GAHC010012612018

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

Case No. : CRL.A(J)/7/2018

PRAFULLA CHANDRA KALITA
SIBSAGAR

VERSUS

THE STATE OF ASSAM
GHC, GHY.

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MRS. JUSTICE MARLI VANKUNG

For the appellant	Ms. Bijita Sarma, Advocate, Legal Aid Counsel.
For the State respondent	Ms. S. Jahan, Addl. P.P.
Date of hearing	21.03.2024.
Date of order	26/06/24

JUDGMENT AND ORDER

(CAV)

(K.R. Surana, J)

Heard Ms. Bijita Sarma, learned Legal Aid Counsel, representing the appellant. Also heard Ms. S. Jahan, learned Addl. P.P. for the State.

2) In terms of the provisions of section 378 of CrPC, the appellant has filed this appeal from jail.

3) This appeal under section 374(2) Cr.P.C. has been filed to assail the judgment dated 06.11.2017, passed by the learned Sessions Judge, Sivasagar in Sessions Case No. 169(S-S)/2016, thereby convicting Prafulla Chandra Kalita, the appellant for committing offence punishable under section 302 IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1,000/- with default stipulation.

***Facts of the case**:*

4) In brief, the case of the prosecution is that on 13.03.2016, a G.D. Entry No. 336 was recorded by the Officer-in-Charge, Amguri P.S. at 4.50 AM. to the effect that Sri Jintu Neog, a resident of Khemdoi Kakati Gaon had informed him over phone that Prafulla Kalita, a resident of the same village had caused grievous injury to his wife by *dao* blows, felling her there. Accordingly,

S.I. Gangadhar Lahon was instructed to take necessary steps for investigation. Accordingly, the wife of the appellant, who was then in injured condition was sent to hospital and on her death, the inquest and post-mortem of the dead body was conducted. The statement of few witnesses was recorded.

5) Later, on 13.03.2016, at about 11.00 AM., the informant, Manash Kalita had lodged an FIR with Officer-in-Charge, Amguri P.S., alleging that on that day, his mother was physically assaulted and she had succumbed to her injuries. Thereupon, Amguri P.S. Case No. 31/2016 under section 302 IPC was registered and further investigation was undertaken. The appellant had surrendered at 11.10 AM. and had admitted his guilt. On disclosure made by the appellant, the weapon of assault was recovered and seized. Upon completion of investigation, the I.O. had submitted charge-sheet against the appellant.

6) On receipt of the case record and the charge-sheet, the Addl. Chief Judicial Magistrate, after complying with the requirement of section 207 CrPC, found the case exclusively triable by the Court of Sessions and accordingly, committed the case for trial before the Court of Sessions with the appellant in jail custody.

Trial before the Court of Sessions:

7) By order dated 31.08.2016, charge under section 302 IPC was framed and explained to the appellant, to which he pleaded not guilty and claimed to be tried.

8) During trial, the prosecution had examined 9 (nine) following PWs, viz., Manash Kalita (informant) (PW-1); Dr. Mrinmoy Baruah (M.O.) (PW-2); Suchen Saikia (PW-3); Jintu Gogoi (PW-4); Rajen Kalita (PW-5); Jadav Saikia (PW-6); Apurba Hazarika (PW-7); Dipak Borah (PW-8); S.I. Gangadhar Lahon

(I.O.) (PW-9). The following were exhibited, viz., FIR (Ext.1); Inquest Report (Ext.2); Post-mortem Report (Ext.3); Seizure List (Ext.4); Sketch Map (Ext.5); Charge-Sheet (Ext.6); Statement of the accused recorded under section 161 CrPC (Ext.7); G.D. Entry Book (Ext.8); G.D. Entry No. 336 dated 13.03.2016 [Ext.8(i)]; True copy of said G.D. Entry [Ext.8(ii)]; Seized *dao* (M.Ext.1); Seized *chadar* (M.Ext.2). One Jintu Neog was examined as CW-1. Thereafter, the appellant was examined by the Court under section 311 CrPC. The appellant took a plea of denial and declined to adduce any evidence.

9) The learned Sessions Judge had framed the following two points of determination:-

I. Whether on 13.03.2016, Putuli Kalita died due to the injuries sustained by her? If so, whether her death was homicidal in nature?

II. Whether on 13.03.2016 at about 4 AM, accused Prafulla Ch. Kalita, has physically assaulted his wife Putuli Kalita with an intention and knowledge to cause her death and thereby committed murder of said Putuli Kalita?

Discussion and decision by the learned Trial Court:

10) The learned Trial Court had elaborately discussed the evidence of the PWs and the CW-1. The appreciation of their evidence would be made in the later part of this judgment and order and therefore, the same is not re-stated herein to avoid repetition.

