

GAHC010032782018



2024:GAU-AS:8800

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

Case No. : Criminal Appeal[J] NO. 20/2018

Shyamal Paul, Udaguri, Assam

.....Appellant

-VERSUS-

The State of Assam Represented by the Public Prosecutor,
Assam, GHC, Guwahati.

.....Respondent

Advocates :

Appellant : Mr. M. Dutta, Amicus Curiae

Respondent : Ms. B. Bhuyan, Senior Counsel &
Additional Public Prosecutor, Assam

Date of Hearing : 29.08.2024 & 30.08.2024

Date of Judgment & Order : 02.09.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MRS. JUSTICE MITALI THAKURIA
JUDGMENT & ORDER [ORAL]

[M. Choudhury, J]

1. This criminal appeal from jail under Section 383, Code of Criminal Procedure, 1973 ['CrPC' or 'the Code', for short] is preferred against a Judgment and Order dated 22.12.2017 passed by the Court of learned Sessions Judge, Udaguri in Sessions Case no. 25[D-U] of 2012. By the Judgment and Order dated 22.12.2017, the accused-appellant has been convicted for committing the offence of uxoricide and on finding him guilty for the offence of murder, the accused-appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo rigorous imprisonment for another three months. The accused-appellant has also been found guilty for the offence under Section 201, Indian Penal Code [IPC] and for the offence under Section 201, IPC, he has been sentenced to undergo rigorous imprisonment for seven years. It has been ordered that the sentences are to run concurrently.

2. The case, Sessions Case no. 25[D-U] of 2012 arose out of Orang Police Station Case no. 55 of 2011 and corresponding G.R. Case no. 392 of 2011. One Bibhas Chandra Paul, as the informant, lodged a First Information Report [FIR] before the Officer In-Charge, Orang Police Station on 04.11.2011 regarding missing of his sister, Uma Paul and suspecting involvement of three persons viz. [i] Shyamal Paul, that is, the present accused-appellant [A-1]; [ii] Sumitra Paul [A-2]; and [iii] Sudhir Paul [A-3] in the suspected murder of the informant's

sister. It was mentioned that the accused persons, named in the FIR, had confessed that they had killed the sister of the informant, Uma Paul and thereafter, buried the deadbody inside a jungle near Orang tea estate. The informant had *inter alia* mentioned that the marriage between his sister, Uma Paul and the present accused-appellant, Shyamal Paul [A-1] was solemnized about 12 years earlier. As no issue was born out of the said wedlock, the accused-appellant used to torture Uma Paul physically and mentally and there was also threat from the accused-appellant that she would be killed. The informant had also alleged that the accused-appellant had entered into another marital relationship and after the second marriage, both the accused-appellant and his second wife, Sumitra Paul [A-2] started torturing Uma Paul with more intensity. The informant had also alleged that on 24.10.2011, the accused persons, A-1 and A-2 with the assistance of the third accused person, A-3 took Uma Paul to Orang on the false pretext of providing medical treatment to her and it was thereafter, Uma Paul had gone missing.

3. On receipt of the FIR, the Officer In-Charge, Orang Police Station registered the same as Orang Police Station Case no. 55/2011 for the offences under Section 120B/302/201/34, IPC.

4. It has emerged from the materials on record that after completing investigation into the case, Orang Police Station Case no. 55/2011, the Investigating Officer [I.O.] laid a charge sheet under Section 173[2], CrPC vide Charge-Sheet no. 61 of 2011 on 30.11.2011 and in the said Charge-Sheet, the I.O. charge sheeted two accused persons viz. [i] Shyamal Paul [A-1], that is, the present accused-appellant; and [ii] Sumitra Paul [A-2]; finding a *prima facie*

case against them for commission of the offences under Sections 120B/302/201/34, IPC. With a statement that no materials were found against Sudhir Paul [A-3] who was also named in the FIR, Sudhir Paul [A-3] was not charge-sheeted. After submission of the charge-sheet, the case, G.R. Case no. 392 of 2011 stood committed to the Court of Sessions, Udaguri for trial and accordingly, Sessions Case no. 25[D-U] of 2012 stood registered.

