GAHC010021072022

2024:GAU-AS:8120-DB

THE GAUHATI HIGH COURT

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

CRIMINAL APPEAL [J] NO.35/2022

Bhaiti Suren

.....Appellant

-**VERSUS**-

The State of Assam, Represented by Public Prosecutor, Assam.

.....Respondent

Advocates :

Appellant	:	Mr. A. Ahmed, Amicus Curiae
Respondent	:	Ms. B. Bhuyan, Senior Counsel & Additional Public Prosecutor, Assam Ms. M. Chakraborty, Advocate
Date of Hearing, Judgment & Order	:	07.08.2024

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

JUDGMENT & ORDER [ORAL]

[M. Choudhury, J]

This criminal appeal from jail under Section 383, Code of Criminal Procedure, 1973, ['the Code' and/or 'the CrPC', for short] is directed against a Judgment and Order dated 21.12.2021 passed by the Court of learned Sessions Judge, Karbi Anglong, Diphu ['the trial court', for short] in New Sessions Case no. 18 of 2018 [Old Sessions Case no. 40 of 2014], which arose out of Bokajan Police Station Case no. 131/2013 and corresponding G.R. Case no. 729/2013. In the trial, the accused-appellant faced a charge of patricide and after the trial, the learned Sessions Judge, Karbi Anglong finding him guilty for committing the murder of his father, Sukhu Sureng under Section 300, Indian Penal Code [IPC], had sentenced the accused-appellant under Section 302, IPC to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo rigorous imprisonment for another 1 [one] year.

2. We have heard Mr. A. Ahmed, 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. Mr. Ahmed, learned Amicus Curiae for the accused-appellant has submitted, at first, that though at the time of submission of the charge-sheet, the prosecution listed Sakuntala Suren, the wife of the deceased and the mother of the accused, as an eye-witness but in the course of trial, the prosecution did not examine Sakuntala Suren as a witness as she, in the meantime, had become unable to testify due to her paralytic condition and loss of speech. As a result, the prosecution sought to

prove the charge of patricide against the accused on the basis of circumstantial evidence. Mr. Ahmed has submitted that there were many missing links in the prosecution story and the vital circumstance were not proved by credible evidence. He has contended that the medical evidence is deficient to establish that the death of the deceased was a homicidal one. He has submitted that most of the witnesses, other than the Autopsy Doctor and the I.O., were witnesses who had reached the place of occurrence much after the alleged incident which occurred in the night intervening 24.09.2013 and 25.09.2013. Contending as above, Mr. Ahmed has submitted that in view of failure on the part of the prosecution to establish its case, the accused was not required to provide any explanation. Yet, the accused had provided an explanation which, according to Mr. Ahmed, was a plausible and acceptable one. But the learned trial court proceeded to draw inference on the basis of suspicions and conjectures from various circumstances to reach a finding of guilt against the accused. Mr. Ahmed has, thus, contended that in view of the missing links in the chain the benefit should go to the accused.

4. Ms. Bhuyan, learned Senior Counsel and Additional Public Prosecutor appearing for the State has submitted that the learned trial court after proper appreciation of the evidence/materials on record, has rightly reached the finding as regards the guilt of the accused. Ms. Bhuyan has contended that as per the Post-Mortem Examination [PME] Report [Ext.-3], there were multiple lacerated wounds on the forehead and ear of the deceased and since it has been established that the accused was present in the house in the night intervening 24.09.2013 and 25.09.2013, he was under obligation to provide a plausible and acceptable explanation as to in what circumstances his father, that is, the deceased met his death on that fateful night. Referring to the Inquest Report [Ext.-2], Ms. Bhuyan has pointed out that the time of death was mentioned as 12-30 a.m. on 25.09.2013 and the same is consistent with the version given in the FIR, lodged on 25.09.2013 by the wife of the deceased, who is also the mother of the accused. In such circumstance, the explanation given by the accused during his examination under Section 313, CrPC cannot be accepted. Ms. Bhuyan has contended that from the facts and

circumstances obtaining in the case, it has clearly emerged that it was the accused who was the perpetrator of the crime. Therefore, the Judgment and Order of the learned trial court is not to be interfered with. Consequently, the present criminal appeal is not merited. Ms. Bhuyan has also submitted, in the alternative, that if it is found that the prosecution case has suffered due to non-examination of the informant who was the only possible eye-witness, the case can be remanded back for recording additional evidence of the informant, that is, the wife of the deceased.

