



2026:GAU-AS:791-DB

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

**Criminal Appeal [I] no. 48/2022**

Lalu Tanti @ Ajit Tanti,  
Son of Late Naresh Tanti,  
Vill. Borjuli 17 No. Line,  
P.S. Rangapara,  
Dist. – Sonitpur, 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 :**

Advocate for the Appellant : Mr. A. Ahmed, Advocate

Advocate for the Respondent : Ms. A. Begum,  
Additional Public Prosecutor, Assam

Date of hearings : 20.01.2026 & 21.01.2026

Date of pronouncement of judgment : 21.01.2026

Whether the pronouncement is of the  
Operative part of the judgment ? : No

Whether the full judgment has been  
Pronounced ? : Yes

**JUDGMENT & ORDER**

[M. 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 and Order dated 03.03.2022 passed by the Court of learned Sessions Judge, Sonitpur at Tezpur [‘the Trial Court’, for short] in Sessions Case no. 186/2016. In the trial of Sessions Case no. 186/2016, two accused persons including the present accused-appellant, faced a charge of murder under Section 302, Indian Penal Code [IPC] read with Section 34, IPC. By the Judgment and Order dated 03.03.2022, the Trial Court has convicted the present accused-appellant for the offence of murder under Section 302, IPC and he has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/-, in default of payment of fine, to undergo simple imprisonment for another three months. The period of detention already

undergone by the accused-appellant has been directed to be set-off against the term of imprisonment as per the provisions of Section 428, CrPC.

2. The investigation was set into motion on registration of a First Information Report [FIR] lodged by one Bijay Tanti as the informant before the Officer In-Charge, Rangapara Police Station on 07.05.2016. In the FIR, it was inter-alia stated that at around 09-00 p.m. on 06.05.2016, there was a quarrel between the informant's maternal uncle, Deepak Tossa and his wife, Smti. Asha Tossa over some domestic matter. In the course of the quarrel, Deepak Tossa assaulted his wife, Asha Tossa with a scissor where upon Asha Tossa called her nephew, Lalu Tanti i.e. the accused-appellant. The informant further alleged that his maternal uncle, Deepak Tossa was assaulted with an iron made weapon and as a result of the assault, he fell down on the ground. Thereafter, Deepak Tossa was again assaulted with a piece of bamboo on his head. As a result of the assault, Deepak Tossa succumbed to his injuries. Subsequently, one Philip Nayak [P.W.3] a Line Chowkidar informed the Manager of Tea-Estate regarding the incident. He also called 108 ambulance service.
3. On receipt of the FIR, the Officer In-Charge, Rangapara Police Station registered the same as Rangapara Police Station Case no. 41/2016 under Section 302, IPC on 07.05.2016 and allowed one Abdul Baser Mollah, a Sub-Inspector of Police attached to the said Police Station, to investigate the case.
4. Prior to registration of the FIR, a General Diary Entry vide G.D. Entry no. 132 was registered on 06.05.2016 at 09-25 p.m. by the Officer In-Charge, Rangapara Police Station on receipt of a telephonic information from Philip Nayak, Chowkidar of Line no. 17, Borjuli Tea Estate to the effect that a person from Line no. 17 had been assaulted and injured grievously. The information was registered as G.D. Entry no. 132 and Abdul Baser Mollah, S.I. was entrusted with the charge of investigation.

5. During the course of investigation, the I.O. proceeded to the place of occurrence [P.O.] and recorded the statements of the witnesses under Section 161, CrPC. From the place of occurrence [P.O.], that is, the house of the deceased, the I.O. seized [i] one foot long spoon [Material Exhibit no. 1]; [ii] one 6" inches long sickle [kachi] without handle [Material Exhibit no. 2]; and [iii] one 2½ feet long bamboo stick [Material Exhibit no. 3] vide Seizure List, M.R. no. 8/2016 [Ext.-3] at around 11-00 p.m. on 06.05.2016 from Asha Tossa, who was also arraigned as an accused. The I.O. also conducted inquest proceedings on the deadbody of the deceased at the P.O. and prepared an Inquest Report [Ext.-4] on 06.05.2016 in presence of witnesses, P.W.2, P.W.5 and one Subhash Nayak. Thereafter, the deadbody was sent to Kanaklata Civil Hospital, Tezpur for post-mortem examination. The post-mortem examination was performed on 07.05.2016 by the Sub-Divisional Medical & Health Officer, Dr. Sanjay Roy [P.W.1]. The I.O. also prepared a Sketch Map of the P.O. [Ext.-7]. After collecting the Post-Mortem Examination Report and completing investigation into the case, a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 31/2016 was submitted on 27.05.2016 finding a prima facie case established to proceed against the present accused-appellant for committing the offence of murder under Section 302, IPC.
6. The accused-appellant was arrested during investigation. The I.O. while submitting the Charge-Sheet stated that no material was found against the other accused person named in the FIR viz. Asha Tossa and a prayer was made to discharge her from the case.
7. On submission of the Charge-Sheet, the Court of learned Sub-Divisional Judicial Magistrate [S.D.J.M.] [Sadar], Sonitpur at Tezpur secured the appearance of the accused-appellant from jail custody on 02.07.2016. As the accused-appellant expressed his inability to appoint a counsel to defend him, he was provided with legal aid by appointing a Legal Aid Counsel. As the copies were ready, the same were supplied to the accused-appellant in terms

