

GAHC010211982019



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

Case No. : CRL.A(J)/65/2019

SIBU KARUWA
DIBRUGARH, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MS. M BARMAN, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT

Date : 19-04-2024

(CAV)

Heard Ms. M. Barman, learned Amicus Curiae for the appellant.
Also heard Ms. S.H. Bora, learned APP appearing for the State.

2. This appeal under section 374(2) Cr.P.C. is directed against the

judgment, order and sentence dated 19.03.2019, passed by the learned Additional Sessions Judge, Dibrugarh in Sessions Case No. 100/2017, thereby convicting the appellant for commission of offence under Section 302 IPC and sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for further 3 (three) months for committing offence under Section 302 IPC. The appeal was presented by the appellant from jail as per the provisions of section 383 Cr.P.C.

3. The prosecution case was set rolling by one Gouri Dirial, who had lodged an FIR on 24.10.2016 with the Namrup Police Station, stating therein that on 23.10.2016, at about 04.00 PM, appellant who works in his tea garden had murdered his wife Smti. Sumanti Panika. Her dead body was recovered in the labour quarter of the appellant. Accordingly, Namrup P.S. Case No. 153/2016 was registered under Section 302 IPC, corresponding G.R. Case No. 3103/2016.

4. On completion of investigation, the I/O found sufficient materials against the appellant and accordingly charge-sheet was submitted in the said case.

5. After the committal proceedings, the case transferred to the Court of learned Additional Sessions Judge, Dibrugarh for trial.

6. The learned Trial Court had explained charges to the appellant on 14.09.2017 of intentionally causing death of his wife Sumanti Karuwa. It may be mentioned that in the FIR, the name of the deceased is mentioned as Sumanti Panika, but her name is mentioned as Sumanti Karua in the post mortem report as well as in the deposition of the witnesses examined by the prosecution.

7. On charges being explained, the appellant pleaded not guilty and claimed to be tried.

8. In course of trial the prosecution had examined 6 (six) witnesses, namely, Gouri Dirial (PW-1), Kaila Urang (PW-2), Dr. Debarshee Chakraborty (PW-3), Sunil Karua (PW-4), Duran Gogoi (PW-5), and the I.O. of the case Prasanta Bezboruah (PW-6) and the following documents were exhibited, viz. ejahar (Ext.1), seizure list dated 23.03.2016 (Ext.2), post-mortem report (Ext.3), inquest report (Ext.4), charge-sheet (Ext.6).

It may be mentioned herein that two documents are found to have been marked as Ext.5. The first one is the "dead body challan", which was exhibited by the doctor (PW-3) and marked as Ext.5, but the said document has not been referred to in the judgment. The second document is the sketch map, which is exhibited by I/O (PW-6) and was also marked as Ext.5, which is referred to in the judgment. Hence, for the sake of clarity in this order, the "dead body challan" is hereinafter referred to as "Ext.5(A)" and the "sketch map" is hereinafter referred to as "Ext.5(B)".

9. After examination of all the PWs, the incriminating materials appearing against the appellant was put before him during his examination under Section 313 Cr.P.C. The appellant took a plea of denial and had stated that his wife had died by consuming poison and did not desire to give any evidence.

10. The learned Trial Court had examined evidence of the PWs. As per the oral evidence of PW-1, PW-2, PW-3 and PW-4, the appellant had opened the door of his house after PW-1 had arrived and thereafter, PW-2 and PW-3 went inside the room of the appellant and found his wife lying dead on a bed.

The dead body was covered with a cloth. As per the evidence of PW-3, he had noticed blood stained hoe of hoe inside the room, which was later on seized by the police through Ext.2. The learned Trial Court also took notice of the evidence of PW-5, who had seen that on 10.00 AM of the same day, the accused was pouring drain water on his wife's head and his wife was shouting on him not to do it and later on he had heard that the appellant had killed his wife. He was a signatory to the seizure list and he proved his signature thereon. The PW-4 was the seizure witness, who had seen the seizure of hoe, bottle, and clothes, which were marked as M.Ext. nos. 1 to 5 respectively. The PW-4 had stated in his cross-examination that he had seen a blood stained hoe. Thus, in this case, there is no eye witness of the incident.

