said case the Hon'ble Supreme Court has held as under:-

“42. From the above decisions, in our considered view, the

following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

- (1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- (3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
- (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
- (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate

court should not disturb the finding of acquittal recorded by the trial court.”

11. Again, in a recent case of **Mallappa & Ors. vs. State of Karnataka**, in Criminal Appeal No. 1162 of 2011, Hon'ble Supreme Court has held as under:-

“36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact

in the decision of the Trial Court.”

12. Thus, the proposition of law, governing appeal against acquittal, which emerges from the aforesaid two decisions of Hon’ble Supreme Court can be crystallized as under – “An appellate court has unrestricted power to review, re-appreciate and reconsider the evidence, based on which the order of acquittal is passed and to come to its own conclusion. The presumption of innocence in favour of the accused/respondent No. 2, in case of acquittal, becomes double; firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law and secondly, the accused/respondent No. 2 having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court and in case, two reasonable conclusions are possible, on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. The appellate court must specifically address all the reasons given by the trial court for acquittal and must cover all the facts and in case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial court.”

13. Having informed ourselves, about the legal proposition presently holding the field, now, we will proceed to discuss the evidence on the record and thereafter, to adjudge the submissions so advanced by the learned counsel for both the parties.

14. It appears that the prosecution side had examined the informant, the elder sister of the deceased, Smti. Sabitri Dehingia as P.W.1 and another alleged eye witness of the incident, the younger sister of the deceased, Smti. Moni Dehingia as P.W.2. The prosecution side had also examined some neighbours of the deceased, Sri Debananda Konwar as P.W.3; Sri Sadananda Dehingia as P.W.4; Sri Dipankar Dehingia as P.W.5; and Sri Paran Jyoti Dehingia as P.W.6. The prosecution side had also examined the Doctor who had conducted the post-mortem examination on the dead

body of the deceased, Dr. Subhajyoti Deka, as P.W.7 and the I.O. of the case, who had carried out the investigation and submitted charge sheet (Ext.-7), Sri Sanjit Kumar Roy as P.W.8. Further, it appears that the accused/respondent No. 2, Smti. Depanjoli Dehingia also examined herself as D.W.1.

15. It also appears that the prosecution side had exhibited the ejahar as Ext.-1; the statement of the informant, Smti. Sabitri Dehingia recorded under Section 164 of the Cr.P.C. as Ext.-2; the seizure list, vide which the I.O. had seized the inverter along with the switch board as Ext.-3; the inquest report held on the dead body of the deceased by the Executive Magistrate as Ext.-4; the post-mortem examination report, submitted by the Doctor as Ext.-5; the sketch map of the place of occurrence prepared by the I.O. as Ext.-6; the charge sheet submitted by the I.O. as Ext.-7; and the G.D. Entry as Ext.-5 (SIC). It also appears that the D.W.1 has exhibited one order, so passed in Probate Case No. 82/2013, as Ext.-A.

16. The evidence of P.W.1 to P.W.6 and also the P.W.8 (I.O.) reveals that the occurrence took place in the house of the deceased, Hitendra Dehingia, on 25.08.2012. The evidences of P.W.1, P.W.2 & P.W.6 also reveal that the occurrence took place in the morning at about 07:00 am. Whereas; D.W.1 stated that the occurrence took place in the morning at about 07:30 a.m. in her house. The evidence of P.W.4 also reveals that the occurrence took place in the morning at about 07:00/07:30 a.m. However, P.W.5 had not testified about the time of the incident.

17. The evidence of P.W.8, the I.O. of the case also reveals that the occurrence took place on 25.08.2012, and on that day, the O.C., Barbaruah P.S. had received one telephonic information, about the death of Hitendra Dehingia by electric shock and in that connection Barbaruah P.S. G.D. Entry No. 583, dated 25.08.2012, has been recorded and the said G.D. Entry is exhibited as Ext.-5 (SIC). The G.D. Entry indicates that the information about the death of Hitendra Dehingia by electric shock was received at the P.S. in the morning at about 08:10 a.m. and on receipt of the same the

O.C., Barbaruah P.S. had endorsed P.W.8 to go to the place of occurrence, after recording the G.D. Entry, Ext.-5 (SIC).

18. Thus, it appears from the evidence of the prosecution witnesses and also from the Ext.-5 that the occurrence took place in the house of the deceased on 25.08.2012, in the morning at about 07:00/07:30 a.m. The accused/respondent No. 2 had not disputed the date, time and place of occurrence.

