

GAHC010199392021



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

**Case No. : CRL.A(J)/48/2021**

JAGAT DAS  
SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM  
REP. BY PP, ASSAM.

**Advocate for the Petitioner** : MR A KALITA, AMICUS CURIAE,

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**  
**HON'BLE MR. JUSTICE MANISH CHOUDHURY**  
**HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

Date of Hearing : **02.08.2024.**  
Date of Judgment : **30.08.2024.**

**JUDGMENT & ORDER (CAV)**

*(Kaushik Goswami, J)*

Heard Mr. A. Kalita, learned Amicus Curiae for the accused appellant. Also heard Ms. B. Bhuyan, learned Senior Counsel/Addl. Public Prosecutor assisted by

Ms. M. Chakraborty for the State respondent.

**2.** This appeal is presented against the Judgment & Order dated 05.10.2021 passed by the Sessions Judge, Sonitpur, Tezpur in Session Case No. 30/2019, whereby the accused appellant is awarded Rigorous Imprisonment for life and to pay a fine of Rs. 5,000/- (Rupees Five Thousand) for offence under Section 302 IPC and in default of payment of fine, Simple Imprisonment for 3 (three) months.

**3.** The brief facts of the prosecution is as follows:-

PW-1 (Niranjan Boro), who is the son of the deceased lodged an FIR on 26.11.2018, alleging inter alia that at about 8:30 p.m. on that day, i.e., 26.11.2018, the accused appellant had an altercation with his mother (Smt. Lata Boro) and then killed her by hacking with a dao. Accordingly, a case was registered being Missamari P.S Case No. 193/2018 under Section 302 IPC.

**4.** Thereafter, the investigation was conducted by PW-8 (Dandadhar Kumar, S.I). On 27.11.2018, PW-9 (Sri Lakshya Jyoti Das, Circle Officer) conducted inquest on the dead body and PW-8, thereafter sent the dead body for post mortem examination. He further prepared a sketch map of the place of the occurrence, which is Ext-4 and also seized the dao, which is Ext-2 and also recorded the statement of the witnesses under Section 161 Cr.PC and arrested the accused appellant and forwarded him to judicial custody. He thereafter collected the Post Mortem report, which is Ext-3. After completion of investigation, he submitted charge-sheet against the accused appellant under Section 302 of IPC, which is Ext-5.

**5.** Thereafter, the learned Judicial 1<sup>st</sup> Class Sonitpur, Tezpur on 01.03.2019 committed the case record against the accused appellant to the Court of

Sessions for trial. The Trial Court after receiving the case record on 14.03.2019, framed charge under Section 302 IPC against the accused appellant. Accordingly, the trial commenced, wherein the prosecution examined 9 witnesses including the informant, Medical Officer as well as the Investigating Officer and at the end of the prosecution evidence, the accused appellant was examined under Section 313 CrPC, wherein all the incriminating circumstances were put to him for explanation. However, the accused appellant generally denied all the incriminating circumstances without offering any explanation and adduced the evidence of one Prabin Koch (Gaonburah) as defence witness. The Trial Court after completing the evidence and upon hearing the parties rendered Judgment on 05.10.2021, whereby the accused appellant was convicted under Section 302 IPC and sentenced thereof.

**6.** Mr. A. Kalita, learned Amicus Curiae for the accused appellant submits that there are no eye witnesses to the assault. He submits that the case of the prosecution merely rest on the testimonies of PW-1 and PW-5, who have deposed to have seen through the ventilator of the accused appellant's house, that the deceased was lying injured bleeding while the accused appellant was sitting near the deceased with a dao in his hand.

**7.** According to him, the testimonies of PW-1 and PW-5 have not found corroboration and as such, the chain of circumstances has been broken and therefore, the conviction based on such testimonies of PW-1 and PW-5 is erroneous. He further submits that since the case of the prosecution is based on circumstantial evidence, motive plays an important part. However, he submits that the prosecution has not been able to establish motive on the part of the accused appellant for committing the offence under Section 302 IPC against his wife. In support of the aforesaid submission, he relies upon the decision of the

Apex Court in the case of ***State of Madhya Pradesh Vs. Phoolch and Rathore***, reported in ***2023 Live Law (SC) 408***.

