

GAHC010199562021



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2025:GAU-AS:5095-

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

Case No. : CRL.A(J)/43/2021

BIREN CH. DAS
S/O. LT. PABIN DAS,
VILL. PATHALIKUCHI,
P.S. TAMULPUR, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY Addl. P.P, ASSAM.

Advocate for the Petitioner : MR N. J DAS, AMICUS CURIAE,

Advocate for the Respondent : MS. A. BEGUM, LD. ADDL. P.P, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI
HONOURABLE MRS. JUSTICE MITALI THAKURIA

Dates of hearing : 27.02.2025 & 28.02.2025

Date of Judgment : 28.04.2025

JUDGMENT & ORDER (CAV)

(M. Thakuria, J)

Heard Mr. N. J. Das, learned Amicus Curiae for the appellant and also heard Ms. A. Begum, learned Additional Public Prosecutor for the State of Assam.

2. The present appeal has been preferred from jail against the Judgment and Order dated 19.02.2021, passed by the learned Sessions Judge, Baksa, Mushalpur, in Sessions Case No. 337/2018 under Section 302 of the IPC, whereby the present accused/appellant has been convicted under Section 302 of the IPC and sentenced to rigorous imprisonment for life, along with a fine of Rs. 1,000/-, and, in default, to undergo R.I for another 3 (three) months.

3. The brief facts of this case is that the informant who stays in Guwahati came to know that the accused/appellant [Biren Das] who is his own brother had physically assaulted his mother on 06.06.2018 and coming to know about the same, he came to his own house and saw that his mother sustained grievous injuries on both knees, eyes and forehead and further on 10.06.2018 at about 06.00.PM, the accused again hit his mother on her head with a piece of wood as a result of which she sustained grievous injury on her head, fell down and died instantly.

4. Based on the aforesaid information, a formal FIR was registered, and the police initiated an investigation. P.W-7, the Officer-in-Charge of the police station, took up the investigation himself, visited the place of occurrence, recorded the statements of witnesses, and ensured that a post-mortem examination was conducted. After collecting the post-mortem report and other relevant evidence, he filed a charge sheet under Section 302 of the IPC against the present accused/appellant.

5. After the committal of the case and furnishing a copy to the accused/appellant, the learned Sessions Judge, Baksa, Mushalpur, heard the accused on the consideration of charge and accordingly, framed a charge under Section 302 of the IPC.

6. In order to prove the charge against the accused, the prosecution examined a total of 11 (eleven) witnesses, who were duly cross-examined by the defence. The accused/appellant was also examined under Section 313 Cr.P.C., wherein, he denied the prosecution's case and declined to adduce any evidence. After hearing the argument put forwarded by both the parties, the accused/appellant was convicted under Section 302 of IPC and sentenced to R.I for life, along with a fine of Rs. 1,000/- and in default to undergo R.I for another 3 (three) months.

7. Mr. Das, learned Amicus Curiae for the appellant, has submitted that the prosecution has failed to establish the case against the present accused/appellant beyond all reasonable doubt regarding the charge of murder. He contended that the accused/appellant did not commit the murder of his mother by assaulting her with a piece of wood on her head. Accordingly, he raised the following issues during his argument:

i. Lack of Eyewitnesses: There are no eyewitnesses to the prosecution's case, and except for P.W-5 (the informant), all other witnesses are hearsay witnesses.

ii. Contradictions in Witness Testimonies: The witnesses made contradictory statements regarding the time of the incident. He submitted that P.W-1, in his re-examination, stated that the incident occurred at 6:00 P.M, whereas the FIR mentions 5:00 P.M. In his examination-in-chief, P.W-5 testified that the incident occurred around 3:30 P.M. when the deceased was sitting on the veranda. Additionally, P.W-5 again mentioned the time of the occurrence as about 6:30 P.M. in his cross evidence. These contradictions regarding the time of the incident raise doubts about the veracity of the prosecution's case.

iii. Contradictions Regarding the Murder Weapon: There are contradictions regarding the murder weapon. According to some witnesses, the accused showed the murder weapon, but there is no mention as to where from it was recovered. However, the I.O testified that the accused led the police to recover the murder weapon, which was a piece of wood kept in a heap of wood near his house. Thus, there is a contradiction regarding the recovery of the murder weapon.