5. During the course of the trial, the prosecution side examined 6 [six] nos. of witnesses to bring home the charges framed against the two accused persons, on 08.02.2012, under Sections 120B/302/34, IPC. After conclusion of the trial, the learned trial court delivered a Judgment and Order on 19.07.2012 convicting both the accused persons, [i] Shyamal Paul [A-1], that is, the present accused-appellant; and [ii] Sumitra Paul [A-2] under Sections 302/120B/201, IPC read with Section 34, IPC and for the offence under Section 302, IPC, they were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 50,000/- each, with default stipulation.

6. Aggrieved by the said Judgment and Order of conviction and sentence dated 19.07.2012, both the convicted accused persons, A-1 and A-2 preferred a criminal appeal jointly before this Court and the said criminal appeal was registered and numbered as Criminal Appeal no. 83[J] of 2012. The said appeal was heard by a Division Bench of this Court on 02.09.2015 and a Judgment and Order in the said appeal was delivered on 19.09.2015. By the Judgment and Order dated 19.09.2015, the Court set aside and quashed the conviction and sentence passed against Sumitra Paul [A-2], the appellant no. 2 therein. While acquitting the appellant no. 2, Sumitra Paul [A-2], the Court in so far as the

conviction and sentence passed against the present accused-appellant [A-1] is concerned, had observed that the trial court without recording the evidence of the Autopsy Doctor relied on the Post-Mortem Examination Report. It was observed that when the Post-Mortem Examination Report was available, the Autopsy Doctor ought to have been examined to ascertain the cause of death of the deceased. The case was remanded back to the learned trial court for a fresh decision against the present accused-appellant, Shyamal Paul [A-1] after recording the evidence of the Autopsy Doctor who performed the post-mortem examination on the deadbody of the deceased, Uma Paul and to write a fresh Judgment and Order thereafter. On being remanded the case back to the learned trial court with the above direction, the trial court examined the Autopsy Doctor as P.W.7 on 25.07.2017 and the present accused-appellant [A-1] was examined under Section 313, CrPC thereafter, on 22.12.2017, for providing an opportunity to explain the circumstances appearing against him from the testimony of P.W.7. Thereafter, the learned trial court heard the learned Public Prosecutor and the learned defence counsel. After hearing the learned counsel for the parties and after appreciation of the evidence/materials on record, the Judgment and Order, impugned herein, was delivered finding the accused-appellant [A-1] guilty for the offence of murder under Section 302, IPC. Hence, the instant appeal.

7. We have heard Mr. M. Dutta, learned Amicus Curiae for the accused-appellant and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor for the respondent State, assisted by Ms. M. Chakraborty, learned counsel.

8. Mr. Dutta, learned Amicus Curiae for the accused-appellant has submitted

that the case of the prosecution rested on circumstantial evidence and as such, a duty was cast on the prosecution to establish all the circumstances by cogent and credible evidence. But in the case in hand, the prosecution did not establish as to when the deceased had died. It is his submission that it is neither clear from the testimony of the Autopsy Doctor [P.W.7] nor from the Post-Mortem Examination Report [Ext.-2] that the death of the deceased, Uma Paul was a homicidal one. He has assailed the testimony of P.W.1 who was also the informant, as a hearsay one. It is his contention that the last seen together theory, which is a relevant facet in a case based on circumstantial evidence, was not proved as nobody had deposed as to whether the deceased and the accused were seen together at any point of time in proximity to the time of alleged murder of the deceased. The prosecution has sought to base its case on some doubtful extra-judicial confessions. As there were many gaps in the chain of circumstances, the learned trial court, according to him, had erred in convicting the accused-appellant as the assailant of the deceased. With such submissions, Mr. Dutta has contended that the Judgment and Order of conviction and sentence of the learned trial court is not sustainable in law and the accused-appellant is clearly entitled to be acquitted, at least, on benefit of doubt.

9. Opposing the contentions of the learned Amicus Curiae, Ms. Bhuyan has strenuously contended that from the Post-Mortem Examination Report, it would clearly emerge that the death of the deceased was a homicidal one. Apart from the extra-judicial confession made by the accused-appellant before the witnesses who had no enmity with the accused, from the nature of marital relationship which existed between the deceased and the accused-appellant, a

motive had clearly emerged. Ms. Bhuyan has further contended that the deadbody was recovered at the instance of the accused and such fact is admissible under the rule of evidence embodied in Section 27 of the Evidence Act. As it was at the instance of the accused-appellant, the deceased had gone to Orang at the relevant time for medical treatment, the prosecution had been able to establish that in all possibility, the accused-appellant and none else, was the probable assailant. Contending so, Ms. Bhuyan has submitted that the Judgment and Order of the learned trial court needs no interference.