11. The learned Trial Court had extensively relied on the evidence of the doctor who had conducted the post-mortem examination (PW-3). The 5 (five) external injuries found on the dead body, as mentioned in the post mortem report are extracted below:-

- (1) A laceration of size 3cm X 1 cm X muscle deep was found present transversely over chin. The margins of the wound were found irregular and contused.
- (2) A laceration of size 5cm X 1cm X scalp deep was found present on the right occipital area which was present obliquely upward and was present 7cm above the Atlanto occipital joint and 2cm to the right of mid line. The margins of the wound were found irregular and contused.
- (3) The laceration of size 3cm X 2cm X scalp deep was present on the left occipital which is obliquely upward and 3cm to the left of mid line and 7cm above the Atlanto occipital region. The margins of the wound were found irregular and contused.
- (4) The laceration of size 2 X 2cm X scalp deep was present over the left parietal area 7 cm above the injury NO. 3 and 3 cm to the left of midline. The margins of the wounds were found irregular and bruised. Blood clots were adherent to the margins of the wounds numbered 1, 2 3 and 4 were

found resistant to washing out with running tap water.

- (5) Contusion of size 32 X 38 cm bluish in color was found present over lower 1/3rd of the back and extending and involving both the buttocks. Scalp - As described external. On reflection the scalp was found to be diffusely contused all over. Skull was healthy. Vertebrae - All were healthy. Membrane Diffused sub-dural haemorrhage and sub-arachnoid haemorrhage were found bilaterally over both the cerebral hemispheres. Brain was congested and spinal cord not examined.

In the Thorax Walls, ribs and Cartilages were healthy. Pleurae congested. Larynx and Trachea, Mucosa was congested, Lungs Both were congested. Pericardium was congested. Heart healthy and the chambers were found to contain liquid and clotted blood. Vessels healthy. Abdomen- Walls were healthy, Peritoneum congested, Mouth, Pharynx and Esophagus, Mucosa was congested. Stomach and its contents - Mucosa was congested and the stomach cavity was found to contain 150 ml of foul smelling liquid substances.

Small intestine and its contents - Mucosa was congested and contained blue like substances. Large intestine and its contents Mucosa was congested and contained gaseous and faecal matter. Liver was congested. Spleen was healthy. Kidneys congested. Bladder, Mucosa was congested and the bladder cavity was empty. Organs of generation - External healthy and internal uterus healthy and empty. Others healthy.

12. It may be mentioned that the following viscera were kept and preserved and the escorting police was requested to take them to Forensic Science Laboratory, Kahilipara for chemical analysis. The said viscera were (i) Jar I- Contained stomach and its contents in preservative, (ii) Jar II- Contained portions of lungs, liver, and brain and one half of his kidney in preservative and (iii) Jar III-Contained sample of saturated solution of common salt used as preservative.

13. In his evidence, the doctor (PW-3) had opined that during autopsy, externally five injuries were found on the dead body, which were caused by blunt force impact and also stated that the injury over the membrane

i.e. subdural haemorrhage and sub-arachnoid is sufficient in the ordinary course of nature (*sic.* the words "to cause death" appears to be missing). He had exhibited the post-mortem examination report (Ext.3) and his signature thereon and the signature of Dr. R.K. Gogoi, Professor & Head of the Department of Forensic Medicine, who had concurred with the opinion. He had also exhibited the inquest report (Ext.4) and his signatures thereon. He had also exhibited the dead body challan [Ext.5(A)]. The PW-3 had stated that after the autopsy, final report was not given. In his cross-examination, PW-3 had stated that it was suspected that poisonous substance might have been present in the dead body, for which viscera were referred for chemical examination and it was also suggested that injury over membrane might have been caused due to collusion against the hard substance.

