GAHC010105932023

2025:GAU-AS:8168-

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

Case No. : Crl.A./185/2023

AJAY KULI
S/O LT. DEBESWAR KULI,
R/O SELEKCHECHACHUK,
P.S.- GARMUR, DIST.- MAJULI, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE P.P., ASSAM.

2:DASIRAM PEGU
S/O LT. SANTARAM PEGU
VILL.- MOPAPINDHA
P.S.- GARMUR
DIST.- MAJULI
ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocate for the Appellant : Shri J. Payeng, Advocate.
Advocate for the Respondents : Ms. S. Jahan, Addl. PP, Assam.
: Ms. M. K. Brown, Legal Aid Counsel, R-2

Date of Hearing : **01.05.2025 & 02.05.2025**
Date of Judgment : **19.06.2025**

JUDGMENT & ORDER

(S.K. Medhi, J.)

The instant appeal has been filed under Section 374 (2) Code of Criminal Procedure, 1973, [Corresponding to Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023] against the judgment dated 22.03.2023 and order dated 27.03.2023 passed by the learned Sessions Judge, Majuli in Session Case No.07/2022 whereby the appellant has been convicted under Section 302 of the Indian Penal Code, 1860 [Corresponding to Section 103 of the Bharatiya Nyaya Sanhita, 2023] and sentenced to Rigorous Imprisonment for life and a fine of Rs.20,000/- in default to undergo Simple Imprisonment for 2 months.

2. The criminal law was set into motion by lodging of an *Ejahar* on 26.02.2022 by one Dashiram Pegu, who is the father of the deceased. It was stated that on the previous day, i.e., 25.02.2022, the deceased, who was his son, had gone to Selek village in the evening to pay wages to the labourers. While returning, he was stopped by a group of unknown youths who assaulted him in various parts of his body including his head and left him lying on the road. His son could eventually manage to find shelter in a house and sent information. As his condition was serious, he was taken to Jorhat and thereafter to Dibrugarh.

3. The *Ejahar* was accordingly registered as Garamur PS Case No. 8 of 2022 under Section 341/325/34 IPC [Corresponding to Sections 126/117/3(5) of BNS]. Subsequently, on 22.02.2022, Section 302 IPC [Corresponding to Sections 103 of BNS] was added. The investigation was accordingly started, and the

Investigating Officer (I.O.) had visited the place of occurrence, recorded statements, prepared sketch maps, made seizures, sending the body for post-mortem examination and after completion of all the formalities, had laid the Charge Sheet. The charge was accordingly framed under Sections 120B, 341 and 302 of the IPC [Corresponding to Sections 61/126/103 of BNS] and on denial of the same, the trial had begun in which, the prosecution had adduced evidence through 15 numbers of witnesses. It may be mentioned that the charges were framed against three accused persons, namely, Ajay Kuli (appellant), Ram Kuli and Moni Doley Pegu. However, the other two accused persons were acquitted and the appellant was acquitted under Section 120B and 341 of the Indian Penal Code, 1860 [Corresponding to Sections 61 and 126 of BNS] but convicted under Section 302 IPC [Corresponding to Section 103 of BNS].

4. PW 1 is one Smt. Pudoi Pegu. She deposed that she does not know the informant and she does not know anything about the occurrence. Accordingly, cross-examination was declined.

5. PW 2 is the informant of the present case and he is the father of the victim/deceased. He deposed that the deceased Niranjan Pegu is his eldest son who was a contractor. On the day of the occurrence, he had gone to pay the wages of the labourers and thereafter he did not return. On the next day, they received his dead body. He had heard that the dead body of his son was found in a house at Selek village. He did not go to the place of occurrence. He heard that his son/deceased had sustained sharp cut injuries on his head. Subsequently, the dead body of his son was taken to AMCH Dibrugarh for post mortem. He proved the *Ejahar* as Ext. P/1. In his cross-examination, PW/2

stated that the place of occurrence is about 4 to 5 km away from his house. He heard about the occurrence at about 9:30 p.m. and he was informed that his son was found lying after a motor cycle accident. Thereafter, he filed the *Ejahar* and he did not know how the occurrence took place.

6. PW 3 is a relative of the informant. He deposed that he knew the victim. On the relevant day of the accident, he saw the dead body of the victim and thereafter, he told one person to inform the V.D.P Secretary Dashiram Doley but he did not pick up the phone. Thereafter, he came home and did not know anything about how the victim died. On being cross examined, he stated that he did not see injuries on the victim.

