

GAHC010001222022



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

Case No. : CRIMINAL APPEAL [J] NO. 12/2022

Son Kumar Gorph

.....*Appellant*

-VERSUS-

The State of Assam

.....*Respondent*

Advocates :

Appellant : Ms. B. Chowdhury, Amicus Curiae
Respondent : Ms. B. Bhuyan, Senior Counsel &
Additional Public Prosecutor, Assam
Ms. M. Chakraborty, Advocate

Date of Hearing, Judgment & Order : 29.07.2024

BEFORE

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

JUDGMENT & ORDER [ORAL]

[*M. Choudhury, J.*]

Aggrieved by and dissatisfied with a Judgment and Order dated 26.04.2021 passed by the Court of learned Additional Sessions Judge, FTC,

Biswanath Chariali in Sessions Case no. 111 of 2018, which arose out of corresponding G.R. Case no. 293/2018, the accused-appellant has preferred the instant criminal appeal under Section 383, Code of Criminal Procedure, 1973 from Jail. The accused in the trial faced a charge of fratricide and after the trial, the Court of learned Additional Sessions Judge, FTC, Biswanath Chariali has convicted the accused-appellant for committing murder of his brother, Mochen Gorh. Finding the accused-appellant guilty of the offence under Section 300, Indian Penal Code [IPC], the accused-appellant has been sentenced under Section 302, IPC to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo simple imprisonment for 6 [six] months. It has been ordered that the period of detention already undergone by the accused during investigation, enquiry and/or trial shall be set-off from the sentence of imprisonment.

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

3. Ms. Chowdhury, learned Amicus Curiae appearing for the accused-appellant has submitted that during the trial, the prosecution examined seven nos. of witnesses including the Medical Officer and the Investigating Officer [I.O.], in order to bring home the charge. But, none of the prosecution witnesses deposed to the effect that they had witnessed any incident of assault on the deceased by the accused which resulted into the death of the deceased, who was one of his brothers. Ms. Chowdhury has further referred to the medical evidence to submit that the medical evidence was not sufficient enough to point unerringly towards homicidal death of the deceased as the Autopsy Doctor had opined that the death was due to cerebro vascular accident

following severe hypo volemic shock. As the case was based on circumstantial evidence, the duty was cast upon the prosecution to prove each of the circumstances independently and thereafter, to complete the chain of circumstances to rule out any possibility of involvement of any other person, other than the accused-appellant. Ms. Chowdhury has strenuously contended that the prosecution evidence was not sufficient to draw a conclusion that it was due to any culpability of the accused only, and none else, the death of the deceased had resulted. In the absence of any direct evidence, insufficiency in the medical evidence and many gaps in the chain of circumstances, the accused is clearly entitled for the benefit of doubts and as such, the Judgment and Order of conviction and sentence of the learned trial court needs to be interfered with.

4. Au contraire, Ms. Bhuyan, learned Additional Public Prosecutor for the respondent State has contended that one of the vital circumstances is that the deceased and the accused used to reside together in the same house and the deadbody of the deceased was found inside that house wherein the accused was also present at the relevant point of time. The prosecution witnesses, in their testimonies, had categorically mentioned about the presence of the accused. It is further contended that in such fact situation, the accused owed an explanation regarding the circumstances which led to the death of his brother. Ms. Bhuyan has further submitted that the other brother of the accused and the deceased, that is, the informant-P.W.6 and the wife of the accused, P.W.7 had both implicated the accused for the death of the deceased. It is submitted by Ms. Bhuyan that the learned trial court after proper evaluation of the evidence/materials on record, had returned the finding of guilt recording reasons and as such, the present appeal is not merited.

5. We have given due consideration to the submissions of the learned counsel for the parties. The submissions of the parties are duly considered together with the

evidence/materials on record including the testimonies of the prosecution witnesses and the documentary evidence, presented during the course of the trial.

6. Before appreciation of the evidence/materials on record, it is necessary to delineate the sequence of events leading to the submission of the charge sheet against the accused-appellant after registration of the alleged crime as Biswanath Chariali Police Station Case no. 151/2018.

