

GAHC010027582023



2026:GAU-AS:871-DB

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

Criminal Appeal [J] no. 23/2023

Golap Gowala, S/o- Late Hagru Gowala, Village - Kulaguri, P.S. -
Behali, District - Biswanath, Assam

.....**Appellant**

-VERSUS-

The State of Assam, represented by the Public Prosecutor,
Assam.

.....**Respondent**

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates :

Appellant : Mr. A. Dhar, Amicus Curiae

Respondent : Ms. B. Bhuyan, Senior Counsel & Additional Public
Prosecutor; Ms. R. Saloi, Advocate

Date of hearing : 22.01.2026

Date of pronouncement of judgment : 22.01.2026

Whether the pronouncement is of the
Operative part of the judgment ? :

Whether the full judgment has been
Pronounced ? : Yes

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT & ORDER [ORAL]

[Manish Choudhury, J]

This criminal appeal from Jail under Section 383, Code of Criminal Procedure, 1973 [‘the Code’ or ‘the CrPC’, for short] is directed against a Judgment dated 31.10.2022 and an Order on sentence dated 04.11.2022 passed by the Court of learned Sessions Judge, Biswanath Chariali in Sessions Case no. 106/2019. By the Judgment and Order on sentence, the accused-appellant has been convicted for the offence of uxoricide under Section 302 of the Indian Penal Code [IPC] and he has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine, rigorous imprisonment for another period of one month.

2. It was alleged in a First Information Report [FIR] lodged before the Officer In-Charge, Behali Police Station on 30.06.2019 by one Sri Babul Gowala as the informant, who is the son of the accused-appellant and the deceased, that at around 04-00 p.m. on that day, his father, that is, the accused-appellant hacked his mother to death by a bora dao [a kind of knife]. The informant-P.W.1 stated that the incident took place when he was not present in the house. On receipt of the FIR, the Officer In-Charge, Behali Police Station registered the same as Behali Police Station Case no. 58/2019 under Section 302, IPC and entrusted two officers, Sri Nripen Saikia, Sub-Inspector of Police and Sri Biman Gogoi, Assistant Sub-Inspector of Police [P.W.7] to investigate into the case.

3. The facts which have emerged from the materials on record and are not disputed by the defence, go to indicate that the FIR was received at the Police Station at 04-00 p.m. on 30.06.2019 and the Investigating Officer [I.O.] [P.W.7] proceeded to the place of occurrence [P.O.], that is, the house of the accused-appellant and the deceased at around 04-30 p.m. and he arrived at the P.O. at 04-40 p.m. travelling a distance of 6/7 kms. At the P.O., there was already a gathering of persons. The I.O. did not find any broken articles at the P.O. After questioning the witnesses for a period of fifteen minutes, he asked one Nila Kanta Tasa [P.W.6], a daily wage-earner, to remove the wearing apparels of the deceased, Gulapi Gowala whose deadbody was found inside the house where the accused-appellant and the deceased used to reside. As per the instruction, P.W.6 removed the wearing apparels from the body of the deceased and the I.O. [P.W.7] seized – [i] one blood-stained gamosa [hand woven towel]; and [ii] one blood-stained saree - vide Seizure List, M.R. no. 20/2019 [Ext.-3] at 05-00 p.m. The informant who was examined as P.W.1 was witness to the seizure. Barindra Guha and Mantu Borah who were examined as P.W.4 and P.W.5 were also witnesses to the seizure. The I.O. conducted the inquest at the P.O. itself and prepared an Inquest Report [Ext.-4]. A Sketch Map of the P.O. [Ext.-5] was also prepared by the I.O. After completing the formalities at the P.O., the I.O. proceeded to the Police Station. In the meantime, the informant-P.W.1, Sachin Rajbongshi [P.W.3], Barindra Guha [P.W.4] and Mantu Borah [P.W.5] also proceeded to the Police Station. The I.O. [P.W.7] reached the Police Station at around 06-05 p.m. As soon as he reached Police Station from the P.O., the accused-appellant appeared at the Police

Station. The prosecution case is that the accused-appellant appeared at the Police Station with the objects seized from him vide Seizure List, M.R. no. 19/2019 at the Police Station in presence of P.W.1, P.W.3 and P.W.5. The prosecution has further asserted that the accused-appellant had also subscribed his signature in Ext.-2, Seizure List. The objects seized vide Ext.-2, Seizure List were : [i] A bora dao [a kind of knife] which is about 17 inches long and the handle is made of plastic; and [ii] a 44 inches long stick made of betel nut tree.