**8.** He further submits that since the accused appellant while being questioned under Section 313 of the CrPC, has offered an explanation, the same is sufficient to rule out his involvement in the offence convicted.

**9.** Ms. B. Bhuyan, learned Senior Counsel/Addl. PP on the other hand submits that the prosecution has proved the guilt of the accused appellant beyond reasonable doubt and as such, the Judgment & Order dated 05.10.2021 of the Trial Court warrants no interference from this Court. She further submits that the testimonies of PW-1 and PW-5 have been fully supported by the other prosecution witnesses, whereby the chain of the circumstances stands fully completed, thereby proving the guilt of the accused appellant alone of the offence convicted. She further submits that the accused appellant had not offered any reasonable explanation against the incriminating circumstances put before him during examination under Section 313 of the CrPC for which, the same became an additional link in the chain of circumstances to make it complete. In support of the aforesaid submission, she relies upon the decision of the Apex Court in the case of ***Wazir Khan Vs. State of Uttarakhand*** in ***Crl.A. Nos. 1922-1923/2017***.

**10.** We have given our thoughtful consideration to the arguments made by the learned counsels appearing for the parties and have perused the materials available on record and have also considered the judgments cited at the bar.

**11.** On perusal of the FIR (Ext-1), it appears that **PW-1 (Sri Niranjan Boro)**, who is the son of the deceased, lodged the FIR on 26.11.2018 alleging inter alia that at about 8:20 p.m., the accused appellant, who is his step-father, has killed

his mother by stabbing her with a dao after having an altercation with her.

**12. PW-7 (Dr. Samuel Tokbi, Medical Officer),** who conducted postmortem on the body of the deceased on 27.11.2018 deposed that he found the following injuries:-

1. Chop wound of size 16 cm x 3 cm x brain deep is present over the face at midline, extending 11 cm above glabella to below middle part of nose. The margins are sharp and contused.
2. Chop wound of size 14 cm x 3 cm x brain deep is present over the head. Extending from 4 cm above upper part of ear (left) horizontally and forwards occipital area of scalp. The margins are sharp and contused.
3. Chop wound of size 13 cm x 3 cm x bone deep is present 2.5 cm below injury no.2 and parallel to it. The margin are contused.
4. Chop wound of size 13 cm x 3 cm x brain deep is present over the face (left) cheek) and head, 4.5 cm away from lateral canthus of left eye, extending horizontally across left ear (upper part) and parallel to injury No. 3. The margins of wound is sharp and contused.
5. Chop wound of size 9 cm x 3 cm x bone deep is present 4 cm below injury No.4 and parallel to it, extending from left ear (middle part) to occipital area.
6. Chop wound of size 8 cm x 3 cm x brain deep is present, 3 cm below injury No. 5 and parallel to it.

7. Chop wound of size 12 cm x 4 cm x vertebrae deep is present over the upper part of neck (left side) extending from 4 cm below the chin and parallel to the lower margin of body of mandible left side. The margins are contused. The structures like vessels, larynx, muscles, nerves are cut.

8. Chop wound of size 8 cm x 2 cm x vertebrae deep is present over the neck, 3 cm below injury No. 7 and parallel to it. The margins are sharp and contused.

9. Incised wound of size 3 cm x 1 cm x muscle deep is present over the neck, 4 cm below injury No. 8 and parallel to it. Margin are regular and clean cut.

10. Chop wound of size 8 cm x 3 cm x bone deep is present over the dorsal aspect of left hand involving all the knuckle (MCP) except thumb and index metacarpophalangeal joint (MCP).

**13.** He further deposed that the death according to his opinion was due to haemorrhagic shock as a result of the injuries sustained, which were antemortem and caused by moderately heavy sharp edged weapon and homicidal in nature. He further exhibited the post mortem report as Ext-3.

It thus appears from the deposition of **PW-7** that the death of the deceased is homicidal.