7. PW 4 stated that he knows the informant, as he is a relative. On the night of 25.02.2022 at about 5:00 p.m. the victim went to pay the wages of the labourers as he was a contractor. On the same night at about 9:00 p.m. to 10:00 p.m., accused persons, namely, Ajay Kuli and Raju Saikia Pegu killed the victim behind the house of Moni Doley Pegu. He deposed that there was an illicit affair between accused Moni Pegu and the victim. At the same time, there was also an illicit relationship maintained by accused Moni Pegu with the appellant, Ajay Kuli. Out of such enmity, the appellant Ajay Kuli and accused Raju Saikia Pegu had killed the victim. There was also some strained relationship between the victim and the brother of the accused Ajay Kuli, namely, Ram Kuli regarding monetary transaction. Although Ram Kuli was not directly involved in the perpetration of the offence, but he knew everything regarding the cause of death of the victim as he was his friend. PW 4 also deposed that he saw a pool of blood just behind the house of the accused Moni Pegu and the accused Moni Doley Pegu confessed before the public that

accused/appellant Ajay Kuli had killed the victim. PW 4 further deposed that the appellant, Ajay Kuli and Raju Saikia Pegu had forced the accused Moni Doley Pegu to call the victim to her house. In the meantime, the appellant Ajay Kuli and Raju Saikia Pegu came to her house and thereafter, accused Raju Saikia Pegu remained behind the house and appellant Ajay Kuli assaulted the victim with "*Bholoka*" bamboo stick on his head and, thereafter, on his chest. As a result, the victim was seriously injured and became unconscious. Subsequently, the victim was carried by the accused person to be thrown in the river but could not do so as suddenly current came and finally they left the victim near the house of one Pelu and the victim entered into the house of Pelu where he took his last breath. On the next day, the appellant Ajay Kuli fled away from their village and remained absconding. After 10 to 15 days of the occurrence, the accused Raju Saikia Pegu confessed before him that they had killed the victim and requested him to save him from the case.

8. On being cross-examined, PW 4 stated that his house is about 4 km away from the place of occurrence. The victim had told him that he was going to pay wages of the labourers. On the day of occurrence, there was wind and light rain and at the time of occurrence, he was in his house. Upon receiving information regarding the incident, he immediately proceeded to the site of occurrence. He further stated that when the police arrived at the scene the next day at about 3:00 pm, he accompanied them to the site of occurrence and he was interrogated. During the funeral ceremony of one of the neighbours, he heard that the appellant Ajay and the victim/deceased were persuading the accused Moni Doley Pegu to take her on their bike on that day. The victim was stated to be the brother-in-law of accused Moni Doley Pegu. He denied the suggestion that he is deposing only on suspicion. He also denied that the blood

which he saw was of a pig. He stated that the motorcycle of the victim was found near the house of the appellant Ajay Kuli in the school field. He denied the suggestion that he was deposing falsely. He further stated that although he had not witnessed the occurrence with his own eyes, he is aware of the entire incident and firmly believes that the accused persons were responsible for the death of the victim.

9. PW 5 deposed that he knows the informant, the accused person and the victim in this case. On the day of the occurrence upon receiving the information about the incident, he went to the place of occurrence where he saw the dead body of the victim. Thereafter, they brought the dead body to Garamur Civil Hospital from where the doctors referred to AMCH Dibrugarh. Subsequently, he came back to the place of occurrence and saw bloodstain behind the house of Mamata Pegu. They also recovered the mobile phone of the victim behind her house. He also saw some blood stains in the house of accused Mamata Pegu which was cleaned with water. He deposed that a bamboo stick was recovered by police from the backyard of accused Mamata Pegu's house. He stated that Ext. P/2 is the Seizure List of the bamboo stick.

10. On being cross-examined, PW-5 deposed that the distance between his house and the place of occurrence is about 1.5 km and he was in his house during the occurrence. He arrived at the place of occurrence one hour after the incident took place and the police did not record his statement. He stated that he did not enter into the house of accused Mamata Pegu on the day of the incident. When the appellant arrived, he and Numal went with police and showed them the spots of blood stains, and the police also picked up the stick

from the place of occurrence. The bamboo stick was *bholoka* bamboo. The police did not tell him about the contents of the Seizure List when he put his signature on it. He denied the suggestion that he was deposing falsely.

11. PW 6 is the brother of the victim. He deposed that he knew the accused person. He stated that on the day of the occurrence his elder brother had gone to Selek village to make payment to labourers. In the evening, he did not return back home. That night he went to the place of occurrence where he saw his brother in an unconscious state. He took him immediately to the Garamur Civil Hospital from where his brother was referred to Jorhat Civil Hospital and then to Dibrugarh, where he was declared dead. He again visited the place of occurrence on the next date at around 4:00 PM and saw pool of blood lying under the house of accused Moni Doley. Just under her house there was sign of concealing the blood stain with mud. He also saw cut injuries on head of the victim, behind the neck, nose and chest. The victim also had injuries over his eyes.

12. On being cross-examined PW 3 stated that he found his brother in the house of one Pelu Tayeng. When he reached the place of occurrence after about one and half hour after the occurrence, there were a lot of people gathered at the house of Pelu. His brother was coming from home on motorbike in order to make payments. The bike was recovered near the house of appellant Ajay Kuli. The house of the accused Moni Doley is located in between two to three houses on both sides. He denied the suggestion that it was not blood falling on the ground under the house of accused Moni Doley. He stated that he had not witnessed the occurrence of the victim being assaulted, but he heard it from the public.

13. PW 7 deposed that she does not know the informant or the victim and she does not know anything about the occurrence. Accordingly, she was not cross- examined.

14. PW 8 is Raju Saikia Pegu. He deposed that he knew the accused person. He stated that on the day of the occurrence he was told by the appellant that there was a quarrel between him and some other person. On the next day, he went to the place of occurrence and he saw blood spots near the house of accused Moni on the road side. Later on he came to know that the injured person had died that night.

