

GAHC010034212022



2026:GAU-AS:1563-DB

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

Criminal Appeal [I] no. 37/2022

1. Bishu Dhali, Nagaon, Assam.
2. Smt. Molin Dhali, Nagaon, Assam.

.....Appellants

-VERSUS-

1. The State of Assam represented by the Public Prosecutor, Assam.
2. Govinda Mallick, 2 No. Borjhar, P.S. Dalgaon, District – Darrang, Assam.

.....Respondents

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates :

Advocate for the Appellants : Mr. A. Ahmed, Amicus Curiae

Advocate for the Respondent no. 1 : Ms. A. Begum,
Additional Public Prosecutor, Assam

Advocate for the Respondent no. 2 : Mr. B.M. Deka, Advocate

Date of hearing : 19.01.2026

Date of pronouncement of judgment : 06.02.2026

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.]

1. The present criminal appeal from jail under Section 383, Code of Criminal Procedure, 1973 [‘the Code’ or ‘CrPC’, for short] is directed against a Judgment and Order dated 11.01.2022 passed by the Court of learned Sessions Judge, Nagaon [‘the Trial Court’ for short] in Sessions [T-1] Case no. 33 [N] of 2014. By the Judgment and Order dated 11.01.2022, the Trial Court has convicted both the accused-appellants for the offence of murder under Section 302, Indian Penal Code [IPC] read with Section 34, IPC and they have both been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each, in default of payment of fine, to suffer simple imprisonment for another six months each.
2. The First Information Report [FIR] was lodged by one Gobinda Mallick as the informant before the Officer In-Charge, Uluoni Police Station on 30.12.2010. In the FIR, the informant named the two accused-appellants along with their mother

[name unknown] as the accused. It was mentioned that the younger sister of the informant, Kanan Mallick died on Wednesday, 29.12.2010 in her matrimonial house as a result of torture inflicted on her. The informant further stated that he came to know about the incident from a source that the deceased was completely fine during the day-time.

3. On receipt of the FIR, the Officer In-Charge, Uluoni Police Station registered it as Uluoni Police Station Case no. 95 of 2010 [corresponding G.R. Case no. 682 of 2010] under Section 302/34, IPC on 30.12.2010 and took up the investigation of the case himself.
4. In the course of investigation, one of the accused persons, Rashamoni Dhali was arrested immediately after registration of the FIR and after arrest, she was sent to judicial custody. Subsequently, Rashomoni Dhali was released on bail. The accused-appellant no. 1 [hereinafter also referred to as accused no. 1 (A-1), at places, for ease of reference], approached this High Court seeking the benefit of pre-arrest bail. However, the High Court did not extend the benefit of pre-arrest bail to the accused no. 1 [A-1]. Thereafter, the accused no. 1 submitted himself to the jurisdiction of the Court of learned Sub-Divisional Judicial Magistrate [S.D.J.M.], Nagaon on 10.10.2011 as per direction of the High Court. On such appearance, he was sent to judicial custody. The accused-appellant no. 1 viz. Molin Dhali [hereinafter also referred to as the accused no. 2 (A-2), at places, for ease of reference] could not be arrested during the period of investigation as she allegedly avoided arrest.
5. The first part of the investigation was carried out by one Dhirendra Barman, the then Officer In-Charge of Uluoni Police Station. During the course of investigation, the I.O. conducted inquest on the deadbody of the deceased through the jurisdictional Circle Officer on 30.12.2010 at the P.O. After the inquest proceeding and preparing an Inquest Report [Ext.-2], the deadbody of the deceased was sent to Bhogeswari Phukononi [B.P.] Civil Hospital, Nagaon for post-mortem

examination. The post-mortem examination was performed at B.P. Civil Hospital, Nagaon on 31.12.2010 by the Medical & Health Officer [M.&H.O.]-I, Dr. Jugananda Bori [P.W.6]. During the investigation, The I.O. also recorded the statements of the witnesses under Section 161, CrPC. Going to the place of occurrence [P.O.], that is, the house of the accused persons, which was also the matrimonial house of the deceased, the I.O. also prepared a Sketch Map of the P.O. [Ext.-5].

