
(2013) 06 GAU CK 0033
In the Gauhati High Court
Case No : Criminal Appeal No. 103 (J) 2008

Shri. Kanuwar Gorh @ Bhutia

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 07-06-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313, 357(a)
Penal Code, 1860 (IPC) — Section 302

Citation : (2013) CriLJ 4352 : (2013) 3 GLD 931 : (2013) 3 GLT 752

Hon'ble Judges : P.K. Saikia, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : K.K. Bhatta, Amicus Curiae, for the Appellant; B. Bhuyan, Addl. PP, for the Respondent

Judgement

P.K. Saikia, J.—This appeal is directed against the judgment dated 27.6.2008 passed by the Additional Sessions Judge, Dibrugarh in Session Case No. 55/08 convicting the accused/appellant offence u/s 302 IPC and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 5,000/- in default RI for another six months for the offence aforesaid. Being aggrieved by the aforesaid judgment, this present appeal has been filed alleging several infirmities in the judgment impugned.

2. Brief facts, as stated during trial and which are necessary for disposal of present appeal, are that one Shri Lakhiram Gorh (PW1) lodged an FIR with O/C, Lahoal Police Station on 21.02.08 alleging that at about 2.30 pm same day, the accused Kanuwar Gorh @ Bhutia killed his father-in-law Ramnath Gorh in his own house by inflicting "dao" blows on his body.

3. On the receipt of the FIR (Ext. 5), above, police registered a case u/s 302 IPC, started investigating the same and during the course of investigation held inquest on the dead body, sent it to hospital for postmortem examination and on conclusion of the investigation, he submitted charge-sheet u/s 302 IPC against the accused person and forwarded him to the Court to stand his trial.

4. The Magistrate before the charge-sheet was so laid committed the case to the Court of Sessions since offence u/s 302 IPC is exclusively triable by Court of Sessions. On the receipt of the case on commitment, learned Sessions Judge transferred the case to file of the learned Additional Session Judge, Dibrugarh for disposal in accordance with law.

5. On the receipt of the case on transfer and on hearing the parties, learned Additional Sessions Judge, Dibrugarh framed charge u/s 302 IPC against the accused person and charge, so framed, on being read over and explained to the accused person, he pleaded not guilty and claimed to be tried. During the trial, prosecution has examined as many as seven witnesses including the informant, doctor who conducted the autopsy of the dead body as well as the learned Magistrate who recorded the confession of the accused person.

6. The accused person was examined u/s 313 Cr.P.C. In his statement u/s 313 Cr.P.C., he admitted that he surrendered before the police soon after the incident in question and also led the police to place of occurrence and helped it in recovering a "dao" from inside the bamboo groove which police seized on the strength of seizure list Ext 3.

7. The accused, however, claims that on the afternoon in question, he somehow lost control over himself for some time and he could not say how he conducted himself during such period and, as such, he claims that he is innocent. He, however, did not adduce any evidence to fortify the aforesaid plea. On the conclusion of trial and on hearing of the parties, learned trial court convicted the accused person of offence u/s 302 IPC and sentenced him to the punishment as aforesaid. It is that judgment which has been assailed in the present proceeding.

8. Opening up of argument on behalf of the accused appellant, the learned Amicus Curiae has contended that the judgment, impugned in the present appeal, is liable to be set aside since prosecution could not establish the charge, brought against the accused/appellant beyond all reasonable doubt.

9. In that connection, it has been contended that the prosecution case is basically based on confessional statement made by the accused persons before the Magistrate during the course of investigation. It is also sought to be premised on circumstantial evidence as well. Unfortunately, none of the aforesaid factors accomplished the goal, assigned.