15. On being cross-examined, he deposed that he has not seen the occurrence, and the blood spots were about 200 metres away from the house of accused Moni. He saw the blood on the next day of occurrence.

16. PW 8 on being re-examined deposed that on 02.03.2023, the police took him to the Magistrate and his statement was recorded under Section 164 Cr.PC [Corresponding with Section 183 BNSS] which was proved as exhibit P-8.

17. PW 9 deposed that he did not know the victim but he knew the accused persons. He heard some people saying that the victim got hurt in a bike accident and some people were saying that he was assaulted. Cross-examination was declined.

18. PW 10 stated that he does not know anything about the case and was accordingly not cross-examined.

19. PW 11 deposed that he knows the accused persons. He stated that the saw the victim with injuries and blood on various parts of the bodies. He immediately informed the injured person's villagers and they came and took him away. He did not know how the injuries were caused. In his cross examination PW 11 stated that the victim told him that he sustained injuries due to an accident.

20. PW 12 deposed that on the night of the incident the victim came to their house and told them that he sustained the injuries due to an accident. She did not see any injuries on the victim. At that stage, the prosecution declared the witness hostile. PW 12 had stated that before the police she said that at about 11:00 PM some injured person had entered their courtyard during a thunderstorm. So they took the victim to their '*changghar*' and cleaned the blood which was coming out of his body. The injured person was bleeding profusely and after identifying him, they informed his family members who came and took him away for treatment. She had told the police that later she came to know from village people that Moni Doley Pegu and Ajay Kuli called the victim to the house of accused Moni Doley, where he was then brutally assaulted. The injured was brought from behind the house of accused Moni Doley Pegu.

21. In her cross-examination, however, she stated that the victim told them that he had an accident. She also deposed that she told the police that the injuries sustained by the victim were the result of an accident.

22. PW 13 is the younger brother of the victim. On 25.02.2022, his victim brother had told him that he is going somewhere to give payment to the

labourers and told him that he will be coming late. Subsequently, he heard that night that his brother was lying in Selek village in an injured condition. After getting the information, he rushed to the village and saw his victim brother in injured condition in the house of one Pelu. His brother was lying unconscious and unable to speak. He saw injuries on his body, particularly, on the head, neck and chest. He came to know that his brother was assaulted by Ajay Kuli, Raju Saikia Pegu and Smt. Moni Doley Pegu. He took his brother for treatment to Garamur Civil Hospital and then to Jorhat Medical College and thereafter, to Dibrugarh Medical College where his brother expired.

In his cross examination, he stated that the police interrogated him on the next day of the occurrence. He deposed that the appellant Ajay Kuli had warned him that he would kill his brother and told him not to send him to Selek village. He did not file any complaint before the police station or the Magistrate regarding this threat from the appellant. He did not know anyone from Selek village personally. He denied the suggestion that the victim died due to accident and he also denied that he was deposing falsely.

23. PW 14 is the I.O of the case. He stated that on 25.02.2022 the *Ejahar* was filed by one Dashiram Pegu alleging murder of one Naranjan Pegu. The said *Ejahar* was registered and entrusted to him for investigation. He immediately rushed to the place of occurrence, drew a rough sketch map and recorded the statements of the witnesses under Section 161 Cr.PC [Corresponding to Section 180 BNSS]. He also seized one motorcycle. On 28.02.2022, he arrested the accused person. Subsequently, he proceeded to the place of occurrence again from where he seized one bamboo stick on being led to discovery by the appellant Ajay Kuli. One witness Raju Saikia Pegu was also

brought to the magistrate for recording his statement under Section 164 Cr.PC [Corresponding to Section 183 BNSS]. He also collected CDR from where he found that there was a nexus in between the accused persons. During the course of investigation, he collected the Post Mortem Report and thereafter on completion of investigation he filed the charge sheet against the accused person. He proved exhibit P/2 as the seizure list and Ext. P/2(2) as his signature therein. Exhibit P-3 is proved as the sketch map and exhibit P 3/1 as his signature therein. He also proved another sketch map as exhibit P/4. He also proved exhibit P/5 as the seizure list and exhibit P 5/1 as the signature of one ASI Nilomoni Borah which he knows through official communication. He also proved another seizure list as exhibit P/6 and exhibit P 6 (1) as his signature therein. Exhibit P/7 was proved as the charge sheet and exhibit P/7(1) as his signature therein. PW 14 also exhibited the seized bamboo stick as Mat Exhibit-A which was seized through the Seizure List as exhibit P-2.

24. On being cross examined, PW 14 stated that he visited the Place of Occurrence (P.O) on 02.03.2022 and he drew the sketch map of the same. There were many concrete pillars lying to the south of the place of occurrence. Towards the north of the P.O there was a "*bahoni*". To the north of the P.O is the house of accused Moni Doley; to the east of P.O is the house of Sahab Pegu. The west of the P.O. is the house of Roinyo Pegu. If there is any sound at the P.O, it will be audible from the house of Sahab Pegu and Roinyo Pegu. He stated that PW 4 did not state in his statement under Section 161 Cr.PC [Corresponding to Section 180 BNSS] that appellant Ajay Kuli assaulted the victim with bamboo stick behind the house of Moni Doley Pegu and that the accused persons tried to dispose of the dead body but could not do so as suddenly current came. PW 5 also did not state before him that appellant Ajay

Kuli dropped the victim in the house of Pelu. PW 6 did not state before him that he saw blood behind the house of accused Moni Doley Pegu. PW 6 did not state before him that the victim was injured on his eyes, nose and chest. He had collected the CDR and saw that there was frequent communication between them but he does not know what the exact communication was. He did not send the Mat Exhibit 4 to FSL.