5. We have given our consideration to the submissions of the learned counsel for the parties and have also perused the evidence/materials on record, including the testimonies of the prosecution witnesses and the documentary evidence, available in the case records of Sessions Case no. 18 of 2018, in original. We have also gone through the decisions referred to by the learned counsel for the parties in support of their submissions and those decisions would be referred to in the later part of this Judgment at the appropriate parts of the discussion.

6. Before considering the respective submissions and contentions of the learned counsel for the parties, it appears apposite to exposit on the sequence of events, in brief, from the stage of registration of the crime case to the stage of submission of the charge-sheet against the accused.

7. At about 07-05 a.m. on 25.09.2013, an information was telephonically given at Bokajan Police Station by one Dhan Bahadur Lama that a murder had taken place at Village – Gharialdubi Majgaon. On receiving such telephonic information, the Officer In-Charge, Bokajan Police Station made a general diary entry, General Diary Entry no. 691 [Ext-4] and asked Biman Konwar [P.W.6], an Assistant Sub-Inspector of Police attached to Bokajan Police Station, to proceed to the place of occurrence [P.O.]. Biman Konwar, ASI, who was the Investigating Officer [I.O.] of the case accordingly, proceeded to the P.O., that is, the house of the deceased and the accused at Village – Gharialdubi Majgaon along with other staff. At the P.O., the I.O. [P.W.6] met Dhan Bahadur Lama [P.W.3] who informed the Police team about

the matter. At the P.O., the I.O, found the dead body of the deceased lying on a bamboo mat at the courtyard and it was found covered with a piece of cloth. It was thereafter, the Officer In-Charge, Bokajan Police Station entrusted Biman Konwar, ASI [P.W.6] to do preliminary investigation. Accordingly, the I.O. [P.W.6] finding a wooden batten at the P.O. seized it by preparing a Seizure List, M.R. no. 85/2013 [Ext.-1] in presence of witnesses. The I.O. also drew up a Sketch Map of the P.O. [Ext.-5] and held inquest on the dead body of the deceased through the Sub-Divisional Officer [Civil], Bokajan at 08-00 a.m. on 25.09.2013. The Sub-Divisional Officer [Civil], Bokajan after completing the inquest proceeding, prepared an Inquest Report [Ext.-2] recording his findings therein.

8. Close on the heels of the inquest proceeding, the First Information Report [FIR] came to be lodged at around 10-50 a.m. by the Sakuntala Suren who was the wife of the deceased and the mother of the accused, before the Officer In-Charge, Bokajan Police Station. On receipt of the FIR, the Officer In-Charge registered the same as Bokajan Police Station Case no. 131/2013 under Section 302, IPC and allowed Biman Konwar to continue with the investigation of the case. As the accused was found at the P.O., he was interrogated by the I.O. and thereafter, was taken into custody. The I.O. also recorded the statements of the witnesses who were available at the P.O. After completing the above formalities, the I.O. took the dead body to the Police Station at first and thereafter, sent the dead body to the Diphu Civil Hospital for post-mortem examination on 25.09.2013. The post-mortem examination on the dead body of the deceased was performed at the Diphu Civil Hospital on 25.09.2013 by the Medical & Health Officer, Dr. Son Kumar Das [P.W.5] and after conducting autopsy, P.W.5 recorded his findings in a Post-Mortem Examination [PME] Report [Ext.-3]. After collecting the PME Report [Ext.-3] and completing the remaining part of the investigation, the I.O. of the case [P.W.6] submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 67/2013 on 29.11.2013 finding a *prima facie* case well established against the accused for the offence under Section 302, IPC.