**14.** It appears that the conviction is based on circumstantial evidence. Hence, it is apt to refer at the outset to the depositions of **PW-1** and **PW-5**, who have stated to have first seen the accused appellant with the deceased inside his house with the deceased lying injured with blood in the floor and the accused

appellant was sitting beside her with a dao in his hand.

**15. PW-1 (informant/son of the deceased)** deposed that his mother used to reside with the accused appellant (step-father) separately and that he resides at a distance of 1½ km away from his mother. He further deposed that prior to the incident, he heard that the accused appellant used to pick up quarrel with his mother. He further deposed that on the day of the incident, i.e., on 26.11.2018 at 8:30 p.m., the neighbor of the accused appellant informed him over phone that the accused appellant was beating his mother and then he alongwith his friend Khagen Boro (**PW-5**) came to the house of the accused appellant and found the house locked from inside. He further deposed that when he knocked at the door and asked what is happening, the accused appellant asked him not to enter in his house and also threatened to kill if anybody enters into the house. He further deposed that there was a desk in the verandah of the house of the accused appellant and by standing upon the said desk, he saw through the ventilator that his mother was lying dead upon the ground and the accused appellant was sitting near his mother with a dao. He further deposed that seeing the incident, he came outside the boundary of the accused appellant's house and over phone informed his villagers. He further deposed that some persons from the neighbourhood came there and thereafter, though they asked the accused appellant to come out of the house but he refused and said that only after arrival of Police he will open the door. He further deposed that thereafter, some people alongwith Police reached and upon the Police asking the accused appellant to open the door, he opened the door and came out with a dao in his hand. He further deposed that Police thereafter apprehended the accused appellant and took him to the Police Station. He further deposed that Police also took the dead body of his mother for post

mortem examination. He further deposed that he had seen cut injury over neck, near ear, cheek, finger of his mother. He further deposed that Police seized the dao vide seizure list, i.e., Ext.2, wherein he testified as a seizure witness. He further deposed that he thereafter lodged the FIR, which is Ext.1 and Ext.1(1) is his signature.

**During cross examination**, he clarified that after 10/15 minutes of receiving information over phone, he reached the place of occurrence and that when the Police called the accused appellant to come out, the accused appellant came out with a dao in the presence of some persons including Manoj Boro and Paben Boro.

**16. PW-5 (Sri Khagen Boro)**, who is said to have accompanied **PW-1** to the house of the accused appellant, deposed that on the date of incident, at around 7:00/8:00 p.m., when he was on road in front of his house, his sister Hirani Boro informed him that Alopi Mohilary, daughter of Niranjana Mohilary (**PW-4**) reported her that there was some "hulla" (shouting) in the house of the accused appellant and thereafter, the situation was quite silent, hence asked him to see the matter. He further deposed that accordingly he alongwith **PW-1**, the son of the deceased went to the house of the accused appellant and **PW-1** called his mother as "Ma, Ma" but not finding any response knocked at the door. He further deposed that the accused appellant replied from inside the house that his mother is not available at home. Then, on asking by **PW-1** as to where his mother had gone, the accused appellant replied that she is not at home. He further deposed that the accused appellant threatened to kill them if they tried to open the door. He further deposed that **PW-1** thereafter stood upon a bench, which was in the verandah and peeped through the ventilator inside the room and by saying "Hey Bhagaban (O God)" got down from the bench. He further

deposed that thereafter, he also peeped through the ventilator and saw blood and the body of the deceased covered with a cloth. Seeing the incident, out of fear he and **PW-1** went away. He further deposed that many persons gathered thereafter and on being informed, Police also came and apprehended the accused appellant alongwith the dao in his hand. He further deposed that Police seized the said dao, vide seizure list Ext. 2 and 2(2) is his signature. He further deposed that when the dead body was taken for post mortem examination, he was present there.

**During cross examination**, he clarified that though there was no light outside the house of the accused appellant, a bulb was lit inside one of the room and the house of the accused appellant consists of 2 rooms and from the light of the other room, he saw the blood and the body inside the room. He further clarified that seeing the incident, he and **PW-1** came out from the boundary and informed the neighbouring people.