6. As Dhirendra Barman, the 1st I.O., stood transferred from Uluoni Police Station, the subsequent Officer In-Charge, Saidul Islam [P.W.7] received the case diary to continue with the investigation. It was during Saidul Islam [P.W.7]'s period as the I.O., the accused no. 1 [A-1] surrendered. As Saidul Islam [P.W.7] was also transferred from Uluoni Police Station subsequently, he handed over the case diary to Khagen Baruah who was serving, at that time, as the 2nd Officer at Uluoni Police Station. It was Khagen Baruah who after collecting the Post-Mortem Examination [PME] Report [Ext.-3] and completing the investigation into the case, Uluoni Police Station Case no. 95 of 2010, submitted the charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 65 on 31.08.2012 finding a prima facie case established to proceed against three accused persons, namely, [i] the accused no. 1 [A-1], Sri Bishu Dhali; [ii] the accused no. 2 [A-2], Smti. Molin Dhali; and [iii] Rashamoni Dhali; for the offence under Section 304B, IPC read with Section 34, IPC. It was mentioned in the Charge-Sheet that during the period of investigation, whereabouts of the accused no. 2 [A-2], Smti. Molin Dhali could not be ascertained and therefore, she should be declared as an absconder.
7. On receipt of the Charge-Sheet submitted in connection with Uluoni Police Station Case no. 95 of 2010 [corresponding G.R. Case no. 682 or 2010], the Court of Sub-Divisional Judicial Magistrate [SDJM], Kaliabor as the committal court secured appearance of the accused no. 1 [A-1] from jail custody on 31.03.2014. On that day, the accused person, Rashamoni Dhali appeared before the Court of SDJM, Kaliabor on receipt of summons. The charge-sheeted accused no. 2 [A-2], Smti. Molin Dhali also appeared before the said Court on that day and submitted an

application with a prayer to enlarge her on bail along with the accused no. 1 [A-1]. The prayers for bail made on behalf of the accused no. 1 [A-1] and the accused no. 2 [A-2] were rejected by the committal court and both of them were sent to judicial custody. On that day itself, that is, on 31.03.2014, after furnishing the copies to the charge-sheeted accused persons as per the provisions of Section 207, CrPC, the case record of G.R. Case no. 682 of 2010 was committed to the Court of Sessions, Nagaon under Section 209, CrPC as the offence under Section 304B, IPC was found to be exclusively triable by the Court of Sessions. The Public Prosecutor was notified accordingly and a direction was made to issue commitment warrants against the two charge-sheeted accused persons, namely, Sri Bishu Dhali [A-1], and Smti. Molin Dhali [A-2] to ensure their appearance before the Court of Sessions on 04.04.2014. The charge-sheeted accused person, Rashamoni Dhali was allowed to remain on previous bail and she was also directed to appear before a Court of Sessions on the next date, 04.04.2014, which was fixed for appearance and necessary order before the Court of Sessions, Nagaon.

8. On receipt of the case record of G.R. Case no. 682 of 2010, the Court of Sessions, Nagaon [‘the Trial Court’] registered the case as Sessions [T-1] Case no. 33 [N] of 2014. The case was opened by the learned Public Prosecutor. After hearing the learned Public Prosecutor and learned defence counsel; and upon perusal of the materials on record; the Trial Court framed the following charges against all three charge-sheeted accused persons on 02.05.2014 :-

Firstly, that you, on or about the 29.12.2010 at Patoliati under Uluoni Police Station in furtherance of common intention caused the death of Kanan Mallick by subjecting her to cruelty on demand of dowry and thereby committed an offence punishable under Section 304B/34 of the Indian Penal Code [IPC], and within my cognizance.

Secondly, that you, or on about the same time date and place in furtherance of common intention have committed murder by causing the death of Mallick and thereby committed an offence punishable under Section 302/34 of the Indian Penal Code [IPC], and within my cognizance.

9. When the charges were read over and explained to the accused persons, the accused persons abjuring guilt, claimed to be tried. During the course of trial, the prosecution side examined the following seven persons as prosecution witnesses and exhibited the following five document as prosecution exhibits in order to bring home the charges against the accused persons :-

Prosecution Witnesses	
P.W.1	Govinda Mallick - Informant
P.W.2	Maheshwari Mandal @ Maharani Mandal
P.W.3	Binay Barman
P.W.4	Sikha Mandal
P.W.5	Rabin Mandal
P.W.6	Dr. Jugananda Bori – Medical & Health Officer
P.W.7	Saidul Islam – Investigating Officer [I.O.]
Prosecution Exhibits	
Ext.-1	First Information Report [FIR]
Ext.-2	Inquest Report
Ext.-3	Post-Mortem Examination [PME] Report
Ext.-4	Charge-Sheet
Ext.-5	Sketch Map of the P.O.