11) As per the evidence of the Medical Officer (PW-2), who had conducted the post-mortem examination of the dead body of Putuli Kalita, it was held that the dead body was found with 7 (seven) incised wounds over her face, forehead, leg and both the hands and that as per medical opinion, cause

of death was haemorrhage and shock leading to syncope and the injure nos. (i), (ii) and (iii) and injury on the brain was fatal in nature and that such injury may be caused by the *dao* (M. Ext.1), which was confirmed in the cross-examination by the defence. The injuries on the deceased as mentioned in the post mortem report were corroborated by the I.O. (PW-9). It was also held that in his explanation, the appellant had confirmed the injuries found on the deceased. Thus, it was held that the injuries were caused with an intention and knowledge to cause death.

12) The learned Trial Court had place reliance on the case of *Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*. Para-152 thereof, on which reliance was placed is quoted below:-

> ***152***. *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 Sahebrao Bobade v. 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.

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

13) In light of the said decision, the learned Trial Court had summarized the circumstantial evidence proved against the appellant as follows:-

i. The appellant was living with his deceased wife, and on the day of the incident, they were alone in their matrimonial home. In this regard, the learned Trial Court had held that it was admitted in by the appellant in his statement under section 313 CrPC that he and Putuli Kalita, his deceased wife were residing together in the residence of the appellant and their children used to reside in a separate residence. The appellant has two wives and the other one resides at Titabor with her children. PW-1, the son of the appellant and the deceased had admitted that he resides separately and his parents resided separately in their village residence and that the villagers did not maintain any relation with the family of the appellant. Hence, it was held that the prosecution had established that at the relevant time, except the appellant and the deceased, no other persons were present at the residence of the appellant.

ii. After hearing a hue and cry, the PW-5, at 4.30 AM. on 13.03.2016, came to the residence of the appellant and saw Putuli Kalita lying on the courtyard of the house with injuries on her neck, face, etc. and he had informed the matter to the son of the deceased. The same is corroborated by the evidence of PW-1 (informant), PW-3,

PW-8, and CW-1 (person on whose information GDE was made and 108 ambulance was called). The evidence of CW-1 was corroborated by PW-9 (I.O.), who saw the dead body when he came to the place of occurrence. It was also held that the variance/ discrepancy of seeing the injured in her residence or at court-yard or on the road-side in front of the house of the appellant is of little impact and needs to be ignored.

iii. The PW-5 came to the house after hearing hue and cry but the appellant was not found in his home at the early hours of the day. The explanation given by the appellant at the time when he was examined under section 313 CrPC that at about 5.00 AM, he saw his wife in the injured condition and went to residence of one Koli Kalita and informed him about the incident and as per her advice, went to arrange a vehicle to take his wife to medical and to inform the police. On getting a tempo, he went to Amguri P.S. to lodge the FIR, but police had asked him to sit as his son had already lodged an FIR. As per evidence of PW-9, the appellant had surrendered at 11.10 AM on 13.03.2016. The said explanation was not found believable and it was viewed as a guilty mind of the appellant.

iv. On recovery of the *dao*, the weapon of assault, as per the I.O. (PW-9), in his statement before the police in the police station, the appellant had stated that he had frequent quarrel with his wife and at about 4.00 AM on 13.03.2016, he had cut his wife with a *dao* and threw it in a roadside ditch having water. The PW-9 recorded the statement of the appellant and then went to the place of occurrence and recovered the *dao* from the roadside ditch, which was found

relevant under section 27 of the Evidence Act as the statement clearly shows that he had knowledge that he threw the *dao* from where it was recovered.

v. The explanation that the appellant had gone to bring a tempo to take his wife for medical was held to be false on the ground that the explanation was not natural and unrealistic because the appellant on seeing the dead body, did not make any hue and cry or raised alarm or sought for any help, but he silently went alone to search for a vehicle. The appellant took an alibi that he had gone to *Bhagwat Path*, but he had neither examined any witness to prove that he was in the Bihu field, nor did he examine Koli Kalita.

14) Accordingly, it was held that the circumstances pointed out to the only hypothesis that the appellant had cut his wife and then fled away from the place of occurrence leaving his wife in injured condition. Accordingly, the appellant was held to be guilty of committing murder of his wife Putuli Kalita and thereby he is liable to be punished under section 302 IPC.

15) Although it was considered that the appellant was 77 years of age, as disclosed in his statement under section 313 CrPC, but as the offence is punishable with death penalty or life imprisonment, as such, it was held that the provisions of section 3 and 4 of the Probation of Offenders Act did not apply in the case. Hence, after hearing the appellant on sentence, he was sentenced to undergo imprisonment for life and also to pay a fine of Rs.1,000/-, with default sentence.

16) Considered the submissions of the learned amicus curiae and the learned Addl. P.P., and examined the TCR.

***Evidence of the PWs**:*

17) As per the Inquest Report (Ext.2) by the I.O. (PW-9), the inquest was conducted at 7.50 AM at Joysagar Hospital Verandah and the dead body was shown and identified by Manash Kalita (PW-1), who is the son of the appellant and the deceased. The body had injury on the head, right hands (illegible as part of original document is torn), left hand and right leg were injured.

18) There is no eye witness in this case.