9. On submission of the Charge-Sheet, the Magistrate, 1st Class, Karbi Anglong, Diphu secured the appearance of the accused, who was in custody, from jail and complied with the procedure laid down in Section 207, IPC by furnishing him the copies of the case. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the learned Magistrate, 1st Class, Karbi Anglong, Diphu committed the case records of G.R. Case no. 729/2013 to the Court of Sessions by an Order of Commitment dated 01.08.2014. While notifying the learned Public Prosecutor, the P.I. was also directed to produce the accused before the Court of Sessions on 04.09.2014.

10. It is relevant to mention that at the relevant time, a Sessions triable case in the district of Karbi Anglong used to be tried before the Deputy Commissioner as during that time, the judiciary was not separated from the executive in the district of Karbi Anglong. On receipt of the case records of G.R. Case no. 729/2013, the same was registered as Sessions Case no. 40 of 2014. Before the Court of Deputy Commissioner, Karbi Anglong, the case was opened by the learned Public Prosecutor. After hearing the learned Public Prosecutor and the defence counsel, a charge under Section 302, IPC was framed against the accused on 06.08.2015. When the charge was read over and explained to the accused, the accused pleaded not guilty and claimed to be tried.

11. After the stage of framing of charge, the recording of evidence of the prosecution witnesses took place before the Court of Sessions, Karbi Anglong as, in the meantime, the separation between the judiciary and the executive took place in the district of Karbi Anglong. On such separation, the case no. stood changed from Old Sessions Case no. 40 of 2014 to New Sessions Case no. 18 of 2018. Before the learned Court of Sessions, the prosecution examined 7 [seven] nos. of witnesses and exhibited 7 [seven] nos. of documents to bring home the charge against the accused. The prosecution witnesses who were examined by the prosecution, were :- [i] P.W.1 : Dewan Soren; [ii] P.W.2 : Asoya Soren; [iii] P.W.3 : Dhan Bahadur Lama; [iv] P.W.4 : Purnam Mura; [v] P.W.5 : Dr. Son Kumar Das; [vi] P.W.6 :

Biman Konwar; and [vii] P.W.7 : Guna Ram Das; and the documents which were exhibited were [i] Ext.-1 : Seizure List; [ii] Ext.-2 : Inquest Report; [iii] Ext.-3 : Post Mortem Examination Report; [iv] Ext.-4 : G.D. Entry; [v] Ext.-5 : Sketch Map; [vi] Ext.-6 : Ejahar; and [vii] Ext.-7 : Charge-Sheet.

12. After closure of evidence from the prosecution side, the accused was examined under Section 313, CrPC and he was asked to explain the circumstances by putting before him the incriminating materials emerging from the evidence led by the prosecution. Apart from taking the plea of denial, the accused had given an explanation as regards the circumstances under which he found the deceased dead. After hearing the learned counsel for the parties and after appreciation of the evidence/materials on record, the learned Sessions Judge, Karbi Anglong, Diphu had rendered the Judgment and Order, impugned herein, finding the accused guilty for the offence of patricide.

13. The learned trial court in the impugned Judgment and Order had observed that the FIR [Ext-6] was lodged by the wife of the deceased wherein it was *inter alia* alleged that there was an altercation between the deceased and the accused preceding the death of the deceased. The learned trial court had noted that as the informant was found to be mentally ill at the time of taking evidence, the examination of the informant had to be dispensed with and an Order to that effect was passed on 13.12.2019.It was in such backdrop, the FIR [Ext.-6] was proved by the prosecution through the Officer In-Charge, Bokajan Police Station by examining him as P.W.7. The learned trial court had recorded that except the informant, there was no eye-witness in so far as the alleged incident and the alleged assault were concerned and thus, the case of the prosecution rested on circumstantial evidence. One of the premise for the learned trial court to arrive at the finding of guilt was that the prosecution witnesses had unequivocally deposed that they heard that the accused had killed his deceased father and the said fact was corroborated by the FIR [Ext.-6] lodged by the informant-wife of the deceased. The learned trial court had held that from the nature of injuries sustained by the deceased it can be

presumed that the injury cannot be sustained only due to one fall on grassy land and the multiple lacerated wounds found on the person of the deceased indicated towards a fight between the deceased and the accused at the time of occurrence.