10. However, during the pendency of the trial, the accused person, Rashamoni Dhali expired on 30.03.2016 and as a result, the case stood abated against her. Thereafter, the trial proceeded against the remaining two accused persons, that is, Sri Bishu Dhali [A-1] and Smti. Molin Dhali [A-2].

11. After closure of the evidence from the prosecution side, the two accused persons, A-1 & A-2 were examined under Section 313, CrPC to provide them opportunity to explain the incriminating circumstances appearing against them from the evidence of the prosecution witnesses. The accused no. 1 [A-1] claiming innocence, stated that the allegations against him were false. As per his version, he was not in the house at the time of the incident and the victim had committed suicide as she was suffering from depression at that time. The accused no. 2 [A-2] stated that at the time of the incident, she was working at another person's house. She further stated that after the incident, she escaped out of fear. When asked by the Trial Court, the defence declined to adduce any evidence. After hearing the learned counsel for the parties and upon appreciation of the evidence/materials on record, the Trial Court finding both the accused persons, A-1 and A-2 guilty of the offence of murder, had delivered the Judgment and Order of conviction and sentence, which is assailed in the present appeal.
12. We have heard Mr. A. Ahmed, learned Amicus Curiae for the accused-appellants; Ms. A. Begum, learned Additional Public Prosecutor for the respondent no. 1, State of Assam; and Mr. B.M. Deka, learned counsel for the respondent no. 2.
13. Mr. Ahmed, learned Amicus Curiae appearing for the accused-appellants has submitted that the Trial Court upon an erroneous analysis of the evidence has reached a finding that the two accused persons in furtherance of their common intention caused the death of the victim and has found falsity in the plea of alibi of the accused persons. He has contended that the prosecution has failed to establish the fact of presence of the accused persons at the house in proximity of time to the incident and in the absence of such established fact, it is not open for the prosecution to place its case in reference to the rule of evidence embedded in Section 106 of the Evidence Act. Had the burden of the prosecution mandated under Section 101 of the Evidence Act been discharged properly then only the onus would have been shifted to the accused persons to offer a plausible explanation as

to how the victim had met her death. He has further contended that in the given facts and circumstances of the case it was not proper for the Trial Court to refer to any alleged false plea of alibi. It is his further contention that just because the accused persons were found to be missing from their house after the incident to evade arrest the same cannot be taken as a circumstance to hold them guilty.

- 13.1. In support of his above submissions, Mr. Ahmed has relied upon the decisions in **Sakharam vs. State of Madhya Pradesh, [1992] 2 SCC 153; Sk. Yusuf vs. State of West Bengal, [2011] 11 SCC 754; Sujit Biswas vs. State of Assam, [2013] 12 SCC 406; and Reena Hazarika vs. State of Assam, [2019] 13 SCC 289.**
14. Ms. Begum, learned Additional Public Prosecutor appearing for the State has supported the Judgment and Order of conviction and sentence passed by the Trial Court. It is contended that in the case in hand, the prosecution has been able to establish the relevant facts by way of cogent and reliable evidence and the false explanation coupled with the false plea of alibi had made the chain of circumstantial evidence complete from which a conclusion can reasonably be drawn that none other than the accused persons were the assailants. It has been contended that when a death had occurred inside the house where they were inmates the accused persons' abscondence was a strong circumstance. The prosecution witnesses who were close relatives of the deceased, had pointed fingers at the accused persons as regards their torture upon the deceased. It has, thus, been contended that taking into all the attending facts and circumstance the finding of guilt has been arrived at by the Trial Court and the same does not call for any interference.
15. We have given due consideration to the rival submissions and have also gone through the evidence/materials available in the case record of Sessions [T-1] Case no. 33[N] of 2014, in original. We have also considered the decisions referred to and relied upon by the learned counsel for the parties in support of the submissions made.

16. Taking into consideration the submissions made on behalf of the parties, it is apposite to refer to the testimony of the prosecution witnesses and the prosecution exhibits, at first.