19) The PW-1, the son of the appellant and the deceased, had stated that on 13.03.2016, while he was at Joysagar in a rented house, his parents were in their village residence. At the date of the incident, his cousin, Saru Bhai @ Rajen Kalita had informed him at 4.00 AM that his father had killed his mother and asked him to come early. At his request, he had called 108 ambulance and his mother was brought to Joysagar Civil Hospital and he had also reached there and had seen his mother, then alive, in the emergency ward. He had seen injury marks at the head, finger, below knee. On enquiry, his mother uttered the words that his father had assaulted her and his mother had expired after two hours.

20) The PW-2 is the Medical and Health Officer-I. He had exhibited the post mortem report (Ext.3) and his signature [Ext.3(1)] and the counter-signature of the then Joint Director of Health Services, Sivasagar, which is known to him. The relevant contents of the said post mortem report are mentioned in one of the foregoing paragraph. As per the post mortem report (Ext.3), the following findings are recorded:-

1. *External appearance:*

rigor mortis was present;

2. *Injuries:*

i. *Incised wound over face, (i) across the nose of size- 7 inch; (ii) Left cheek size – 6 inch.*

ii. *incised wound over forehead extending to temporal region (left side) size- 8 inch.*

iii. *Incised wound over lower part of face (left side just above the margin of the mandible), extending upto the ear- size- 8 inch.*

iv. *Lacerated wound over forehead (right side). Size- 4 inch.*

v. *Incised wound over left leg below knee. Size - 5 inch x 3 inch x 2 inch.*

vi. *Lacerated would over right thumb. Size- 3 inch x 2 inch.*

vii. Incised cut wound on the left hand wrist. Size 3 inch bone deep.

3. Cranium and spinal canal:

Scalp, skull and vertebrae, the injuries are:-

1. Incised wound over forehead extending upto the temporal region (left side). Size - 8 inch.

2. Lacerated wound over the forehead extending upto the frontal region. Size- 4 inch.

3. Lacerated wound over occipital region. Size- 3 inch.

Membrane: Intact.

Brain and spinal cord: Healthy.

4. Thorax: Walls, ribs and cartilages – normal.

Plaeurae– normal.

Larynx and Trachea – normal.

Lung – both lungs normal. Pericardium- normal.

Heart – normal.

Vessels – cut. Injury as described.

Fracture (1) Maxilla; (2) Rt. tibia (upper end);

Dislocation of (1) left wrist joint, and (2) Right side MP joint- 1 inch.

All the injuries were ante-mortem in nature.

5. In the opinion of the Medical & Health Officer-I, Sivasagar Civil Hospital, the cause of death is haemorrhage and shock leading to syncope.

21. Thus, from the conjoint reading of the inquest report and the post-mortem report, multiple injuries were inflicted upon the deceased victim and the victim died of resultant haemorrhage and shock, leading to syncope. As

per the deposition of the Doctor who had issued the post mortem report, the injury nos. (i), (ii), (iii) and the injuries in the brain are fatal in nature and such types of injuries can be caused by M.Ext.1 *dao*.

22. As per the evidence of Suchen Saikia (PW-3), Dipak Bora (PW-8), a neighbour of the appellant had informed him at night hours on 13.03.2016 that quarrel is going on in the residence of the appellant and his wife Putuli Kalita was lying on the road. He went to the house of the appellant and found the victim lying on the roadside in front of the house of the appellant with injuries at neck, face, back of chest and leg. He had stated that in the meanwhile, somebody had informed the police and the police had arrived there. He had also stated that Putuli Kalita was not in a position to talk. He had accompanied her when she was taken to hospital in 108 ambulance. By that time her son Manash (PW-1) had arrived at the hospital. She died at about 7-8 AM in the hospital. He had also stated that the police had come and conducted inquest. He had exhibited the Inquest Report (Ext.2) and his signature [Ext.2(ii)] thereon. He had stated that the appellant and the deceased used to reside in their house and their children used to resides separately and the first wife of the appellant resided at Titabor with her children. In his cross-examination, he had stated that due to their family quarrel, the villagers normally did not maintain visiting relation with them. Although he had stated that while giving his statement before the police he had not stated that he had seen the injuries at neck, face, back of chest and leg of the deceased, but he had also stated that it is not a fact that the deceased did not get any such injury.

23. Jintu Gogoi, the son-in-law of the appellant and the deceased was examined as PW-4. On 13.03.2016, he was informed by the police that his

mother-in-law was in Joysagar Civil Hospital as she was assaulted by her husband. He arrived at there at about 8.00 AM and Putuli Kalita expired at about 10-20 minutes thereafter. The police came and conducted the inquest on the dead body. He had exhibited the said Inquest Report (Ext.2) and his signature [Ext.2(iii)] thereon. In his cross-examination, PW-4 had stated that his residence is about 3 km away from the residence of his mother-in-law. Due to family dispute, the other wife of the appellant lived separately and due to land dispute, his son Manash Kalita also used to live separately. He had no personal knowledge as to how Putuli Kalita got the injuries. He had stated that he know that Putuli Kalita was mad in character and was mentally disturbed.