10. We have duly considered the submissions of the learned counsel for the parties and have also gone through the testimonies of the prosecution witnesses examined by the prosecution and the documentary evidence led during the trial to bring home the charge against the accused, as available in the case record of Sessions Case no. 25[D-U] of 2012, in original.

11. In the course of the trial, the prosecution side initially examined six nos. of prosecution witnesses and later on, another prosecution witness as P.W.7 was examined to bring home primarily the charge of uxoricide against the accused [A-1]. In addition, the prosecution side also exhibited two nos. of documents viz. [i] Ext.-1 – FIR; and [ii] Ext.-2 – Post Mortem Examination [PME] Report.

12. The informant, Bibhas Paul, as mentioned earlier, is an elder brother of the deceased, Uma Paul and the brother-in-law of the accused. He was examined as P.W.1. P.W.3, Durga Paul is an elder brother of the accused [A-1] and a brother-in-law of the deceased. P.W.2, Binoy Paul was the VDP Secretary at the relevant point of time. P.W.4, Siden Paul is an uncle of the accused and P.W.5, Sunil Paul

is a cousin brother of the accused. The prosecution witnesses – P.W.2, P.W.3, P.W.4 & P.W.5 – are inhabitants of Village – Alichinga, Police Station – Dhekiajuli. At the time of lodging the FIR and at the time of deposition, the informant– P.W.1 stated that he resided in Dhekiajuli, Police Station – Dhekiajuli.

13. Admittedly, the case in hand rested on circumstantial evidence as there was no eye-witness account. None of the prosecution witnesses had deposed to the effect that they had seen any alleged assault on the deceased by the accused. It is well settled proposition of law that in cases where the evidence is of circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn are required to be established by reliable and credible evidence so as to exclude any hypothesis consistent with the innocence of the accused. The Hon'ble Supreme Court of India in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra**, reported in [1984] 4 SCC 116, has referred to five principles, for proving a case based on circumstantial evidence, in the following manner :-

152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is **Hanumant v. The State of Madhya Pradesh**, [1952] SCR 1091. This case has been uniformly followed and applied by this Court in a large number of later decisions upto date, for instance, the cases of **Tufail [Alias] Simmi v. State of Uttar Pradesh**, [1969] 3 SCC 198 and **Ramgopal v. State of Maharashtra**, [1972] 4 SCC 625. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case.

It is well to remember that in cases where the evidence is of a

circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

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

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

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in **Shivaji Sahab Rao Bobade & Anr. vs. State of Maharashtra, [1973] 2 SCC 793** where the following observations were made :

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

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

- [3] the circumstances should be of a conclusive nature and tendency.
- [4] they should exclude every possible hypothesis except the one to be proved, and

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

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

14. Before appreciation of the evidence on record, a reference to the rule laid down in Section 25 and Section 26 of the Evidence Act appears necessary. As per Section 25 of the Evidence Act, no confession made to a Police Officer shall be proved as against a person accused of any offence, meaning thereby, a confession made to a Police Officer cannot be admitted in evidence. Section 26 of the Evidence Act has provided that no confession made by any person whilst he is in the custody of a Police Officer, shall be proved as against such person, unless it be made in the immediate presence of a Magistrate. Section 27 of the Evidence Act is an exception to Section 25 and Section 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of any fact in consequence of an information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact discovered must lead to discovery of a physical object like a corpse, a weapon, etc. The rule of evidence embodied in Section 60 of the Evidence Act is to the effect that oral evidence must, in all cases whatever, be direct, that is to say, *firstly*, if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; *secondly*, if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; *thirdly*, if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; and

fourthly, if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds. As a corollary, when a statement of a witness is not based on a direct personal knowledge but on what he heard from others, is termed as hearsay and such a hearsay evidence ordinarily is not admissible in evidence. By taking into purview the above positions of law regarding rules of appreciation of evidence, we now turn to the testimony of the prosecution witnesses, excluding the inadmissible parts of their testimony on the afore-mentioned counts, from consideration.