17. P.W.1, Gobinda Mallick, in his examination-in-chief, stated that he knew all the three accused persons [At that time, Rashamoni Dhali was alive]. He testified that the marriage between his sister, Kanan and the accused no. 1 [A-1], Bishu Dhali was solemnised four years earlier. Since after the marriage, the accused persons tortured his sister both physically and mentally. His sister told him many times to take her back to the parental house as her husband used to beat her badly. On the date of the incident, he went to the house of his another sister in the same village where the accused and deceased resided. There a brother-in-law of the accused no. 1 [A-1] informed him that his sister had died. Then, he went to the matrimonial house of his sister. Reaching there, he [P.W.1] saw that his sister was lying dead on the floor of the house. He saw injuries on the neck and legs of his sister. He did not find presence of any of the family members of the accused in the house at that time. Then, he informed the Police and lodged the FIR. Police personnel came to the place of occurrence [P.O.] and prepared a Sketch Map of the P.O. He stated that he did not see who killed his sister but believed that the family members of her in-laws' house had killed his sister. P.W.1 exhibited the FIR as Ext.-1 along with his signature therein as Ext.-1[1]. He also exhibited the Inquest Report as Ext.-2 along with his signature therein as Ext.-2[2].

- 17.1. In cross-examination, P.W.1 stated that before the incident which led to his sister's death, his deceased sister gave birth to a child in Ananta Memorial Nursing Home at Tezpur and that child died after two/three days. He stated that his mother and father also committed suicide by jumping into River Dhansri. His house was situated at three hours travel distance by bus from his sister's house. P.W.1 stated that he came to the house of his another sister, Sikha [P.W.4] at around 7-00 p.m. and on that night itself, he lodged the FIR [Ext.-1]. P.W.1 stated that the houses of Bhojen Biswas, Basu, Rabin Mandal and Maheswari were situated near the matrimonial

house of the deceased. He had, however, no visiting terms with those neighbours' houses. He stated that his sister reported him about physical and mental torture committed upon her by the accused no. 1 [A-1] and other family members, but he did not inform about the same to anyone else. P.W.1 denied a suggestion that due to depression owing to the death of the new born child, the deceased committed suicide by hanging herself on bamboo bushes. P.W.1 admitted that he did not state before the I.O. that his sister informed him about the torture committed upon her by her in-laws and that she requested him to take her back from the house of the accused. He further admitted that he did not state before the I.O. about the injuries sustained by his deceased sister. P.W.1 stated that after the marriage, the relationship between his deceased sister and her husband [A-1] was cordial. At the time of birth of the child, the accused no. 1 [A-1] paid Rs. 18,000/- for medical expenses of his wife. At that time, their relationship was cordial. The incident took place after one month of the date of delivery of the child. P.W.1 denied a suggestion that the allegations made were not true and a false case had been instituted against the accused persons.

18. P.W.2, Maheswari Prasad @ Maharani Mandal who is an elder sister of the deceased, stated in examination-in-chief that the incident took place about four years ago. Her younger sister, Kanan Mallick was given in marriage with the accused no. 1 [A-1] about one year before the incident. After the marriage, the deceased gave birth to a child and incident took place after about three days from the date of delivery of the child. On the date of occurrence, one Subhash, a brother-in-law of the accused no. 1 [A-1], informed them that her sister, Kanan Mallick who was in the matrimonial house, was seriously ill. On receipt of the said information, she [P.W.2] along with her husband, Rabin Mandal [P.W.5] and brother-in-law [not named] went to the house of the accused no. 1 and going there, she [P.W.2] found that her sister, Kanan was lying on the ground inside the living room of the house. At the time, no one was present in the house of the accused. P.W.2 stated that to her knowledge, the conjugal life of her sister with the accused no. 1 [A-1] was peaceful and there was no dispute between them.