24. Rajen Kalita, PW-5, had stated that the appellant was his uncle and the deceased was his aunty. On 13.03.2016 at about 4.30 AM, on hearing hue and cry at the residence of the appellant, he went there and saw that Putuli Kalita was lying on the courtyard of the house of the appellant with injuries at neck and leg. He had informed the appellant's son, who was residing at Joysagar. Somebody of village had informed 108 ambulance. Putuli Kalita died at Joysagar Civil Hospital. He had also stated that the appellant and Putuli Deka resided in their house and after the incident, the appellant was not found in his house and he had heard that the appellant had surrendered before police. In his cross-examination, he had stated that he did not hear who made the cry. He had stated that the two wives of the appellant stayed in different places. He had no knowledge of the dispute as he did not maintain any relation with the appellant's family. He had denied that because of previous sour relation, he had deposed falsely against the appellant.

25. Jadav Saikia was examined as PW-6. He had stated that the appellant is his uncle in relation. The deceased was his aunt and the wife of the

appellant. On returning home from Coochbehar, he heard from others that the appellant had killed his wife. On 13.03.2016, police had seized a *dao* and one *chadar* from the place of occurrence. He had exhibited the seizure list (Ext.4) and his signature [Ext.4(i)] thereon. He had stated that M. Ext.1 is the said *dao* and M. Ext.2 is the seized *chadar*. He had not seen the dead body. In his cross-examination, he had stated that on the date of incident, he was in Coochbehar. He cannot say where the assault took place. He had denied that he had stated before police that the incident took place inside the house. He had stated that he arrived on the next day of the incident and signed the seizure list. Police had seized the *dao* from the roadside ditch. He cannot say to whom the said dao belonged or how it was lying in the ditch. He had not seen the *dao* seized from inside the appellant's house.

26. Apurba Hazarika was examined as PW-7. He knew the appellant and his wife, Putuli Kalita as a co-villager. He had stated that on 13.03.2016, when he went to the residence of Late Jiban Kalita, he came to know from Makan Saikia, wife of Late Jiban Saikia that on previous night at about 10-11 PM, appellant had killed his wife Putuli and that she was taken to Joysagar Hospital. While he was at the residence of Bhupen Saikia to take stock of the incident of death of Putuli, Amguri Police arrived at the residence of the appellant and seized one *chadar* from the roadside ditch in front of the house of the appellant. He had not seen the seizure of any *dao* but heard that one dao was recovered from the said ditch. He had exhibited the seizure list (Ext.4) and his signature [Ext.4(ii)] thereon. He had stated that M. Ext.2 is the seized *chadar*. In his cross-examination, he had stated that the incident of assault took place in the previous night. He cannot say the date of the incident. He had stated that he had signed the seizure list at the place of occurrence.

27. Dipak Bora was examined as PW-8. He knew the appellant as a co-villager and Putuli Kalita was the wife of the appellant. On the next day morning of the incident, neighbouring people one Mr. Barua had informed him that the appellant had killed his wife Putuli and asked him to go to one police personnel of their village. After arrival of *Gaonburah*, he went to the residence of Prafulla Kalita to take stock of the incident of death of Putuli. He saw Putuli lying in the courtyard with multiple injuries. Amguri Police arrived at the residence of the appellant and sent him and *Gaonburah* Suchen Saikia with the injured to Joysagar Hospital. Putuli was admitted to hospital. After sometime, Manash, the son of the appellant arrived there. Putuli died during treatment. In his cross-examination, he had stated that he did not see the incident of assault. He cannot say the name of Mr. Baruah and he cannot say whether Baruah is his name or title. He had stated that the villagers did not maintain any relation with appellant for his ill temperament. He had denied that due to ill feelings for the appellant, he had deposed falsely.

28. S.I. Gangadhar Lahon, the I.O. was examined as PW-9. He had stated that at 4.50 AM, while he was posted as an attached officer at Amguri P.S., the then duty officer had received information over phone from Jintu Neog, constable, Assam Police that the wife of the appellant was murdered by the appellant with a *dao* in his residence. On getting the information, same was entered in G.D. Entry book vide Amguri P.S. G.D.Entry No. 336 dated 13.03.2016 and entrusted him to proceed to the place of occurrence and to investigate. Accordingly, at 5.30 AM, he went to the place of occurrence i.e. residence of the appellant at Khemdoi Kakoti Gaon and saw that Putuli Kalita was lying inside her house in injured condition. By that time the *Gaonburah* and others came there. He also saw that in the meantime 108 ambulance service

arrived there. He had seen several cut injury marks on the person of Putuli Kalita. Considering seriousness of her health condition, injured was sent to Sivasagar Civil Hospital, Joysagar with *Gaonburah* and few other villagers. At about 7.30 AM, I/C, Joysagar had informed over phone that the injured Putuli had expired at hospital. On the said information, he went to the Civil Hospital, Joysagar and 8.40 PM (*sic*. should have been 8.40 AM), he had conducted inquest on the dead body of Putuli Kalita. He had exhibited the Inquest Report (Ext.2) and his signature [Ext.2(4)] thereon. He had issued requisition for post mortem examination. He had also recorded the statement of 2 (two) witnesses at hospital. After handing over the dead body, he went back to Amguri P.S.