19. It is also not in dispute that in his own house, on 25.08.2012, at about 07:00/07:30 a.m., the deceased, Hitendra Dehingia had died on account of electric shock received by him in his house. Now, it is to be seen whether the death of Hitendra Dehingia was suicidal, accidental or homicidal in nature.

20. In this regard the evidence of the Doctor (P.W.7) is relevant. His evidence reveals that he had conducted the Autopsy on the dead body of the deceased on 25.08.2012, at about 01:00 p.m., though the dead body was arrived at Assam Medical College and Hospital ('AMCH', for short), Dibrugarh at about 12:30 p.m. His findings recorded in the post-mortem examination report are as follows :-

“External appearance :-

One average male dead body wearing one underwear, long pant, ganjee, shirt, body warm on touch, eyes closed, mouth closed. Rigor mortis present all over the body. Post-mortem staining faintly present on the back except on the pressure areas.

Injuries :-

Electric entry wound of 1.5 cm X .8 cm over the left middle finger in the ventral aspects, mid one third of the finger and vertically placed, base pale ridges in the surrounding are hard, flattening of skin detected. No ligature marks detected. On dissection neck tissues found healthy.

On examination of Cranium and Spinal Canal.

Scalp Congested. Skull and Vertebrae are healthy. Membrane and brain are congested, petechial hemorrhages are present. Spinal cord not detected. On examination of the Thorax - Walls, ribs, cartilages are healthy. Pleurae, Larynx and Trachea are congested. Both the lungs are congested. Petechial hemorrhages present.

Pericardium and Heart congested; blabby, petechial hemorrhages present, liquid and clotted blood present in all the chambers. Heart is enlarged and weighted around 450 grams. Vessels are healthy.

On examination of the Abdomen - Walls are healthy, Peritoneum, mouth, pharynx and esophagus Congested. Stomach is healthy and empty. Small intestine healthy, filled with digested food materials and gases. Large Intestine - Healthy, filled with fecal materials and gases.

Liver is congested. Spleen is healthy. Kidney congested. Bladder is empty. Organs of generations external and internal are healthy. Prostate is healthy.

Opinion :-

Upon the aforementioned finding, P.W.7 opined that the death is due to syncope as a result of ventricular fibrillation consequent to ante mortem electrocution. Time is since death 4 - 6 hours from the post-mortem examination. He confirmed Ext.-5, the Post mortem report

and his signature thereon. He also confirmed Ext.-4, the Inquest Report.”

21. A careful perusal of the inquest report, (Ext.-4) of the dead body of the deceased, so prepared by the Ankur Bharali, Executive Magistrate, especially the Clause No. 12, indicates that during the investigation, the witnesses informed that on 25.08.2012, the deceased got electrocuted at his home. But, no mark of injury on the person of the deceased, except stiffness of the limbs/body, could be detected.

22. Notably, the G.D. Entry, Ext.-5 (SIC) No. 578, dated 25.08.2012, also reveals that at about 08:10 a.m., the O.C. of Barbaruah P.S. got information over phone that one Hitendra Dehingia of Rangi Gaon got electrocuted in his house and suffered demise and endorsed S.I. Sanjeeb Kumar Roy to investigate the case by visiting the place of occurrence.

23. Thus the post-mortem examination report, (Ex.-5) and the evidence of P.W.7 reveals that the death was due to syncope as a result of ventricular fibrillation consequent to ante mortem electrocution and time since death approximately 4 – 6 hours since the time from examination. It is to be noted here that the cause of death of the deceased is not disputed by the accused/respondent No. 2.

24. Thus, from the inquest report, G.D. Entry and post-mortem examination report, it could not be ascertained as to whether the death of the deceased, Hitendra Dehingia was accidental, suicidal or homicidal in nature. Therefore, we have to go to the evidence adduced by the prosecution witnesses to arrive at a finding in this regard. However, it has been established beyond all reasonable doubt that he suffered demise due to electrocution on 25.08.2012, at about 7:00/7:30 a.m. in his house.