**17.** What emerges out from the above testimony of **PW-1** and **PW-2**, is that the accused appellant was present in his house by bolting the door from inside alongwith the body of the deceased with a dao.

**18. PW-8**, who is the Investigating Officer in the case, further corroborates the testimonies of **PW-1** and **PW-5** to the effect that when he reached the place of occurrence, he found the accused appellant locked inside the house with the body of the deceased and came out with a dao in his hand.

**19. PW-8** deposed that on 26-11-2018 while he was posted as 2<sup>nd</sup> Officer at Missamari Police Station, some unknown person over telephone informed OC that the accused appellant killed his wife followed by a quarrel. He further deposed that on the basis of that information, a G.D Entry No. 601 dated 26-11-

2018 was made and he was endorsed to inquire the matter and accordingly, he visited the place of occurrence. On arrival of place of occurrence, he found the accused along with the dead body of the deceased in their room. He further deposed that the door of the room was bolted from inside and he knocked at the door. He further deposed that accordingly, the accused appellant opened the door and he apprehended him. He further deposed that he found a dao in the hand of the accused appellant, which he used in committing the offence. He accordingly seized the dao from the hand of the accused appellant, vide seizure list Ext.2 and Ext.2(3) is his signature. He further deposed that he informed the Circle Officer, **PW-9** about the incident and as per his instruction, took the dead body to the Police Station as it was night. He further deposed that on the very day, i.e., on 26-11-2018, **PW-1** lodged an FIR regarding the incident. Accordingly, the OC, registered the case being Missamari PS Case No. 193/2018 under Section 302 of IPC and endorsed him to investigate the case.

He further deposed that on 27-11-2018, the Circle Officer conducted inquest on the dead body and thereafter, he sent the dead body for post mortem examination. On 27-11-2018, he again went to the place of occurrence and prepared the sketch map of the PO. He exhibited the sketch map of the PO as Ext.4 and Ext.4(1) is his signature. He further deposed that he also recorded the statement of witnesses. He further deposed that he arrested the accused appellant and forwarded him to judicial custody and that thereafter, he collected the post mortem report. He further deposed that after completion of the investigation, he submitted charge-sheet against the accused appellant under 302 of IPC and exhibited the same as Ext.5 and Ext.5(1) is his signature. He further exhibited the seized dao as M.Ext.1.

**During cross examination**, he clarified that the place of occurrence is No.2 Dhanmora, which is about 1½ km away from the Police Station. He further clarified that Village No.2 Dhanmora and Patidoi Bherela falls under the jurisdiction of Missamari P.S, however, he does not know the distance between the village No.2 Dhanmora and Patidoi Bherela. He further clarified that he does not know the distance between the village Ramnathpur and the place of occurrence. He further clarified that he recorded the statement of the witnesses at the place of occurrence on 27-11-2018. In Ext.4,i.e., the sketch map, he clarified that he did not mention that the door of the room was bolted from inside. He further clarified that he did not record the statement of Satish Doimari and Khetriram Basumatary, the witnesses of inquest. He further clarified that all witnesses mentioned their village's name as No.2 Dhanmora and the accused also belongs to the same village, i.e., No.2 Dhanmora. He further clarified that he recorded the statement of four neighbouring witnesses.

**20. PW-9** is the Circle Officer of Thelamari Revenue Circle, who deposed that on 27-11-2018 when he was working as Circle Officer, Thelamara Revenue Circle, at about 10.30 a.m. in reference to Missamari PS Case No. 193/2018 u/s 302 IPC, he conducted the inquest on the dead body of the deceased at the Police station and found the following:-

*“Description of injury mark: 2 incised wound are seen over face left side, one extending from middle of cheek to upper part of ear and other extending from angle of mouth to back of neck. Both the wounds are of Approximate 20 cm length. An incised wound was seen over forehead extending to the nose side around 20 cm. An irregular lacerated wound seen over dorsal surface of left hand.”*

He further exhibited the inquest report as Exhibit 6 and identified his signature as Ext. 6(1).

**During cross examination**, he clarified that no medical officer was present and that in the inquest report he did not obtain the signature of the Investigating Officer.