25. PW 15 is the Doctor who had conducted the post mortem examination on the victim. Upon performing the post mortem examination he found the following:

> "***External Appearance:***
>
> ***1. Condition of subject stout emaciated, decomposed, etc.:*** *Male dead body of averagebuild, dark brown complexion wearing a shirt and diaper. Surgical bandages seen over left side of head. Body found cold on touch externally and warm internally. Rigor mortis present all over the body.*
>
> ***2. Injuries:***
>
> *1. Stitched lacerated wound of length 9 cm over left fronto parietal scalp; on dissection contusion seen over frontotemporo parietal scalp.*
>
> *2. Abrasion of size 1 x 1 cm over nose.*
>
> *3. Linear fracture of length 3 cm of left temporal bone.*
>
> *4. Linear fracture of length 9 cm of both parietal bones.*
>
> ***3. Mark of ligature on neck dissection, etc****.: Ligature mark: Not detected, On dissection: healthy.*

...

OPINION

Death was due to coma following the head injuries sustained. All injuries were ante-mortem and caused by blunt impact. Time since death (Approximately): 06-12 hours".

PW 15 proved the post mortem report as Ext. P-9. In his cross examination, he stated that such kind of injuries may result from an accident with a motorbike and hitting of a post but the stated that he did not find any sign of alcohol consumption by the victim.

26. The aforesaid evidence and the allegations made against the appellant were put to him in his examination under Section 313 of the Cr.PC and the appellant denied the allegation and claimed that he was innocent.

27. Based on the materials including the depositions and the response of the appellant in his examination under Section 313 of the Cr.PC, the impugned judgment has been passed which is the subject matter of challenge in the present appeal.

28. We have heard Shri J. Payeng, learned counsel for the appellant. We have also heard Ms. S. Jahan, learned Additional Public Prosecutor, Assam as well as Ms. M. K. Brown, learned Legal Aid Counsel for the respondent no. 2.

29. Shri J. Payeng, learned counsel for the appellant has submitted hat in the present case, there is no eye witness and the same is based on circumstantial evidence and as such there is a heavy burden cast upon the prosecution to prove the said circumstances in a complete chain which leads to

only one conclusion, i. e., guilt of the accused and none else. He also submits that if there is possibility of any other hypothesis, the benefit of doubt is required to be given to the accused.

30. He submits that the deposition of PW 1 is not at all relevant as she had stated of not knowing anything regarding the case. PW 2 is the informant, who is also the father of the deceased. Both the *Ejahar,* as well as his deposition, would not implicate the appellant. In fact, in his cross-examination, he had stated of hearing about a motorcycle accident. Similarly, PW 3 in his cross-examination, had stated that he did not see any injuries on the body of the deceased. He has also submitted that the depositions of both PW 4 and PW 5 are not relevant inasmuch as, PW 4 in his cross examination, had clearly stated that at the time of the occurrence, he was at his residence which was 4 KM away. PW 5 appears to be a hearsay witness.

31. The learned counsel for the appellant has strenuously urged that the seizures in the instant case are wholly irrelevant and would not constitute a link to the chain of circumstances. He has elaborated that there are three seizure lists namely Exhibit P2- pertaining to a bamboo *lathi*, Ext.P5- pertaining to a motorcycle and Ext. P6- being a mobile phone. He submits that PW 5 was a witness to Exhibit P5, which pertained to the motorcycle and in so far as Exhibit P2 (bamboo *lathi*) is concerned, one Ghana Kanta Pegu was the witness, and not PW 5. Therefore, the claim made by PW 5 that he is a signatory to Exhibit P2 is wholly incorrect. He further submits that though the said Ghana Kanta Pegu was examined as PW 9, he did not prove his signature on Exhibit P2. Further, PW 7 also did not prove her signature in Exhibit P2. He therefore submits that the aspect of seizure of the alleged murder weapon was not

proved at all.

32. The learned counsel for the appellant has also assailed the trustworthiness of the evidence of PW 6, who is the brother of the deceased. He submitted that the narration of the injuries alleged to have been sustained by the deceased on the head, neck, nose, chest and eyes were not supported by the medical evidence adduced by PW 15, who is the doctor who had performed post mortem. Further in his cross examination, PW 6 had stated that he found his brother in the house of one Pelu Tayeng and had heard about the assault from the public. Similarly, PW 7 is irrelevant as she had stated of not knowing anything about the case. The learned counsel adds that though this PW 7 appears to be an attesting witness of Exhibit P2 (bamboo *lathi*), such attestation was not proved. He has also highlighted that PW 8 in his Examination-in-Chief, had deposed that the appellant had told him about a quarrel with some person. However, in his cross examination, he deposed that during the occurrence he was at his home and had not seen the same. He had also stated that blood spots were seen at a place which was about two hundred metres from the house of the appellant. Though the said PW 8 was re-examined so as to prove his earlier statement recorded under Section 164 Cr.PC [Corresponding to Section 183 of BNSS], as Exhibit P8, the learned counsel submits that such statement cannot be construed as evidence. He submits that the depositions of PW 9 and PW 10 are wholly irrelevant as witness.