25. P.W.1, Smti Sabitri Dehingia is the informant and the elder sister of the deceased. Her evidence reveals that on 25.08.2012, in the morning, she was standing in a room of their house and there was a table in that room and near the table, there

was an inverter. At that time her brother, Hitendra Dehingia opened the drawer of the table and brought out one box of tobacco and at that time, the accused came from another room and removed the connection of inverter and electrocuted him with the live wire and he fell down on the floor and after sometime he suffered demise. Her evidence also reveals that at that time, the accused had shouted whether the deceased had died or not and she then made hue and cry. Her evidence also reveals that the accused also threatened to kill her and thereafter, she locked herself in a room. Then on being raised hue and cry, the neighboring people gathered in her house and informed the police about the incident and after sometime police came to the place of occurrence and took the dead body of the deceased at first to the Babaruah P.S. and thereafter, to the AMCH for post-mortem examination. Her evidence also reveals that she and her unmarried sister, Moina Dehingia resided in the same house of the deceased and the accused always threatened to drive them out from their house and demanded them their rented property and the accused always keep a small knife with her and usually inflict them with the same and she did not allow them to cook food and she used to pour water on their bed. Her evidence also reveals that prior to the incident, the accused physically and mentally assaulted the deceased and when he returns from his duty, the accused threw his bag and the accused also used to cut his bike and that she usually threatened them that her brother is a police officer and no action can be taken against her.

25.1. Cross-examination of P.W.1 reveals that at the time of the incident she and her sister Moina Dehingia used to reside in the house of the deceased and there was also a minor daughter, aged 4 years, of the accused and one domestic servant, namely Asal Panika, aged 10 years were in the house. It is further elicited that prior to the occurrence, the accused used to quarrel with her and her sister. It is also elicited that the inverter was not in the room of the deceased and the accused, but it was in another room. She denied the suggestion of the accused that at the time of the occurrence she was not present in the room where the inverter was installed. It is also

stated that she had not stated before the police that "you being a Nurse kindly see what happened to my brother". She denied that the relationship between the accused and the deceased was cordial and she along with her sister were jealous of it and tried to separate them. It is also elicited that she filed a Probate Case for getting the property of her deceased brother and they have not made the accused as party in the said case.

26. P.W.2, Smti Moni Dehingia is the sister of P.W.1. Her evidence reveals that her house is adjacent to the house of the deceased and on 25.08.2012, at about 7:00 a.m. she went to the house of the deceased to bring some tea powder and then she had seen the accused holding something in her hand and touched the same with the body of the deceased and thereafter, the deceased fell down on the floor. At that time Sabitri Dehingia was also present and she along with Sabitri Dehingia lift the deceased to the bed and saw whether the deceased died or not and found that he could not take breath. Then the accused left the place of occurrence and entered into the bed room. When she shouted her, she came out with a tea cup in her hand pretending as if she does not know anything about the occurrence. Then, they raised hue and cry and then many villagers came and the village people informed the police and thereafter, police came and took the dead body to the P.S. and after that, to the AMCH. Her evidence also reveals that prior to the incident, about 2 years back, the accused usually pickup quarrel with the deceased and used obscene words and she had demanded all property of the deceased.

26.1. Cross-examination of P.W.2 reveals that she stated before the police that after hearing hue and cry from the house of Hitendra Dehingia, she went to his house and found him lying on the floor and the accused was standing nearby the deceased and the accused shouted to take the deceased to medical hospital. It is also elicited that she did not state before police that the accused used to pickup quarrel with the deceased and they tried to settle the same amicably, but, the accused demanded property and abstain from resolving the issue. She, however, denied the suggestion

that prior to his death Hintendra Dehingia, was leading a very peaceful life with his wife, the accused.

27. P.W.3, Debananda Konwar is the neighbor of the deceased. His evidence reveals that he always went for morning walk and it was his habit to visit the house of the deceased as Uma Kanta Dehingia, the elder brother of the deceased is his close friend. His evidence also reveals that though the deceased and the accused was husband and wife, they used to live separately in the same house and there was an inverter on the left side the deceased's room and on the day of occurrence, when he entered the deceased's house, the deceased was preparing tobacco and at that time one Sadananda Dehingia was also present with him and the deceased was talking with them casually and then, the accused called the deceased to see the inverter which was out of order. His evidence also reveals that when the deceased went to see the inverter and then, the accused pulled out the plug and touched the same on the stomach of the deceased and electrocuted him with the live wire and thereafter, the accused left the room and locked her in her bed room. Thereafter, they raised a hue and cry and neighboring people gathered there and then the accused shouted that "Nai Mora Nai Mora" and instructed them to take him to the Hospital for treatment. His evidence also reveals that the accused also threatened Sabitri Dehingia that next time, she would kill her. Then someone had informed the police and police came there and seized the inverter and the switch board vide seizure list Ext.-3 and Mat.Ext.-1 and Mat.Ext.-2, are the inverter and the plug respectively and took his signature as witness over the same.

27.1. Cross-examination of P.W.3 reveals that there was a Maruti car in the house of the deceased and he denied that after the death of the deceased he used to drive the car. He denied having not stated before the police that he had visited the house of the deceased and at that time the deceased was preparing tobacco and the accused called the deceased to see the inverter which was out of order and then suddenly the accused un-plugged the wire of the inverter and touched the same in the stomach of

the deceased and electrocuted him.