14. The learned Trial Court had framed the following point for determination:-

“Whether the accused person on 23.01.2016 at 4 PM committed murder by intentionally (or knowingly) causing the death of Smti. Sumanti Karuwa and thereby committed an offence u/s 302 IPC?”

15. As the appellant and the deceased were residing together in the same house, the learned Trial Court had held that there was nothing on record to show that any other person had access to their house at the time of occurrence. Moreover, when the dead body was recovered, the house was closed from inside and when the appellant was called by PW-1, he opened the door and came out and the witnesses found the dead body of his wife lying inside the house on the bed and accordingly, it was held by the learned Trial Court that under the provisions of section 106 of the Evidence Act, 1872, it was within the knowledge of the appellant as to how the deceased had sustained injuries and died and accordingly, it was held that the burden had shifted on the appellant to explain the circumstances leading to the death of the deceased and also his innocence and it was held that the appellant had failed to discharge that burden and in this regard, reliance was placed on the case of *Trimukhi Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681. As there was no other inmate in that house and no explanation was offered by the appellant as to the cause of death of his wife, it was held that a strong presumption under Section 114 of the Evidence Act would arise against the appellant of having committed the crime because the dead body was recovered from the home where the door was bolted from inside. Moreover, as the witnesses found a blood stained hoe (also referred to as spade in the impugned judgment), which was seized from the room, it was held that the seized spade was also a blunt weapon. Accordingly, it was held that it was the appellant who had caused the death of

the deceased with the spade seized by the I/O.

16. Resultantly, the Trial Court had held that the prosecution had successfully proved that it was the appellant and none else who had intentionally caused death of the deceased. Accordingly, it was held that the appellant was guilty of committing the offence of murder punishable under Section 302 IPC and he was convicted for the said offence and he was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- with default stipulation as mentioned hereinbefore.

17. The learned Amicus Curiae had strenuously referred to all the evidence on record and had also read the deposition of all the prosecution witnesses. It was submitted that there was no eye witness to the commission of crime. Moreover, it was submitted that the appellant was in an inebriated condition. It was also submitted that although the PW-4 had stated in his examination-in-chief that he saw a blood stained hoe inside the house, but the prosecution had failed to establish that the said hoe (M.Ext.1) was the weapon of assault and the said hoe (M.Ext.1) was not sent for serological examination to ascertain if at all it contained any blood stain. It was also submitted by referring to the inquest report (Ext.4) that the Circle Officer, who had conducted the inquest did not find any external injuries on the dead body. It is submitted that the inquest report was not believable, having no evidentiary value because without any external injuries, opinion was recorded out of the blue that the cause of death was due to grievous hurt by blunt object and also because the author of the inquest report was not examined as prosecution witness. Thus, it is submitted that the contents of the inquest report (Ext.4) was contradictory to the external injuries, which are mentioned in the post-mortem report (Ext.3).

18. It was also submitted that the PW-3 had admitted the suggestion

given to him during cross-examination that the injuries found in the membrane might have been caused due to collusion against the hard substance. It was also submitted that the prosecution had failed to prove the intention of the appellant for committing the crime. Nonetheless, even if the Court is of the view that it was the burden of the appellant under Section 106 of the Evidence Act to explain what had happened inside the closed room, but on a presumption that the seized hoe (M.Ext.1) was the weapon of assault and yet there is no evidence that the deceased was assaulted with sharp edge of the hoe, is a circumstance which establishes and proves that the appellant had no intention of committing the offence of murder. Accordingly, it was submitted that even if this Court is disinclined to acquit the appellant, her alternative submission was to the effect that the conviction of the appellant ought to be converted to one under Part-II of Section 304 of the IPC and the sentence may reduce to one already undergone.