7. It was one of the brothers of the deceased and the accused, namely, Kusho Gorh [P.W.6] who lodged the First Information Report [FIR] before the Officer In-Charge, Biswanath Chariali Police Station on 23.06.2018 alleging inter alia that at around 04-30 p.m. on 22.06.2018, his brother, Son Kumar Gorh [the accused] assaulted his another brother, Mochen Gorh [the deceased] by giving fist blows and kicks in the courtyard of their house as a result of which, Mochen Gorh [the deceased] breathed his last after some time. The informant further mentioned in the FIR [Ext.-3] that at the time of the incident, he was not at home and he came to know about the incident from the wife of the accused, Padmeswari Gorh [P.W.7]. It has emerged that the FIR was written by a scribe, Bharati Dutta and as per her endorsement in the FIR [Ext.-3], the same was written as per version of the informant and the contents was read over to him.

8. On receipt of the FIR [Ext.-3], the Officer In-Charge, Biswanath Chariali Police Station registered the same as Biswanath Police Station Case no. 151/2018 for the offence under 302, IPC on 23.06.2018 and entrusted the investigation of the case to one Pradip Hazarika [P.W.5], a Sub-Inspector of Police attached to Biswanath Chariali Police Station, as its Investigating Officer [I.O.].

9. It has emerged that at 05-45 p.m. on 22.06.2018, Pradip Hazarika [P.W.5]

received an information telephonically from Kailash Sarma [P.W.1], the Secretary of the Village Defence Party [VDP] of Bamunipathar to the effect that Son Kumar Gork had assaulted his brother, Mocher Gork to death. On receipt of the said information, a general diary entry vide Biswanath Chariali Police Station General Diary Entry no. 611 dated 22.06.2018 came to be registered. The I.O. of the case, Pradip Hazarika [P.W.5] visited the place of occurrence [P.O.], that is, the house of the deceased and the accused, immediately after registration of the General Diary Entry no. 611 on 22.06.2018 and finding the accused at the P.O., the accused was taken into custody. He [P.W.5] also prepared a Sketch Map of the P.O. [Ext.-2] and recorded the statements of the available witnesses under Section 161, CrPC at the P.O. After conducting inquest on the deadbody of the deceased, the deadbody was forwarded to Behali Block Primary Health Centre [PHC] for post-mortem examination. It was at around 11-30 a.m. on 23.06.2018, the FIR [Ext.-3] was lodged. The post-mortem examination on the deadbody of the deceased was performed in Behali Block PHC on 23.06.2018 and the Autopsy Doctor recorded his findings in a Post-Mortem Examination [PME] Report [Ext.-1]. After completing investigation into the case, Biswanath Chariali Police Station Case no. 151/2018, the I.O. of the case, P.W.5 laid a charge sheet under Section 173[2], CrPC vide Charge Sheet no. 111/2018 on 30.08.2018 finding a prima facie case under Section 302, IPC well established against the accused.

10. After submission of the Charge Sheet, the Court of learned Sub-Divisional Judicial Magistrate [M], Biswanath Chariali secured the appearance of the accused from Jail custody on 25.10.2018 and furnished the copies to him in compliance of the procedure laid down in Section 207, CrPC. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the learned Sub-Divisional Judicial Magistrate [M], Biswanath Chariali committed the case records of G.R. Case no. 293/2018 to the Court of Additional Sessions Judge, FTC, Biswanath Chariali by an

Order of Commitment dated 25.10.2018 passed under Section 209, CrPC. The learned Public Prosecutor was notified accordingly.

11. On receipt of the case records of G.R. Case no. 293/2018 pursuant to the Order of Commitment dated 25.10.2015, the Court of Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur ['the trial court', for short] registered the same as Sessions Case no. 111/2018. After securing appearance of the accused before it from jail custody; and after hearing the learned Public Prosecutor and the learned defence counsel; and upon perusal of the materials on record, the learned trial court, on 01.12.2018, framed the following charge against the accused :-

That you on the night of 22.06.2018 at about 04-30 p.m., with intention or knowledge of causing death of the victim Sri Mochen Gore, assaulted him at Village – Bamunipathar under Biswanath Chariali Police Station causing his death and you thereby have committed the offence of murder punishable under Section 302 of the Indian Penal Code [IPC] and within my cognizance.