28. P.W.4 is Sadananda Dehingia and he also dittoed the same facts like P.W.3. His evidence reveals that on 25.08.2012, at about 7:00/7:30 a.m. he was standing on the road near the culvert. Then Debananda Konwar came from morning walk and stayed for some minutes with them. The deceased also went with him in that morning for pasturing cattle and standing with him on the road. Then on being invited to have morning tea he along with Debananda Konwar went to the house of the deceased. After sometime Dipankar Dehingia also came to the house of the deceased. At first they were in the drawing room. The next room was a bed room and one inverter was there and then, they went to that room. The deceased then opened the drawer and took out some tobacco. Then, suddenly the accused came from her bed room which was situated adjacent to the bed room being used as guest room and removed the plug of the inverter from the switch board and touched it on the stomach of the deceased. Then the deceased shouted and fell down on the floor. Then, they lifted him to the bed and after sometime, he died. Then, they made hue and cry and then, nearby people arrived at there. On being informed, police also came there and seized the inverter along with the switch board vide seizure list Ext.-3 and he signed as witness over the same. He confirmed the Mat.Ext.-1 and Mat.Ext.-2, the inverter and the switch board, respectively.

28.1. Cross-examination of P.W.4 reveals that he came to the court along with Sabitri Dehingia (P.W.1), but he denied the suggestion that he adduced evidence on being tutored by Sabitri Dehingia. He denied the defence suggestion that he was not present at the house of the deceased and that he had not seen the occurrence.

29. P.W.5, Dipankar Dehingia is a student and is the neighbor of the deceased, Hitendra Dehingia. His evidence reveals that on 25.08.2012, he was sitting with the deceased on a bench in the veranda of the house of the deceased. Then the deceased went inside the house to bring tobacco and then he saw from the veranda that the

accused, Depanjoli Dehingia came inside from her room and pulled out the plug of the inverter and touched the same in the stomach of the deceased and immediately the deceased fell down on the floor. His evidence also reveals that at that time sister of the deceased, Moni Dehingia tried to lift him on the bed and then the accused went inside her bed room and locked her and shouted to take the deceased to Hospital, but the deceased died immediately. Then the family members of the deceased raised hue and cry and village people gathered there and thereafter, police came and held inquest on the dead body and took his signature on the inquest report, Ext.-4. He also confirmed the inverter, Mat.Ext.-1, in the court.

29.1. Cross-examination of P.W.5 reveals that the informant is his aunt. He denied the suggestion that he went to the house of the deceased after hearing hue and cry from the house of the accused and found the deceased lying on the ground. He also denied the suggestion that when he asked the accused person about the incident, then she replied that the deceased was electrocuted while cleaning the inverter. He admitted having not aware of whether the accused had brought out the plug from the switch board or not.

30. P.W.6, Paran Jyoti Dehingia is a co-villager of the deceased. His evidence reveals that on the day of occurrence on 25.08.2012, in the morning hours, he went to the house of the deceased, Hitendra Dehingia and he saw the deceased was sitting in a chair by the side of the door and he was preparing tobacco on his palm. His evidence also reveals that at that time the accused, Depanjoli Dehingia came from inside the house and she rebuked the deceased and all of a sudden she took out the live wire of the inverter and touched the same in the stomach of the deceased and immediately the deceased fell down on the floor from the chair and he shouted. Then on hearing the shout of the deceased, his two sisters, Sabitri Dehingia and Moina Dehingia and two persons namely, Debananda Dehingia and Sadananda Dehingia were also present inside the house and came running to the entrance of the house, where the incident took place. His evidence also reveals that he along with the family members of the

deceased lifted the deceased from the ground and lie him down on the bed and then he died. Thereafter, the village people gathered there and called the police and then, police took the dead body to AMCH for post-mortem examination. His evidence also reveals that police conducted inquest over the dead body and Ext.-4 is the Inquest Report, wherein he signed as a witness.

30.1. Cross-examination of P.W.6 reveals that he denied the suggestion that he stated before the police that he did not know about the incident and he did not see the occurrence. He also denied the suggestion that he stated before the police that on the day of occurrence he went the house of the deceased and found him sitting in a corner and he met Debananda Dehingia and Sadananda Dehingia in the house of the deceased.