14. We now turn to the testimonies of the prosecution witnesses – P.W.1, P.W.2, P.W.3 and P.W.4 – at first. All the four prosecution witnesses were inhabitants of the Village – Gharialdubi Majgaon. Prosecution witness, P.W.1, Dewan Soren is a co-villager. P.W.2, Asoya Soren is the elder brother of the deceased. P.W.3, Dhan Bahadur Lama and P.W.4, Purnam Mura were the Secretary and the Vice President respectively of the Village Defence Party [VDP] at the relevant point of time.

15. In his testimony, P.W.1 deposed that at about 01-00 a.m. on the date of the incident, he was informed telephonically by some villagers that the accused killed his father at around 12-30 a.m. that night. When he heard that the deceased had already expired, he went to the P.O. only in the morning hours. Going there, he saw the dead body of the deceased lying in the courtyard. At the P.O., the villagers told him that the accused killed his father with a wooden batten. Thereafter, he informed the matter to the Secretary of the VDP, who, in turn, informed the matter to Police. Thereafter, Police personnel came to the P.O. and seized the wooden batten by preparing a Seizure List [Ext.-1] in his presence and he gave his signature therein as Ext.-1[1]. P.W.1 stated that the informant was, at that time, in a paralytic condition and she was also not in a position to walk and talk. In cross-examination, P.W.1 stated that Dhan Bahadur Lama [P.W.3] was the Secretary of the VDP at that point of time. He further stated that he went to the P.O. in between 04-30 a.m. to 05-00 a.m. and the Police personal arrived at the P.O. at around 07-00 a.m. As regards the relationship between the accused and the deceased, P.W.1 deposed to the effect that there was no enmity between the accused and the deceased.

16. P.W.2., Asoya Soren testified to the effect that in the morning hours on the date of the incident, he heard from the villagers that at around 12 O'clock night, there was

a quarrel between the deceased and the accused and during the quarrel, the accused had hit his father on his head with a wooden batten resulting in instantaneous death of the deceased. P.W.2 further stated that he went to the P.O. in the morning and found the dead body of the deceased lying in the courtyard of the house. P.W.2 also stated to have heard from the villagers that the accused killed his deceased father with the wooden batten. According to P.W.2, Police personnel arrived at the P.O. at around 06-00 a.m. and thereafter, the dead body was taken to the Police Station. During cross-examination, P.W.2 stated that the deceased was his own younger brother. P.W.2 stated that the deceased used to raise quarrel almost daily in the house after being drunk. P.W.2 further disclosed that the deceased used to beat both his wife and his son, the accused after getting drunk. P.W.2 further testified that both the deceased and the accused were cultivators and they used to plough their own plots of land. Stating that his house is situated at a distance of 10 feet, P.W.2 stated that he did not hear any shouting on the night of occurrence. P.W.2 described the dimension of the wooden batten, which he found in two pieces. P.W.2 also disclosed that he did not find the accused entering into quarrel from his end, with his deceased father prior to the date of occurrence. P.W.2 stated to have noticed an injury on the right side of the forehead of the deceased.

17. P.W.3, Dhan Bahadur Lama, Secretary of the VDP also arrived at the P.O. only in the morning hours. P.W.3 stated that at the P.O., he saw the dead body of the deceased lying in a pool of blood on the ground. He was informed by the villagers, present there, that it was the accused, who had killed the deceased by assaulting the deceased with a wooden batten. P.W.3 further stated that he immediately informed the matter to Bokajan Police Station over phone. Pursuant to his information, the Police personnel came to the P.O. and held inquest on the dead body of the deceased. P.W.3 exhibited the Inquest Report as Ext.-2 with his signature therein as Ext.-2[1]. P.W.3 further disclosed that the Police seized a wooden batten which was used in the incident from the P.O. and he was a witness to the Seizure List [Ext.-1] prepared in that connection and also exhibited his

signature therein as Ext.-1 [2]. During cross-examination, P.W.3 stated that he had no knowledge whether there was any quarrel between the accused and the deceased from a prior point of time. P.W.3 also gave a description of the wooden batten seized vide Ext.-1 while clarifying that he did not witness any incident.