of the provisions of Section 207, CrPC. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the Court of learned SDJM [Sadar], Sonitpur at Tezpur committed the case record of G.R. Case no. 1399/2016, corresponding to Rangapara Police Station Case no. 41/2016, to the Court of Sessions as per Section 209, CrPC. The learned Public Prosecutor was notified accordingly and a direction was made for appearance of the accused-appellant before the Court of Sessions, Sonitpur at Tezpur [the Trial Court] on 15.07.2016.

8. On receipt of the case record of G.R. Case no. 1399/2016, the Trial Court registered the same as Sessions Case no. 186/2016. The case was opened by the learned Public Prosecutor. After hearing the learned Public Prosecutor and the learned Legal Aid Counsel for the defence; and upon perusal of the materials on record, the Trial Court, on 08.08.2016, framed a charge under Section 302, IPC against the accused-appellant. When the charge was read over, interpreted and explained to the accused, he pleaded not guilty and claimed to be tried. Accordingly, the trial proceeded to the stage of evidence.
9. During the course of examination of witnesses by the prosecution, the Trial Court found that incriminating evidence had emerged against the other accused, namely, Asha Tossa also to be proceeded with the charge of murder. The Trial Court on 06.05.2019, after hearing the learned counsel for the parties and after perusal of the materials on record, passed an Order arraigning Asha Tossa as an accused by invoking the powers under Section 319, CrPC. Upon appearance of Asha Tossa before the Trial Court, the Trial Court on 19.07.2019 re-framed the charge under Section 302, IPC read with Section 34, IPC against both the accused persons. When the charge was read over, interpreted and explained to the accused persons, they pleaded not guilty and claimed to be tried.
10. In order to bring home the charge against the accused persons, the prosecution side examined the following seven persons as prosecution

witnesses; exhibited seven numbers of documentary evidence; and three number of material exhibits :-

| Prosecution Witnesses |                                                |
|-----------------------|------------------------------------------------|
| P.W.1                 | Dr. Sanjay Roy                                 |
| P.W.2                 | Sri Bijay Tanti                                |
| P.W.3                 | Sri Philip Gowala                              |
| P.W.4                 | Sri Bir Singh                                  |
| P.W.5                 | Sri Kartik Nayak                               |
| P.W.6                 | Sri Sankar Nayak                               |
| P.W.7                 | S.I. Jatin Chandra Borah                       |
| Exhibits              |                                                |
| Ext.-1                | Post Mortem Report                             |
| Ext.-2                | FIR                                            |
| Ext.-3                | Seizure List                                   |
| Ext.-4                | Inquest Report                                 |
| Ext.-5                | Extract copy of GDE no. 132 dated 05.05.2016   |
| Ext.-5[A]             | Relevant portion of statement of Philip Gowala |
| Ext.-6                | Charge-Sheet                                   |
| Ext.-7                | Sketch Map                                     |
| Material Exhibits     |                                                |
| Mat. Ext.-1           | Spoon                                          |
| Mat. Ext.-2           | Sickle                                         |
| Mat. Ext.-3           | Bamboo Lathi size about 2½ feet                |

11. After closure of evidence from the prosecution side, the two accused persons were examined under Section 313, CrPC to grant them opportunity to explain the incriminating circumstances emerging from the testimony of the prosecution witnesses. The plea of both the accused persons was denial. When the accused persons were asked whether they would adduce any

defence evidence, they declined to do so. After hearing the learned counsel for the parties; and upon evaluation of the evidence/materials on record, the Trial Court vide the Judgment and Order dated 03.03.2022, returned the verdict of guilt against the present accused-appellant while acquitting the other accused person, Asha Tossa from the charge of murder on the ground of insufficient evidence.