10. According to learned Amicus Curiae, the confessional statement becomes untenable in law for reasons more than one. They are:

a). The accused/appellant was not given sufficient time for reflection to ponder over the warnings and to decide whether he would make a confession or not. It is fatal, more so, when confession is in respect of an offence as serious as murder.

b). The learned Magistrate did not inform the accused that he would not be sent to police custody even if he refused to make a confession. In that connection,

learned Amicus Curiae has drawn our attention to the decision of Hon''ble Supreme Court of India in the case of Shivappa Vs. State of Karnataka, . In the case of Shivappa (supra), Hon''ble Supreme Court has held as follows:-

besides administering the caution, warning, specifically provided for in the first part of sub-section (2) of Section 164, namely, that the accused is not bound to make a statement and that if he makes one, it may be used against him as evidence in relation to his complicity in, the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the Police or the like in case he declines to make a statement and be given the assurance that even if he declines to make the confession, he shall not be remanded to the Police custody.

c). In the case of Troilokya Gogoi Vs. State of Assam, and many other cases, this court too followed the proposition of law, so enunciated by the Hon''ble Apex court of the country in Shivappa (supra).

d). Learned Magistrate made no enquiry, whatsoever, to know as to how the accused was treated while he was in police custody, although a duty is always cast on the Magistrate to make such an enquiry. To carry home his point, our attention has been drawn to the decision, rendered by Hon''ble Supreme Court in the case of Shivappa (supra). The relevant part is reproduced below:-

Before proceeding to record the confessional statement, a searching inquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused.

e). Contending that the conduct of learned Magistrate in placing the accused in the custody of a Home guard while he was given time for reflection on the warnings is enormously illegal, learned Amicus Curiae has taken us through the decision of a Division Bench of this Court rendered in the case of Troilokya Gogoi (supra) where this Court held as follows:-

Coming to the confessional statement of the accused, we find, on perusal of the evidence of PW-8 (Shri P.K. Sharma), who was, at the relevant time, judicial Magistrate, at Golaghat, that on 30.7.94 (i.e., on the following day of the occurrence) at about 11.30 a.m., accused was produced before PW-8 for recording his confessional statement. After warning and cautioning the accused, PW-8 kept the accused inside his chamber under the charge of a Home Guard personnel and gave him time for reflection. Though PW-8 has mentioned that he took care to see that no police officer was present in the court or at any nearby place from where the accused could be seen or heard, the fact remains that the accused is a common vi lager and he could hardly distinguish between a man wearing uniform of police or a man wearing uniform of a Home guard personnel. We, therefore, find it difficult to hold that PW-8 took adequate precaution to

remove from the mind of the accused the feeling that he was completely free from the clutches of the police

11. Learned Amicus Curiae further submitted that the circumstances, established by the prosecution, do not make a complete chain of events leading to the irresistible conclusion that the accused, and none else, is the author of the crime in question. In that connection, our attention has been drawn to the decision of Hon"ble Supreme Court of India in the case of Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, .

12. Assailing the judgment, more and more, it is argued that in the case under consideration, the prosecution miserably failed to establish the motive of the accused person in killing his own father-in-law. It has repeatedly been held that in a case, based on circumstances, the prosecution needs to prove the motive of offender in committing the crime under scrutiny. Since same was not done in our instant case, it administers one more lethal blow to the prosecution case. The learned Amicus Curiae, therefore, urges this Court to acquit the accused person on setting aside the Judgment, impugned, herein.

13. Countering such argument advanced from the side of defence, the learned Additional Public Prosecutor has submitted that the prosecution has successfully proved the charge, leveled against the accused person, not only on the basis of circumstantial evidence, tendered in the case aforesaid but also on the basis of confession which the accused admittedly made before the Magistrate during the course of investigation. Accordingly, Learned Public Prosecutor submits this Court to affirm the Judgment of the Trial Court on dismissing this jail Appeal preferred by accused person.

14. We have given our anxious consideration to the rival submissions, advanced by the learned counsel for the parties having regard to the evidence on record, statement of accused person recorded u/s 313 Cr.P.C. as well as Judgment impugned.