iv. Failure to Record Confessional Statement: Mr. Das raised the issue that, although the I.O. claimed that the accused led the police to the recovery of the murder weapon, no statement was recorded under Section 27 of the Indian Evidence Act regarding the discovery of the weapon. Further, no confessional statement was recorded.

v. P.W-5's Testimony: Mr. Das further submitted that P.W-5, considered to

be one of the most vital witnesses for the prosecution, did not witness the incident, although he claimed to be present at the time of the occurrence. Furthermore, all other witnesses are hearsay witnesses who claim to have learned about the incident only after arriving at the scene.

vi. Extra Judicial Confessions before P.Ws-7, 8, and 9: P.Ws-7, 8, and 9 claim that the accused confessed his guilt in their presence. However, their evidence suggest that the confession was made in the presence of police officers, which, according to the law, is inadmissible. Mr. Das further pointed out that despite the confession, the I.O. neither requested for the recording of any confessional statement of the accused/appellant, nor the statements of P.Ws-7, 8, and 9 were recorded under Section 164 of the Cr.P.C.

vii. Non-Exhibiting of G.D. Entry: Mr. Das raised the issue that although the investigation was claimed to have been initiated based on the G.D. entry, the prosecution failed to exhibit the G.D. entry during the trial.

viii. Contradictions in the Statements of P.Ws: He further submitted that there are significant contradictions in the statements of the P.Ws, which have been confronted with the I.O. Therefore, the evidence of the P.Ws cannot be considered as reliable or trustworthy, as they provided different versions in their testimony and in their statements made before the I.O. under Section 161 of the Cr.P.C.

ix. Absence of Motive: The prosecution failed to establish a clear motive for the murder. It is an admitted fact that the accused/appellant is the son of the deceased, but the prosecution has failed to provide any explanation as to why he would commit the murder of his own mother. Additionally, no other

circumstantial evidence was presented by the prosecution to prove the guilt of the accused/appellant.

8. Mr. Das, learned Amicus Curiae for the appellant, concluded by submitting that the prosecution has failed to establish the case against the accused/appellant beyond all reasonable doubt. As such, the accused/appellant is entitled to acquittal. He further submits that the learned Sessions Judge neither properly considered the evidence on record nor appreciated the same in its true perspective. Therefore, he prays for setting aside the conviction and sentence passed against the appellant.

9. *Per contra*, Ms. Begum, learned Additional Public Prosecutor, submitted that P.W.5 is the vital witness of the prosecution's case. His testimony establishes that he was present in the house at the time of the incident and that the offence occurred in his presence. He had returned from Guwahati after receiving information about injuries sustained by his mother due to assault by his brother (the accused/appellant) approximately four days prior to the murder. His presence in the house at the time of the incident is further corroborated by other witnesses who arrived at the scene immediately after hearing his cries for help. The defence was unable to rebut the testimony of P.W.5, either by adducing evidence or through cross-examination of the prosecution witnesses. Furthermore, P.W.1 testified that he informed the police about the incident over phone, following which a G.D. entry was made, and the police arrived at the scene to conduct formalities, including preparing an inquest report and sending the deceased's body for post-mortem examination. All the prosecution witnesses corroborated each other's testimonies, stating that prior to the murder, the accused/appellant had assaulted his mother, causing grievous injuries to her eyes, knees, and face.

10. She further submitted that both P.W.1 and P.W.5 deposed that P.W.5 had returned home upon hearing the incident of assault on his mother and had arranged for her treatment. The murder occurred the day after his return, and this sequence of events is corroborated by other prosecution witnesses who not only arrived at the scene upon hearing P.W.5's cries but also confirmed their prior knowledge of the assault that had taken place 3/4 days earlier. Several witnesses stated that they had personally seen the injuries sustained by the deceased due to the accused/appellant's assault before the fatal incident.

11. Ms. Begum, learned APP further submitted that some witnesses also alleged that the accused/appellant frequently quarrelled with his mother in a state of intoxication and often assaulted her. Thus, there is complete corroboration between the testimonies of P.W.1 and P.W.5 regarding both incidents of assault, which is further supported by other prosecution witnesses. She added that, despite minor contradictions in the prosecution witnesses' statements, their testimonies remained consistent regarding the two incidents of assault; one occurring a few days before the murder and the other leading to the fatal injury. The defence failed to rebut these claims. When P.W.5 raised an alarm during the incident, other witnesses and villagers gathered at the scene and found the deceased lying on the ground. Furthermore, P.Ws. 7, 8, and 9 stated that the accused/appellant had confessed his guilt before them. However, Ms. Begum clarified that while the accused/appellant made a confession in the presence of the police, it was given at his house and not at the police station. At the time, he was not in police custody. She acknowledged that extra-judicial confessions are generally considered as weak piece of evidence and may be inadmissible if made in the presence of the police. Nevertheless, based on the facts and circumstances of the case, the testimonies of P.Ws. 7, 8, and 9

regarding the confession cannot be outrightly disregarded.