31. P.W.8, Sri Sanjeeb Kumar Roy is the I.O. of the case, who had carried out the investigation and submitted charge sheet (Ext.-7). His evidence reveals that on 25.08.2012, at about 08:10 a.m. telephonic information was received by the O.C., Barbaruah P.S. about the death of Hitendra Dehingia and then the O.C. had recorded a G.D. Entry No. 578 dated 25.08.2012 and thereafter, he was entrusted to investigate the case and then he visited the place of occurrence and found the dead body of the deceased lying on a bed. Thereafter, he had held inquest on the dead body of the deceased in presence of Executive Magistrate and draw sketch map, Ext.-6 of the place of occurrence and examined the witnesses and also sent the dead body for post-mortem examination and thereafter, collected the post-mortem examination report, Ext.-5. Thereafter, he had arrested the accused, Depanjoli Dehingia and sent her to the court and he seized the inverter along with the switch board, vide seizure list, Ext.-4 and Mat.Ext.-1 and Mat.Ext.-2 respectively are the inverter and the switch board. Thereafter, he got the statement of the informant, Ext.-2 recorded under Section 164 of the Cr.P.C. in the court and on completion of the investigation he laid charge sheet.

31.1. Cross-examination of this witness reveals that the occurrence took place on

25.08.2012, but the seizure was made on 11.09.2012, and he did not know about the cause of delay of the seizure. He confirmed that the P.W.1, Sabitri Dehingia stated to him that she asked the accused to see her brother as the accused was Nurse and that P.W.1 did not state before him during investigation that prior to the incident the accused used to carry one knife intending to attack them. He also confirmed that P.W.2 did not state before him that on the day of occurrence she went to the house of the accused to bring tea and she saw the accused was holding something in her hand and touched the same in the stomach of the deceased. He also confirmed that P.W.3 did not state before him that he often go for morning walk and visited the house of the deceased and on the day of the incident he visited the house of the deceased and found that he was preparing tobacco and the accused then called him to see the inverter as it was out of order and suddenly the accused unplugged the live wire and touched the same in the stomach of the deceased and electrocuted him. He also confirmed that P.W.4 did not state before him that he went for morning walk and he met Debananda Dehingia and Sadananda Dehingia and the deceased invited them to his house for a cup of tea.

32. It is to be noted here that the accused/respondent No. 2, Depanjoli Dehingia also examined herself, in her defence as D.W.1. Her evidence reveals that at the time of death of her husband, Hitendra Dehingia she was in a separate room and there were six rooms in their house. Her evidence also reveals that her husband and she used to use two different rooms and the inverter was not in the room in which they used to stay. Her evidence also reveals that as the elder sister of the deceased, Sabitri Dehingia did not allow her to enter into the room where the incident took place, she could not go there and at the time of the incident she was making tea in the kitchen of her room and as she was a Nurse, her husband's elder sisters called her and asked her to see her husband and at that time, along with her husband's elder sisters, Moina, Sabitri, Parul and Nina Dehingia were also present there. Her evidence also reveals that the elder sisters of her husband disliked her from the time of their

marriage since they were not married and they asked her husband to transfer the lands in their names in writing, but, her husband did not agree to do the same. They also asked her to leave the house, but she stayed there by arriving at a mutual understanding, but they have not stopped the torture upon her. Her evidence also reveals that the relationship between her husband and her was harmonious and there was no quarrel between them and Uma Kanta Dehingia is her husband's eldest brother and after the death of her husband, he filed a Probate Case No. 82/2013, with regard to the properties of her husband, without arraigning her as a party in the said case, and no notice was issued to her. But, when she came to know about the Probate Case from her engaged Advocate, then she appeared in the court and then, said Uma Kanta Dehingia withdrew the said case and Ext.-'A' is the certified copy of the order of the said case. Her evidence also reveals that the allegation leveled against her is false.

32.1. Cross-examination of D.W.1 reveals that her husband died on 25.08.2012, at about 07:00/07:30 a.m. by electric shock of inverter. It is further elicited that she was not aware of filing any divorce case by her husband against her on 24.08.2012, before his death and she also not aware of the case being lodged by the elder sister of her husband, Smti Sabitri Dehingia against her. She denied the suggestion that she killed her husband by putting the plug in his abdomen.