33. As regards the deposition of PW 11 is concerned, Shri Payeng, the learned counsel submits that in his cross examination he had stated that the deceased told him that he had met with an accident. Similar deposition has also been made by PW 12, Smt. Sewali Taid. He, however, clarifies that Sewali Taid

and Pelu appear to be the same person. The said PW 12 was declared hostile and from her narration, it appears that she is a hearsay witness. As regards PW 13, it is submitted that he also appears to be a hearsay witness and moreover the medical evidence does not corroborate the description of the injuries made by him.

34. So far as the deposition of the I.O as PW14 is concerned, though, he had claimed to have made seizure of the bamboo *lathi* on being led by the appellant, there was no disclosure memo prepared as required under Section 27 of the Indian Evidence Act, 1871. Further, though certain witness had narrated about the presence of blood stains, those were not collected for any scientific examination. The learned counsel has highlighted that the doctor who was examined as PW 15, in his cross- examination had clarified that though the death was due to head injuries the same may result from an accident.

35. As regards the statement of the PW8 recorded under Section 164 of the Cr.PC [Corresponding to Section 183 BNSS] is concerned, wherein a statement was made that he saw the appellant assaulting, the learned counsel for the appellant has submitted that apart from the fact that such statement cannot be construed as evidence, the said witness was initially arrested and was in custody and his statement by the police was recorded on 01.03.2022, and on the very next date, i.e., 02.02.2022, his statement was recorded under Section 164. Further, though in the examination of the appellant under Section 313 of the Cr.PC [Corresponding to Section 351 BNSS], a question was put to him on the aforesaid statement being Q. No. 7, it is submitted that the contents of the said statement were not put to him.

36. In support of his submission, the learned counsel for the appellant has relied upon the following case laws:

i. Somasundaram @ Somu Vs State represented by the Deputy Commissioner of Police reported in **(2020) 7 SCC 722.**

ii. Khushal Rao Vs State of Bombay reported in **AIR 1958 SC 22.**

iii. Amar Singh Vs State of Rajasthan reported in **(2010) 9 SCC 64.**

iv. Babu Sahebagouda Rudragoudar and Ors. Vs State of Karnataka reported in **(2024) 8 SCC 149.**

v. Indrakunwar vs State of Chhattisgarh reported in **2023 SCC Online SC 1364**.

vi. Mintu Hasda and Anr vs The State of Assam reported in **2018 SCC Online Gau 290.**

37. The case of ***Somasundaram*** *(supra)* has been cited on the aspect of the evidentiary value of the statement recorded under Section 164 Cr.PC [Corresponding to Section 183 BNSS] and the relevant observations of the Hon'ble Supreme Court are extracted herein below:

"*81. Section 164 Cr. PC enables the recording of the statement or confession before the Magistrate. Is such statement substantive evidence? What is the purpose of recording the statement or confession under Section 164? What would be the position*

if the person giving the statement resiles from the same completely when he is examined as a witness? These questions are not res integra. Ordinarily, the prosecution which is conducted through the State and the police machinery would have custody of the person. Though, Section 164 does provide for safeguards to ensure that the statement or a confession is a voluntary affair it may turn out to be otherwise. We may advert to statements of law enunciated by this Court over time.

82. As to the importance of the evidence of the statement recorded under Section 164 and as to whether it constitutes substantial evidence, we may only advert to the following judgment i.e. in George v. State of Kerala: (SCC p. 624, para 36)

> *"36.... In making the above and similar comments the trial court again ignored a fundamental rule of criminal jurisprudence that a statement of a witness recorded under Section 164 Cr.PC, cannot be used as substantive evidence and can be used only for the purpose of contradicting or corroborating him."*

83. What is the object of recording the statement, ordinarily of witnesses under Section 164 has been expounded by this Court in R. Shaji v. State of Kerala 2: (SCC p. 279, paras 27-28)

> *"27. So far as the statement of witnesses recorded under Section 164 is concerned, the object is twofold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in court should be discarded, is not at all warranted. (Vide Jogendra Nahak v. State of Orissa and CCE v. Duncan Agro Industries Ltd.)*
>
> *28. Section 157 of the Evidence Act makes it clear that a statement recorded*

under Section 164 CrPC, can be relied upon for the purpose of corroborating statements made by witnesses in the committal court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 CrPC, such statements cannot be treated as substantive evidence."

84. Thus, in a case where a witness, in his statement under Section 164 CrPC, makes culpability of the accused beyond doubt but when he is put on the witness stand in the trial, he does a complete somersault, as the statement under Section 164 is not substantial evidence then what would be the position? The substantive evidence is the evidence rendered in the court. Should there be no other evidence against the accused, it would be impermissible to convict the accused on the basis of the statement under Section 164.