15. However, before we proceed further, we find it necessary to have a brief review of evidence on record and the evidence of PW 1, Shri Lakhi Ram Gorh (informant), PW2, Smt. Binita Gorh (wife of the accused), PW3, Shri Jiten Praja and PW4, Sri Sukra Bhuyan are taken up first for consideration. The PW 1, PW 3 and PW 4 are all the neighbours of the accused person.

16. In his evidence, PW1 has stated that on the fateful day at about 3 PM while he was returning home, the son of the accused came to him running and told him that his father had killed his maternal grandfather, Sri Ram Nath Gorh. At first, PW 3 did not believe such information. But then, he immediately heard hue and cry coming from the side of the house of the accused person. He straight away rushed to such place and found Sri Ram Nath Gorh lying dead on the ground in a pool of blood in the court yard of the accused person. Having seen the same, he proceeded to Lahowal Police Station and lodged an ejahar there.

17. On arriving at the police station, he found the accused there. Soon thereafter, the Police took the accused to the place of occurrence, and recovered a dao from inside the bamboo grove nearby the house of accused person on being shown by accused which police seized on the strength of seizure list. In his cross examination, he has stated that as far as he knows, the relation between the deceased and the accused was cordial. In his cross examination, he further states that the dao was recovered from inside the bamboo grove.

18. PW 4, Sri. Sukra Bhuyan has stated that on the fateful day in the late afternoon, he came to know that accused killed his father-in-law for which he came to the house of the accused person and found the deceased lying dead on the ground in the court-yard of the accused person with a cut wound on his neck. In the meantime, police came to the place of occurrence and seized one dao on the strength of seizure list. The dao, so seized, was identified by him as Material Ext- 1. In his cross-examination, he, however, stated that he did not know wherefrom the dao was recovered.

19. PW 2, Smt. Binita Gorh is the wife of the accused person. According to her, on the fateful day at the relevant time, she came out of the house in search of wild vegetables. When she returned home, she found her father lying death in their court-yard. She was declared hostile on the request of prosecution. PW 3 has deposed that on the fateful day, he saw many people converging near the place of occurrence but he did not enquire as to why those people gathered at such place.

20. It is in those backdrops, let us consider the evidence of Dr. B.K. Choudhury, who was examined as PW 5. Dr. B.K. Choudhury conducted autopsy on the body of deceased. According to him, on 22.02.2008, he was posted as Demonstrator in the Department of Forensic Medicine, Assam Medical College, Dibrugarh. On that day, at about 10 a.m., he conducted Postmortem examination on the body of one Ram Nath Gorh and found the following:

A male dead body of thin built, dark complexion, wearing a dhoti and half shirt, eyes and mouth were closed, rigormortis present over the body. Blood stained present in front of neck. Anus and penis were healthy.

Injury:

1. One incised wound measuring 16 x 4 x 6 cm present on back of the neck at middle part vertically. Skin, muscle, sort tissue, vessels and vertebrae were cut at the c3 and c4 level.

2. One incised wound measuring 2 x 1 0.5 cm present on right forearm at lateral aspect 3 cm above the right wrist joint.

Mark of ligature on neck dissection not detected externally. Cranium and Spinal Cord:

Scalp and skull - healthy.

Vertebrae - Injury as described.

Membrane - healthy

Brain - pale

Spinal Cord - Incised wound at C3 and C4 level. Whole cord is cut.

OPINION

Death was instantaneous, resulting from injuries as described. All the injuries were antemortem caused by sharp cutting heavy weapon and homicidal in nature. Time since death: approximately 12 to 24 hours. Ext. 1 is the postmortem report and Ext. 1(1) was his signature.

21. So situated, let us consider the testimony of Sri Naresh Chandra Phukan, S.I. of Police. He was examined as P.W. 6. According to him, on 21.02.2004, he was posted at Lahowal Police Station. On that day, he received an Ejahar from PW 1. On the receipt of the FIR, he registered a case thereon and then, he proceeded to the place of occurrence and found the body of deceased lying in the court-yard of accused in a pool of blood.