4. The post-mortem on the deadbody of the deceased was performed at Behali Block Primary Health Centre by Dr. Deepak Kumar Biswashi, Senior Medical & Health Officer [P.W.8], posted there on 01.07.2019. After performing autopsy, P.W.8 recorded his findings and opinion in a Post-Mortem Examination [PME] Report [Ext.-6], which he exhibited during the trial with his signature therein as Ext.-6[1].

5. After completing the investigation into the case, the I.O. submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 41/2019 on 31.08.2019 finding a prima-facie case established to proceed against the accused-appellant for committing the offence of murder under Section 302, IPC.

6. After submission of the Charge-Sheet, the Court of learned Judicial Magistrate, First Class [JMFC], Biswanath Chariali secured the appearance of the accused-appellant from Jail custody on 30.06.2022 as since after his surrender before the Police Station on 07.12.2019, he was in custody. As the copies were ready, the Court of learned JMFC, Biswanath Chariali supplied the copies to the accused-appellant as per the provisions under Section 207, CrPC. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the Court of JMFC, Biswanath Chariali, by an Order dated 07.12.2019, committed the case records of P.R. Case no. 305/2019, arising out of Behali Police Station Case no. 58/2019, to the Court of learned Additional Sessions Judge, Biswanath Chariali [‘the Trial Court’, for short] after notifying the learned Public Prosecutor accordingly. The Jail authority was asked to produce the accused-appellant before the then Additional Sessions Judge [subsequently,

Sessions Judge], Biswanath Chariali [‘the Trial Court’] on 21.10.2019.

7. On receipt of the case records of P.R. Case no. 305/2019, the Trial Court registered the same as Sessions Case no. 106/2019. After hearing the learned Public Prosecutor as well as the learned defence counsel; and upon perusal of the materials on record, the Trial Court on 21.12.2019 framed a charge under Section 302, IPC against the accused-appellant. When the charge was read over and explained to the accused-appellant, he pleaded not guilty and claimed to be tried.

8. During the course of the trial, the prosecution side examined nine persons as prosecution witnesses, exhibited seven nos. of documents as documentary evidence and four nos. objects as material exhibits in order to bring home the charge against the accused-appellant and they are as follows :-

Prosecution Witnesses	
P.W.1	Babul Gowala
P.W.2	Haren Sarma
P.W.3	Sachin Rajbongshi
P.W.4	Barindra Guha
P.W.5	Mantu Baraik
P.W.6	Nila Kanta Tossa
P.W.7	Biman Gogoi
P.W.8	Dr. Deepak Kr. Biswashi

P.W.9	Raju Duwara
Exhibits	
Ext. P-1	Ejahaar
Ext. P-2	Seizure List
Ext. P-3	Seizure List
Ext. P-4	Inquest Report
Ext. P-5	Sketch Map
Ext. P-6	Post Mortem Report
Ext. P-7	Charge-Sheet
Material Exhibits	
Mat. Ext.-1	Dao
Mat. Ext.-2	Lathi
Mat. Ext.-3	Gamocha
Mat. Ext.-4	Saree

9. After closure of the evidence from the prosecution side, the accused-appellant was examined under Section 313, CrPC to afford him opportunity to explain the incriminating circumstances appearing against him in the evidence of the prosecution side. The accused-appellant in his reply, stated that the prosecution had foisted a false case against him. When the accused-appellant was asked whether he would adduce any evidence, the accused-appellant declined to adduce any defence evidence. After hearing the learned counsel for the parties and upon appreciation of the evidence/materials on record, the Trial Court has

delivered the impugned Judgment and Order of conviction and sentence against the accused-appellant holding him guilty for the offence of uxoricide.

10. We have heard Mr. A. Dhar, learned Amicus Curiae for the accused-appellant and Ms. B. Bhuyan, learned Senior Counsel & Additional Public prosecutor assisted by Ms. R. Saloi, learned counsel for the respondent State.