18. P.W.4., Purna Mura was the Vice President of the VDP, and he also came to the P.O. only in the morning hours on the date of the incident. In his testimony, P.W.4 stated that at the P.O. he was informed by some villagers that the deceased had been killed by his son, that is, the accused. By going to the P.O., he noticed that the dead body was lying on the ground and there was bleeding from the head of the deceased. P.W.4 acknowledged the presence of P.W.3 at the P.O. at that time. Like P.W.3, P.W.4 was also a witness to the Inquest Report, Ext.-2 and he identified his signature therein as Ext.-2[2]. During cross-examination, P.W.4 stated that he had no knowledge about any quarrel between the deceased and the accused. Like P.W.3, P.W.4 also gave a description about the dimension of the wooden batten seized vide Ext.-1, Seizure List.

19. Upon analysis of the testimonies of the afore-mentioned four prosecution witnesses, P.W.1, P.W.2, P.W.3 and P.W.4, it is found that all these witnesses had arrived at the P.O., that is, the house of the deceased and the accused only in the morning hours, which was much after the death of the deceased. All these witnesses had deposed in a similar manner that at the P.O., they were informed by some villagers that the deceased had been killed by the accused by a wooden batten. But none of these prosecution witnesses had named the villagers who had informed them as to how the deceased had met his death at the hand of the accused. Other than these four prosecution witnesses, no other villagers were examined by the prosecution. In such backdrop, the evidence of these prosecution witnesses that they were informed by some villagers as to how the incident had occurred and or as to how the incident took place once they arrived at the P.O. is not a piece of evidence to add weight to the prosecution case as such nature of evidence *ex facie* is hearsay evidence.

20. After excluding the above part of the testimonies of these prosecution witnesses, we find from the remaining parts of the testimonies of these prosecution witnesses that P.W.1 and P.W.3 were witnesses to the Seizure List [Ext.-1] whereby a wooden batten was seized from the P.O. and P.W.3 and P.W.4 were witnesses to the inquest proceeding where after the inquest Report [Ext.-2] was prepared. What has further emerged from the testimonies of these prosecution witnesses is that prior to the date of occurrence, there was no enmity between the deceased and the accused. From the evidence of P.W.2, who was the elder brother of the deceased, it has emerged that the deceased was habituated to drinking and after getting drunk, almost daily, he used to raise quarrel in his house and in the process of such quarrels, he used to beat his wife, that is, the informant and his son, that is, the accused. P.W.2 who is a close relative of both the deceased and the accused also testified that the accused never used to raise quarrel from his end with his father. P.W.3 and P.W.4 who apart from being functionaries of the VDP, were also co-villagers of the deceased and the accused, had deposed that they had no knowledge about existence of any enmity between the deceased and the accused. Motive for commission of an offence assumes more significance in cases based on circumstantial evidence than in the cases in which direct evidence regarding commission of offence was available. Though failure to prove motive is not fatal by itself but absence of motive in a case resting on circumstantial evidence is a factor that shall, in general, go in favour of the accused. It has emerged from the evidence that there was no prior enmity between the deceased and the accused. However, it was the deceased who was attributed the role of creator of disturbance in the house after consuming liquor, almost daily, with no earlier incident of playing the role of aggressor attributed to the accused. With such the evidence, in our considered view, any motive for the accused behind the alleged murder cannot be said to have been established, even remotely.

21. One of the contentions of the learned Additional Public Prosecutor is that the approximate time and date of death of the deceased mentioned in the Inquest

Report [Ext.-2] matched with the time and date of death mentioned in the FIR [Ext.-6]. It is trite to mention that neither the First Information Report nor an Inquest Report is considered to be substantive piece of evidence. The object of an inquest proceeding under Section 174, CrPC is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and, if so, what was its apparent cause. The question regarding details of how the deceased was assaulted or to who assaulted him or under what circumstances he was assaulted, is outside the ambit and scope of an inquest proceeding. The FIR was lodged by the wife of the deceased and the mother of the accused. But she did not enter into the witness box, for the reason mentioned above, to testify about the veracity of the contents of the FIR and the defence also did not get any opportunity to confront her by cross-examination.