12. Aggrieved by and dissatisfied by the impugned Judgment and Order of conviction and sentence, the present appeal has been preferred.
13. We have heard Mr. A. Ahmed, learned counsel for the accused-appellant; and Ms. A. Begum, learned Additional Public Prosecutor for the respondent State.
14. Mr. Ahmed, learned counsel appearing for the accused-appellant has pointed out, at first, that the I.O. had been examined twice, once as P.W.7 and later on, as P.W.8. He has submitted that other than the two official witnesses - the Autopsy Doctor as P.W.1 and the I.O. as P.W.7 as well as P.W.8 - five other witnesses, P.W.2 to P.W.6 were examined by the prosecution to bring home the charge. Out of the said five witnesses, four of them, P.W.3 to P.W.6 had turned hostile and their testimony cannot be used by the prosecution in support of the charge as they clearly made departure from their previous statements and in their testimony before the Court, they had not said anything as regards commission of the offence by the accused-appellant. He has further submitted that P.W.2, on the basis of whose testimony the Trial Court had mainly reached the finding of guilt, was not an eye-witness as he reached the P.O. much later. Mr. Ahmed has further submitted that name of another person, Biswajit Nayak cropped up in the testimony of P.W.2 and it was alleged that Biswajit Nayak was also involved with the accused-appellant in committing the assault. But, Biswajit Nayak was not charge-sheeted by the I.O. Mr. Ahmed has further pointed out that witnesses had pointed towards involvement of the accused Asha Tossa in quarrel/tussle with the deceased prior to the death of the deceased. After the

Trial Court had acquitted Asha Tossa on the ground of insufficient evidence, no appeal has been preferred by the State and as such, the finding about Asha Tossa's acquittal has attained finality. As per the Autopsy Doctor, the nature of weapon used was a sharp one whereas P.W.2 had deposed that he had seen the accused-appellant coming out of the house of the deceased with a bamboo stick in his hand. It is further contended that the immediate neighbours of the deceased were neither examined by the I.O. nor they were called during the stage of the trial by the prosecution. As it emerged that there was no direct evidence, the case of the prosecution had to be tested on the basis of the circumstantial evidence. There were many gaps in the chain of circumstances making the chain an incomplete one. As no case has been established by the prosecution beyond reasonable doubt, the impugned Judgment and Order of conviction and sentence calls for interference.

15. Au contraire, Ms. Begum, learned Additional Public Prosecutor appearing for the State has supported the Judgment and Order of conviction and sentence passed against the accused-appellant. Referring to the Autopsy Report [Ext.-1], Ms. Begum has submitted that the cause of death was haemorrhage and shock as a result of the injury sustained by the deceased. The injury was a sharp cut injury on the occipital region [back side] over scalp and it was of size : 3cm x 2cm x 1cm. It was opined that the injury was caused by a sharp weapon and the injury so sustained was consistent with a sickle [Material Exhibit no. 2], seized by the I.O. Ms. Begum has further contended that when the testimony of P.W.2 is analyzed with the testimony of the Autopsy Doctor, P.W.1, notwithstanding the fact that the prosecution witnesses, P.W.3 to P.W.6 had turned hostile, the prosecution was able to establish that it was the accused-appellant who had committed the assault on the deceased on his head. Though the name of Asha Tossa was shown to be involved in the incident, no appeal was preferred after her acquittal. It has emerged from the evidence on record that there was a quarrel between the deceased and his wife, Asha Tossa on the date of occurrence and on being called by the wife of the deceased, the accused-appellant came to the P.O. It was thereafter, the

deceased met with his death. As such, there is no reason to interfere with the Judgment and Order of conviction and sentence passed by the Trial Court and the present appeal should fail. In support of her submission, Ms. Begum has referred to the decision in **Attar Singh vs. State of Maharashtra, [2013] 11 SCC 719.**