12. During the course of the trial, the prosecution examined 7 [seven] nos. of witnesses – [i] P.W.1 – Kailash Sarma; [ii] P.W.2 – Birchandra Rai; [iii] P.W.3 – Dr. Dipak Kumar Biswasi; [iv] P.W.4 – Mahadev Gorh; [v] P.W.5 – Pradip Hazarika; [vi] P.W.6 – Kusho Gorh; and [vii] P.W.7 – Padmeswari Gorh. The documentary evidence exhibited during the trial were – [i] Ext.-1 : Post-Mortem Examination [PME] Report; [ii] Ext.-2 : Sketch Map of the P.O.; [iii] Ext.-3 : FIR dated 23.06.2018; and [iv] Ext.-4 : Charge Sheet no. 111/2018 dated 30.08.2018.

13. After closure of the prosecution evidence, the accused was examined under Section 313, CrPC and the incriminating circumstances appearing in the

evidence of the prosecution witnesses against him were put to him inviting his explanation. In respect of most of the queries, the accused admitted them to be true by giving an explanation from his side at the end of such examination. The accused had, however, declined to adduce any evidence in his defence. After hearing the learned counsel for the parties and after appreciation of the evidence/materials on record, the trial court proceeded to render the impugned Judgment and Order by finding the accused guilty of the offence of murder. After hearing the accused on the point of sentence under Section 235[2], CrPC, the accused has been sentenced in the manner, indicated above.

14. For appreciation of the submissions of the parties, it is now necessary to turn to the testimonies of the prosecution witnesses and the documentary evidence led during the trial.

15. Mahadev Gorph [P.W.4], who was a co-villager, deposed that while he was returning from the market at around 11-00 a.m. on 22.06.2018, he saw a gathering of persons in front of the house of the accused. When he went there, he found that the deceased, Mochen Gorph was lying dead beside the road. He saw that the legs of the deadbody were swollen. P.W.4 further deposed that the accused was present there and he was in a heavily drunken state and was creating nuisance. P.W.4 found that the accused was not in his senses under influence of alcohol and he was in a naked condition. It was his brother who helped the accused to put on his clothes. P.W.4 further stated that it was he, who telephonically informed the President and the Secretary of the Village Defence Party [VDP], namely Kailash Sarma [P.W.1] and Kamaleswar Hazarika respectively. P.W.4 stated that he was told by the wife of the accused that the

deceased was killed by the accused by assaulting in his private parts.

16. P.W.2, Birchandra Rai was another co-villager and a Nayak in the VDP, who knew the informant, the deceased and the accused. As regards the incident, P.W.2 stated that the incident occurred about two years earlier but P.W.2 did not mention the date of the incident. P.W.2 stated that on the date of the incident, Mahadev Gorh [P.W.4] informed them over telephone and asked them to go near the house of the accused. P.W.2 further stated that when they went to the house of the accused, he saw the deadbody of the deceased lying inside the house and the accused was kept tied there by the people. While admitting that he did not see the occurrence, P.W.2 stated that he did not notice any injury on the body of the deceased. He heard that it was the accused, who had killed his elder brother, Mochen Gorh. Accordingly, information was given at the Police Station and the Police personnel arriving at the place of occurrence [P.O.], that is, the house of the deceased and accused took the accused into custody. P.W.2 further stated that the Police also examined him.

17. P.W.1, Kailash Sarma was the Secretary of the VDP at the relevant point of time. P.W.1, also a co-villager like P.W.2, stated that the incident took place in May/June in the previous year. P.W.1 deposed that when he was in his shop on the date of the incident, someone informed him telephonically that an incident of murder had taken place in the house of the accused. On receiving the news, they, that is, he and P.W.2, Birchandra Rai, the VDP Nayak reached the P.O. and saw the deadbody of the deceased lying inside the house. He also saw that the accused was kept tied up inside the house by the persons present there. He [P.W.1] accordingly informed the Police. P.W.1 further stated that on being

informed, Police personnel came to the P.O. and took away the deadbody of the deceased and the accused with them. Like P.W.2, P.W.1 also deposed that he did not notice any injury on the person of Mochen Gorh [the deceased].