**21.** That apart, the prosecution adduced the evidence of two neighbours of the accused appellant i.e. **PW-3** and **PW-4** who deposed that the accused appellant used to regularly quarrel with the deceased wife.

**22. PW-3 (Sri Pradip Kr. Boro)** deposed that he always heard quarrel between the accused appellant and his wife i.e the deceased. He further deposed that on the day of incident, he was at home and at around 7 p.m., **PW-1** informed him that the accused appellant killed his wife and he then went to the house of the accused. He further deposed that when he reached the house of the accused appellant, some other persons had already gathered and that the accused appellant was raising "hulla" (shouting) inside his house. He further deposed that PW-1 then told him that the accused appellant is armed with a dao and that he thereafter informed the Police. He further deposed that accordingly, Police came and apprehended the accused and took the dao from him.

**During cross examination**, he clarified that his house is about 100 meter away from the house of the accused and that as co-villager he knows the accused appellant and the deceased well. He further deposed that the accused appellant is the third husband of the deceased. Though, he was asked if the deceased was drawing pension from her first husband i.e. Paniram Boro, he

replied in the negative. He further clarified that **PW-1** is the son of the deceased through her second husband and that he does not know about the relation of the deceased with the family of her first and second husband. He further deposed that he had never seen **PW-1** visiting the house of the accused appellant.

He further denied the suggestion that he was not informed by **PW-1** about the incident. He further clarified that when Police apprehended the accused he had seen the dao but cannot say the exact length of the said dao. He further clarified that the dao contained blood stains.

**23. PW-4 (Sri Niranjan Mohilary),** similarly deposed that the accused appellant often used to pick up quarrel with his wife/deceased and that on the day of incident, in the evening time the accused appellant had quarrel with his wife/deceased. He further deposed that on the day of the incident at around 8.30 p.m while he was sleeping, his wife informed him that the accused appellant had killed his wife. And that after arrival of Police he went to the house of the accused appellant and had seen the dead body from a distance but he did not enter into the house where the dead body was lying.

**During cross examination,** he clarified that his house is just adjacent to the house of the accused appellant. He further clarified that the Accused appellant was the third husband of the deceased and that since last 15 years the accused appellant after purchasing the land in his name near his land used to reside there with his wife by constructing house thereon. He further clarified that he does not know about any dispute between the accused and his wife regarding land or money. He further clarified that he does not know about the relation of the deceased with the family members of her first and second

husband. He further clarified that prior to the incident, PW-1 had no relation with the deceased and that later on, he clarified that he does not know about the relation between the deceased and **PW-1**. He further clarified that their village is primarily Bodo populated area.

**24.** Thus, the presence of the accused appellant inside the house with the body of the deceased stands further corroborated from the testimony of the aforesaid two neighbours i.e. **PW-3** and **PW-4**.

**25. PW-6 (Sri Dipen Ch. Boro),** who is a villager of the informant's village deposed that he knows the accused and the deceased. He further deposed that the accused was the second husband of the deceased and that on the day of incident, in the evening **PW-1** telephoned him and said that his mother was murdered and called him to his house. He further deposed that thereafter he along with 4/5 others went to the house of the accused and remained outside of his gate and that at that time the accused was inside his house. He further deposed that after some time Police reached there and entered into the campus and asked the accused to open the door of his house. He further deposed that the accused thereafter holding a dao in his hand opened the door and came out. He further deposed that thereafter they entered into the house and had seen the dead body of deceased lying upon floor near the bed in injured condition with profuse bleeding on several parts of her body. He further deposed that he noticed cut injury over her head, fingers and neck.

**During cross-examination,** he clarified that the informant/**PW-1** is his friend and that they hailed from the same village. He further clarified that the accused appellant is a resident of the adjacent village and that the house of the accused is about one km away from his village. He further clarified that the area

where the accused resided is a bodo populated area and that there is only one Assamese family i.e. the accused. He further clarified that Missamari Police station is situated in the middle of the house of the accused and their village. He further clarified that Susen Boro was the first husband of the deceased and that he is still alive and resided in their village. He further clarified that the informant/**PW-1** was the son of the deceased through her first husband Susen Boro.