12. Ms. Begum also pointed out that there is no evidence to suggest that P.Ws. 7, 8, and 9 testified falsely or had any prior enmity with the accused/appellant. Therefore, there is no reason to disbelieve their statements. She further submitted that despite minor contradictions in the witnesses' statements under Section 161 of Cr.P.C., their core testimonies remained consistent. The witnesses were aware of the prior incident of assault, and they also confirmed that the accused/appellant had a history of quarrelling with and assaulting his mother while intoxicated. Moreover, seizure witnesses identified the murder weapon i.e. a piece of wood. During his re-examination, P.W.8 reaffirmed that the accused/appellant, while retrieving the murder weapon, confessed that he had killed his mother with it. She further submitted that medical evidence corroborates the ocular evidence, and the post-mortem findings confirm the injuries sustained by the deceased.

13. The learned APP has relied upon the case of ***Aftab Ahmed Anasari Vs. State of Uttaranchal*** reported in ***(2010) 2 SCC 583*** to contend that extra judicial confession though a weak piece of evidence can be taken into consideration if no animosity or motive is apparent. For ready reference, the relevant observations are extracted hereinbelow-

"52. Though extra judicial confession is considered to be a weak piece of evidence by the courts, this Court finds that there is neither any rule of law nor of prudence that the evidence furnishing extra judicial confession cannot be relied upon unless corroborated by some other credible evidence. The evidence relating to extra judicial confession can be acted upon if the evidence about extra judicial confession comes from the mouth of a witness who appears to be unbiased and in respect of whom

even remotely nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused."

14. She has also relied upon the case of ***Kartik Malhar Vs. State of Bihar*** reported in (1996) 1 SCC 614 to support the contention that even a single witness is sufficient if found to be trustworthy. The relevant observations are extracted hereinbelow-

"14. We have already discussed above that it is open to the courts to record a conviction on the basis of the statement of a single witness provided the evidence of that witness is reliable, unshaken and consistent with the case of the prosecution. The case of the prosecution cannot be discarded merely on the ground that it was sought to be proved by only one eyewitness, nor can it be insisted that the corroboration of the statement of that witness was necessary by other eyewitnesses. ..."

15. Thus, the prosecution contends that the accused/appellant assaulted the deceased with a wooden object, striking her head and causing fatal injuries. To substantiate its case, the prosecution examined a total of 11 (eleven) witnesses, including the informant, the investigating officer (I.O.), and the medical officer. Therefore, before arriving at a conclusion, it is essential to scrutinize and assess the evidence presented by the prosecution.

16. P.W-10 is the Doctor/Medical Officer (M.O.) in this case, who conducted the post-mortem examination of the deceased. According to him, he performed the post-mortem examination on 11.06.2018 at approximately 02:00 PM. During the examination, he found the following injuries:

“External Examination: Laceration of 4cmx1cmxbone depth, present over occipital parietal region right side. One abrasion present over left cheek, abrasion over both knee joint. Echymosis present over periocular region. No ligature mark is present. Scalp was contused over parieto-occipital region. Skull-healthy, vertebra-healthy, diffused subdural haemorrhage present over both the cerebral hemisphere and brain is congested”.

17. He also exhibited the Post-Mortem Examination Report as Exhibit-3, along with his signature and the signatures of the other doctors. He opined that the cause of death was coma resulting from a head injury. The injuries were ante-mortem in nature and caused by a blunt force impact. The time of death was estimated to be between 12 to 24 hours prior to the examination. In his cross-examination, he stated that such a subdural hemorrhage on the deceased's head could also have been caused by a fall on a hard surface.

18. From the medical evidence and the Post-Mortem Report, it has been opined that the cause of death was due to coma resulting from a head injury. Therefore, it has to be determined, who inflicted the head injury that led to the deceased's death. The injuries have been confirmed to be ante-mortem in nature. Furthermore, it has been opined that the injury was caused by a blunt force object. According to the prosecution's case, the present accused-appellant assaulted the deceased with a wooden *buttam*, causing a severe head injury, which ultimately resulted in her death due to coma.