18. The I.O. of the case, Pradip Hazarika who testified as P.W.5, deposed that on 22.06.2018, he was serving as the Second Officer at Biswanath Chariali Police Station. P.W.5 stated that at 05-45 p.m. on 22.06.2018, Kailash Sarma, the VDP Secretary [P.W.1] informed him over telephone that the accused had assaulted his elder brother, Mochen Gorh [the deceased] to death. On the basis of the said information given by Kailash Sarma [P.W.1], the Officer In-Charge, Biswanath Chariali Police Station recorded a general diary entry, General Diary Entry no. 611 dated 22.06.2018. After making the entry, the Officer In-Charge, Biswanath Chariali Police Station asked him to go to the P.O. and accordingly, he proceeded to the P.O. P.W.5 stated that at the P.O., that is, the house of the accused and the deceased, he found the presence of Kailash Sarma, the VDP Secretary [P.W.1] and many other persons. At the P.O., he found the deadbody lying on the floor inside the house and the accused was found in tied condition. He [P.W.5] then took the accused into custody. P.W.5 stated that he also recorded the statements of some of the witnesses available at the P.O. and prepared a Sketch Map of the P.O. [Ext.-2]. Thereafter, he came to the Police Station with the accused and the deadbody of the deceased. As by the time he reached the Police Station it was already dark, the inquest proceeding on the deadbody was conducted through a Magistrate only on the following day before sending the deadbody for post-mortem examination. In cross-examination, P.W.5 stated that the deceased, the accused and the wife of the accused, Padmeswari Gorh [P.W.7] used to live in the same house. P.W.5 further stated

that he did not seize any weapon. He neither seized any weapon of assault nor the Gamosa [Towel] by which the accused was kept tied at the P.O.

19. On evaluation of the above testimonies, it is evident that the prosecution witnesses – P.W.1, P.W.2 and P.W.4 – were not eye-witnesses to any alleged incident of assault on the deceased by the accused. As per the testimony of P.W.4, the deceased met his death at a time prior to 11-00 a.m. on 22.06.2018. According to P.W.4, he reached the P.O., that is, the house of the accused and the deceased at around 11-00 a.m. on 22.06.2018 and at that time, the deadbody of the deceased was lying beside the road and the accused then was in a heavily drunken state and not in his senses. The accused was found creating nuisance at the P.O. From the testimonies of P.W.1 and P.W.2, it has emerged that by the time they as functionaries of the VDP, reached the P.O. there was already gathering of persons at the P.O. By the time they were at the P.O., the accused was apprehended and kept tied inside the house. It has, thus, emerged that P.W.4 when he visited the P.O., the deadbody was lying beside the road the accused creating nuisance in heavily drunken state and when P.W.1 and P.W.2 reached the P.O. together they found that the deadbody of the deceased lying inside the house and the accused was kept tied in the house. There is no evidence as to who had apprehended the accused in the interregnum and kept him tied inside the house and who had moved the deadbody of the deceased from near the road inside the house.

20. In the FIR [Ext.-3], the informant, Kusho Gorh [P.W.6] a brother of the deceased and the accused, mentioned that it was at around 04-30 p.m. on 22.06.2018, the accused assaulted his brother, Mochen Gorh to death in the

courtyard of their house. In the FIR [Ext.-3], the informant further mentioned that he came to know about the incident from the wife of the accused, Padmeswari Gorkh [P.W.7].

21. When the informant testified as P.W.6, he deposed that on the date of occurrence, was about 2½ years ago, which was a Friday, both the accused and the deceased consumed wine and thereafter, there was a quarrel between them. In the process, the accused assaulted Mochen Gorkh and killed him. Thereafter, the accused dragged the deadbody and kept it inside the house where they both used to reside. P.W.6 further deposed that the incident took place at around 04-00 p.m. and at that time, he was in his workplace. It was one Mantu, a co-villager [not a witness] who informed him [P.W.6] about the incident. On getting the information, P.W.6 came to his house at around 05-00 p.m. On reaching the house, he saw that the accused was kept tied up and his younger brother, Mochen Gorkh was lying dead inside the house. There was already a gathering of villagers at the P.O. In the meantime, Police personnel arrived at the P.O. and took away the accused and the deadbody to the Police Station. In cross-examination, P.W.6 stated that on the date of the incident, he was working as a day labour in a house at a distance of 3 km from his residence. About the deceased, P.W.6 stated that he was a bachelor and used to consume liquor. P.W.6 admitted that he had neither witnessed the incident of killing of the deceased by the accused nor he had seen the quarrel between them. In his statement, P.W.6 did not mention about the wife of the accused, Padmeswari Gorkh [P.W.7] from whom he claimed to have known about the incident, as per the FIR [Ext.-3].