15. In his evidence-in-chief, P.W.1 stated that he knew the accused as he married his younger sister, Uma Paul about twelve years earlier. He stated that no issue was born out of the said wedlock. P.W.1 stated that the accused used to torture his sister and he also used to threaten her of killing. The accused remarried one Sumitra Paul and since thereafter, the intensity of his torture upon Uma Paul increased. He stated that on 24th day of October, the accused took Uma Paul to Orang on the pretext of providing medical treatment to her there. When Uma Paul did not return thereafter, Durga Paul [P.W.3], the elder brother of the accused, came to his [P.W.1] house to inform that Uma Paul had not returned home. P.W.1 stated to have informed P.W.2, Binoy Paul, the then VDP Secretary, who, in turn, told P.W.3, Durga Paul to search for the accused. P.W.1 further stated that P.W.3 found the accused and the accused told that he had killed Uma Paul. On getting the information, he lodged the FIR at Orang Police Station. P.W.1 exhibited the FIR as Ext.-1 with his signature therein as Ext.-1[1]. He stated that the Police recovered the deadbody of his sister, Uma Paul. In cross-examination, P.W.1 stated that the FIR was written as per his

version. He further stated that during her lifetime, Uma Paul did not lodge any case as regards any torture meted out to her by the accused. P.W.1 further disclosed that after his second marriage, the accused kept Uma Paul at his own house at Alichinga and he used to live separately at Orang. P.W.1 also stated that the accused had three brothers. P.W.1 further disclosed that he lodged the FIR on the basis of the information given to him by Durga Paul [P.W.3].

16. P.W.2, Binoy Paul stated that he knew the accused and at the relevant point of time, he was the VDP Secretary. On the incident, P.W.2 deposed that on one day, Durga Paul [P.W.3] came to him to inform that Uma Paul did not return home. He then made a search for Uma Paul after about 7-8 days, Durga Paul [P.W.3] apprehended the accused and brought the accused to his house. When he questioned the accused, the accused admitted that he had killed Uma Paul. Then, he [P.W.2] handed over the accused to the Police personnel in Dhekiajuli Police Station. The accused was subsequently sent to Orang Police Station from Dhekiajuli Police Station. Whatever was deposed by P.W.2 during his cross-examination was in the nature of hearsay.

17. P.W.3, Durga Paul deposed to the effect that Uma Paul was bitten by a dog and in order to provide medical treatment to Uma Paul, the accused called her to Orang. P.W.3 stated that on one day, he did not find Uma Paul at home when he came back. Then he made an enquiry in the parental house of Uma Paul but he could not find Uma Paul there. P.W.3 stated that the accused, Shyamal Paul [A-1] used to live in a rented house in Orang and he could not find the accused there. It was after some days, he found the accused in the house of a person named Subudh at Dhansiri Ghat. P.W.3 further stated that when he asked the

accused [A-1] whereabout of Uma Paul, the accused replied to him that Uma Paul had been killed by him. Then, he apprehended the accused and handed him over to the VDP Secretary, P.W.2. During cross-examination, P.W.3 stated that Uma Paul had been staying in his house after the second marriage of the accused. After the second marriage, the accused had been staying in a rented house at Orang. P.W.3 further stated that he did not lodge any FIR when he did not find Uma Paul. He stated that he was alone when the accused told him that Uma Paul was killed by him. He stated that they were three brothers and they had one bigha of land wherein the accused also had a share. P.W.3 also stated that he did not know anything about the second marriage of the accused and about the second wife of the accused. He had disclosed that Uma Paul and the accused had been living separately for about three years and the accused used to visit his house frequently to look after his parents. P.W.3 also stated that he had never visited the rented house of the accused in Orang prior to the incident. He denied that he had told Police that when he asked the accused in a threatening language, the accused confessed his guilt before him. P.W.3 further stated that he was not told by the accused where the deadbody was buried.

18. P.W.4, Siden Paul deposed to the effect that on one day, Durga Paul [P.W.3] told him that Uma Paul did not come back home. Then, he [P.W.4] asked Durga Paul [P.W.3] to search for her. After a few days, Durga Paul [P.W.3] came to his house along with the accused and in his presence, Durga Paul [P.W.3] questioned the accused. On being so questioned, the accused admitted that Uma Paul had been killed by him. Then he [P.W.4] called Binoy Paul [P.W.2], the then VDP Secretary and handed over the accused over to the Police through P.W.2. During cross-examination, P.W.4 stated that the accused did not tell him

how Uma Paul was killed and when and where the deadbody of Uma Paul was buried by him.