33. It is to be noted here that on the basis of aforesaid evidence, the learned trial court had arrived at the finding that the prosecution side could not prove the case against the accused/respondent No. 2 beyond all reasonable doubt and therefore, acquitted the same. The relevant paragraph of the said judgment and order of acquittal is '12' wherein the learned trial court has observed as under :-

"12. As already stated it is alleged that the accused had murdered her husband by electrocuting. In their evidence the witnesses also deposed implicating the accused. But the question is how far they can be relied upon to hold the accused guilty for the alleged offence. In search of answer

to this I have very carefully scrutinized the materials before me. In this case, death of Hitendra Dehingia, the husband of the accused is neither denied nor disputed. During their evidence, the witnesses stated that the accused removed the plug of the inverter and brought it in contact with Hitendra for which he died. It appears from the evidence of the witnesses that all of them had witnessed the occurrence. But from the evidence of the P.W.1, the informant Sabitri Dehingia, it appears that at the time of occurrence there was none. She did not specifically state that except herself anyone else had witnessed the occurrence. But from the evidence of Moni Dehingia it appears that the occurrence took place in her presence. Moni Dehingia also stated that she along with Sabitri took Hitendra to a bed, but Sabitri remained silent about it during her evidence. At the same time, Moni Dehingia admitted during her cross-examination that she had stated during investigation that hearing hue and cry she came to the house of the deceased. The informant Sabitri Dehingia and Moni Dehingia remained silent about Debananda Konwar the PW3, Sadananda Dehingia the PW4, Dipankar Dehingia the PW5 and Paranjyoti Dehingia the pw6, but the evidence of Debananda Konwar, Sadananda Dehingia, Dipankar Dehingia and Paranjyoti Dehingia reveal that they were also present at the time of the alleged occurrence. Sadananada Dehingia and Debananda Konwar narrated about their presence at the time of occurrence but they remained silent about Paranjyoti Dehingia. But from the evidence of Paranjyoti it appears that he was also present at the relevant time. The witnesses stated that the accused removed

the plug of the inverter and brought it in contact with the stomach of the deceased. But the evidence of the doctor does not disclose that the deceased had sustained any injury in his stomach. It appears from the evidence of the doctor that there was electric entry wound of 1.5 cm X 8 cm over the left middle finger in the ventral aspects, mid 1/3rd of the finger of the deceased. It is my considered opinion that had the deceased sustained injury in his stomach the doctor would have detected the same at the time of autopsy, but the doctor did not find any injury in the stomach of the deceased. From the evidence of Debananda Konwar and Sadananda Dehingia it appears that after the occurrence police arrived there and seized the inverter, but from the Ext.-3 the seizure list it appears that the inverter was seized on 11.09.12 where as the occurrence allegedly took place on 25.08.12. It also appears from the evidence of the witnesses that the witnesses made improvements at the time of deposing before the court during trial.”

34. A cursory perusal of the para No. 12 reveals that the learned trial court had recorded the acquittal of the accused/respondent No. 2 on the ground that there is contradiction in the version of the witnesses and they have also made improvement at the time of their deposition during the trial and the medical evidence also not supported the eye witness account of the prosecution version and that the Doctor had found injuries on the finger of the deceased, whereas, the eye witnesses stated that they have seen the accused/respondent No. 2 touching the live wire of the inverter in the abdomen of the deceased, but no injury was found on the stomach of the deceased.

35. The finding, so recorded by the learned trial court, while examined in the light

of given facts and circumstances on the record, and in view of submission of learned Advocates of both the parties, it cannot be said that the learned trial court had misdirected itself in appreciating the evidence in its proper perspective and arrived at an erroneous finding.

36. From a close scrutiny of the evidence of the prosecution witnesses i.e. the evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6, we find that though all of them claimed having remained present in the room, where the inverter was and where the occurrence took place, yet, their evidences appear to have suffered from inter-se inconsistencies. P.W.1, nowhere in her evidence, stated about the presence of other witnesses in her house. She stated that at the relevant time minor daughter of the deceased namely, Kirtika Dehingia, aged 4 years and a domestic servant namely, Asal Panika, aged 10 years were present in the house. She stated that when she made hue and cry, neighbouring people gathered at her house. Also we find that she has improved her version before the court and the I.O. (P.W.8) had confirmed that she did not state before him that prior to the occurrence, the accused/respondent No. 2 used to carry a knife intending to attack them. P.W.8 also confirmed that P.W.1 stated to him that she asked the accused/respondent No. 2 to see her brother as the accused/respondent No. 2 was a Nurse.

37. It also appears that P.W.2, Smti Moni Dehingia also nowhere in her evidence stated about presence of other prosecution witnesses at the place of occurrence. Though she claimed having present at the place of occurrence, yet, P.W.1 never stated about her presence in the room where the inverter was and where the occurrence took place. She stated that when they raised hue and cry, then many villagers came. This witness also improved her version before the court and the I.O. (P.W.8) confirmed that she never stated before him that she saw the accused/respondent No. 2 was holding something in her hand and touched the same with the body of the deceased and that she went to the house of the accused/respondent No. 2 to bring tea.