22. As it has been established that the informant-P.W.6 was neither an eye-witness to any quarrel between the deceased and the accused alleged to have occurred prior to the death of the accused nor to any incident of assault on the deceased by the accused, his testimony was not an eye-witness account. If the version given in the FIR is also accepted, then his testimony about the fact that it was the accused who had assaulted the deceased to death is only hearsay. From his testimony, it has emerged that P.W.6 had reached the P.O. much after the death of the deceased and much after the assemblage of villagers at the P.O.

23. It was the case of the prosecution that the deceased, the accused and the wife of the accused, Padmeswari Gork [P.W.7] used to reside in the same house together. In view of such projection, the testimony of Padmeswari Gork, deposed as P.W.7, would be of relevance. When we turn to the testimony of P.W.7, Padmeswari Gork it is found that she [P.W.7] testified to the effect that she did not witness any incident of assault on the deceased by the accused. In her testimony, P.W.7 deposed that on the date of the incident, she went to her workplace and when she returned home from the workplace, she found that many persons were present in their house. P.W.7 had categorically stated that she did not witness the incident of murder. P.W.7 stated that when she returned home, she found her husband, that is, the accused in a drunken condition and he was kept tied at the P.O. by the villagers. P.W.7 also stated that on the date of occurrence, there was a quarrel and fighting between the deceased and the accused after they consumed liquor and in the process, the deceased was killed.

24. On evaluation of the above evidence/materials on record, it is found that

the case is not a case based on direct evidence. The prosecution case is based on circumstantial evidence.

25. At this juncture, it is apt to refer to the medical evidence which are found in the forms of testimony of the Autopsy Doctor, P.W.3 and the Post-Mortem Examination [PME] Report [Ext.-1]. P.W.3, Dr. Dipak Kumar Biswasi stated in his testimony that on 23.06.2018, he was serving as the Senior Medical & Health Officer in Behali Block PHC. P.W.3 deposed that on 23.06.2018, he performed post-mortem examination on the deadbody of Mochen Gorgh in reference to Biswanath Chariali Police Station General Dairy Entry no. 611/2018 dated 22.06.2018. The deadbody was identified by Constable, Ratna Mahanta. As regards his findings after autopsy, P.W.3 stated that there were fraught over mouth and dislocation of intervertebral joint in between C₁ and C₂. He found fractures of right 2nd, 3rd, and 4th ribs at anterior axillary line. Pleura and right lung of the deceased were found punctured with haemorrhage. The heart was found empty. P.W.5 further stated that there were ruptures of the liver and spleen. The stomach was found containing liquid content smelling like alcohol. P.W.5 found all the injuries to be anti-mortem in nature. He opined that the death was due to cerebro vascular accident following severe hypo volemic shock. P.W.5 further stated that the death had occurred within 24 hours from the time of autopsy. He exhibited the Post-Mortem Examination [PME] Report as Ext.-1 with his signature therein as Ext. 1[1].

25.1. During cross-examination, P.W.3 stated that if the deceased had fallen with very heavy force on a hard substance, the ribs might break in that way, as recorded in the PME Report. The liver and the spleen were ruptured due to

fracture of the ribs. P.W.3 further stated that he found rigor mortis in the deadbody and therefore, he reached the finding that the death had occurred within 24 hours. P.W.3 clarified that the development of rigor mortis depends upon temperature and in winter, the rigor mortis develops lately in comparison to the summer season.

25.2. In the PME Report [Ext.-1], it was reported that the post-mortem examination was performed at 01-00 p.m. on 23.06.2018. When the testimony of the Autopsy Doctor, P.W.3 and the time of performance of autopsy, has recorded in Ext.-3, are considered together, it goes to indicate that the death of the deceased might have occurred at around or after 01-00 p.m. on 22.06.2018.

25.3. In medical terminology, the term, 'cerebro vascular accident' is given to the clinical syndrome accompanying a sudden and severe attack, which leads to a stroke. Major blood or fluid loss causes hypovolemic shock. Hypovolemic shock is an emergency condition in which severe blood or fluid loss makes the heart unable to pump enough blood to the body. Bleeding inside the body, which condition cannot be seen from outside, can be a cause of hypovolemic shock.

26. It has already unerringly emerged that the present one is a case based on circumstantial evidence. The position of law is well settled that all the links in the chain of circumstances are necessary to be established for conviction on the basis of circumstantial evidence. The court trying a case based on circumstantial evidence has to evaluate and to reach a satisfaction that by the chain of circumstances, it has been clearly and fully established that it was only the accused, who was the perpetrator of the crime. The Hon'ble Supreme Court in

Sharad Birdhichand Sarda vs. State of Maharashtra, reported in [1984] 4 SCC 116, has stated as under :-

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 Sahabro Bobade vs. State of Maharashtra*, [1973] 2 SCC 793, where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

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.