19. P.W.1 is a neighbour of the deceased. He deposed that 3/4 days prior to the murder, at around 6:00 PM, he heard a human cry from the house of the accused. Then, he rushed to the scene and saw that the mother of the accused

had sustained injuries on her body, including her face, knees, and eyes. He further stated that the accused frequently consumed alcohol and, under its influence, used to assault his family members. He further deposed that 3/4 days after the initial incident, he again heard cries from the house of the accused, rushed to the house of the appellant and he saw the deceased lying dead on a stone. Upon inquiry, the informant, Niren Das, told him that the accused, under the influence of alcohol, had struck the deceased on the head with a wooden object before fleeing the scene. He immediately informed the police over the phone. The police arrived, at around 9:00 PM, conducted an inquiry, prepared the inquest report, and sent the deceased's body for post-mortem examination, during which P.W.1 also signed as a witness. He further stated that a large crowd had gathered at the house of the accused at that time.

From his cross-examination, it is evident that P.W.1 did not witness the actual incident of murder. However, he denied to the suggestion that he had not stated before the police that three days after the first incident, he again heard cries, rushed to the house of the accused, saw the deceased lying on a stone, and was informed by the informant that the accused had assaulted his mother under the influence of alcohol. P.W.1 was also re-examined during the trial, where he reiterated his statements and described both the first and second incidents of murder. However, he was not cross-examined by the defence.

20. P.W.2 is an independent witness, and he deposed that the informant had to leave his house for Guwahati due to the torture and behaviour of the accused/appellant. He further narrated the earlier incident of 06.06.2018, when the accused/appellant physically assaulted his mother. He also stated that the informant was called back from Guwahati to arrange medical treatment for his mother. However, on the evening of 10.06.2018, the incident of murder

occurred. He further deposed that the accused/appellant again inflicted an injury on his mother's head with a piece of wood. When he rushed to the accused/appellant's house, he saw the informant at his own house and observed injuries on the head and eyes of the deceased. He further stated that Suren Ch. Hazarika (P.W.1) informed the police, who arrived at the scene, conducted an inquiry, and took the dead body for a post-mortem examination. He also exhibited his signature on the inquest report as Exhibit-1.

From his cross-examination, it is evident that he did not witness the incidents of 06.06.2018 and 10.06.2018. However, he denied the suggestion that he had not stated before the police that the accused/appellant assaulted the deceased with a piece of wood.

21. P.Ws. 3 and 4 are relatives of the deceased. According to them, the deceased had informed them about the previous incident of assault. Thereafter, P.W.3 informed the informant, who was at Guwahati at the time of the earlier incident. The informant immediately returned home to arrange medical treatment for his mother. However, during the second incident, the deceased succumbed to her injuries due to the assault inflicted on her by the accused/appellant with a wooden object. P.W.4 was also present at the place of occurrence after hearing cries for help and saw the deceased's body in the accused/appellant's house. Both P.Ws. 3 and 4 were present during the inquest conducted by the police and signed the inquest report accordingly.

During cross-examination, both P.Ws. 3 and 4 denied the suggestion that they had not stated before the police that they rushed to the place of occurrence upon hearing cries and saw the deceased's body.

22. P.W.5, the informant in this case, is the most vital witness for the

prosecution. He claims his presence at the time of the incident, when his brother, the accused/appellant, assaulted their mother with a piece of wood on her head. At that time, his mother was sitting on the veranda of their house at around 3:30 P,M when the accused struck her with the wooden object and then fled from the scene. He deposed that he raised an alarm, after which people gathered at the spot. The police arrived upon being informed and took the deceased's body for post-mortem examination. He further deposed that the accused frequently used to quarrel under the influence of alcohol, demanding arrangement for his marriage. Due to the behaviour of the accused, P.W.5 had to leave his house. However, prior to the incident, he was called back by his relatives to arrange medical treatment for his mother. Upon his return, he found her in an injured condition, with visible injuries on her forehead, eyes, and knees.

From his cross-examination, it is evident that he arrived home one day before filing the FIR, which was lodged on 12.06.2018. However, he could not recall who wrote the FIR. He also stated that his statement was recorded by the police on 10.06.2018. He denied the suggestion that he had not informed the police about the physical assault on his mother while she was sitting at the doorstep of their house.