22. He also found the neck of the deceased nearly severed. He therefore, conducted inquest on the dead body in presence of witnesses and in that connection he prepared a report which he proved as Ext. 2. In the meantime, the accused surrendered before the police station. He was again brought to the place of occurrence and on being shown by the accused person, he recovered a dao from inside a bamboo groove which he seized on the strength of seizure List, Ext. 3. Since the accused expressed his desire to confess his guilt, he produced the accused before the Magistrate for recording his confessional statement.

23. In the course of investigation, he sent the dead body to the hospital for postmortem examination and on completion of investigation, he submitted charge sheet u/s 302 IPC against the accused person and forwarded him to the Court to stand his trial. The FIR, lodged by PW1, was proved by him as Ext. 5. In his cross-examination, he has stated that he did not know as to why the accused killed his father-in-law.

24. The witness whose evidence is yet to be reproduced is Smt. Munmi Sarma, Judicial Magistrate. According to her, on 22.02.2008 she was posted at Dibrugarh as Judicial Magistrate. On that day, in connection with Lahoal P.S. Case No. 27/08, the accused Kanuwar Gorh was produced before her to have his confessional statement recorded.

25. The accused was produced before her at about 1 P.M. Thereafter, she gave him necessary statutory warnings including the warning that he is not bound to make confession and if he chose to make a confession, same might be used against him and he may be convicted on such confession as well. Thereafter, she put him in the custody of her Bench Assistant and kept him inside her chamber till 2.30 p.m.

26. At 2:30 P.M. he was again produced before her. She repeated him the warnings which she already rendered to him before. Since the accused still desired to make a confession, she recorded his confession which she proved as Ext. 6. The signature of the accused in the confessional statement aforesaid was proved as Ext. 6(1), 6(2), 6(3), 6(4) and 6(5). In her cross-examination, she had admitted that the accused was given only one and a half hour time for reflection on the warnings given to him.

27. We have already found that the prosecution has made two pronged attempts to make out the allegation, brought against the accused person. Therefore, we find it necessary to know how far such attempts are crowned with success. Since the prosecution has placed enormous reliance on the confessional statement, such statement is taken up first for scrutiny in the light of allegations leveled against it.

28. Here, it is worth noting that all the Courts, including Apex Court of the country, have repeatedly held that provisions of law, incorporated in Section 164 Cr.P.C., are so sacrosanct that in recording a confession, the directions, rendered in Section 164 Cr.P.C., are to be followed, not only in form, but in essence too. In this connection, we may profitably peruse the decision of Hon''ble Supreme Court of India in the case of Kehar Singh and Others Vs. State (Delhi Administration), . The relevant part is reproduced below.

64. The following principles emerge with regard to Section 164 CrPC:

(i) The provisions of Section 164 CrPC must be complied with not only in form, but in essence.

(i) Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.

(iii) A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.

(iv) The maker should be granted a sufficient time for reflection.

(v) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.

(vi) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.

(vii) Non-compliance with Section 164 CrPC goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.

(viii) During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.

(ix) At the time of recording the statement of the accused, no police or police official shall be present in the open court.

(x) Confession of a co-accused is a weak type of evidence.

(xi) Usually the court requires some corroboration from the confessional statement before convicting the accused person on such a statement.

29. It is pertinent to mention here that various High Courts have also laid down some guidelines vis-a-vis recording of judicial confession in order to ensure voluntariness of a confessing accused person. In a catena of decisions, the Apex Court of the country held that the compliance of the guidelines, rendered by the High Court on recording of judicial confession is as important as compliance of directions, rendered in Section 164 Cr. PC. The decision, rendered by Hon''ble Supreme Court in the case of Shivappa (Supra), is worth noting. Relevant part is reproduced below:

Full and adequate compliance not merely in form but in essence with the provisions of Section 164 Cr.P.C. and the rules framed by the High Court is imperative and its non-compliance goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence...