19. P.W.5, Sunil Paul deposed that on one day, Durga Paul [P.W.3] told him that the accused had been apprehended. Then, he [P.W.5] asked the accused whereabouts of Uma Paul. The accused replied that he had killed Uma Paul. Binoy Paul [P.W.2], the then VDP Secretary was then called and before Binoy Paul [P.W.2] also, the accused admitted that Uma Paul was killed by him. Then, Binoy Paul [P.W.2] handed over the accused to the Police Station. During cross-examination, P.W.5 stated that Durga Paul [P.W.3] did not tell him anything when he brought the accused to his shop on that day and as such, he was not aware as to why the accused had been apprehended.

20. On an analysis of the testimony of the afore-mentioned witnesses, it has emerged that the marriage between the accused and Uma Paul was solemnized at least a decade earlier to the incident. It has further emerged that the accused had entered into a relationship with another women, leaving Uma Paul to stay in his house at his native place at Alichinga where his elder brother, Durga Paul [P.W.3] used to live. It has further emerged from the testimony of Durga Paul [P.W.3], the accused had been living separately from his first wife, Uma Paul in a rented house at Orang for a period of about three years earlier to the date of the incident. Durga Paul [P.W.3] did not disclose in his testimony in what manner and when the accused had called Uma Paul to Orang for the purpose of providing medical treatment to Uma Paul. From the testimony of Durga Paul [P.W.3] it is also clear that when Uma Paul left home in Alichinga for Orang, P.W.3 was not at home. P.W.3 did not disclose from whom he came to learn that

Uma Paul was called to Orang by the accused for medical treatment.

21. From the testimony of P.W.1, it transpires that whatever he had mentioned in the FIR [Ext.-1] was based on information given to him by Durga Paul [P.W.3] as he admitted the said fact in his cross-examination. Thus, his testimony to the effect that Uma Paul was either called or taken to Orang on the 24th day of October, 2011 was clearly based on the information provided to him by Durga Paul [P.W.3] and as such, the same is in the nature of hearsay as Durga Paul [P.W.3] in his testimony did not mention anything as regards the date when Uma Paul was called, purportedly for providing medical treatment, to Orang by the accused. While Durga Paul [P.W.3] had categorically asserted that when the accused had admitted that Uma Paul was killed by him, he was alone and there was no other person with him. On the other hand, Siden Paul [P.W.4] stated that when Durga Paul [P.W.3] questioned the accused in his presence, the accused confessed his guilt. Binoy Paul [P.W.2], the VDP Secretary had stated that Durga Paul [P.W.3] after apprehending the accused brought the accused to his house. From the testimony of P.W.2 it does not emerge that when the accused admitted that he [the accused] killed Uma Paul, Durga Paul [P.W.3] was present along with him. Sunil Paul [P.W.5] too stated that the accused confessed before him and did not state whether it was in presence or absence of Durga Paul [P.W.3], who stated to him that the accused had been apprehended.

22. From the testimony of the prosecution witnesses – P.W.1, P.W.2, P.W.3, P.W.4 & P.W.5 – it has not emerged clearly as to when Uma Paul left her house at Alichinga for Orang. It is well settled that extra-judicial confession is a weak type of evidence and it is ordinarily to be used as a corroborative piece of

evidence to lend credibility to other substantive evidence on record. If it is not supported by other substantive evidence on record or if it fails to inspire confidence, it is to not be treated as a strong piece of evidence for the purpose of arriving at a conclusion of guilt. The standard required for proving an extra-judicial confession to the satisfaction of the Court is on the higher side. It can only be accepted after exercise of care and caution and before accepting any extra-judicial confession, the circumstances surrounding such extra-judicial confession so made are to be considered, apart from examining its voluntariness and truthfulness. If an extra-judicial confession does not inspire confidence of the Court, the same shall have to be excluded from consideration.

23. The circumstances of last seen together is a facet in a case resting on circumstantial evidence. The circumstance of last seen together is ordinarily taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the points of time when the accused and the deceased were seen together with the deceased alive and when the deceased was found meeting a homicidal death is so small that the possibility of any other person being with the deceased can be completely ruled out. The time gap between the accused person seen in the company of the deceased and the homicidal death of the deceased would then be a material consideration for appreciation of the evidence and to place reliance on it as a circumstance against the accused. It is true that it cannot be said that the evidence of last seen together is to be rejected only because the time gap between the accused person and the deceased last seen together and the homicidal death of the deceased was found out after a considerable period of time. There can be no fixed formula for the duration of time gap and it

depends upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period. In other words, if the prosecution is able to lead credible and conclusive evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, despite a long time gap, can be considered as one of the circumstances in the chain of circumstances to prove the guilt of such accused person.