23. P.W.6 stated that he heard about the incident from the wife of the informant, who told him that the accused had assaulted the deceased on her head with a wooden object. He further deposed that the accused had previously assaulted his mother on multiple occasions. However, at the time of the incident, P.W.6 was not present. He also stated that due to the violent behaviour of the accused, the informant had to leave his house and move to Guwahati. The police later arrived at the scene and sent the deceased's body for a post-

mortem examination.

From his cross-examination, it is evident that he did not witness the incident of assault committed by the accused/appellant.

24. P.Ws. 7, 8, and 9 are neighbours of the accused/appellant. They claimed to have been present at the time of the seizure of the murder weapon, i.e., a piece of wood, and exhibited their signatures on the seizure list. They also identified the material exhibit [the piece of wood] during their examination. These witnesses further stated that when the murder weapon was recovered, the accused/appellant confessed his guilt before them. From their cross-examination, it is evident that these P.Ws did not witness the actual assault. However, they claimed to have been present at the time of the recovery of the murder weapon and also stated that the accused/appellant confessed his guilt in their presence, but, denied the suggestion that they had not informed the police about the confession of the accused.

P.W.8 was re-examined by the prosecution, during which he reiterated that the accused/appellant took out the murder weapon and admitted the killing his mother with it. P.W.9 also deposed that the accused/appellant frequently used to quarrel and assault his mother while under the influence of alcohol. He further stated that, prior to the murder, the accused had assaulted his mother, causing injuries to her eye and leg while the informant was in Guwahati. Upon hearing about his mother's injuries, the informant returned home and arranged for her medical treatment. However, on the following day, at around 5:30 PM, the accused again assaulted his mother with a piece of wood on her head, leading to her death. The accused then fled from the house and was apprehended by the police only after 3/4 days of the incident.

25. P.W-11 is the Investigating Officer who was posted at Tamulpur Police Station at the time of the incident. On 10.06.2018, at approximately 7:15 PM, he received information that a son had killed his mother in a village. Accordingly, the Officer-in-Charge made a G.D. Entry and deputed him to visit the scene. He, along with other staff, proceeded to the place of occurrence, where they found the deceased lying dead in the house of Prabin Das, with visible head injuries. Thereafter, he examined the witnesses and informed the Magistrate and the Superintendent of Police concerned. The Magistrate directed him to bring the dead body to the police station, as it was late at night. He prepared a sketch map of the place of occurrence (Exhibit-4). He further deposed that he searched for the accused, but the accused had fled. The following morning, the Magistrate conducted the inquest, and the dead body was sent for Post-Mortem examination. On 12.06.2018, local villagers informed him that the accused had returned home. He immediately reported the matter to the O.C. concerned and proceeded to the house of the accused. The accused was subsequently apprehended and brought to the police station. Upon interrogation, the accused stated that he could lead the police to the recovery of the wooden piece used in the assault. The next morning, the officer accompanied the accused to his house, where the accused showed them the wooden piece, which was kept in a heap of wood near his house. The item was seized and marked as Material Exhibit-1. After completing the investigation and recording witness statements, he collected the Post-Mortem report and subsequently submitted the Charge-Sheet against the accused under Section 302 IPC (Exhibit-6).

During cross-examination, he stated that he had apprehended the accused on 12.06.2018, at approximately 6:45 P.M, from his house. The following

morning, at around 7:25 A.M, he revisited the house of the accused and recorded his statement under Section 161 Cr.P.C. Further, from his cross-examination, it revealed that although the accused led him to the recovery of the wooden piece, it was not specifically mentioned that the piece of wood had been kept under the heap of wood. Additionally, he admitted that he did not submit any request for recording the confessional statement of the accused. Moreover, no bloodstains were found on the wooden piece; hence, it was not sent for FSL examination.

26. After hearing the submissions made by the learned counsels for both sides and on perusal of the evidence on record, as well as the judgment passed by the learned Trial Court, it is seen that the prosecution has alleged that the accused/appellant assaulted the deceased with a piece of wood on her head, causing injuries that led to her death. The medical report confirms that the deceased died as a result of the head injury. Furthermore, the post-mortem report confirms the other injuries sustained by the deceased, corroborating the ocular evidence provided by the P.Ws.