29. PW-9 had further stated that at about 11.00 AM, the then Officer-in-Charge of Amguri P.S. had received a written FIR from PW-1 and Amguri P.S. Case No. 31/2016 was registered and the case was entrusted to him for further investigation. During investigation, he had recorded the statement of witnesses and at about 11.10 AM, the appellant had surrendered at Amguri P.S. and confessed his guilt of assaulting his wife and his statement was recorded under section 161 CrPC. He had stated that in his statement the appellant had stated that due to frequent quarrel by his wife, on 13.03.2016, at about 4.00 AM, he had cut his wife with a *dao* and thereafter, he threw the said *dao* in the nearby ditch having water. After recording the appellant's statement, he had again went to the place of occurrence and recovered the *dao* as stated by the appellant and one cotton *chadar* and seized them vide seizure list (Ext.4) and he had also exhibited his signature [Ext.4(3)] thereon. He had stated that M. Ext.1 is the said *dao* and M. Ext.2 is the seized *chadar*. He had also exhibited the section 161 CrPC statement of the appellant recorded by him as Ext.7 and his signature [Ext.7(i)] thereon. He had also stated that he has prepared the sketch map of

the place of occurrence (Ext.5) and exhibited his signature [Ext.5(i)] thereon. He had stated that he had submitted charge-sheet against the appellant under Section 302 IPC (Ext.6) and exhibited his signature [Ext.6(i)] thereon.

30. In his cross-examination, the I.O. (PW-9) had stated that he had done part investigation on the basis of Amguri P.S. G.D.Entry No. 336 dated 13.03.2016. But copy of the said G.D. Entry was neither made part of charge-sheet nor had he tagged the same with the FIR. He had admitted that he did not refer to the said GD Entry in the charge-sheet. He had examined the complainant after receipt of the FIR. He had admitted that in the FIR (Ext.1), the name of the appellant was not named as the assailant of his mother. He had not examined Jintu Neog, on whose information G.D. Entry had been made. He had denied that no information was received from Jintu Neog and Amguri PS G.D. Entry No. 336 dated 13.03.2016 was a concocted one and made after completion of investigation. He had denied that the appellant had not confessed his guilt before him. He had admitted that he had not sent the appellant to Court for recording his statement. He had also admitted that he cannot say how the seized *Chadar* was related this case. He had not verified as to whom did the *chadar* belonged to. He had also stated that in the seizure list (Ext.4), it is not mentioned that the seized articles were recovered as informed by the appellant, but rather, there is mention that the same were recovered on shown by the witness. In Ext.4, the place of seizure was shown as the place of the appellant and it was not mentioned that the seized articles were recovered from a ditch. He had denied that he had not properly investigated the case and submitted charge-sheet against the appellant.

31. On a direction by the Court vide order dated 21.06.2017, the PW-9 was re-examined. In his re-examination, he had stated that as directed by the

Court, he had appeared with G.D. Entry book containing Amguri P.S. G.D. Entry No. 336 dated 13.03.2016. He had exhibited the G.D. Entry Book as Ext.8; G.D. Entry No. 336 dated 13.03.2016 as Ext.8(i), and certified copy of the said G.D. Entry No. 336 dated 13.03.2016 as Ext.8(ii) and signature of Inspector Kiran Chandra Nath, the then Officer-in-Charge of Amguri P.S as Ext.8(iii). He had stated that Amguri P.S. G.D. Entry No. 336 dated 13.03.2016, contains entry that at 4.50 AM, information was received over phone from Jintu Neog, constable of Assam Police regarding murder of wife of the appellant by the said appellant of Kemdoi Kakoti Gaon with a *dao* at his residence and fled away. The G.D. Entry also contains that after making the entry, he was entrusted to proceed to the place of occurrence and to investigate the matter. In his re-cross-examination, PW-9 had stated that in the FIR there was no mention that the appellant had assaulted the deceased with a *dao*.

32. The prosecution case was closed vide order dated 05.07.2017. Thereafter, vide order dated 21.07.2017, the learned Trial Court had directed that Jintu Neog be examined as CW-1. In his examination-in-chief, CW-1 had stated that the appellant is known to him as a co-villager and neighbour. Putuli Kalita was the wife of the appellant. On 13.03.2016, at late night hours, while he was sleeping at his residence, on hearing some hue and cry, some village boy came to his house and informed him that the appellant had cut his wife Putuli Kalita. He sent them to inform the matter to *Gaonburah*, Suchen Saikia. After sometime, Suchen Saikia came to his residence. Then he had informed S.I. Gangadhar Lahon (PW-9) of Amguri P.S. that the appellant had cut his wife Putuli Kalita. He went to the house of the appellant and saw Putuli Kalita was lying with bleeding injuries. As she was alive, he had called 108 ambulance. By that time, S.I. Gangadhar Lahon (PW-9) of Amguri P.S. had arrived there. Putuli

Kalita was sent to Joysagar Civil Hospital by 108 ambulance. Later on, he heard that Putuli Kalita had died on the same day. The prosecution decline to cross-examine him. However, in cross-examination by defence counsel, CW-1 had stated that he had not seen the incident of assault by the appellant. Rajen Kalita and Pabitra Kalita of their village had initially informed him about the incident. Thereafter, *Gaonburah* came to his house and informed the matter. On getting this information, he had passed over the information to Amguri P.S. Duty Officer. He had no personal knowledge about the incident. During investigation, the I.O. had not recorded his statement.