38. The cases of ***Khushal Rao*** *(supra)* and ***Amar Singh*** *(supra)* have been relied on the aspect of dying declaration. In the case of ***Khushal Rao*** *(supra)*, the following observations is extracted herein below:

"*17. Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of father corroboration.*

If, on the other hand, the Court, after examining the dying declaration in all its aspects, and Testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of

the reported cases, but from the fact that the Court, in a given case, has come to the conclusion that particular dying declaration was not free from the infirmities, referred to above or from such other infirmities as may be disclosed in evidence in that case."

39. Similarly, in the case of ***Amar Singh*** *(supra)*, the Hon'ble Supreme Court has made the following observations by taking into consideration the landmark case of the ***Privy Council Pakala Narayana Swami v. King Empero***r, reported in ***AIR 1939 PC 47***.

"*18. Clause (1) of Section 32 of the Evidence Act provides that statements made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, are themselves relevant facts. …*

19. In Pakala Narayana Swami v. King Emperor Lord Atkin held that circumstances of the transaction which resulted in the death of the declarant will be admissible if such circumstances have some proximate relation to the actual occurrence. The test laid down by Lord Atkin has been quoted in the judgment of Fazal Ali, J. in Sharad Birdhichand Sarda v. State of Maharashtra and His Lordship has held that Section 32 of the Evidence Act is an exception to the rule of hearsay evidence and in view of the peculiar conditions in the Indian society has widened the sphere to avoid injustice. His Lordship has held that where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statements would clearly fall within the four corners of Section 32 and, therefore, admissible and the distance of time alone in such cases would not make the statements irrelevant."

40. The case of ***Babu SahebaGouda*** (supra) has been relied upon on the aspect of disclosure statement under Section 27 of the Indian Evidence Act, 1871. For ready reference the relevant observations of the Hon'ble Supreme

Court are extracted hereinbelow:

> "*60. We would now discuss about the requirement under law so as to prove a disclosure statement recorded under Section 27 of the Evidence Act, 1872 (hereinafter being referred to as "the Evidence Act") and the discoveries made in furtherance thereof.*
>
> *61. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the investigating officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in State of U.P. v. Deoman Upadhyaya.*
>
> *62. Thus, when the investigating officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The investigating officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).*"

41. In the said case, the Hon'ble Supreme Court has also touched upon the issue of obtaining serological opinion to establish the blood group on the weapon recovered. The relevant observations are extracted herein below:

> "*73. In addition thereto, we may note that admittedly, the prosecution did not procure any serological opinion to establish blood group, if any, on the weapons so recovered. Thus, the recoveries are otherwise also meaningless and an exercise in futility.*"

42. The judgment of the Hon'ble Supreme Court in ***Indrakunwar*** *(supra)* has been cited on the aspect of Section 313 of Cr.PC, wherein the following observations have been made

"35. A perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when considering such statements.

35.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

35.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

35.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.

35.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

35.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

35.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

35.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8 This statement is to be read as a whole. One part cannot be read in isolation.

35.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

35.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

35.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.

37. It is established that negative inferences cannot be drawn for a question or incriminating circumstance not put to an accused while making a statement under Section 313 Cr.P.C. Her statement, nowhere reflects an answer to a question concerning the particulars of the child that she was admittedly carrying but denied that the deceased was not the one recovered from the dabri. Although there is a requirement by law to disclose the aspects required to adjudicate in a criminal matter, such duty cannot unreasonably and unwarrantedly step over the fundamental right of privacy."

43. In the case of ***Mintu Hasda*** *(supra)*, a Coordinate Bench of this Court had held that the mere recovery of a weapon could not automatically lead to a presumption of commission of an offence. The relevant observations are extracted herein below:

"*10. As regards evidence of seizure of dao from the house of appellants we are of the View that it does not automatically lead to presumption that the seized dao was actually used for committing the offence. Admittedly, no blood was found on the dao. It was also not sent to Forensic Science Laboratory for chemical analysis. Moreover, dao is very common to every household in this part of the country. ..."*

44. *Per Contra,* Ms. Jahan, the learned Additional Public Prosecutor has supported the impugned judgment and has contended that the appeal is devoid of any merits. She has submitted that the conviction is not based only on the recovery of the *lathi,* but there are other materials which have been considered. She has contended that the chain of circumstances is complete which lead to the conclusion of guilt of the appellant. She has emphasized that the following sequence of events would constitute a complete chain.

i. The appellant had warned the PW 1, who is the brother of the deceased, not to allow the deceased to go to Selek village.

ii. The deceased had actually gone to the Selek village, which is proved by PWs 2, 4, 6 and 13.

iii. PW 8 had proved the quarrel, who had also named the deceased as the man who was attacked by the appellant.

iv. The body of the deceased was found at Selek village, which is proved by PW 12, who had stated that the deceased had come to their house in an injured condition. The same is also proved by PWs 6 and 13.

v. PW 4 had deposed that accused Raju Saikia Pegu had confessed before him that they killed the deceased.

vi. There was a pool of blood found near the house of Moni Pegu, which was proved by PW 4, PW 5 and PW 8.

vii. There were signs of concealed blood at the place of occurrence which was proved by PW 5 and PW 6.

viii. The murder weapon, i.e, the bamboo *lathi* was recovered, which was proved by PWs 5 and 14.

ix. The motorcycle was recovered, which was proved by PWs 4 and 6.

x. The mobile phone of the deceased was recovered, which was proved by PW 5. She however submits that no link could be established of the said mobile phone with the deceased.

xi. The motive was established by PW 4, who had deposed about a love triangle, as well as monetary transactions.

xii. The death was homicidal in nature.

xiii. The dying declaration regarding accident is not corroborated in view of the fact that PW 13 met the deceased in an unconscious state.