30. A perusal of Ext. 6 reveals that our High Court too formulated a series of guidelines which are incorporated in the form, used for recording judicial confession, These apart, Hon''ble Supreme Court in the case of Shivappa (Supra) and this Court in Sri Troiloyka Gogoi (Supra), in no uncertain words, declared that a confessing accused person needs to be told in very plain words that he would not be sent to police custody even if he refused to make a confession. Equally important, as held in Shivappa (supra), learned Magistrate is under an onerous obligation of enquiring as to how the accused was treated while he was in police custody immediately before his production before the Magistrate.

31. Coming back to the case, under scrutiny, we have found that learned Magistrate neither informed the accused person that he would not be sent to police custody even if he refused to make a confession nor did she make any enquiry as to how the accused was treated, while he was in police custody before being brought to her. These are all clear testimony of directions, rendered by this Court, in the case of Shivappa (supra) and Troiloyka Gogoi (Supra), being honored only in violation which, in turn, makes the confession, under scrutiny, totally unsafe for reliance.

32. We have also found from the confessional statement itself that after giving

warning to him, the learned Magistrate put the accused in the custody of the Home Guard. Although, in her evidence, she has stated that she put the accused in the custody of her bench assistant, yet, such a claim inspires no confidence in view of clear statement, made in the confessional statement (Ext.- 6) that the accused was put in the custody of Home Guard while the former was given time for reflection.

33. This unmistakably shows that by putting the accused in the custody of Home Guard, the learned Magistrate not only ignored the direction of this Court, rendered in the case of Troilokya Gogoi (Supra) but it rendered the statement, made by accused person, unreliable as well since it casts a serious doubt about the voluntariness of the accused in making the confession under consideration.

34. However, the greatest blow to the confession aforesaid comes from the admitted fact that the learned Magistrate had granted only one and a half hour time to the accused person to have reflection on the warning given to him vis-a-vis his making a confession of his guilt. We may note here that law does not give any prescription regarding a time to be given to a confessing accused to have reflection on the statutory warnings rendered to him.

35. In the case of Henry Westmuller Roberts Vs. State of Assam, , the Apex Court held that a confession, otherwise valid, cannot be thrown away only for not giving minimum 3 hours time for reflection but then over the years, it has repeatedly been held that that a confessing accused needs to be given adequate and enough time to have reflections on the warnings given to him. Such time depends on various factors, such as, duration of accused in police custody, nature of the offence, background of such person and so forth and so on.

36. Reverting to our case, we have found that though the accused was alleged to have committed an offence as serious as murder and although he was found to be an illiterate garden worker with appalling economic background, he was given hardly one and a half hour time for reflection on the warnings, he was given by the Magistrate vis-?-vis his making a confession before the Magistrate.

37. Time, so granted to the accused person, aforesaid, under no circumstances, can be said to be adequate and enough allowing the accused to have reflection on the warnings, rendered to him. Such shortcoming alone makes the confession in question totally untenable in law. As such, we have no hesitation in coming to the conclusion that the confession in question cannot be said to have been made voluntarily and, as such, same cannot be made the basis of conviction as prayed for by the prosecution.

38. So situated, let us consider how far other evidence on record makes out the allegation brought against the accused person. On a conjoint reading of evidence of the PWs, more particularly, PW 1 and PW 6, it would appear clear that on the fateful day, in the afternoon, moments after the alleged incident, the accused, on his own, went to the police station and thereafter, he took the police to his house and then to bamboo grove nearby.

39. The evidence on record, both oral and documentary, further demonstrates that police recovered a dao from the bamboo groove on being shown by the accused person. That the deceased died a homicidal death on sustaining huge cut wounds on his person, more particularly, on his neck at the residence of the accused person around 2:30 pm on 21.02.2008 are also found firmly established by the evidence on record.