**26.** Apparent that the said **PW-6** further corroborates the testimony of **PW-1** to the effect that after seeing the incident, **PW-1** informed his villagers over telephone about the incident and also to the effect that the accused appellant was present inside the house with the dead body of the deceased with the door locked from inside.

**27.** That apart the prosecution adduced the evidence of one person being **PW-2 (Sri Nityananda Das)**, who was present at the Police Station when the accused appellant confessed his guilt before the Police. However, the same being hit by Section 25 of the Indian Evidence Act.

**28.** Thereafter, all the incriminating materials /evidence were put to the accused appellant, under Section 313 CrPC wherein he by generally denying all the circumstances, explained the question No. 2 that when he came from work he found the dead body of his wife inside the house.

**29.** In addition, the accused appellant adduced the evidence of the Gaonburah No. 1 and No. 2 Dhanmora Village as **DW-1**, who deposed that his residence is situated at a distance of 3/4 km from the house of the accused and that he had heard from public that the accused tortured his wife/ the deceased. He further deposed that the informant is the son of second husband of deceased and that

the husband of deceased was an employee of Military Engineering Service and he has been receiving pension after his retirement from service. He further deposed that the husband of deceased also purchased valuable landed property during his life time. He further deposed that after the death of her second husband, the accused married the accused and used to reside in No. 2 Dhanmara village. He further deposed that after the marriage of the deceased, her son/**PW-1**/informant resided in another village. He further deposed that the deceased reported him that her son/informant used to quarrel over landed property of her previous husband. He further deposed that he has heard that there was a quarrel amongst the deceased, informant/**PW-1** and the accused on the date of the incident.

**During cross examination**, he clarified that he has heard that the accused murdered the deceased by cutting her with a dao. He further clarified that he knows the informant/**PW-1** used to quarrel with the deceased.

**30.** It is well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

**31.** Reference is made to the decision of the Apex Court in ***Sharad Birdhi Chand Sarda Vs. State of Maharashtra*** reported in ***(1984) 4 SCC 116***, wherein the Apex Court has held that the conditions precedent before conviction could be based on circumstantial evidence, must be fully established, are as hereunder:-

*“1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;*

- 2. The facts so established should be consistent with the hypothesis of guilt and 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."*

**32.** In the present case, the incriminating circumstances are as hereunder:-

1. **PW-1** deposed that after being informed by the neighbor of the accused appellant, that the deceased/his mother was being beaten by the accused, went to the house of the accused appellant with **PW-5** and found the house locked from inside and when they knocked the door, the accused appellant answered from inside.
2. **PW-1** deposed that by standing upon a desk in the verandah, he peeped through the ventilation and saw his mother lying dead upon the ground and the accused appellant was sitting near his mother with a dao.
3. **PW-5** corroborated the evidence of **PW-1** to the effect that the accused appellant was present in the house bolted from inside with the body of the deceased lying in the floor.
4. **PW-1** and **PW-5** further deposed that after the arrival of the Police, the accused appellant opened the door and came out with a dao in his hand.
5. **PW-8** (Investigating Officer) corroborated the testimony of **PW-1** and **PW-5** to the effect that when the Police reached the place of occurrence, the accused appellant was present inside the house by bolting the door from

inside with the body of the deceased and upon the police asking him to open the door, the accused appellant opened the door and came out with a dao in his hand.

6. **PW-3** and **PW-4** who are the neighbors of the accused appellant supported the version of the prosecution and deposed that they always used to hear quarrel between the accused and the deceased.

7. **PW-6** corroborated the testimony of PW-1 that the PW-1 had informed him about the incident over telephone.

8. **PW-7** (Medical Officer) and the Post Mortem report Exhibit 3 confirms the injuries sustained by the deceased to have been caused by moderately heavy sharp edged weapon like that of the seized dao(Exhibit-2).

**33.** Thus, from the aforesaid circumstances, it has clearly established that the accused appellant was present in the house with the deceased at the time of occurrence. The aforesaid circumstances having been fully corroborated by the prosecution witnesses leaves no room for any other hypothesis whatsoever as regards the guilt of the accused appellant.