19. Per contra, the learned Addl. P.P. has made her submissions in support of the judgment impugned in this appeal and she has justified the conviction of the appellant and sentence imposed on him. It was submitted that the evidence of the prosecution witnesses could not be dislodged during their cross-examination and that the combined effect of the PW Nos.1, 2, 4 and 5 established that after getting information of quarrel between the appellant and the deceased, the appellant did not open the door of his house and it was only when PW-1, who is the owner of the garden had asked the appellant to come out that PW-2, 4 and 5 could go inside the house only to find the dead body of the wife of the appellant, which was lying on the bed and no one else was present inside. Accordingly, it was submitted that the appellant had failed to discharge his burden of proving what has actually happened inside the closed

room immediately before the PW Nos.1, 2, 4 and 5 had found the dead body inside the house after gate was opened by the appellant. It was submitted that the nature of injuries stated by the PW-3, i.e. the doctor who had conducted the post-mortem examination, was sufficient in ordinary course of nature to cause death.

20. At the outset, it would be appropriate to examine the evidence of the prosecution witnesses on record.

21. Gauri Dirial (also written as Gouri Dirial), is the complainant who had lodged the FIR (Ext.1) on 23.10.2016. He was examined as PW-1. In his examination-in-chief, he had stated that the occurrence took place around 5.00 PM and he was at his house and at that time, Kaila Urang, an employee of his garden had informed him over phone that the appellant had assaulted his wife and kept her inside and he was sitting in the front side of his house with a *dao*. He went to the house of the appellant with Kaila Urang and others, the appellant was outside his house with a *dao*. He had asked Kaila and others to enter his house and when they came out, he was told that the appellant's wife was lying on the bed and perhaps she had died. On his information, the police came and took the appellant and the dead body. He had exhibited the ejahar lodged by him as Ext.1 with his signature thereon and he had also exhibited the seizure list (Ext.2) and his signature thereon. In his cross-examination, he had denied that the appellant did not tell him that he had assaulted his wife. He had admitted that he was not a witness to the incident and he denied that the hoe (M.Ext.1) was not seized in front of him.

22. Kaila Urang (also written as Kaila Orang), who was examined as PW-2, was a worker in the garden of the informant. He had stated that occurrence took place a year ago at about 6.00 PM and on the day of incident at

about 5-6 PM, his daughter Pakhila, who was in the house of the appellant had informed him that the appellant had beaten his wife. Thereafter, he went to the house of the appellant and knocked his door, but he refused to open the door and accordingly, he told the informant about it and thereafter, the informant arrived and asked him to call the appellant, upon which the appellant came out of the house and he entered into the house and saw the dead body of the wife of the appellant. He had stated that at that time, the appellant was drunk. After informant had informed the police, the police arrived and took away the dead body and some articles were seized in his presence and he had put his thumb impression in the seizure list. He had stated that he had seen in Court the spade (M.Ext.1), empty bottle (M.Ext.2), clothes (M.Ext.3, 4 and 5) seized by the police. In his cross-examination, he had admitted that he had not seen the occurrence. He had denied the suggestion that he did not inform the I/O that his daughter was not in the house of the appellant and informed him about the occurrence or that he did not state during investigation that the appellant was drunk. He had stated that there were three houses adjacent to the house of the appellant. He had stated that he had proved his thumb impression on a blank sheet of paper, but he had denied that the police did not make any seizure in his presence.

23. The doctor who had conducted the post-mortem examination was examined as PW-3. The nature of external injuries found by him and viscera sent for chemical analysis has already been narrated hereinbefore. He had stated that during autopsy, externally five injuries were found over the dead body, which were caused by blunt force impact and he had also stated that the injury over the membrane i.e. subdural haemorrhage and sub-arachnoid is sufficient in the ordinary course of nature (*sic.* the words "to cause death"

appears to be missing). He had exhibited the post-mortem examination report (Ext.3) and his signature as well as the signature of Dr. R.K. Gogoi, Professor & Head, Department of Forensic Medicine, who had concurred with his opinion. He had also exhibited the inquest report (Ext.4) and his signatures thereon as well as dead body challan [Ext.5(A)] and his signature thereon.