40. The above aspects of the prosecution, particularly its claims that the accused surrendered to the police station little after the incident in question, took the police to his house, then to the bamboo groove nearby and helped the police in recovering a dao from the bamboo groove aforesaid draw more and more support from the statement which the accused person rendered during his examination u/s 313 of the Cr.P.C.

41. In our considered opinion, the prosecution has established the following circumstances beyond any shadow of doubt.

(i) On 21.02.2008 around 2:30 p.m., the deceased met his death.

(ii) He met his death in the court-yard of the accused person, who is his own son-in-law.

(iii) The death of deceased was homicidal in nature.

(iv) Though there were two cut wounds on the body of the deceased, yet, the death was mainly occasioned by a huge cut wound on the neck of the deceased.

(v) The death was instantaneous.

(vi) Soon after the incident in question, the accused surrendered before the police at Lahowal Police Station.

(vii) Immediately thereafter, he led the police to the bamboo groove nearby the residence of accused person.

(viii) The police recovered and seized the dao from inside the bamboo groove aforesaid on being shown by accused person.

42. It deserves a mention here that the accused person in his statement u/s 313 Cr.P.C. has admitted that on the day aforesaid, at the time relevant, he was equipped with a dao. But then, for some time, he lost control over himself and subsequently, he discovered himself at Lahowal Police Station, Dibrugarh. He, therefore, could not say how he behaved during the short interlude aforesaid. However, such a plea is found unacceptable for reasons more than one.

43. On careful perusal of evidence of PWs, it is found that while putting the prosecution witnesses to the cross-examinations, the accused never set up the plea of his losing control over himself during the intervening period aforesaid. He clearly developed such a theory all of a sudden while being examined u/s 313 of Cr.P.C. Such an abrupt development in the stances of the accused person, however, goes a long way to show that accused had invented the aforesaid

theory just to get rid of his misdeed of enormous proportion.

44. Even otherwise, the plea of the aforesaid of the accused cannot be accepted. It is found well apparent that immediately after committing the crime in question, the accused rushed to the police station and took shelter therein. Had he actually lost control over himself during the period aforesaid, as claimed by the accused person, he must have roamed hither and thither instead of rushing to the police station. This is one more testimony of aforesaid plea not being based on truth but on falsehood instead.

45. Hon'ble Supreme Court, in the case of State of Tamil Nadu Vs. Rajendran, has held that while being examined u/s 313 Cr.P.C., if the accused could not/did not explain the incrementing circumstances or raised false plea, such false plea or inability of the accused person to explain incrementing circumstances may many a time provide the additional link in the chain of circumstances of a prosecution case based on circumstantial evidence.

46. Coming back to our present case, we have found that the accused instead of explaining the incrementing circumstances, which stared direct at him, raised a false plea that during the time under consideration, he lost his control over himself and did not know what he had done during such interval. But as stated above, such a plea is already held to be a false plea. Such a false plea, in turn, makes the prosecution case more and more trustworthy.

47. Learned Amicus Curiae again argues that the prosecution gives unnecessary importance to the factum of recovery of dao since it has hardly any bearing upon the case under consideration. This is because of the reason that dao is such a common instrument that it is found in each and every household in Assam. Equally important, the members of tea garden community are closely very associated with such an instrument. Being so, no importance should be attached to recovery of dao even if it is found that such an instrument was recovered on being shown by the accused person.

48. Such an argument however, hardly holds any water. It is true that instrument, above, is found in almost all households in the state of Assam. It is equally true that the Tea garden community, which the accused is a member of, uses it more frequently. But then, one must not lose sight of the fact that it was not recovered from the place where it ought to be but from a very unusual place, same being the bamboo groove nearby the house of the accused person.

49. The recovery of dao from the place aforesaid soon after the alleged incident, coupled with the fact that the deceased died a homicidal death on sustaining huge cut wounds on his body, speak loud and clear that the dao aforesaid was the dao used in commission of the crime, under scrutiny. The recovery of dao, in the facts and circumstances of the case, under consideration, therefore, becomes one more proof of the accused, and the accused alone, was the author of the crime.