Point of determination:

33. The only point of determination that arises in this appeal is as follows:-

> Whether the judgment of conviction and sentence is sustainable on facts and in law?

Analysis of the evidence:

34. There is no eye witness to the incident. The informant (PW-1) as well as Jintu Neog, Police Constable, on whose information, G.D. Entry No. 336 dated 13.03.2016, was registered at 4.50 AM, were also not eye-witness to the occurrence.

35. As per evidence of PW-1, his cousin Rajen Kalita had informed him that his father had killed his mother on 13.03.2016 at 4.00 AM.

36. PW-3 had stated that at night hours, one Dipak Bora (PW-8), neighbour of the appellant had informed him that quarrel was going on in the house of the appellant and appellant's wife Putuli Kalita was lying on the roadside in front of the house of the appellant with injuries at neck, face, back

of chest and legs. In the meanwhile, someone had informed the police and the police had arrived there. Putuli Kalita was not in a position to talk.

37. Dipak Bora (PW-8) had stated in his examination-in-chief that on the next day morning of the incident, his neighbour, one Mr. Barua had informed him that the appellant had killed his wife Putuli Kalita. Thereafter, he went to *Gaonburah* to inform him. Thus, by referring to "next morning", the Court has to assume that PW-8 was trying to say that the quarrel in the house of the appellant had taken place before the onset of midnight. It is not in the evidence of PW-8 that he had informed PW-3 about the incident. He did not have personal knowledge of the quarrel in the house of the appellant in the night.

38. PW-3, PW-5 had stated in their examination-in-chief that late night, they had heard hue and cry from the house of the appellant. But they did not immediately go to the place of occurrence.

39. It appears that PW-5 is the first person to reach the place of occurrence at 4.30 AM. As per information available in the internet, on 13.03.2016, sunrise at Sivasagar (Assam) was at 5.26 AM and thus, it is quite possible that day twilight must have set in by then. CW-1, on whose phone call, the G.D. Entry No. 336 dated 13.03.2016 was made, had stated that Rajen Kalita and Pabitra Kalita of his village had initially informed him about the incident. Out of these two persons, Pabitra Kalita was not examined by the I.O. or by the prosecution. Moreover, neither the I.O., nor the prosecution had examined Jintu Neog (CW-1).

40. Thus, the time of occurrence as per PW-1 is 4.00 PM; as per PW-3 it is "night hours"; as per PW-5, he had heard the hue and cry at 4.30 AM; as per PW-7, his hearsay evidence is that the appellant had killed his wife Putuli

Kalita at 10.00-11.00 PM on 12.03.2016. As per PW-9, information that the appellant had cut his wife, Putuli Kalita was received at 4.50 AM and accordingly, G.D. Entry No. 336 dated 13.03.2016 was recorded at 4.50 PM.

41. Therefore, from the evidence of PW-3, between intervening night hours of 12.03.2016 and day break of 13.03.2016, Putuli Kalita, though severely injured was alive and was lying unattended on the roadside in front of the house of the appellant. This was also known to PW-5, PW-7 and CW-1.

42. As per the evidence of PW-1, his mother had died 2 hours after PW-1 had reached the hospital. As per the evidence of PW-3, Putuli Kalita had died between 7-8 AM. As per the evidence of PW-4, he had reached the hospital at 8.00 AM, and Putuli Kalita died after 10-20 minutes. However, as per the FIR, the same was lodged by PW-1 on 13.03.2016 at 11.00 AM. After that PW-1 went to hospital and after 2 hours, his mother had purportedly died, which means that the mother of the PW-1 had died at about 1.00 PM. On Ejahar, it is mentioned that his mother had succumbed to injuries at 7.30 AM at Medical. Therefore, time of death is not clearly established.

43. None of the PWs, except PW-1, examined by the prosecution seems to have made any attempt to ask Putuli Kalita, when alive as to who had cut her. PW-1 had talked with his mother, who told him in Joysagar Civil Hospital that she was cut by the appellant, his father. Yet, the PW-1 did not inform PW-9, who was present there that as per his mother's statement, his father had cut and injured her and there was no mention about the said statement in the FIR. Thus, from early morning hours of 13.03.2016 till she died sometime between 1.00 PM (as per evidence of PW-1) on 13.03.2016, no attempt was made to have the dying declaration of the injured victim recorded. The PW-3, who had accompanied Putuli Kalita in ambulance to the hospital had stated in his

examination-in-chief that Putuli Kalita was not in a position to talk. Therefore, the Court will have to presume when the doctors, medical staff and PW-3, PW-4, PW-5, PW-8 and PW-9 could not talk to Putuli Kalita, that part of the evidence of PW-1, where he had stated that his mother had informed him that the appellant had cut and injured her is not believable because of the subsequent conduct of PW-1 not to have informed anyone in the hospital about it when PW-9 was also present there.