22. P.W.5, Dr. Son Kumar Das, who, on 25.09.2013, was serving as a Medical & Health Officer at Diphu Civil Hospital, performed the post-mortem examination on the dead body of the deceased, Sukhu Sureng, which was identified by UBC Jivon Phukan and Devan Soren. In his testimony, P.W.5 stated that after completing autopsy on the dead body of the deceased, he recorded his findings in the PME Report, which P.W.5 exhibited as Ext.-3. P.W.5 identified his signature in the PME Report as Ext.-3[1]; the signature of the Superintendent of Civil Hospital, Diphu as Ext-3[2]; and the signature of Joint Director of Health Services, Karbi Anlgong, Diphu as Ext.-3[3]; respectively. In the Autopsy Report, he recorded the following findings :-

External Appearance

PM is done on a male dead body of about 55 years age. Average built, Height 5ft 6 inch, complexion sworthy, Hairs : Short, eyes closed, mouth closed, wearing blue white shirt and read white half-pant with multiple lacerated wounds on right side of forehead and on right ear with fracture of frontal bone with bleeding.

Scalp Skull : Multiple lacerated wounds on right side of the forehead and on right ear with fracture on the frontal bone with bleeding. Membrane is

torn and hemorrhage inside frontal bone. Chest, abdomen : no abnormalities, Thorax : No abnormalities.

P.W.5 stated that in the PME Report [Ext.-3], he opined that the cause of death was due to head injury caused by blunt trauma. When P.W.5 was cross-examined, he stated that blunt trauma sustained by the deceased could be due to fall on hard substance or if the deceased got hit against any hard substance.

23. In common parlance, blunt trauma refers to injury of the body by forceful impact with a dull object. With blunt force trauma, there can be internal organ injuries that are not immediately visible. On scrutiny of the PME Report, Ext.-3, and on reading of the testimony of the autopsy doctor, P.W.5, we find that it has not been reported therein categorically that the death of the deceased was a homicidal one.

24. When the accused was examined under Section 313, CrPC, and thereby, was provided with the opportunity to explain the incriminating circumstances emerging from the prosecution evidence, he stated that his deceased father used to fight with his mother every day. As regards the events which occurred on the date of the incident, he stated that at around 10-30 p.m. on the date of the incident, his father in an intoxicated state, was fighting with his mother. When he requested his father not to fight with his mother, he was chased by his father with a wooden batten. On being so chased, he had to run out of the house and it was after about one hour, he returned back to his house. After returning, he saw that his father was lying on the floor and his mother was standing nearby. Then his mother asked him to lift his father and he accordingly lifted him. Thereafter, both of them kept sitting near his father on that night. He stated that when he lifted him, he saw injuries on the head of his father with blood oozing out therefrom. In the morning, the persons in the neighbourhood were informed and thereafter, the case was lodged by his mother against him. The accused also stated that his mother, that is, the informant was suffering from paralysis and had lost her speech.

25. Noticeably, the FIR was written by a scribed named Kanouj Bhattacharyya. But the said scribe, Kanouj Bhattacharyya was not examined by the prosecution. In the FIR, the scribe had mentioned that the FIR was written as per the version of the information. From the evidence/materials on record, it has emerged that the informant had become paralytic and had lost her speech. As the prosecution did not lead any evidence as regards the health condition of the informant to lodge the FIR with her own version through a scribe, the situation in which the FIR came to be lodged did not become clear.