- 18.1. At that juncture, the learned Public Prosecutor made a prayer before the Trial Court to declare P.W.2 as hostile and the Trial Court after going through the previous statement of the witness recorded under Section 161, CrPC by the I.O., permitted the learned Public Prosecutor to cross-examine P.W.2.
- 18.2. During her cross-examination by the defence, P.W.2 stated that her marriage was solemnised before the marriage of her deceased sister. P.W.2 stated that the houses of Subhash Dhali, Bhojen Biswas, Basu Biswas, Dimbu Mandal and Banka Biswas were situated near the house of the accused persons. P.W.2 further stated that when he arrived at the P.O. she found that many persons had already gathered at the P.O.
19. P.W.3, Binay Barman stated that he knew all the three accused persons and the informant-P.W.1. He stated that the marriage between the deceased and the accused no. 1 [A-1] was solemnised about two years earlier to the date of the incident and after marriage, the deceased started residing in the house of the accused no. 1 [A-1] to lead her conjugal life with the accused no. 1 [A-1]. Apart from them, the elder sister, that is, the accused no. 2 [A-2] and their mother, Rashamoni Dhali also resided in the matrimonial house of the deceased. As regards the incident, P.W.3 stated that he was present in his own house at that time. Then, one Rabin Mandal [P.W.5] who was one of the relatives of the accused persons, came to his house and informed him that Kanan Mallick had expired. P.W.3 stated that he did not go to the house of the accused persons on that night. It was on the following day Police personnel came to his house to call him to the P.O. Then going to the P.O., he stated to have seen the deadbody of the deceased lying there in the courtyard. At that time, the accused, Rashamoni Dhali was present in the house. But, he did not see the other two accused persons, A-1 & A-2 in the house.
- 19.1. During cross-examination, P.W.3 stated that the accused persons were his neighbours. The house of the accused persons was situated at a hearing distance

from his house. But on the date of the incident, he was watching TV and hence, he did not hear any hue and cry raised from the house of the accused persons. P.W.3 stated that he did not hear at any point of time that the accused persons committed torture upon the deceased in pursuance of their demand for dowry. P.W.3 stated to have heard about the incident in the evening time of the date of the incident. However, he went to the P.O. at 9-30 a.m. on the following day. At that time, there was a gathering of 30/35 persons in the house of the accused persons. At that time, he saw presence of Bhaben Mandal, Rabin Mandal [P.W.5] and some others there whose names he could not remember. At the time, he saw the presence of the elder sister of the deceased.

20. P.W.4, Sikha Mandal stated that she knew the accused persons. P.W.4 stated that the death of her younger sister, Kanan Mallick occurred after about one year from solemnisation of her marriage with the accused no. 1 [A-1]. On the date of the incident, the deceased was at her matrimonial house. The incident occurred at around 7-00 p.m. Subhash, a brother-in-law of the accused no. 1 [A-1], came to her house to inform that her sister, Kanan Mallick had fallen ill and he asked them to visit her. Receiving the information, she [P.W.4] and her husband went to the house of the accused persons. Going there, she found his younger sister dead in the house. At that time, no one was present in the house. She saw a red mark in the neck of the deceased and also an injury on her legs. Many people gathered at the P.O. Then, his younger brother [P.W.1] informed about the incident to Police. Police personnel came. P.W.4 stated that her younger sister had a good relationship with her husband [A-1] after her marriage. The deceased gave birth to a child, but the child died in the hospital three days after birth. The relationship between the deceased and the accused no. 1 [A-1] deteriorated since thereafter. The Police held inquest on the deadbody of the deceased and P.W.4 exhibited the Inquest Report as Ext.-2 along with his signature therein as Ext.-2[2].

20.1. During cross-examination, P.W.4 stated that her parental house was at Dalgaon, District - Darang. P.W.4 stated that the distance between her matrimonial house

and the house of the accused persons was about 1½ miles. She claimed ignorance about the date of the incident. She stated that both her parents committed suicide. After Subhash gave them the information, her younger brother, P.W.1-informant went to the house of the accused, at first, at around 7-00 p.m. It was thereafter, she and her husband went there. At the house of the accused persons, no member from their family was present when they went there. The deceased died after three months after the death of her child. P.W.4 stated that P.W.1-informant and her husband took her sister, Kanan to the hospital for her delivery. P.W.4 stated that she did not hear that the accused no. 1 [A-1] spent Rs. 18,000/- during treatment. After the death of the child, quarrel used to break out between her deceased sister and her husband [A-1] and the relationship between them deteriorated. After the death of the child, P.W.1 visited her [P.W.4] house on the date of the incident only. P.W.4 stated that the houses of Subhash, Dimbu, Bhusan, Rupsan, Binoy Barman [P.W.3] and Bhojen were situated in the vicinity of the accused persons' house. The house of one Basu Biswas, who used to live along with his mother and three unmarried sisters, was in close vicinity to the house of the accused. P.W.4 stated to have seen red marks on the neck and leg of her deceased sister. The accused no. 1 [A-1] and his two brothers' families shared the same campus and there was a common courtyard in the middle of their houses. P.W.4 denied suggestions that she did not state before the Police that the brother-in-law of the accused no. 1 [A-1] came to her house at around 07-00 p.m. on the night of the incident to inform that her youngest sister, Kanan had fallen ill; and that he asked her to visit the house and then, she and her husband went to the house of the accused persons to witness that her sister was dead with red marks on her neck.