16. We have given due consideration to the submissions advanced by the learned counsel for the parties and have gone through the evidence/materials brought on record.
17. In order to find out the correctness of the finding of guilt returned by the Trial Court, it would be necessary to refer to the testimony of the prosecution witnesses. From the Judgment and Order of the Trial Court, it has emerged that the Trial Court has mainly relied upon the testimony of the Autopsy Doctor [P.W.1] and the informant-P.W.2. Keeping appreciation of the testimony of the P.W.1 and P.W.2 reserved for a later stage, we may refer to the testimony of the prosecution witnesses, P.W.3 to P.W.6 at first.
18. P.W.3 was the Chowkidar of Line no. 17, Borjuli Tea-Estate at the relevant time. It was P.W.3, who telephonically informed to the Officer In-Charge, Rangapara Police Station at around 09-25 p.m. on 06.05.2016 that a person at Line no. 17 was assaulted. The said information was recorded as G.D. Entry no. 132 on 06.05.2016 and the S.I. of Police, Abdul Baser Mullah was entrusted with the charge of investigation. In examination-in-chief, P.W.3 stated that he knew the accused and the deceased. He stated that the incident took place on 06.05.2016 and he came to know from P.W.5 and other villagers that a quarrel took place between the deceased and his wife, Asha Tossa and subsequently, the deceased succumbed to his injuries. Thereafter, P.W.3 was declared hostile by the prosecution and by seeking leave from the Court, he was cross-examined by the prosecution, followed by his cross-examination by the defence.

19. P.W.4, Bir Singh deposed that he knew the accused and the deceased. As regards the incident, he stated that the incident occurred at about 08-00 p.m. about 5-6 months earlier. He came to know that a quarrel took place at the house of the deceased but he did not go to the house of the deceased. It was after arrival of Police personnel at the P.O., he went there. He further stated that they were not allowed to enter into the house of the deceased. At that point, P.W.4 was declared hostile by the prosecution and by seeking leave from the Court, he was cross-examined by the prosecution, followed by his cross-examination by the defence.
20. P.W.5, Kartik Nayak deposed to the effect that when the incident took place at around 09-00 p.m. about one year earlier, he was at his house. After coming from his shop, he was inside a small house in his homestead which was at a distance of thirty feet from the house of the accused. It was his sister-in-law, Tileswari Nayak who told him that an incident had taken place in the village and asked him to go there. Then, he went to the house of the accused. Going there, he saw that the deadbody of the deceased was kept laid on the floor. He noticed injuries on the back side of the head of the deceased and also in the hands. The inquest was done at the house of the deceased. He further stated that prior to the incident, he heard a quarrel taking place between the deceased and his wife and he used to hear them quarreling for no reason. He further stated that he did not know anything else. P.W.5 deposed that the deceased always consumed liquor and assaulted his wife. He exhibited the Inquest Report as Ext.-4 with his signature therein as Exhibit-4[2]. At that Stage, P.W.5 was declared hostile by the prosecution and by seeking leave from the Court, he was cross-examined by the prosecution, followed by his cross-examination by the defence.
21. P.W.6, Sankar Nayak was from the same village as that of the accused and the deceased. Affirming that he knew the accused and the deceased, he deposed that he heard that a quarrel was taking place between the deceased and his wife but he did not go to the house of the deceased. At that point,

P.W.6 was declared hostile by the prosecution and by seeking leave from the Court, he was cross-examined by the prosecution, followed by his cross-examination by the defence.

22. In so far as the other parts of the testimony of these witnesses [P.W.3 to P.W.6] are concerned, the prosecution brought few specific parts of their respective previous statements to their notice and thereafter, those specific parts were also brought to the notice of the I.O. when he was examined as P.W.7 as well as P.W.8. for the purpose of confirmation. On perusal of those specific parts of the testimony of these witnesses, it is evident that these witnesses in so far as those specific parts of their respective previous statements are concerned, had resiled when they gave testimony before the court.
23. The law is settled that evidence of hostile witnesses can also be relied upon by the prosecution to the extent of which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records. It remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence.
24. From the discussion made hereinabove, it can be noticed that none of these four witnesses, P.W.3 to P.W.6 had deposed about involvement of the accused-appellant in the incident which took place on the date of the occurrence. These four witnesses had only spoken about the quarrel that took place between the deceased and his wife and the quarrels which regularly used to take place between them. Nothing has emerged from the testimony of these four witnesses, P.W.3 to P.W.6 which would go to support the case of the prosecution that the accused-appellant took any part in the quarrel between the deceased and his wife, Asha Tossa on the date of the incident and contributed in the alleged assault leading to the death of the deceased.