27. The wife of the deceased, P.W.7 testified that on the date of the incident, when she went to her workplace, the deceased who used to reside in the same house, was alive at that point of time. From the medical evidence, it has not clearly emerged the death of the deceased was a homicidal one. The Autopsy Doctor, P.W.3 testified to the effect that ruptures of the liver and the spleen could occur due to fractures of the ribs. The ribs could be fractured if a person had a fall on a hard substance with a very heavy force. Neither the Autopsy Doctor, P.W.3 nor the PME Report [Ext.-1] had mentioned about any kind of external injury on the person of the deceased. P.W.1 and P.W.2 who saw the deadbody of the deceased, also testified that there was no external injury on the person of the deceased. The Autopsy Doctor [P.W.3] and PME Report [Ext.-1] reported about presence of liquid content smelling like alcohol in the stomach of the deceased. From the testimony of P.W.6, Kusho Gorkh who was the elder brother of the deceased, it has emerged that the deceased used to consume liquor. The fact that the deceased used to consume liquor is also evident from the testimony of P.W.7, Padmeswari Gorkh. When the accused was examined under Section 313, CrPC, the accused had mentioned that the deceased, Mochen Gorkh consumed country liquor but did not have food continuously for three-four days and as a result, he died. As per the finding recorded in the PME Report [Ext.-1], the small intestine which helps to digest food coming from the stomach, was found empty.

28. It has been established from the evidence/materials on record that, the accused and the deceased used to reside together in the same house. It has further emerged that the deceased died during the day-time on 22.06.2018. The prosecution had not led any clinching evidence to the effect that it was only

the accused, who was last seen together with the deceased giving rise to a situation for the accused to offer an explanation about the situation as to how the deceased had died. The medical evidence is insufficient to point towards a homicidal death of the deceased. As from the testimony of the Autopsy Doctor, it has emerged that the internal injuries sustained by the deceased were possible in case of a fall on a hard substance with heavy force. It has further emerged from the PME Report [Ext-1] of the deceased and the testimony of other witnesses that the deceased was a habitual drunker and prior to his death, he had consumed liquor. When in the context of such evidence/materials on record, the death of the deceased is looked at, it cannot be said with certainty that the prosecution has been able to conclusively establish that the deceased had met his death due to assault on him by the accused on the date of the incident, although it is possible to suspect that the death of the deceased was attributable to any act on the part of the deceased. It is well settled that suspicion, however grave it may be, cannot take the place of proof. It is a settled propositional law that if two views are possible on the evidence adduced in a case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted.

29. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubts, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, and there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must

follow unless the prosecution is able to prove its case beyond all reasonable doubt.

30. In this connection, the following observations made by the Hon'ble Supreme Court of India in *Sujit Biswas vs. State of Assam*, reported in [2013] 12 SCC 406, can be appropriately referred to :-

13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. [Vide *Hanumant Govind Nargundkar vs. State of M.P.*, AIR 1952 SC 343; *State vs. Mahender Singh Dahiya*, [2011] 3 SCC 109; and *Ramesh Harijan vs. State of U.P.*, [2012] 5 SCC 777.

31. In the light of the discussion made above and for the reasons assigned therein, we are of the clear view that the prosecution has failed to prove the relevant circumstances independently so as to complete the chain of circumstances to establish that the death of the deceased was a homicidal death and such homicidal death of the deceased was attributable to any culpable act on the part of the accused only. In view of such failure on the part of the prosecution, we find that the accused is clearly entitled to the benefit of doubt. In such view of the matter, we find that the Judgment and Order of conviction and sentence passed by the learned trial court against the accused-appellant is found not sustainable in law and the same is accordingly set aside. Consequently, the instant criminal appeal stands allowed.

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

33. Before parting with, we wish to place our appreciation on record as regards the services rendered by Ms. B. Chowdhury, learned Amicus Curiae appearing for the accused-appellant and direct the Registry to make available to her just remuneration as per the notified fee structure applicable to the Amicus Curiae.

34. The Registry to send back the case records of the learned trial court forthwith.

JUDGE

JUDGE

Comparing Assistant