44. As per the evidence of PW-7, the appellant had already killed Putuli Kalita the previous night at about 10-11 PM.

45. After villagers came to know that Putuli Kalita was lying injured, none of the witnesses examined by the prosecution have stated in their evidence about the presence of any other person or witness in the place of occurrence.

46. The place from where the *dao* and *chadar*, seized vide Ext.4 is not clear. As per the seizure list (Ext.4), the seized articles were seized at 11.50 PM on 13.03.2016, from the place of occurrence. However, as per the sketch map (Ext.5), the said articles and a *khukri* were seized from the place marked 'C', which is beyond a drain towards north of the house of the appellant. As per the sketch map (Ext.5), the house is marked with letter 'A' and the weapon *khukri* is not entered in the seizure list. None of the seizure witnesses have referred to finding a *khukri* at the place of seizure. As per the evidence of PW-6, the articles were seized from the place of occurrence and he had exhibited the seizure list (Ext.4) and his signature [Ext.4(i)] thereon as well as the *dao* (M. Ext.1) and *chadar* (M. Ext.2). PW-7 had stated in his evidence that one *chadar* was seized from a roadside ditch in front of the house of the appellant. He did not witness seizure of *dao*, but heard of such recovery later, yet, both *dao* and *chadar* is

shown to have been seized vide Ext.4. The I.O. (PW-9), in his examination-in-chief, had stated that the appellant had allegedly confessed that after cutting his wife with a *dao*, he had thrown the *dao* in a nearby ditch having water and he had further stated that he recovered the *dao* as stated by the appellant. However, in his cross-examination, PW-9 had stated that in the seizure list (Ext.4), there is no mention that the seized articles were recovered as informed by the appellant, rather, it is mentioned that the same were recovered as shown by the witness and that in Ext.4, the place of seizure was shown as the place of appellant. Thus, it appears that the *dao* was planted at the place from where the witnesses had showed it to the I.O., who had seized the seized articles thereupon from a place shown by the witnesses and those were not seized from the place allegedly disclosed by the appellant.

47. Although the appellant and the deceased were living together, none of the PWs had last seen them together immediately before the alleged incidence had occurred.

48. The learned Trial Court had referred to five circumstances, which was found to be complete and led to the only hypothesis of guilt of the appellant. Those circumstances are elaborately referred to in para-13 above. The summary of the same is as under:-

a. The appellant was living with his deceased wife, and on the day of the incident, they were alone in their matrimonial home, and the appellant's first wife and his children were living separately. The villagers also did not maintain any relation with the family of the appellant.

b. After hearing a hue and cry, PW-5 came to the residence of the

appellant at 4.30 AM. on 13.03.2016, and saw Putuli Kalita lying on the courtyard of the house with injuries on her neck, face, etc. He had informed the matter to the son of the appellant and the deceased, which was corroborated by the evidence of PW-1 (informant), PW-3, PW-8, and CW-1 (person on whose information GDE was made and 108 ambulance was called). The learned Trial Court had held that the variance/ discrepancy of seeing the injured in her residence or at court-yard or on the road-side in front of the house of the appellant is of little impact and needs to be ignored.

c. The explanation by the appellant during his examination under section 313 CrPC was not found believable because as per the evidence of PW-9, the appellant had surrendered at 11.10 AM on 13.03.2016.

d. Alleged confessional statement of the appellant that he had cut his wife with a *dao* and threw it in a roadside ditch having water, was found relevant under section 27 of the Evidence Act as the statement clearly shows that he had knowledge that he threw the *dao* from where it was recovered.

e. The alibi of appellant that he had gone to Bihu celebration and then after finding his wife cut and injured, he went to bring a tempo to take his wife for medical was held to be false on the ground that the explanation was not natural and unrealistic because the appellant on seeing the dead body, did not make any hue and cry or raised alarm or sought for any help, but he silently went alone to search for a vehicle. The appellant took an alibi that he had gone to Bihu festival, but he had neither examined any

witness to prove that he went to the Bihu field, nor did he examine Koli Kalita.

49. The Supreme Court of India, in the case of *Vijay Kumar Arora v. State Govt. of NCT of Delhi*, *(2010) 2 SCC 353: (2010) 0 Supreme(SC) 56*, has held as follows:-

> ***9***. *It is not in dispute that the case against the appellant rests on circumstantial evidence. It would be advantageous to restate the well settled law relating to appreciation of circumstantial evidence. The evidence tendered in a court of law is either 'direct' or 'circumstantial'. Evidence is said to be 'direct' if it consists of an eye-witness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum. Essential ingredients to prove the guilt of an accused by circumstantial evidence are : The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not". In cases where 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. Each fact sought to be relied upon must be proved individually. However, in applying this principle, a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them, on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although, there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The Court thereafter has to*

consider the effect of proved facts. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is, or are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis, except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. 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; and where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. [extracted from (2010) 0 Supreme(SC) 56]

50. In light of those herein before principles, on the examination of the evidence on record, the Court is unable to find any link in the chain to be complete. The circumstances, based on which the appellant was convicted is revisited again.