21. P.W.5, Rabin Mandal gave his testimony before the Court on 23.05.2017. In his examination-in-chief, P.W.5 stated that he knew the two accused persons, the informant and the deceased, who was the wife of the accused no. 1 [A-1] & a younger sister of the informant-P.W.1. He deposed that the incident occurred about eight/nine years earlier. At around 10-00 a.m. on that day, he heard that Police personnel came to the house of the accused. Then he also had gone to the house

of the accused. There he saw the deadbody of the deceased, lying in the courtyard. A lot of people also gathered at the P.O. But, he did not see the two accused persons in their house.

- 21.1. In cross-examination, P.W.5 stated that the deceased was his sister-in-law as she was an younger sister of his wife. P.W.5 stated that he was not in visiting terms with the accused. He did not know if the deceased had any disagreement with her husband [A-1]. P.W.5 further stated that he knew nothing about the incident.

22. P.W.6, Dr. Jugananda Bori was, on 31.12.2010, posted as Medical & Health Officer [M.&H.O.]–I at Bhogeswari Phukanani [B.P.] Civil Hospital, Nagaon. P.W.6 stated that on 31.12.2010, he performed post-mortem examination on the deadbody of the deceased, a female aged about 24 years, in reference to Uluoni Police Station Case no. 95/2010 dated 30.12.2010. He stated that on examination, he found that a ligature mark was present in the neck between chin and thyroid cartilage and the ligature mark was continuous. After dissection, he found that there was fracture of the hyoid bone. Abrasion of size : 3 c.m. X 1 c.m. was found in the right leg. Cranium and Spinal Canal were healthy. Though thorax was found healthy it was congested. Abdomen organs were healthy. Mouth, Pharynx and Esophagus were congested. He opined that the cause of death was due to asphyxia following strangulation. He stated that in case vigorous force is applied on the neck, then hyoid bone can be fractured. He further stated that the death was homicidal in nature. P.W.6 exhibited the PME Report as Ext.-3 and his signature therein as Ext.-3[1].

- 22.1. In cross-examination, P.W.6 stated that in the PME Report, he did not specifically mention whether the death was homicidal or suicidal. The time of death might be within twenty-four hours. He admitted that he did not make any remark about the tongue. He stated that the ligature mark on the neck was complete, that is, continuous. He stated that in case of strangulation there was chance of breaking down of the hyoid bone. In case of fall down on hard surfaces also, the type of

abrasion, as sustained by the deceased, might be caused in the leg. According to him, fracture of hyoid bone might also be caused in case of hanging.

23. P.W.7, Saidul Islam deposed in his examination-in-chief, recorded on 01.08.2019, and further examination-in-chief, recorded on 06.09.2021, that on 10.10.2011, he was posted at Uluoni Police Station as Officer In-Charge and on that day, he received the case diary of Uluoni Police Station Case no. 95/2010 from his predecessor, Dharendra Barman [since deceased]. P.W.7 stated that he knew the handwritings of Late Dharendra Barman. During the period P.W.7 was investigating as the I.O., the accused no. 1 [A-1] appeared before him. P.W.7 further stated that during the pendency of investigation, he was transferred from Uluoni Police Station and therefore, he handed over the case diary to one Khagen Baruah [since deceased] who was then serving as 2nd Officer at Uluoni Police Station. P.W.7 stated that his predecessor Officer In-Charge, Dharendra Barman after registration of the case, initiated and conducted the investigation by visiting the place of occurrence [P.O.], conducting inquest on the deadbody of the deceased through the jurisdictional Circle Officer, sending the deadbody for post-mortem examination and drawing a Sketch Map of the P.O. Dharendra Barman arrested the accused, Rashmoni Dhali [since deceased] and also recorded the statements of the witnesses. P.W.7 stated that it was Khagen Baruah [since deceased] who after collecting the PME Report, submitted the Charge-Sheet. P.W.7 exhibited the FIR as Ext.-1; the Charge-Sheet as Ext.-4; and the Sketch Map of the P.O. as Ext.-5; along with his signatures therein.
- 23.1. During cross-examination, P.W.7 stated that the place of occurrence was in Patoliati village. As per the FIR, the date of the incident was 29.10.2010 and the FIR was lodged at about 10-00 a.m. on 30.10.2010. Prior to institution of the FIR, no general diary entry was made. As per the Sketch Map of the P.O., Bhajen Dhali, Hema Dhali, Subhash Dhali, Dimbu Mandal and Banka Biswas were neighbours of the accused persons but there were not examined by the I.O.