27. From the submissions made by the learned counsels for both sides, as well as from the evidence of the prosecution witnesses, the following points are found to be admitted:

- i.** The presence of P.W-5 at the place of occurrence at the relevant time of the incident is not disputed, and his evidence regarding his presence at the time of the incident could not be rebutted by the defence.
- ii.** The fact that P.W-5 came to his house upon receiving information about the assault on his mother by the accused/appellant has been corroborated by other P.Ws, to the extent that P.W-5 returned home from Guwahati after the

incident, i.e., on 06.06.2018.

iii. All the neighboring people gathered at the place of occurrence upon hearing the cries of P.W-5 when he saw his mother lying injured. The accused/appellant was seen fleeing from his house with a piece of wood in his hand, which was identified as the murder weapon.

iv. P.W-1 called the police over the telephone, following which a G.D. entry was made. The police subsequently arrived at the place of occurrence, conducted the inquest, recorded the statements of witnesses, and sent the dead body for post-mortem examination.

v. Other P.Ws arrived at the place of occurrence on a prior occasion when the accused/appellant had assaulted his mother, causing grievous injuries, particularly to her eyes, knees, and hands.

vi. The medical evidence supports the ocular evidence regarding the injuries sustained by the deceased in the incident that occurred on 06.06.2018.

28. From the facts and circumstances discussed above, it is evident that the allegation regarding the accused/appellant's previous assault on his mother on 06.06.2018, resulting in grievous injuries, remains undisputed. Additionally, it is established that P.W.5 had to leave his residence due to the accused/appellant's violent behaviour, torture, and cruelty towards him and his mother. It is also evident that after receiving information about the injuries sustained by his mother due to the assault on 06.06.2018, P.W.5 returned home to arrange medical treatment for her. It is an admitted position that there is no eyewitness to the incident. However, the presence of P.W.5 at the relevant time of the incident, either in his house or at the place of occurrence, is not disputed.

29. It is well settled proposition of law that in cases where the evidence is of circumstantial nature, the circumstance from which the conclusion of guilt is to be drawn are required to be established by reliable and credible evidence so as to exclude any hypothesis consistent with the innocence of the accused. The Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra***, reported in **(1984) 4 SCC 116**, has referred to five principles, for proving a case based on circumstantial evidence, in the following manner:-

"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is [Hanumant v. The State of Madhya Pradesh](#).(1) This case has been uniformly followed and applied by this Court in a large number of later decisions upto date, for instance, the cases of [Tufail \(Alias\) Simmi v. State of Uttar Pradesh](#)(2) and [Ramgopal v. Stat of Maharashtra](#)(3). It may be useful to extract what Mahajan, J. has laid down in [Hanumant's](#) case (supra):

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 & Anr. v. State of Maharashtra](#)(¹) where the following observations were made:

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

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

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be

proved, and

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

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

30. So in the instant case, it must be determined whether the circumstances presented by the prosecution are sufficient to conclude, with all human probability, that the act of murder was committed by the accused / appellant. The following circumstances are:

- a.** P.W-5 saw the accused/appellant fleeing from the house with a piece of wood in his hand, and at the same time, he saw his mother lying injured, having sustained a head injury while sitting on the verandah.
- b.** Soon after the incident, the accused/appellant fled, and he was apprehended by the police only after 3/4 days.
- c.** The seizure witnesses corroborated each other's statements, confirming that the accused led the police to the discovery of the murder weapon.
- d.** The murder weapon, a piece of wood, was seized and exhibited as material evidence. The seizure witnesses duly identified it before the Court.
- e.** The earlier incident of 06.06.2018 is also proven by witnesses, as they testified that the accused assaulted his mother, causing injuries to her. It is also established that he frequently quarreled with and assaulted his mother under

the influence of alcohol. Due to his behavior and atrocities, P.W.5 had to leave his house and move to Guwahati.

f. Further, from the accused/appellant's statement recorded under Section 313 of the Cr. P.C., it is evident that he pleaded innocence and claimed that his mother sustained injuries by falling on the ground. So, the question arises: if his mother had indeed been injured due to a fall, why did he immediately flee from the scene? Instead of providing her with medical treatment, he fled while carrying a piece of wood in his hand, further supports the conclusion that he assaulted his mother by striking her on the head with it.

31. Apart from the circumstances discussed above, P.W. Nos. 7, 8, and 9 also claimed that the accused/appellant confessed his guilt in their presence at the time of the recovery of the murder weapon. P.W.8 was re-examined by the prosecution, during which he reiterated his statement that the accused/appellant confessed his guilt and stated before him that he had killed his mother with the said weapon. It is an established fact that an extra-judicial confession is a weak piece of evidence and is not legally acceptable unless made in the presence of credible witnesses.