50. We may note that the accused evidently made a confession before the police during the course of investigation. However, such a confession could not be relied upon due to some technical infirmities therein. However, fact remains that the accused did make a confession. Such a factor, coupled with the fact that there is absolutely no iota of material on record to suggest, even remotely, that any person, other than the accused, had any role in extinguishing the life of his father-in-law on the day in question in his own court-yard, make it abundantly clear that accused, and none else, was responsible for killing his father-in-law in the afternoon of 21.02.2008.

51. On recapitulating the circumstances, which we have narrated here-in-before, we have found that all those circumstances together, in our considered opinion, make a complete chain of events unbreakable anywhere which leads to irresistible conclusion that the accused, and none else, had killed his father-in-law in his own court-yard on the day in question. The plea which the accused raised falsely in his statement u/s 313 Cr.P.C. makes such a conclusion totally inevitable.

52. It is worth noting that learned Amicus Curiae has again contended that in a prosecution case, based on circumstances only, motive occupies the centre stage and if the motive is not proved, such a case gets weakened to a great extent and makes the prosecution case totally unsafe for reliance. Since in the case under consideration, the prosecution miserably failed to prove the motive of the accused person in killing his own father-in-law, this case cannot escape the consequences, attached with such failure.

53. We hold that such an argument is without much substance. It is true that the prosecution could not establish the motive of the accused person in killing the deceased but, as stated above, the other circumstances which we have catalogued herein before have unmistakably established that author of the crime under consideration is none other than the accused person.

54. In that connection, we can very profitably peruse the decision of Hon''ble Supreme Court of India in the case of Ujjagar Singh Vs. State of Punjab, . Hon''ble Supreme Court of India in the case of Ujagar Singh (Supra) held as follows:

It is true that in a case relating to circumstantial evidence motive does assume great importance but to slay that the absence of motive would dislodge the entire prosecution story is perhaps giving this one fact an importance which is not due and (to sue the clich?) the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

55. We have already found that the prosecution has proved a chain of circumstances unbreakable anywhere and it leads to the irresistible conclusion that accused, and none else, had killed the deceased on the afternoon of 21.02.2008 and that too in his own court-yard. In view of the above, inability of the prosecution to establish the motive of the accused in killing his father-in-law

no way takes the case out of its gear.

56. The Medical Report reveals that there were two huge cut wounds on the body of the deceased, one of which was on the back of the neck while other was on the right forearm. Doctor also opined that injuries were so massive that it occasioned the instantaneous death of the deceased. When these revelations are considered together with the weapon of offence, there cannot be an escape from conclusion the accused inflicted wounds on the deceased only with the intention of killing him.

57. Being so, the accused is liable to be convicted u/s 302 I.P.C. Since learned Trial Court has convicted the accused of the offence aforesaid and since he was punished with imprisonment for life with fine of Rs. 1000/- in default R.I. for another six months, we find no reason to interfere with the Judgment impugned.

58. Consequently, the Judgment of the Trial Court is affirmed and Appeal is dismissed.

59. The Govt. of Assam is directed to pay an amount to Rs. 75,000/- (Rupees seventy five thousand) only as being compensation to the family member(s) of the victim as provided u/s. 357(a) of the Cr. P.C 1973. The Govt. shall deposit the amount in the office of learned Sessions Judge, Dibrugarh within a period 2 months from the date of receipt of copy of this judgment. On the receipt of the money, the same shall be disbursed to the family members of the deceased equally if number of family members of the deceased is more than one on proper identification and on obtaining necessary receipt from them.

60. Learned Amicus Curiae is entitled to one day's hearing fee. The Registry is directed to place a copy of this judgment to Smt. Munmi Sharma, the then Additional Sessions Judge, Dibrugarh. (wherever she is posted now for guidance)