24. Sunil Karua, who is a worker in the tea garden of the complainant was examined as PW-4. His statement in his examination-in-chief is similar to that of PW-2. Moreover, he had also stated that he saw he blood stained hoe inside the house and when the police came, they were asked to take the dead body out, which they did, and the police seized the hoe with handle (M.Ext.1), bottle (M.Ext.2) and clothes (M.Ext. nos. 3, 4 and 5) and he had put his thumb impression on the seizure list. In his cross-examination, he had reiterated that he had seen a blood stained hoe, but also stated that he did not witness how the appellant's wife had died or who killed her.

25. Duran Gogoi was examined as PW-5. He had stated in his examination-in-chief that he knows the complainant and the accused and also knew the deceased. He had stated that one day at around 10 a.m. when he was going for his work, he saw that after fetching water from a drain the appellant was pouring the same on his wife's head and his wife was shouting not to do that. He asked him not to do it and when he was in his shop in the afternoon he heard that the appellant had killed his wife. Thereafter he went to the house of the appellant and at that time the police had also came and he saw the appellant's wife lying dead on a bed at his house. The police took his signature on a paper. He had stated that Ext.2 is the seizure list and he had also exhibited his signature thereon. In his cross-examination, he had denied that he did not state before the police as deposed. He cannot say how the wife had died and he

had also stated that the police did not seize anything in front of him.

26. Sri Prasanta Bezboruah, the IO of the case was examined as PW-6. In his examination-in-chief, he had stated that on 23.10.2016 he was working as Second Officer, Namrup Police Station and on receipt of Ejahar from Gouri Dirial that the appellant had murdered his wife, Namrup PS case no.135/2016 was registered and was entrusted in litigation. He has rushed to the place of occurrence, examined the complainant and witnesses and found that the appellant was detained by local people. He found the dead body of the wife of the appellant in his house where one spade with handle (M. Ext.1), one empty glass bottle (M. Ext.2) were also lying and on getting sufficient materials against the appellant was arrested and took the dead body to the police station where inquest was done and thereafter it was sent for post-mortem examination. He had collected the post-mortem examination report during investigation and during the pendency of investigation he was transferred and thereafter the investigation was completed by Sri Dibyajyoti Morang whose handwriting and signature was known to him and that the subsequent IO had forwarded the viscera to the Forensic Science Laboratory and collected the report and on completion of investigation charge sheet was submitted against the appellant under section 302 IPC. He had exhibited the sketch map (Ext.5) prepared by him and the signature thereon. He had also exhibited the seizure list (Ext.2) and the signature thereon, he had also exhibited the spade with handle (M. Ext.1), one empty glass bottle (M. Ext.2) and green and pink saree (M. Ext. Nos. 3 and 4), petticoat (M. Ext. 5), which he had seen in the Court. He had also exhibited the charge sheet (Ext.6) and the signature of SI Dibyajyoti Morang as Ext.8(1). It may be mentioned that there appears to be a typing error in writing Ext.8(1) because in the original exhibit available in the TCR, the signature is marked as

Ext.6(1). He had also exhibited the FIR (Ext.1) and the signature of Chidananda Bora, Officer-in-Charge. In his cross-examination he had stated that he had examined all the witnesses on the day of the incident and that he had arrived at the place of occurrence at 9:15 a.m. He had stated that PW-1 did not state during investigation that the appellant was waiting with a dao and he had also not stated that the appellant had confessed his guilt. He had also stated that the PW-2, Kaila Urang did not state that the appellant was drunk at the time of incident. During investigation he had not examined Duran Gogoi or Pakhila Urang. He also stated that he had prepared the sketch on the date of the incident but he did not write the name of the person who had identified the place of the occurrence. He had stated that as per the sketch there were only two houses near the place of occurrence. He had denied that the sketch was faulty as there are many houses near the place of occurrence.