24. Thus, to bring in the applicability of last seen together theory in a case resting on circumstantial evidence, the prosecution is cast with an obligation to prove two facts by reliable and credible evidence, *firstly*, when the accused and the deceased were last seen together with the deceased being alive; and *secondly*, when the deceased had suffered homicidal death.

25. At this juncture, we can turn to the testimony of the Autopsy Doctor, who was examined as P.W.7 and the Post-Mortem Examination [PME] Report, which was exhibited by the prosecution as Ext.-2 through P.W.7. From the PME Report [Ext.-2], it is revealed that the post-mortem examination on the deadbody of the deceased was performed at Udaguri Civil Hospital on 05.11.2011. In his testimony, Dr. Arindam Bora [P.W.7] deposed that on 05.11.2011, he was serving as the Medical & Health Officer-I at Udaguri Civil Hospital. It was on 05.11.2011, he performed the post-mortem examination on the deadbody of Uma Paul, who was identified by UBC, Purnima Das. On examination, he [P.W.7] found the deadbody as a decomposed one with maggots. In the PME Report [Ext.-2], he recorded the following findings :-

1. Condition of subject stout emaciated, decomposed etc. :
A decomposed female body maggots with long hair.
2. Wounds – position and character : As described.
3. Bruise Position size and nature : As described.
4. Mark of ligature on neck dissection, etc. : NIL.

II – Cranium and Spinal Canal

1. Scalp, skull, vertebrae : Intact.
2. Membrane : Decomposed.
3. Brain and spinal cord : Decomposed.

Note : The spinal canal need not be examined unless any indications of disease or injury exist.

III – Thorax

1. Walls ribs and cartilages : Intact.
2. Pleurae : Decomposed.
3. Larynx and trachea : Decomposed.
4. Right lung : Decomposed.
5. Left lung : Decomposed.
6. Pericard [dium] : Decomposed
7. Heart : Decomposed
8. Vessels : Decomposed.

IV – Abdomen

1. Walls : Decomposed.
2. Peritoneum : Decomposed
3. Mouth, Pharynx, oesophagus : Decomposed
4. Stomach and its contents : Decomposed
5. Small intestine and its contents: Decomposed
6. Large intestine and its contents: Decomposed
7. Liver : Decomposed
8. Spleen : Decomposed
9. Kidneys : Decomposed
10. Bladder : Decomposed

11. Organs of generation external and internal : Decomposed

V – Muscles, Bones and Joints

1. Injury : # Carnival [C₂].
2. Disease or deformity : Nil.
3. Fracture : # Carnival [C₂].
4. Dislocation : Nil.

More detailed description of Injury or Disease

Fracture cervical bone [C₂]

Assistant Surgeon

Opinion of As to cause of death

Sub-Assistant Surgeon

In my opinion, death is due to Asphyxia following strangulation.

Signed Sd/- illegible

25.1. P.W.7 further stated that in the PME Report [Ext.-2], he recorded his opinion and as per his opinion, the death was due to asphyxia following strangulation. P.W.7 exhibited the PME Report as Ext.-2 and his signature therein as Ext.-2[1]. In cross-examination, PW.7 reiterated that the deadbody was a totally decomposed one and the muscles were found separated from bone. He further testified that he could not detect whether C2 fracture was ante-mortem or not.

26. At the time of institution of the FIR [Ext.-1] on 04.11.2011, the deadbody of the deceased, Uma Paul was not recovered. From the FIR [Ext.-1], it is revealed that the FIR was received at the Police Station at about 06-00 p.m. on 04.11.2011. The prosecution, for reasons best known to it, did not bring any

Inquest Report on record. In the absence of any Inquest Report, it is not possible to find out when the inquest proceeding was held. The prosecution witnesses including the I.O. [P.W.6] did not specifically mention as to when the deadbody of the deceased was recovered. In the PME Report [Ext.-2], it was recorded that the deadbody of the deceased was despatched at 01-00 p.m. on 05.11.2011 and it was received at Udaguri Civil Hospital at 01-20 p.m. on 05.11.2011. From the above materials, it can be safely concluded that the deadbody of the deceased was recovered in between 06-00 p.m. on 04.11.2011, when the FIR was lodged, and 01-00 p.m. on 05.11.2011, when the deadbody was despatched. The prosecution has not led any evidence as to when the deceased met her death. The medical evidence in the form of testimony of the Autopsy Doctor [P.W.7] and the PME Report [Ext.-2] do not throw any light as regards the time and date of the death of the deceased, even by approximation. Though it is established about the duration of the time period within which the deadbody of the deceased was recovered but it is not possible to reach any conclusion as regards the time and date of alleged unnatural death of the deceased.