11. Mr. Dhar, learned Amicus Curiae appearing for the accused-appellant has submitted that the case is based on circumstantial evidence and there were many gaps in the case of the prosecution. The child who had reported first about the incident to the informant-P.W.1 was not examined by the prosecution and the same had created a gap in the chain of circumstances. As the prosecution had failed to establish all the circumstances by way of reliable and cogent evidence, the accused-appellant did not owe any explanation as an accused has the right to maintain silence. He has submitted that suspicion howsoever grave, cannot take the place of proof as the prosecution had failed to establish the case beyond reasonable doubt. The impugned Judgment and Order of conviction and sentence is, therefore, liable to be interfered.

12. Ms. Bhuyan, learned Senior Counsel & Additional Public Prosecutor appearing for the State has submitted that all the circumstances established by the prosecution point unerringly towards the guilt of the accused-appellant. It has emerged that on the date of the incident, it was only the accused-appellant and the deceased who were in the house and the deadbody of the deceased was found inside the house. Therefore, the accused-appellant clearly owe an explanation and his plea as regards falsity in the prosecution case was an additional link to complete the chain of circumstances. Ms. Bhuyan has further contended that the subsequent conduct of the accused-appellant is relevant under Section 6 and Section 8 of the Evidence Act. It is also contended that non-examination of the children would not have any effect in the prosecution case. With such submissions, the learned Additional Public Prosecutor has supported the Judgment and Order of conviction and sentence passed against the accused-

appellant.

13. We have given consideration to the rival submissions of the learned counsel for the parties and have also gone through the evidence/materials available in the case record of Sessions Case no. 106/2019.

14. It has emerged from the evidence on record that the deadbody of the deceased was found lying inside the house where the accused-appellant and the deceased used to reside as husband and wife. The informant-P.W.1 is the elder son of the accused-appellant and the deceased. The accused-appellant and the deceased have another son who is younger to the informant-P.W.1.

15. In his testimony, P.W.1 stated that on the date of the incident, his younger son, Dulu Gowala was not in the house and the said fact was elicited by the defence during cross-examination of P.W.1. The three witnesses, P.W.1, P.W.2 & P.W.3 at around 04-00 p.m. on 30.06.2019 were watching television in the residence of P.W.2. At that time, the two minor sons of P.W.1 viz. Nabajit Gowala, aged about 9/10 years, and Satyajit Gowala, aged about 3/4 years, came running to the house of P.W.2 to inform their father that their grandfather had killed their grandmother. On receipt of such information, P.W.1 rushed to the house where his father and mother used to reside. P.W.1 with his wife and two sons used to reside in a house which was in the backside and vicinity of the house of the accused-appellant and the deceased. The two witnesses, P.W.2 and P.W.3 were watching television with P.W.1. All the three prosecution witnesses, P.W.1, P.W.2 & P.W.3 testified that they found the deadbody of the deceased lying inside the house with injuries on her neck and ear. P.W.1 was the first to reach the P.O. and noticed that there was profuse bleeding from the neck. P.W.1 tried to stop the bleeding by holding his mother's neck but the bleeding did not stop. As per his testimony, his mother was alive but as soon as he put her head on his lap, she breathed her last. The time when P.W.2 and P.W.3 arrived at the P.O., persons from the locality also started gathering.

16. The testimony of P.W.1, P.W.2 & P.W.3 regarding injury sustained by the deceased on her person stand corroborated by the findings of the Autopsy Doctor [P.W.8] and the PME Report [Ext.-5] wherein the following findings as regards the injury sustained by the deceased were recorded :-

[i] One incised wound of size 6 x 4 x 1 inches over left side of the neck, extending from sub-mandibular and to occipital region.

[ii] Another wound of size 3 x 1 x .5 inches over right side of the neck from infra auricular to sub occipital area.

17. P.W.8 testified that all the wounds sustained by the deceased were ante-mortem in nature. As per the PME Report [P.W.6], P.W.8 performed the PME Report at 12-00 noon on 01.07.2019 and he found that the death of the deceased occurred within twenty-four hours. P.W.8 opined that the death was due to cardio respiratory failure as a result of the injuries sustained. In cross-examination, it was elicited from P.W.8 that there was no other injury except the afore-stated injuries. P.W.8 during cross-examination, further stated that it was not possible to sustain the injuries, as sustained by the deceased, if a person would fall on a staircase. In view of such evidence on record, there is no dispute to the effect that the deceased met a homicidal death inside her own house.