45. The learned APP accordingly submits that the chain of circumstances is complete which proves beyond all reasonable doubt the complicity of the appellant. In support of her submissions, she relies upon the following case laws:

i. **R. Sahji Vs State of Kerala** reported in **(2013) 14 SCC 266**.

ii. **G. Parshwanath Vs State of Karnataka** reported **in (2010) 8 SCC 593**.

iii. **Sahib Singh Vs State of Punjab** reported in **(1996) 11 SCC 685.**

iv. **Rameshbhai Mohanbhai Koli & Ors. Vs State of Gujarat**

reported in **(2011) 11 SCC 111**.

v. Ram Singh Vs The State of UP reported in **(2024) 4 SCC 208.**

vi. Goverdhan & Anr. Vs State of Chhattisgarh reported in **(2025) 0 INSC 47.**

vii. State of Punjab Vs Hakam Singh reported in **(2005) 7 SCC 408.**

46. In the case of ***R Shaji*** *(supra),* the Hon'ble Supreme Court has laid down that statement recorded under Section 164 of the Cr.PC [Corresponding to Section 183 BNSS] can be used for corroboration and contradiction. In this regard, Section 157 of the Indian Evidence Act, 1871 [Corresponding to Section 160 of Bharatiya Sakshya Adhiniyam, 2023] has also been taken into consideration.

47. In the case of ***G Parshwanath*** *(supra),* it has been laid down that inference can be used for circumstances and further that merely because a witness turns hostile, his entire evidence need not be rejected.

48. The case of ***Sahib Singh*** (supra), it has been laid down that in an appropriate case seizure list can be proved by the police officers who conducted the search as it may so happen that seizure witness is not available, or even if available, is not willing to be a party to such search. For a similar proposition, the case of ***Rameshbhai*** *(supra)* has been cited.

49. The case of ***Ram singh*** *(supra)* has been cited to bring home the contention that non recovery of the weapon by itself may not be fatal to the case of the prosecution. In the said case, it was further laid down that non examination of the ballistic expert may not be fatal if there is direct evidence.

50. A similar view has been taken in the recent decision of ***Govardhan*** (supra), wherein it has been laid down that for convicting an accused, the recovery of the weapon used in commission of an offence is not a *sine qua none.* For a similar proposition, the case of ***Hakam Singh*** (supra) has been relied upon.

51. Ms. M. K. Brown, the learned Legal Aid Counsel appearing for the Respondent No. 2 has supported the contentions advanced by Ms. Jahan, the learned APP and has prayed for dismissal of the appeal. She has contended that the crucial witness is PW 8, who in his statement under Section 164 of the Cr.PC [Corresponding to Section 183 BNSS] had clearly stated of witnessing the appellant attacking the deceased. This fact has been corroborated by PW4 who has proved the use of a bamboo *lathi.* She has submitted that if the deceased had met with an accident, it would not have been possible for him to reach the house of Moni.

52. Shri Payeng, the learned counsel for the appellant, in his rejoinder, has submitted that the place of occurrence itself is not certain and it appears that there are two places of occurrence as per the prosecution itself. While PW 8 in his cross-examination had deposed of there being blood spots at a distance of 200 metres from the place of Moni, PW6 in his cross-examination had deposed that the motorcycle was recovered near the appellant's house. On the other

hand, as per the seizure list Exhibit P5, the motorcycle was recovered from the possession of Bhaiti Pegu (PW 13), who is the deceased's brother. Shri Payeng, the learned counsel has reiterated that the entire conviction is based on hearsay evidence and is not sustainable in law.

53. The rival submissions have been duly considered and the materials placed on records including the TCRs have been carefully examined.

54. It is not in dispute that the present case is one based on circumstantial evidence and there is no eyewitness. Under such circumstances, the prosecution is cast with the burden to prove beyond all reasonable doubt, a chain of circumstances which lead to only one conclusion i.e. of the guilt of the accused/appellant and no other hypothesis is possible. Therefore, it would be necessary to examine as to whether the aforesaid burden has been successfully discharged by the prosecution.

55. As discussed above, PW 1, PW 7, PW 9, PW 10 appear to be inconsequential in the present case. PW 2, who is the informant, and the father of the deceased did not make any implicating statements against the appellant and rather in his cross-examination had heard that the deceased had met with a motor cycle accident. PW 3 in his cross-examination, has stated that he did not see any injury mark on the body of the deceased. PW 4 had tried to bring the aspect of the motive by deposing about certain illicit affairs as well as monetary transaction but had clarified in his cross-examination that at the time of the occurrence, he was at his residence which was at a distance of 4 kms from the place of occurrence.