38. Thus, it appears that though ordinarily these two witnesses resides in the same household with the deceased and accused/respondent No. 2, their presence in the room, where the inverter was and where the occurrence took place, appears to be doubtful and their evidences also make the presence of other four prosecution witnesses i.e. P.W.3, P.W.4, P.W.5 and P.W.6, at the place of occurrence doubtful.

39. P.W.3, Debananda Konwar, though claimed that when he entered into the house of the deceased, one Sadananda Dehingia was present there and the deceased was preparing tobacco and were talking with them casually and at that time, the accused called the deceased and asked him to see the inverter, which was out of order and when the deceased went to see the inverter, the accused pulled out the plug and touched the same on the stomach of the deceased and electrocuted him. But, P.W.8, the I.O. confirmed that P.W.3 never made such statement before him during his examination under Section 161 of the Cr.P.C. This contradiction makes his very presence at the place of occurrence doubtful. Moreover, Sadananda Dehingia (P.W.4) in his evidence, though stated that he was present in the room where the deceased was taking out tobacco from the drawer, he never stated about asking the deceased to see the inverter by the accused. The I.O. (P.W.8) confirmed that P.W.4 did not state before him that he (P.W.4) went for morning walk and met Debananda Konwar and Dipankar Dehingia and about inviting them by the accused to his house to have a cup of tea.

40. On the other hand, P.W.5, Dipankar Dehingia, who claimed having been with the deceased sitting on a bench at the veranda of the deceased and then the deceased went to fetch tobacco then he had seen the accused coming inside the room and pulling out the plug of the inverter and touching the same in the stomach of the deceased, yet, he admitted in the cross-examination that he does not know whether the accused brought out the plug from switch board or not. Admittedly, also, he is related to the informant. Over and above, he never whispered about presence of Sadananda Dehingia and Debananda Konwar at the place of occurrence. No doubt,

these inconsistencies, as apparent on the face of the record, appear to be minor. But, in the given background of the case, so projected by the prosecution side, the inconsistencies and the improvements made by its witnesses, to the considered opinion of this court, are sufficient to raise a reasonable doubt about the veracity of their evidence.

41. P.W.6, Paran Jyoti Dehingia, on the other hand, projected a different story. According to him, while he went to the house of the deceased he found him sitting on a chair by the side of the door and preparing tobacco and then he saw the accused coming from inside the house and she rebuked the deceased and suddenly she took out the live wire from the inverter and touched the same on the stomach of the deceased. In view of the evidence of other prosecution witnesses i.e. P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 who had stated about pulling of a drawer and taking out tobacco from a box by the deceased, the evidence of this witness that the deceased was sitting on a chair and preparing of tobacco, itself becomes doubtful.

42. On the other hand, the evidence of D.W.1, the respondent No.2, Depanjoli Dehingia reveals that at the time she was preparing tea in the kitchen of her bed room and then the elder sister of her husband, Sabitri Dehingia came there and asked her to see her husband as she was Nurse by profession and then she found her husband lying. Her evidence also reveals that the brother and two elder sisters of her husband were there and the evidence of D.W.1 remained unshaken in the cross-examination. Her evidence ruled out the presence of P.W.3, P.W.4, P.W.5 and P.W.6 at the place of occurrence.

43. Further, it appears from the evidence of P.W.1 and P.W.2 and from other witnesses and also from the evidence of D.W.1 that the relation between the accused/respondent No. 2, with the P.W.1 and 2, was not cordial. There was also property dispute between them, the factum of which stands confirmed from filing of one Probate Case, being No. 82/2013, without making the accused/respondent No. 2

as party to the same, by the elder brother of the husband of accused/respondent No.2, and withdrawal of the same later on, vide order, Ext.-A.

44. All these facts and circumstances, which are apparent from the record of the learned trial court, goes a long way to establish that the evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6 cannot be believed. As discussed herein above, there are inter-se inconsistencies in their evidence and besides, they appear to be highly interested witnesses and also it appears from the evidence of P.W.1 and 2 that they have also deposed inimically towards the accused/respondent No. 2. Furthermore, the medical evidence also belied the version of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6, as because, while all the six witnesses stated that the accused/respondent No. 2 having pulled out the plug of the inverter touched the same in the abdomen of the deceased and electrocuted him, the evidence of P.W.7, who had conducted autopsy, reveals that no injury was found on the stomach of the deceased, though the aforesaid witnesses claimed having seen touching the abdomen of the deceased with the plug of the inverter by the accused/respondent No.2. This being the factual position, it cannot be ascertained as to whether the death of the deceased, Hitendra Dehingia was suicidal, accidental or homicidal in nature.