25. The I.O., Jatin Chandra Bora who was examined as P.W.7 as well as P.W.8, had deposed about the manner in which the investigation was carried out, as already mentioned hereinabove. He exhibited the FIR [Ext.-2]; the Seizure Memo [Ext.-3]; the Charge-Sheet [Ext.-6]; Rangapara Police Station General Diary Entry no. 132 dated 05.05.2016 [Ext.-5]; and the Sketch-Map of the P.O. [Ext.-7] apart from the relevant extracts of the previous statements of P.W.3, P.W.4 & P.W.5.
26. Reverting back to the testimony of P.W.2, it can be seen that he knew the deceased as well as the accused-appellant. Regarding the incident, P.W.2 stated that about 09-00 p.m. on 06.05.2016, there was a quarrel between the deceased and his wife, Asha Tossa. In the course of the quarrel, the deceased assaulted his wife and on being assaulted, Asha Tossa went to her parental house and thereafter, came back again to her matrimonial house along with the accused-appellant and one Biswajit Nayak. P.W.2 stated that he did not see the assault made by the accused-appellant and Biswajit Nayak on the deceased. When P.W.2 reached the house of the deceased, he saw the accused-appellant going out with a bamboo stick in his hands. Then, he saw that the deceased was lying with injuries on the backside of his head. '108' Ambulance service was called after the villagers gathered at the P.O. The villagers informed the Police and Police personnel came to the P.O. and took the deadbody of the deceased to the Police Station.
- 26.1. It was on 07.05.2016, P.W.2 stated to have filed the FIR which was written by a person according to his dictation. P.W.2 stated that Asha Tossa told him that she had assaulted her husband by means of a silver large spoon [heta]. Police personnel seized the silver large spoon [heta] [Mat. Ext.-1]; a sickle [Mat. Ext.-2]; and a bamboo lathi [Mat. Ext.-3] from the P.O. P.W.2 exhibited the FIR as Ext.-2, with his signature therein as Ext.-2[1] and the Inquest Report as Ext.-4 with his signature therein as Ext.-4[1].

- 26.2. During cross-examination, P.W.2 stated that his house was situated at a distance of half a kilometre from the P.O. and he reached at the P.O. after about twenty minutes of the incident. P.W.2 further stated that the deceased had three children and at the relevant time, they were present at the P.O. He further stated that the deceased used to drink alcohol regularly and on the date of the incident also, he was drunk. Quarrel was a regular routine affair between both the deceased and his wife. On the date of the incident also, both of them had quarreled. At the relevant time, the deceased assaulted his wife with a sharp weapon on her neck and she was tied with a gamosa to stop her bleeding. P.W.2 further deposed that Asha Tossa told him that she was assaulted by the deceased and in retaliation, she also assaulted the deceased on his head.
- 26.3. P.W.2 further stated that he did not state before the Police that he had seen the accused-appellant holding a bamboo stick in his hands on the date of occurrence and about his leaving from the P.O. He denied a suggestion that he deposed falsely in the court.
27. From the testimony of P.W.2, it has emerged that his testimony is contradictory on the point of his seeing the accused-appellant leaving the P.O. with a bamboo stick in his hands. While in his examination-in-chief, P.W.2 stated that he saw the accused-appellant leaving the P.O. with a bamboo stick in his hands, but in cross-examination, he stated that he did not tell before the Police that he had seen the accused-appellant holding a bamboo stick in his hands on the date of the occurrence and about his leaving the P.O. If P.W.2 had deviated from his previous statement made before the Police, it was open for the prosecution even after closure of cross-examination of P.W.2 to seek permission for his examination under Section 154 of the Evidence Act. In this connection, decision of the Hon'ble Supreme Court in **Dahyabhai Chhaganbhai Thakker vs. State of Gujarat, AIR 1964 SC 1563** can be referred to. As the prosecution had failed to bring out the contradiction by way of examination of P.W.2 as per the provisions of

Section 154 of the Evidence Act, the statement regarding his witnessing the accused-appellant leaving the P.O. was clearly an improvement. Had the accused-appellant made a visit to the house of the deceased on being called by Asha Tasso from her paternal house, that too, after a quarrel with the deceased, the prosecution should have led evidence on such aspect. There was no evidence on record that on the date of the incident, the accused-appellant who used to reside separately in Line no. 17 Borjuli Tea-Estate was seen visiting the house of the deceased by any other person. It has further emerged that P.W.2's place of residence was at a distance of half a kilometre and he reached the P.O. only after about twenty minutes of the incident.