56. The deposition of PW 5 has been elaborately discussed above who had

however, stated that he was informed about the incident. So far as his role as a seizure witnesses concerned, such seizure is only with respect to the motorcycle (Ext P 5) and not of the bamboo *lathi* (Ext P 2). Though there appear two signatures in Ext. P 2 belonging to PW 7 and 9, neither of them had proved their signatures and therefore, the seizure of the *lathi* has not been proved in accordance with law. The learned APP had cited the case of ***Sahib Singh*** (supra) and ***Ramesh Bhai*** (supra) in this regard, which however would not come to the aid of the prosecution. In those cases, it has been laid down that a seizure list may be proved by the I.O only in circumstances where no witnesses were available or willing to attest the seizure at the relevant time.

57. The evidence of PW 6, appears to be inconsistent both with the medical evidence regarding the injuries as well as on the place where the pool of blood was seen. While PW 6 had narrated that he saw the pool of blood lying under the house of Moni Doley, PW 8 had narrated that blood spot was found at a distance of about 200 metres from the house of Moni Doley. PW 8 had narrated that the appellant had told him about a quarrel with some person. The said PW 8 was re-examined wherein he had proved his statement made under Section 164 Cr.PC [Corresponding to Section 183 BNSS] as Ext. 8.

58. It is strenuously argued on behalf of the appellant that such statement made under Section 164 of the Cr.PC [Corresponding to Section 183 BNSS] cannot be construed as evidence. Though there may not be any dispute with such proposition, statements made under Section 164 can definitely be proved by the witness while making his deposition on the dock. The requirement, however, is to sift such statements along with the other materials.

59. In the said statement, he had narrated that he saw the appellant attacking someone with a stick and the man he attacked was the deceased. Juxtaposed, in his chief-examination, he had not even stated about his presence during the time of the incident and had only narrated about a quarrel of the appellant with some person and he had accordingly gone to the place of occurrence on the next day and saw blood spot near the house of accused Moni. In his cross-examination he had clarified that the blood spot was about 200 metres away from the house of accused Moni. What is also important is to note that in his re-examination, he had simply stated that his statement under Section 164 Cr.PC [Corresponding to Section 183 BNSS] was recorded on 02.03.2022. The contents of the said statement were not however elaborated.

60. On this point, this Court finds force in the contention of the learned counsel for the appellant that in his examination under Section 313 of the Cr.PC [Corresponding to Section 351 BNSS], the contents of the aforesaid statement made under Section 164 Cr.PC [Corresponding to Section 183 BNSS] were not put to him. For the sake of clarity, Q. No. 7 put to the appellant is extracted herein below:

> " *Question No. 7:- P.W.8 Sri Raju @ Saikia Pegu stated in his evidence that he does not know the informant and the victim. He knows the accused persons. On the relevant day of occurrence, he was told by accused Ajay Kuli that there was a quarrel between him and some other person. On the next day he went to the place of occurrence and saw certain blood spot nearby the house of accused Moni on the roadside. Later on, he came to know the injured person died. On 02.03.2022 police brought him to the magistrate court where his statement has been recorded u/s 164 CrPC. He exhibited the said statement as Ext.P-8 and Ext.P-8/1 and P-8/2 are his signatures. What is your answer?*

Ans: I am innocent. He is giving false evidence."

61. The evidentiary value of a statement made under Section 164 of the Cr.PC [Corresponding to Section 183 BNSS] has been elaborately explained in a catena of decisions including the case of ***Somasundaram*** (Supra), which has been discussed above.

62. As per the deposition of PWs 11 and 12, the deceased had told them that he had met with an accident and such statement was made just prior to his death. In this connection, the contention advanced by the learned counsel for the appellant that a dying declaration can be utilized even by an accused finds force and is supported by the case of the Hon'ble Supreme Court in ***Khushal Rao*** *(supra).*

63. The test to be followed in a case which is based on circumstantial evidence is well settled. In the land mark case of ***Sharad Birdhichand Sarda vs. State of Maharashtra,*** reported in ***(1984) 4 SCC 116*** the principles have been laid down which are reiterated in a catena of judgments later on passed by the Hon'ble Supreme Court. The said principles are as follows:

> *"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 uptodate, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh(2) and Ramgopal v. State 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 far 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(') 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."

64. We have also noticed that the accusation upon the appellant and the conviction made by the learned Trial Court is more on the basis of suspicion. It is well settled that suspicion cannot take the place of legal proof. In this regard, one may gainfully refer to the decision of the Hon'ble Supreme Court in the case of ***Sujit Biswas Vs. State of Assam*** reported *in* ***(2013) 12 SCC 406,*** **wherein the following observations have been made:**

"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."

65. In the conspectus of the aforesaid decision, we are of the considered opinion that the circumstances existing would not lead to an inevitable conclusion of complicity / guilt of the appellant.

66. Accordingly, the judgment dated 22.03.2023 and order dated 27.03.2023 passed by the learned Sessions Judge, Majuli in Session Case No.07/2022, convicting the appellant under Section 302 of the IPC [Corresponding to Section 103 BNS], are hereby set aside. The appellant is accordingly directed to be released forthwith, unless he is wanted in any other case.

67. The appeal accordingly stands allowed.

68. Send back the TCRs.

69. Before parting, we record our appreciation for the assistance and service rendered by Ms. Brown, the learned Legal Aid Counsel appearing for the respondent no. 2, who would be entitled to the prescribed fee.

JUDGE **JUDGE**

Comparing Assistant