**34.** Pertinent that the accused appellant during his examination under Section 313 CrPC explained that when he came from work, he found the dead body of his wife inside the house. It has been clearly established by the prosecution witnesses that the accused appellant was inside the house by bolting the door alongwith the body of the deceased with a dao in his hand and came out after the arrival of the Police. Thus, it cannot be accepted by any stretch of imagination that a husband upon returning to his home and finding his wife dead, would lock himself inside the house and sit alongwith the body without calling out for any help when it has come on evidence that there are houses adjacent to the house of the accused appellant. Therefore, the said explanation cannot be accepted to be true or to be an appropriate explanation.

**35.** Reference is made to the decision of the Apex Court in the case of ***Wazir Khan Vs. State of Uttarankhand*** in ***Criminal Appeal Nos. 1922-1923/2017***, wherein the Apex Court held that in a case based on circumstantial evidence where no eye witness is available, when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

**36.** Reverting back to the case in hand, it appears that the accused appellant is alleged to have committed the murder of his wife and the prosecution has succeeded in leading evidence to show that the offence took place in the dwelling home where the accused appellant was present at the time of the offence.

**37.** Though the accused appellant explained that when he came from work he found the dead body of his wife inside the house, the same cannot be accepted to be true in the facts and circumstances of the case and therefore, the same is a strong circumstance which indicates that the accused appellant is responsible for commission of the crime. In other words, the accused appellant having offered a false explanation, the same became an additional link in the chain of circumstances to make it complete.

**38.** Now so far as the submission of the Amicus Curiae on behalf of the appellant/accused is that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned is totally misplaced in the context of the present case. Though it is correct that absence of motive in a case of circumstantial evidence is a factor that weighs in favour of the accused, however the same cannot be a ground to reject the prosecution case, if the evidence is clear and unambiguous and the circumstances proved the guilt of the accused. In ***Suresh Chandra Bahri v.***

***State of Bihar***, reported in ***1995 Supp (1) SCC 80***, the Apex Court has held that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case.

**39.** Reference in this regard is also made to the decision of the Apex Court in ***Babu v. State of Kerala***, reported in ***(2010) 9 SCC 189***. Paragraph 25 and 26 of the aforesaid decision, the Apex Court observed and held as under :-

*“25. In State of U.P. v. Kishanpal, (2008) 16 SCC 73 , this Court examined the importance of motive in cases of circumstantial evidence and observed :*

*‘38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.*

*39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.’*

*26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide Pannayar v. State of T.N., (2009) 9 SCC 152)”*

*12. In the subsequent decision in Shivaji Chintappa Patil vs. State of Maharashtra, (2021) 5 SCC 626 , this Court relied upon the decision in Anwar Ali1 and observed as under:-*

*“27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. The motive... ..” (Refer: Anwar Ali vs. State of Himachal Pradesh, (2020) 10 SCC 166)”*

**40.** In the case in hand, all the incriminating circumstances has been conclusively proved and the chain of such circumstances is also complete negating the involvement of any other person in the offence except that of the accused appellant. Therefore, absence of motive has no relevance in the context of the present case.

**41.** In the present case, the incriminating circumstances stands complete and the prosecution has established the guilt of the accused appellant beyond reasonable doubt.

**42.** In the light of the discussion made above and the reason assigned therein, we do not find any reason to take a view other than the view taken by the learned Trial Court, which has reached the view that the prosecution has proved the case beyond all reasonable doubt.

**43.** In such view of the matter, the appeal being devoid of merit is liable to be dismissed by affirming the Judgment and Order of the learned Trial Court.

Ordered accordingly.

**44.** Before parting with, we wish to place our appreciation on record as regards the services rendered by Mr. A. Kalita, learned Amicus Curiae appearing for the accused appellant and directs the Registry to make available to him just remuneration as per the Notified fees structure applicable to the Amicus Curiae.

- 45.** Registry to send back the case record of the learned Trial Court forthwith.  
The appeal stands dismissed.

**JUDGE**

**JUDGE**

**Comparing Assistant**