27. On the examination of the evidence on record, it is seen that during cross-examination, the appellant has not made any attempt to set up his defence case. The evidence of PW nos. 1, 2, 4 and 5 remains un-impeached, so far as they had found the door of the house of the appellant closed and when they entered the house after the appellant had come out, they had seen the dead body of the wife of the appellant lying inside the house on a bed.

28. It is noticed that none of the said PW nos. 1, 2, 4 and 5 had deposed having seen any injury on the dead body. Moreover, the inquest report (Ext.4) also contains no mention regarding external injuries, if any, on the dead body. Thus, the description of external injuries found on the dead body has come to light only from the post mortem report (Ext.3). The evidence of the doctor (PW-3), who had conducted the post mortem examination, could not be discredited during his cross-examination. The evidence of PW-3, which

incriminates the appellant is the statement that "*the injury over the membrane i.e. subdural haemorrhage and sub-arachnoid is sufficient in the ordinary course of nature*" (*sic.* the words 'to cause death' appear to be missing).

29. The learned Legal Aid Counsel has rightly pointed out that though the PW-4 has stated that the hoe (also typed as 'spade') contained blood stains, but it was not sent for serological examination.

30. It is seen from the evidence of PWs, it appears that a chain of circumstances operating against the appellant has been made out. Duran Gogoi (PW-5) saw that at 10.00 am. on the day of occurrence, the appellant was fetching water from a drain and was pouring on the head of his wife and his wife was shouting not to do that. The PW-5 also asked the appellant not to do so and left and in the afternoon when he was in his shop, he had heard that the appellant had killed his wife. Kalia Urang (PW-2) had reached the house of the appellant after hearing that he had killed his wife, but the appellant refused to open the door. In the meanwhile, PW-2 had also informed PW-1, and after PW-1 reached the house of the appellant, then only the appellant opened the gate of his house and then PW-2 and PW-3 went inside and saw the dead body of the deceased wife of the appellant, lying on the bed. The PW-4 also deposed that his neighbours told him that the appellant and his wife were engaged in quarrelling and when he reached the house of the appellant the PW-1 had also arrived and on arriving, they found the door of the house of the appellant shut and the door was opened only after PW-1 told the appellant to do so. The PW-4 had stated that he had seen a blood stained hoe inside the house of the appellant.

31. Thus, the evidence of the PWs discloses that since 10.00 am. in the morning, there was a quarrel between the appellant and his wife. At the

time when the dead body of the wife of the appellant was first seen by PW nos. 2 and 3, only the appellant and his wife were alone in their house. Therefore, what had happened or transpired in the closed house of the appellant, which led to the death of the wife of the appellant was well within the knowledge of the appellant. The post mortem report by the Doctor (PW-3) suggests nothing but homicidal death of the wife of the appellant because the appellant could not show that the injuries which were found on the dead body of the victim could be self-inflicted.

32. The appellant had not made any attempt to take his injured wife for medical treatment is a circumstances which establishes that the appellant had criminal *mens rea* and had no intention that his wife survive. Self inflicted injury by the wife of the appellant has to be excluded because had such cut injuries as was found present in the dead body by PW-3 been self inflicted, the appellant would have shown to the I.O. the weapon used by his deceased wife.

33. Therefore, under the facts unique to this case, the non-sending of the hoe (also mentioned as spade) for forensic and/or serological examination will not be fatal because of absence the house was closed from inside and thus, there was no presence of any outsider in the house of the appellant and the deceased at the time when PW-2 and PW-3 had seen the dead body of the deceased wife of the appellant. For the same reason, the question as to whether the appellant had a *mens rea* to murder his wife is not material because if the appellant had no *mens rea* to murder his wife, he would surely have opened his house and would have called for help or would have raised a hue and cry.

34. The learned *amicus curiae* had painstakingly pointed out that the possibility of the wife of the deceased falling down on floor and injuring her

brain cannot be ruled out and it was also submitted that the PW-3 in response to suggestion given by the defence, had replied that injury in the membrane might have been caused due to collusion against hard substance. We cannot agree with the said submission because as per the evidence of PW-1, PW-2 and PW-4, the appellant had refused to open the door of his house and if his wife had injured herself, then the appellant would have sought help of his neighbours to take her for providing her medical treatment. The appellant had opened the door of his house only when PW-1, his employer had asked him to do so. The appellant had failed to rebut the evidence of PW-1, PW-2 and PW-4.