27. The prosecution witnesses – P.W.1, P.W.2, P.W.3, P.W.4 & P.W.5 – did not specifically depose as to when the deceased had gone out of her house at Village – Alichinga for Orang town, which are under the territorial jurisdiction of Orang Police Station, purportedly for medical treatment. These prosecution witnesses did not depose to the effect that it was the accused who had accompanied the deceased during her journey from Village–Alichinga to Orang. There is no evidence/material, even by way of hearsay, on record on the point that the deceased was last seen alive in the company of the accused. P.W.2,

Binoy Paul stated that he started searching for Uma Paul after about 7-8 days apparently after P.W.3, Durga Paul informed him that Uma Paul did not return back to home. P.W.3, Durga Paul started making enquiry about whereabouts of Uma Paul after one day he did find Uma Paul at home, without specifically mentioning the date when Uma Paul left her home.

28. In the above facts and circumstances obtaining in the case, we are not persuaded to reach a view that the prosecution has been able to bring in the applicability of last seen together theory by any manner. In view of failure on the part of the prosecution to bring in the theory of last seen together alive in any manner, not to speak of in a satisfactory and convincing manner, it cannot be said that correspondingly, the onus had shifted to the accused to provide a plausible explanation in terms of Section 106 of the Evidence Act. In this connection, the following observations made in **Sharad Birdhichand Sarda** [supra] can be referred to :-

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied :

- [1] various links in the chain of evidence led by the prosecution have been satisfactorily proved,
- [2] the said circumstance points to the guilt of the accused with reasonable definiteness, and
- [3] the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not

otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal's case [supra] where this Court observed thus :

Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused.

29. It has been urged on behalf of the prosecution that recovery of the deadbody of the deceased was made after the place was pointed out by the accused. Reference is made to the testimony of the I.O. [P.W.6] in that connection. To examine such contention, reference to the evidence given by the I.O. [P.W.6] appears necessary. As per the testimony of I.O. [P.W.6], the FIR was received by the Officer In-Charge, Orang Police Station at around 06-00 p.m. on 04.11.2011. The accused was handed over by the informant [P.W.1] at Dhekiajuli Police Station wherefrom the accused was brought to Orang Police Station. P.W.6 further stated that the deadbody was recovered after the same was shown by the accused. P.W.6 neither exhibited any Sketch Map nor provided any description of the place wherefrom the deadbody of the deceased was recovered nor mentioned the time/date when such recovery of the deadbody was made. He only stated that the deadbody was found laid on the ground covered with branches and leaves of tree. P.W.6 stated that he did not seize anything from the P.O. [the place of recovery of the deadbody]. P.W.6 also admitted that no one was examined at the time of recovery of the deadbody on the ground that there was no habitation near the P.O. Though P.W.6 stated that inquest was held at the P.O. itself. He did not, however, exhibit any Inquest Report. P.W.6 also admitted that there was no witness to the inquest proceeding. P.W.6 further deposed that Durga Paul [P.W.3] stated to him that

when he [P.W.3] asked the accused in threatening language, the accused confessed his guilt.

30. At the cost of repetition, it may be stated that Section 27 is an exception to Section 25 and Section 26 of Evidence Act. It makes that part of the statement which distinctly leads to discovery of fact in consequence of information received from a person accused of any offence, in the custody of a Police Officer, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Thus, what is admissible being the information, the same is to be proved and not the opinion formed on it by the Police Officer. To bring in the exception, the exact information given by the accused while in the custody which leads to the recovery has to be proved. It is settled that it is necessary for the benefit of both the accused and the prosecution that the information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. In the case in hand, only the I.O. [P.W.6] had deposed to the effect that the deadbody of the deceased was recovered after the place was shown by the accused. The fundamental infirmity in the present case is that the exact statement said to have been made by the accused which ultimately led to the discovery of a fact to be relevant under Section 27 of the Evidence Act, was not brought on record. The prosecution had not led any evidence that at the time of recovery of the deadbody, there was any witness or not, as no memorandum was found to have been prepared in that connection. In fact, the I.O. [P.W.6] had admitted that there was no witness at the time of recovery of the deadbody. In absence of any evidence as regards the