18. P.W.4 who was the post-occurrence witness, testified that when he went to the P.O., he saw that the deadbody of the deceased was lying on the floor inside the house with cut injuries around her neck. The wearing apparels of the deceased Mat. Ext.-1 & Mat. Ext.-2 were seized by the I.O. in his presence at the P.O.

19. P.W.1 also testified to the effect that on being informed, he rushed towards the house of his parents and when he was about to reach his father's house, he saw his father, that is, the accused-appellant running towards the paddy field. He testified that letting his father go

he went inside the house and saw that his mother was lying inside the house in an injured condition. As he was informed that his mother was killed, his conduct to go inside the house to seek his mother, rather than to catch hold of his father, cannot be termed as a circumstance in favour of the defence. That part of the testimony of P.W.1 was never questioned by the defence during his cross-examination. Rather, it was elicited by the defence during cross-examination of P.W.1 that P.W.1 saw the accused-appellant running away from his house. A suggestion was put to P.W.1 that the accused-appellant did not flee from his house but went out to bring the cattle back. Such kind of suggestion given by the defence would clearly indicate that the accused-appellant came out of his house when his wife was inside the house in a seriously injured condition.

20. The subsequent conduct of the accused-appellant which is relevant, was brought out by P.W.1, P.W.3, P.W.5 & P.W.7. P.W.1, P.W.3 & P.W.5 who stated that after the death of the deceased, they went to the Police Station. The visit of these three prosecution witnesses to the Police Station received corroboration from the testimony of the I.O. [P.W.7]. The I.O. [P.W.7] stated that after he reached the Police Station after conducting the procedural formalities at the P.O., the accused-appellant appeared in the Police Station with a dao and a stick made of betel nut tree in his hands, which were seized vide Seizure List, Ext.-2 in presence of P.W.1, P.W.3 & P.W.5. The appearance of the accused-appellant in the Police Station and seizure of the dao and the stick by the I.O. [P.W.7] in presence of P.W.1, P.W.3 & P.W.5 was not disputed by the defence by cross-examining any of them during the trial. The afore-stated subsequent conduct of the accused-appellant clearly is relevant under Section 6 and Section 8 of the Evidence Act.
21. It is settled proposition that in a case based on circumstantial evidence, the prosecution has to establish the facts and the fact established should be consistent with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis. The circumstances should be of a conclusive nature and tendency. In a case of circumstantial evidence, the judgment remains essentially inferential. Inferences are drawn from established facts, as the circumstances lead to particular inferences. The Court must draw an inference

with respect to whether the chain of circumstances is complete and when the circumstances therein are collectively considered, the same must lead only to irresistible conclusion that the accused alone is the perpetrator of the crime in question. It is also a settled legal proposition that that in a criminal trial, the purpose of examining the accused person under Section 313, CrPC is to meet the requirement of principle of natural justice. The accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him and the Court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete.

22. At the relevant time on the date of the incident, it was the accused and the deceased as the husband and wife who were present inside the house. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge may not be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. When an accused is alleged to have committed the murder inside the premises of a private property and the prosecution succeeds in leading evidence to show that either immediately before the commission of crime or at the time of the commission of the crime, the accused and the deceased were together there without any third person with them and if the accused does not offer any explanation how the deceased received the fatal injuries or offers an explanation which is found to be false, then it becomes a strong circumstance to indicate that he is responsible for the crime. Such obligation is cast in view of the rule of evidence embodied in Section 106 of the Evidence Act for which there will be a corresponding burden on the accused as the only other person present within the four corners of the premises with the deceased, to give an explanation as to how the crime was committed. In such position, the accused cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to prove the case resting on circumstantial evidence would

always be on the prosecution in terms of the rule embodied in Section 101 of the Evidence Act and there is no duty at all on an accused to offer any explanation. [Ref :- **Trimukh Maroti Kirkan vs. State of Maharashtra, [2006] 10 SCC 681**].

23. The following passage, quoted in the three-Judge decision in **Deonandan Mishra vs. the State of Bihar, AIR 1955 SC 801**, made in the context of failure of the accused to offer any explanation for circumstances appearing in evidence against him in a case resting on circumstantial evidence, can be appropriately referred to :-

9..... It is true that in a case of circumstantial evidence not only, should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved would afford a reasonable basis, for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain.