a. The appellant and Putuli Kalita, his wife, were living alone, is a circumstance. But none of the PWs, who had visited the appellant's place found the injured Putuli Kalita inside the dwelling house. PW-3 had found the cut and injured victim at roadside in front of the house of the appellant. PW-5 and PW-8 had found Putuli Kalita in the courtyard of the dwelling house with multiple injuries. As per the sketch map (Ext.5), place marked as courtyard is on the western side of the dwelling house. As per the said sketch map (Ext.5), the place of occurrence is inside the dwelling house. The I.O. (PW-9) has stated in his examination-in-chief that the place of occurrence is inside the

house. Thus, the link of the chain is not established.

b. The finding regarding the place where the injured Putuli Kalita was first seen is important and the Court is of the considered opinion, the *situs* of the actual place of occurrence cannot be left uninvestigated. No attempt has been made by the I.O. to find out the place of occurrence, because none of the PWs including the I.O. have stated that they saw blood on the ground where Putuli Kalita was lying injured. Thus, if no sign of blood was at the place where Putuli Kalita was lying injured, such a situation would only happen if the place where the injured was actually lying is changed. As per opinion expressed by PW-2 in the post-mortem report, the cause of death is haemorrhage and shock leading to syncope. Syncope is the medical term for "sudden loss of consciousness". Thus, from the post-mortem report, the impression gathered that due to cut injuries, there was haemorrhage, which led to onset of syncope. Hence, the absence of blood indicates that the victim must have been shifted. The next question is who had done it and why, which remains unanswered. Hence, the link of the chain is not found to be complete.

c. The appellant had surrendered in Amguri P.S. is a circumstance operating against the appellant.

d. The alleged confessional statement of the appellant that he had cut his wife with a *dao* and threw it in a roadside ditch having water, was accepted to be relevant under section 27 of the Evidence Act. However, the *dao* was not recovered from the roadside ditch with water. The said oral evidence is contradictory to the contents of the seizure list (Ext.4), where it is mentioned that the PW-9 had seized the two articles noted

therein at the place of occurrence, which was shown by the witnesses. Therefore, such a recovery cannot be said to be in pursuance to the alleged statement leading to recovery made by the appellant and the provisions of section 27 of the Evidence Act, 1872 cannot be attracted in case of such a recovery, as made in this case from a location not disclosed by the appellant in his alleged confessional statement. Therefore, as the *dao* was not seized from inside the dwelling house, the prosecution was required to send the said *dao* for forensic/ serological examination to establish that it contained finger-print of the appellant and that it also contained traces of blood of Putuli Kalita. Here again the chain is found to be broken.

e. It is true that the alibi of the appellant was not proved. But the circumstances where the co-villagers, even after finding Putuli Kalita in injured condition, did nothing till PW-1 asked them to call 108 ambulance speaks volume and establishes that the villagers were not in talking terms with the appellant. Therefore, the appellant cannot be entirely disbelieved. He had come to the police station, but as an FIR was already lodged by PW-1, he was arrested.

51. The two out of five circumstances weigh against the appellant, but these two circumstances alone cannot substitute for proof of guilt against the appellant.

52. In his examination under section 313 CrPC, the appellant had stated that he had reached Amguri P.S. at 8.00 AM but the Officer-in-Charge of the Police Station had refused to receive his FIR by informing him that his son had already lodged an FIR. The appellant had denied that he had given any confessional statement before the police. It is well settled that a confession

made before the police and in the police station cannot be relied upon.

53. Accordingly, in light of the discussions above, the Court is of the considered opinion that the impugned judgment of conviction and consequent sentence awarded to the appellant is not sustainable on facts and in law. The sole point of determination is answered in the negative and in favour of the appellant and against the prosecution.

54. The Court does not find that the prosecution has been able to prove beyond any reasonable doubt that the appellant had cut and injured his deceased wife Putuli Kalita. Under such circumstances, the appellant is found entitled to the benefit of doubt. Accordingly, this appeal succeeds and is hereby allowed.

55. Accordingly, the Court is inclined to pass the following-

O R D E R

56. The appellant, namely, Prafulla Chandra Kalita, is given the benefit of doubt and his conviction and sentence vide impugned judgment dated 06.11.2017, passed by the learned Sessions Judge, Sivasagar in Sessions Case No. 169(S-S)/2016, by which the appellant was convicted for committing offence punishable under section 302 IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1,000/- with default stipulation is hereby set aside and reversed.

57. The appellant shall be released forthwith if not wanted in any other case. The Registry shall transmit a true copy of this order to the Superintendent, District Jail, Sivasagar along with any other document like release order, etc. as may be necessary to enable the appellant to be released.

58. Before releasing the appellant, an undertaking shall be obtained

by the Superintendent, District Jail, Sivasagar, where he is currently lodged, to the effect that he would surrender as and when called upon to do so by virtue of any appellate order that may be passed against this judgment and order.

59. The learned Legal Aid Counsel shall be entitled to her usual honorarium.

60. Let the TCR be sent back.

JUDGE **JUDGE**

Comparing Assistant