information given by the accused leading to discovery of a fact, we are not persuaded to agree to the submission advanced on behalf of the prosecution that the recovery of the deadbody of the deceased would be admissible under the rule of evidence embodied in Section 27 of the Evidence Act. With no witness deposing regarding recovery of the deadbody, save and except the I.O. [P.W.6], and no evidence regarding the accused accompanying the I.O. [P.W.6] at the time of recovery of the deadbody, the recovery of the deadbody cannot also be brought within the purview of Section 8 of the Evidence Act.

31. With no direct evidence on the point of seeing the accused in the company of the deceased with the deceased being alive; due to absence of any evidence as regards the time and date of the death of the deceased, even by approximation; non-applicability of the theory of last seen together; and doubtful nature of evidence as regards recovery of the deadbody; there appears to be no substantive evidence, other than the alleged extra-judicial confession made by the accused before the prosecution witnesses, mentioned above. While an extra-judicial confession is considered to be a weak piece of evidence, to accept any extra-judicial confession, it has to inspire the confidence of the court. The circumstance in which the alleged extra-judicial confession was shown to be made by the accused, discussed above, the same has not inspired confidence of the court as the testimony of those prosecution witnesses were not in conformity with one another, more particularly, when the surrounding circumstances when such alleged extra-judicial confessions were made.

32. From the discussion on the evidence/materials on record, we find that the various links in the chain of evidence led by the prosecution have not been

satisfactorily established pointing to the guilt of the accused with any kind of definiteness and any proximity to the time. It is true that in view of the nature of relationship that existed between the accused and the deceased, the needle of suspicion can be pointed towards the accused. But it is settled that suspicion, however grave it may be, cannot take the place of proof and there is a long distance to travel from the point of 'may be true' to the point of 'must be true'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take the place of proof. The long distance between 'may be true' and 'must be true', must be covered by clear, reliable, credible and unimpeachable evidence before an accused can be held guilty. It is also a fundamental principle of criminal jurisprudence that if two views are possible on the evidence/materials adduced in the case, one pointing towards the guilt of the accused and the other to his innocence, the view which is favourable to the accused, at all stages, should be adopted. This principle assumes relevance and pertinence in cases wherein the guilt of the accused is sought to be established circumstantial evidence.

33. The offence defined in Section 201, IPC is attracted when one causes disappearance of evidence of offence or gives false information to screen the offender. The essential ingredients of the offence under Section 201, IPC are as follows – [i] an offence has been committed; [ii] the accused knew or had reason to believe that such offence has been committed; [iii] the accused caused disappearance of the evidence thereof; [iv] give false information in respect thereof; [v] knowing or having reasons to believe the same to be false; and [vi] the accused did so with intention to screen the offender from legal punishment. When the evidence/materials available on record are analysed qua

the ingredients of the offence defined in Section 201, IPC, we find lack of sufficient evidence/materials to attract the said offence against the accused.

34. For the reasons mentioned hereinabove, we find ourselves not in agreement with the finding of guilt arrived by the learned trial court on the evidence/materials on record, discussed hereinabove. Having held that the prosecution has failed to prove its case against the accused beyond all reasonable doubts by way of clear, reliable, credible and unimpeachable evidence, we find that the Judgment and Order dated 22.12.2017 of conviction and sentence passed by the learned trial court is unsustainable in law and the same is liable to be set aside. It is accordingly set aside. Consequently, the instant criminal appeal stands allowed.

35. The accused-appellant is to be released from custody forthwith if his custody is not required for any other case or purpose.

36. Before parting with the record, we wish to place our appreciation on record as regards the services rendered by Mr. M. Dutta, learned Amicus Curiae appearing for the accused-appellant and direct the Registry to make available to him just remuneration as per the notified fee structure applicable to the Amicus Curiae.

37. The records of the trial court are to be sent back forthwith.

38. During the course of hearing, it has come to notice that the case diary of Paneri Police Station Case no. 150 of 2007 under Section 341/376, Indian Penal

Code is tagged with the case records of Sessions Case no. 25[D-U] of 2012. The Court of Sessions, Udaguri shall look into the said aspect for taking necessary steps.

JUDGE

JUDGE

Comparing Assistant