24. In **Wazir Khan vs. State of Uttarakhand, [2023] 8 SCC 597**, when the contention of the appellant-accused was drawn to the incriminating circumstances that inculpated him in the crime, he failed to offer appropriate explanation or gave a false answer. It has been held that the same counted as providing a missing link for completing the chain of circumstances. It has been observed as follows :-

22. In a case based on circumstantial evidence where no eye witness is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an

explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court, namely Nika Ram vs. State of Himachal Pradesh, AIR 1972 SC 2077; Ganesh Lal vs. State of Rajasthan, [2002] 1 SCC 73; and State of Uttar Pradesh vs. Dr. Ravindra Prakash Mittal, AIR 1992 SC 2045.

25. In **Kalu @ Laxminarayan vs. State of Madhya Pradesh, [2019] 10 SCC 211**, after a discussion on the rule of evidence embodied in Section 106 of the Evidence Act and the failure to offer any explanation by the accused, the following observations have been made :-

16. In view of our conclusion that the prosecution has clearly established a prima facie case, the precedents cited on behalf of the appellant are not considered relevant in the facts of the present case. Once the prosecution established a prima facie case, the appellant was obliged to furnish some explanation under Section 313, Cr.P.C. with regard to the circumstances under which the deceased met an unnatural death inside the house. His failure to offer any explanation whatsoever therefore leaves no doubt for the conclusion of his being the assailant of the deceased.

26. When the accused-appellant was asked during his examination under Section 313, CrPC to provide his explanation, to the incriminating evidence appearing against him, accused-appellant was found to be placed in a position requiring him to provide an explanation how the deceased sustained the injuries. Other than stating that the witnesses had foisted a false case against him the accused-appellant did not offer any explanation as regards the incriminating circumstances put to him as emerged from the testimonies of the prosecution witnesses. During the course of the trial, the defence did not take any plea in the nature of alibi, even by way of suggestion, that the accused-appellant at the relevant time was not in his house.

27. P.W.1 further stated that the accused-appellant i.e. his father and the deceased i.e. his

mother deceased used to quarrel with each other occasionally. P.W.1 being the elder son of the accused-appellant and the deceased has such knowledge and he was not confronted with regard to such evidence by the defence when he was cross-examined. Quarrels which the accused-appellant used to enter into with the deceased occasionally is a fact which can be taken as a circumstance to draw inference as regards involvement of the accused-appellant in the process of analysing the circumstance in the chain of circumstances. Along with the circumstances established by the prosecution to the prosecution witnesses, which in our considered view, are satisfactorily made out to point towards the accused-appellant as the probable assailant, with reasonable definiteness and in proximity to the events of homicidal death of the deceased as regards time and situation with him not offering any explanation as regards the injury sustained by the deceased inside his own house is a strong incriminating circumstances and an additional link to complete the chain of circumstances to reach a conclusion that it was the accused-appellant only who was the perpetrator of the crime of uxoricide.

28. In the facts and circumstances obtaining in the case in hand, as discussed above, the point urged by the learned Amicus Curiae on non-examination of children is found to have no effect to the case of the prosecution in any substantive manner.

26. In the light of the discussion made above and for the reasons assigned therein, we do not find any ground, not to speak of any good and sufficient ground, to interfere with the guilt reached by the learned Trial Court against the accused-appellant.

29. As it has already found that the prosecution has been able to establish all the possible circumstances to make the chain complete, we find the instant criminal appeal unmerited and the same is liable to be rejected. Therefore, affirming the Judgment and Order on conviction and sentence passed by the Trial Court, the instant criminal appeal stands dismissed.

30. We reiterate the direction given by the learned Trial Court as regards recommendation

to award adequate compensation to the dependent[s] of the deceased by the District Legal Services Authority after due enquiry under Section 357A, CrPC and the extant Victim Compensation Scheme, 2012 framed thereunder. We further observe that such enquiry, if not completed till date, shall be undertaken and completed with utmost expediency and thereafter, to award and disburse appropriate compensation thereunder to the victims entitled upon conclusion of such enquiry.

31. Before parting with the record, we wish to place our appreciation on record as regards the service rendered by Mr. A. Dhar, learned Amicus Curiae appearing for the accused-appellant and direct the Registry to make available to him just remuneration as per the notified fee structure applicable to the Amicus Curiae.

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

JUDGE

JUDGE