26. It has clearly emerged from the above discussion that the case in hand is a case which rested on circumstantial evidence as no one had testified as an eye-witness of the occurrence. It is too well settled that an accused can be convicted if he is found guilty in cases based on circumstantial evidence provided the prosecution is found successful in proving the complete chain of events and circumstances beyond reasonable doubt pointing definitely towards the involvement of the accused as the perpetrator of the crime. The nature of evidence which are required to be led by the prosecution in a case resting on circumstantial evidence has been delineated in the oft-quoted three-Judge Bench decision in **Sharad Birdhichand Sarda vs. State of Maharashtra**, reported in **[1984] 4 SCC 116**, in the following words :-

> 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. State of Madhya Pradesh [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi vs. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal vs. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

> 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 Sahabrao Bobade vs. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]
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> > 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,
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> [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. One of the aspects which assumes importance in a case based on circumstantial evidence is existence of motive. From the evidence led by the prosecution, already alluded above, we have not found any motive which can be attributed to the accused for compelling him to commit an act of murder.

28. In view of the opinion of the Autopsy Doctor [P.W.5] that the cause of death of the deceased was due to head injury caused by blunt trauma, the prosecution could have benefited by showing the wooden batten to the Autopsy Doctor to obtain his opinion as to whether the head injury sustained by the deceased could have been possible by such kind of wooden batten. But the prosecution despite making seizure of the wooden batten vide the Seizure List [Ext.-1], had failed to show the wooden batten to the Autopsy Doctor. The prosecution had even failed to produce and exhibit the wooden batten, stated to have been seized vide the Seizure List [Ext.-1], during the trial. If the Seizure List [Ext.-1] is looked at, it is found that when the wooden batten was seized at 08-00 a.m. on 25.09.2013, there was no indication that the wooden batten was a bloodstained one, at least to draw an inference

prima facie that it was used in committing the assault, as alleged by the prosecution side throughout.

29. The accused was not attributed any kind of criminal antecedent by the prosecution witnesses, more particularly, by P.W.2 who was the elder brother of the deceased. In fact, P.W.2 had categorically stated that the deceased used to be the aggressor and the accused used to be the recipient. From such previous conducts of the deceased and the accused, no motive can be inferred and absence of motive, in such situation, becomes a missing link in the case of the prosecution. On evaluation of the testimony of the prosecution witnesses vis-à-vis the explanation provided by the accused, it has emerged that during the night intervening 24.09.2013 and 25.09.2013, the accused was in an intoxicated state and it was a possibility that the accused playing the role of aggressor, as always, entered into a quarrel with his wife and his son, as projected by the accused, and in the process of chasing the accused, the deceased received the head injury due to forceful impact on a hard substance resulting into blunt trauma.

30. In the light of the well settled principle that in a case resting on circumstantial evidence, each and every incriminating circumstance must be clearly established by reliable and clinching evidence by the prosecution and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, ruling out the possibility in other hypothesis against the guilt. When the facts and circumstances of the case in hand are examined, we are not persuaded to reach a view that the prosecution has been able to establish all the incriminating circumstances by reliable and clinching evidence and we find that there are few missing links in the chain of circumstances due to want of reliable and clinching evidence.

31. 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. 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.

32. Upon evaluation of the evidence/materials on record in its entirety, we are of the considered view that though the evidence/materials on record points a needle of suspicion towards the accused but the prosecution has not been able to move from

the stage of 'may be true' to the stage of 'must be true', as required in law to return a finding of guilt for a criminal charge, more particularly, for a serious crime like murder, that too, for patricide. Having regard to the nature of evidence led by the prosecution, as discussed above, we are of the considered view that it would be unsafe to sustain a conviction for a charge of murder against the accused and as a consequence, we find the present case as one wherein there is applicability of the well settled principle of criminal jurisprudence that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other towards his innocence, the view which is favourable to the accused should be adopted. Thus, we hold that the Judgment and Order of conviction and sentence rendered by the learned trial court is not sustainable in law and therefore, the instant criminal appeal succeeds. Accordingly, by setting aside the Judgment and Order dated 21.12.2021 of the learned trial court, impugned herein, the criminal appeal is allowed.

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

34. Before parting with the record, we wish to place our appreciation on record as regards the services rendered by Mr. A. Ahmed, 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.

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

JUDGE **JUDGE**

Comparing Assistant