35. This is the case where it was the burden of the appellant to prove what had happened inside the confines of his home where he and his wife were the only inmates, and to show the circumstances which led to the death of his wife. The appellant had failed to discharge his burden under section 106 of the Evidence Act, 1872. In his examination under section 313 Cr.P.C., the appellant had denied that he had killed his wife and took a plea that his wife had died after consuming poison, but he did not give any explanation as to how his wife had suffered 5 (five) external injuries mentioned in the post mortem report and as per the evidence of the doctor (PW-3), the injury over the membrane i.e. subdural haemorrhage and sub-arachnoid was sufficient in the ordinary course of nature to cause death (the words "to cause death" appears to be missing in examination-in-chief of PW-3).

36. In his evidence, the doctor (PW-3) who had conducted post mortem report had stated that after the autopsy, he did not give his final opinion and in his cross-examination, PW-3 had stated that during autopsy he suspected that poisonous substance might be present in the dead body for which he had referred the viscera for chemical analysis. The absence of final

opinion is not fatal to the case of the prosecution because the prosecution had been able to prove that the chain of circumstances appearing against the appellant was complete, which leads to only and no other conclusion that the appellant had physically assaulted his wife, which resulted in her suffering grievous hurt, which had resulted in her death.

37. Although the learned *amicus curiae* had painstakingly submitted that this was a case where the appellant did not murder his wife with a premeditated mind and thus, the offence committed by the appellant should be treated as one under section 304 Part-II of the IPC. In light of the discussions made herein before, we are unable to accept that this was a case falling within the meaning of Exception-4 to section 300 of the IPC because as per the evidence of PW-5, on the fateful day the appellant had been pouring drain water on the head of his wife and they were quarrelling till late afternoon and then the dead body of his wife was seen inside the house after the appellant had opened the door. Thus, it cannot be said that suddenly the appellant in a fit of rage had killed his wife without any provocation.

38. The learned Trial Court had appositely referred to the case of *Trimukhi Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681*, and held that as this was a case of murder of his wife and the dead body was found inside the confines of a dwelling house where the husband resides and that besides the appellant and his wife there were no other inmates in that house and in absence of any explanation offered by the appellant as to the cause of death of his wife a very strong presumption would arise against the appellant. Accordingly, the appellant was convicted.

39. There are some minor discrepancy in the evidence of PWs. In the FIR, the time of occurrence is 4:00 p.m. The PW-1, in his examination-in-

chief has stated the time of occurrence at about 5:00 p.m. The PW-2 has stated the time of occurrence as 6:00 p.m. in his examination-in-chief. PW-4 has given the time of occurrence as 4:30 p.m. in his examination-in-chief. These are minor discrepancy which does not discredit the case of the prosecution.

40. The learned amicus curiae had raised a point that the appellant was in an inebriated condition. As there is no evidence on record that the appellant was administered liquor or that he was compelled by force to drink, his inebriated condition would not be a defence to commit a murder of his wife.

41. In light of the discussions above, we are of the considered opinion that the judgment, order and sentence dated 19.03.2019, passed by the learned Additional Sessions Judge, Dibrugarh in Sessions Case No. 100/2017, by which the appellant was convicted for commission of offence punishable under section 302 IPC and sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for further 3 (three) months for committing offence under Section 302 IPC, which is impugned in this appeal deserves our concurrence.

42. Resultantly, this appeal is dismissed.

43. The learned *amicus curiae* shall be entitled to her usual honorarium/fees.

44. Let a free copy of this judgment and order be served on the appellant through the Superintendent of jail where the appellant is currently lodged.

45. Let the TCR be returned back.

JUDGE

JUDGE

Comparing Assistant