32. In case of ***Ramanand @ Nandlal Bharti vs. The State of Uttar Pradesh*** reported in ***2022 0 AIR SC 5293***, in paragraph 81 of the judgment it has been held by the Hon'ble Supreme Court that "*Court should start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. In order to accept extra judicial confession, it must be voluntary and must inspire confidence. If it is satisfied that the extra judicial confession is voluntary, it can*

be acted upon to base the conviction”.

33. However, the statements of P.W. Nos. 7, 8, and 9 could not be rebutted by the defence regarding their presence at the time of the accused/appellant’s confession. Moreover, these witnesses had no prior grudge against the accused/appellant that would have motivated them to falsely testify about his confession. It is a well-settled principle of law that a confession made in the presence of a police officer is inadmissible and not tenable in the eyes of the law. However, from the circumstances described above, it is evident that P.W. Nos. 7, 8, and 9 are credible and trustworthy witnesses.

34. Based on the foregoing discussion, it is evident that the prosecution has successfully established, through circumstantial evidence, that the accused/appellant assaulted his mother with a piece of wood, striking a vital part of her body, specifically on her head, leading to her death. Now, the crucial question to be determined is whether the offence falls under Section 302 of the IPC or qualifies for an exception under Section 300 of the IPC.

35. Section 300 of the IPC lays down 5 exceptions where culpable homicide would not amount to murder. However, it is settled law that an offence under Section 299 of the IPC not to fall under the offence of murder under Section 300 would not be restricted only to the five exceptions. For a culpable homicide to be murder, it must come within the four provisions of Section 300. Murder is the gravest form of culpable homicide. At this stage, it will be beneficial to refer to the principles laid down by the Hon’ble Supreme Court in the case of ***State of AP Vs. Rayavarapu Punnayya and Anr.*** reported in ***AIR 1977 SC 45*** .

“21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is murder or culpable

homicide not amounting to murder on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Sec. 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code."

36. Further in the case of ***Kishore Singh and Anr. vs. The State of M.P.*** reported in ***AIR 1977 Sc 2267*** it has been laid down as follows:

"11. The distinction between culpable homicide (Section 299, I.P.C.) and murder (Section 300, I.P.C.) has always to be carefully borne in mind while dealing with a charge under Section 302, I.P.C. Under the category of unlawful homicides fall both cases of culpable homicide amounting to murder and those not amounting to murder. Culpable homicide is not

murder when the case is brought within the five exceptions to Section 300, I.P.C. But even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300. I. P. C. to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300, I. P. C., namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under S. 299, I. P. C."

37. The nature of the assault, the motive behind it, the rustic background of the individuals involved, and other relevant factors must be carefully considered to determine the appropriate penal section under which the offence falls.

38. From the discussion above, it is evident that the accused/appellant had given only a single blow with a piece of wood. Had his intention been to kill his mother, he would have given more blows or used a sharper or heavier weapon to kill the victim, especially since the incident occurred in his own house. From the evidence on record, it is also clear that the accused/appellant, in a drunken state, frequently used to quarrel and assaulted his mother/deceased. Thus, it appears that the accused/appellant had no premeditated mind to commit murder, but the victim died due to the grievous head injury inflicted by him.

39. Accordingly, we are of the opinion that it is necessary to modify the section under which the accused/appellant was convicted. We hold that the case against the accused/appellant is established under Section 304 Part-II of the IPC.

40. As a result, the appeal succeeds in part. The appellant's conviction under

Section 302 of the IPC is modified to Section 304 Part-II of the IPC. Accordingly, he is sentenced to rigorous imprisonment for seven years, with the same fine that was previously imposed by the learned Sessions Judge, Baksa which shall remain unaltered. The period of imprisonment shall be set off against the time already served, as per the punishment awarded by this Court.

41. With these observations, this criminal jail appeal stands disposed of.

42. We sincerely acknowledge the service rendered by the learned Amicus Curiae. The Registry shall pay the remuneration as per the entitlement upon production of a copy of this judgment and order.

43. Send down the record of the learned Court below immediately with a copy of this judgment. The Registry shall serve a free copy of this judgment and order to the appellant through the jailor concerned.

JUDGE

JUDGE

Comparing Assistant