28. As mentioned above, P.W.1 performed the post-mortem examination on the deadbody of the deceased on 07.05.2016. After performing autopsy, he recorded his findings and opinion in the Post-Mortem Examination Report which he exhibited as Ext.-1 along with his signature therein as Ext.-1[1] during his testimony, P.W.1 exhibited the signature of the Joint Director of Health Services, Sonitpur, Tezpur as Ext.-1[2]. As regards the findings, P.W.1 stated that there was sharp cut injury on occipital region [backside] and right side of head over scalp and the size of injury was 3 cm x 2 cm x 1 cm. There was fracture of the skull and as a result, the brain matters had come out. Clotted blood was seen around the region. As regards the alleged weapon, P.W.1 opined that the nature of weapon used was a sharp weapon. Apart from the injury, described above, P.W.1 in his evidence, had testified that there was no other external injury. The injury sustained by the deceased was found to be ante-mortem one. In his opinion, P.W.1 opined that the cause of death was shock and haemorrhage as result of the injury on the occipital region. He further opined that the injury sustained was sufficient to cause death of a person. During cross-examination, P.W.1 reiterated that there was no other external injury on the deadbody of the deceased except the injury in the occipital region of the head of the deceased and only a sharp weapon had been used to cause the injury on the deceased. The cause of death, as opined by the autopsy doctor, P.W.1 was not seriously contested by the

defence. From the nature of the injury sustained in the occipital region and other evidence on record, it can be easily concluded that the death of the deceased was a homicidal one as a result of assault made by a sharp weapon.

29. The question, therefore, arises is who was the assailant to cause the homicidal death of the deceased. From the evidence on record, it is clearly discernible that the deceased was habituated to consume alcohol regularly and after consumption of liquor, he used to enter into quarrels with his wife almost everyday. The evidence on record further go to indicate that on the date of the incident also, there was a quarrel between the deceased and his wife, Asha Tasso. The Trial Court, due to insufficient evidence, has already acquitted the wife of the deceased, Asha Tasso who was jointly made accused with the accused-appellant. As the acquittal of Asha Tasso was not challenged by the State by way of appeal, the order of acquittal in respect of Asha Tasso has attained finality.
30. Though a mention was made by P.W.2 regarding presence of one Biswajit Nayak in the alleged assault upon the deceased on the date of the incident, Biswajit Nayak was not charge-sheeted by the I.O. In fact, there was no mention of Biswajit Nayak at all in the Charge-Sheet [Ext.-6].
31. On a combined analysis of the testimony of the prosecution witnesses and the events stated to have occurred on the date of the incident leading to the homicidal death of the deceased inside his house compound, it is found that there was no reliable, cogent and conclusive evidence to the effect that the deceased had died of the fatal injury caused by any assault from the accused-appellant.
32. It is settled that the prosecution is to establish its own case by way of evidence of conclusive nature, more particularly, when its case is based on circumstantial evidence in the absence of any eye-witness accounts. In a case based on circumstantial evidence, the facts established should be consistent

only with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. If from the circumstances established, two views are possible from the evidence adduced in the case, one pointing to the accused and the other to his innocence, the view which is favourable to the accused should be adopted. It is settled that the principle has more relevance in cases where the guilt of the accused is sought to be established by a circumstantial evidence.

33. When keeping into consideration the above settled position, the facts and circumstances established in this case, as discussed above, are examined, the evidence brought by the prosecution on record falls short of the standard required, which is beyond reasonable doubt, for the reasons assigned hereinabove. In such view of the matter, we are not persuaded to be in agreement with the finding of guilt recorded by the Trial Court in the Judgment and Order dated 03.03.2022, as the case is not fully established on the yardstick of beyond reasonable doubt against the accused-appellant.
34. The accused-appellant is, therefore, clearly entitled to the benefit of doubt and his conviction for the alleged homicidal death of the deceased, is found not sustainable. Consequently, the impugned Judgment and the Order of conviction and sentence passed by the Trial Court calls for interference. The impugned Judgment and Order on conviction and sentence passed by the Trial Court is set aside and quashed and the accused-appellant is acquitted of the charge of murder under Section 302, IPC on benefit of doubt. The criminal appeal is accordingly, allowed.
35. The accused-appellant is to be released forthwith from jail if his detention is not required in connection with any other case.
36. The records of the Trial Court is to be sent back forthwith.

**JUDGE**

**JUDGE**

## Comparing Assistant