45. Though Mr. Bora, learned Senior Counsel, appearing for the appellant, submits that the finding so recorded by the learned trial court is the outcome of improper appreciation of the facts and circumstances on the record and on that ground contended to interfere with the said finding, yet, the aforesaid submission is found to be devoid of any substance as out of eight prosecution witnesses examined by the prosecution side six prosecution witnesses - P.W.1, Sabitri Dehingia; and P.W.2, Moni Dehingia are sisters of the deceased and P.W.3, Debananda Konwar; P.W.4, Sadananda Dehingia; P.W.5, Dipankar Dehingia; and P.W.6, Paranjyoti Dehingia are their neighbors and all of them claimed having present at the room, where the alleged occurrence took place, yet the same becomes doubtful and cannot be relied upon because of the reason discussed herein above.

46. Whereas, the evidence of the accused/respondent No.2 as D.W.1 appears to be believable and what was stated by her in her examination-in-chief, remained un-rebutted in cross-examination and the evidence adduced by the prosecution witnesses failed to outweigh the same. It appears from her evidence that the relation between her and her husband was cordial and there was no quarrel between them and such as stand was being taken by her, in her examination under Section 313 of the Cr.P.C. also. Under the circumstances the evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6 that in their presence the accused/respondent No. 2 had killed her husband by electrocution is not at all believable. They have made unsuccessful attempt to attribute motive of killing her husband by the accused/respondent No. 2. Rather, it appears from the depositions of P.W.1 and P.W.2 that out of property dispute they have deposed inimically towards the accused/respondent No. 2. They have failed to produce any documentary evidence in respect of filing of domestic violence case by P.W. 1 against the accused/respondent No. 2 and divorce case by the deceased against the accused/respondent No. 2 prior to his death. All these facts and circumstances militate against the veracity of their version.

47. Thus, having examined the impugned judgment and order of acquittal in the light of the decision of Hon'ble Supreme Court in the case of **Chandrappa (Supra)** and **Mallappa (Supra)**, this Court is of the view that there is no substantial and compelling reason to interfere with the impugned judgment and order of acquittal, so passed by the learned trial court. The presumption of innocent was always available in favour of the accused/respondent No. 2 and with the acquittal from the charge under Section 302 of the IPC, by the learned trial court; the presumption of innocence becomes double.

48. As submitted by Mr. Talukdar, the learned Amicus Curiae for the respondent No. 2, there must be compelling reasoning to reverse an order of acquittal and herein this case no perversity, illegality or error of law on fact in the impugned judgment and order could be successfully established by the appellant. We find no substantial and

compelling reason to interfere with the same. The decision referred by Mr. Talukdar in **Kalamani Tex (Supra)**, also strengthened his submission, wherein it has been held by the Hon'ble Supreme Court as under:-

“..... It is true that the High Court would not reverse an order of acquittal merely on formation of an opinion different than that of the trial court. It is also trite in law that the High Court ought to have compelling reasons to tinker with an order of acquittal and no such interference would be warranted when there were to be two possible conclusions. [*C.K. Dasegowda v. State of Karnataka*, (2014) 13 SCC 119, para 14 : (2014) 5 SCC (Cri) 599]”

49. Under the aforementioned facts and circumstances, this Court finds no merit in this appeal and accordingly, the same stands **dismissed**. Send down the record of the learned court below, with a copy of this judgment and order. The parties have to bear their own costs.

50. Lastly, we have noticed that the learned trial court had not considered in the impugned judgment and order about the issue of entitlement of compensation by the family members of the victim under section 357A Cr.P.C. and the Assam Victim Compensation Schemes 2012, on account of pre-mature death of the deceased Hitendra Dehingia. Therefore, we are inclined to request the Secretary, District Legal Services Authority, Dibrugarh, to examine the issue of entitlement of compensation by the family members of the deceased and to award appropriate amount of compensation, if otherwise they are entitled to under law. And this exercise has to be carried out within 3 (three) months of receipt of a copy of this judgment and order.

51. The Registry shall send a copy of this judgment and order to the Secretary, District Legal Services Authority, Dibrugarh for doing needful.

52. Before parting with the record, this Court would like to place on record our deep appreciation, to Mr. D. Talukdar, for the assistance rendered by him as Amicus curiae

for the respondent No. 2, in disposal of this appeal. The Registry shall pay his fee, which he is entitled to, as per the Rule.

JUDGE

JUDGE

Comparing Assistant