24. It is apt to refer, at first, to the relationships of the deceased, the accused [A-1], the accused [A-2] and the prosecution witnesses, P.W.1, P.W.2, P.W.4 and P.W.5. The deceased, Kanan Mallick is the wife of the accused no. 1 [A-1]. The accused no. 2 [A-2] is an elder sister of the accused no. 1 [A-1] and, therefore, is a sister-in-law of the deceased. The deceased is a younger sister of the informant-P.W.1. The prosecution witnesses, P.W.2 and P.W.4 are two elder sisters of the deceased. P.W.5 is a brother-in-law who had married the elder sister of the deceased, P.W.2. Thus, the prosecution witnesses – P.W.1, P.W.2, P.W.4 and P.W.5 – are close relatives of the deceased and the accused. P.W.3 is a neighbour of the deceased and the accused persons.
25. As per the testimony of P.W.2, P.W.4 and P.W.5, they were residents of Village – Bharidhua. It has further emerged that their houses, as like the matrimonial house of the deceased, which was located at Village – Pataliati were in the nearby area. The informant-P.W.1 was a resident of Village – 2 No. Borjhar, Police Station – Dalgaon, District – Darrang. As per the testimony of P.W.1, his place of residence was situated at a distance and it would take about three hours if one would travel by bus.
26. None of the prosecution witnesses, P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 had deposed that they had witnessed any incident of assault on the deceased by the accused persons, A-1 and A-2 on the date of incident. The informant-P.W.1 stated that on the date of the incident, 29.12.2010, he went to the house of his another sister situate in the same village as that of the accused, that is, Pataliati. When he was in the house of the said sister, a brother-in-law of the accused no. 1 [A-1] informed him that the deceased had died. P.W.2 stated that on the date of the incident, Subhash Dhali, a brother-in-law of the accused no. 1 [A-1], informed them that her sister, Kanan Mallick was in her matrimonial house in a seriously ill condition. In her testimony, P.W.4 stated that at around 07-00 p.m. on the date of the incident when she was in her house, a brother-in-law of the accused no. 1 [A-1], who married an younger sister of the accused no. 1 [A-1], namely, Subhash

came to her house to inform that her sister, Kanan had fallen ill and Subhash asked them to visit Kanan. Thus, it is clear that the prosecution witnesses, the informant-P.W.1, P.W.2 and P.W.4 were all informed by Subhash Dhali. But, neither the I.O. had cited Subhash Dhali as a listed witness in the Charge-Sheet nor the prosecution had called him as a prosecution witness during the trial. In their testimony, P.W.2 and P.W.4 further stated that the house of Subhash Dhali was in the vicinity of the matrimonial house of the deceased. From the evidence on record, it has, thus, emerged that it was Subhash Dhali who had knowledge about the death or ailing condition of the deceased, earlier in point of time than P.W.1, P.W.2 and P.W.4. It was only after receipt of information from Subhash Dhali, P.W.1, P.W.2 and P.W.4 had proceeded to the P.O.

27. On reaching the house of the accused no. 1 [A-1], which was also the matrimonial house of the deceased, from the house of his sister - Sikha Mandal [P.W.4], P.W.1 saw that his sister, Kanan was lying dead on the floor with injuries on her neck and legs. By the time P.W.2 reached the P.O., there was gathering of a large number of persons there. P.W.2 stated that she proceeded to the P.O. with her husband, P.W.5 and at the P.O., she saw her sister, Kanan lying on the ground in the living room of her matrimonial house in dead condition. But, P.W.5 contradicted his wife's testimony by stating that he heard at around 10-00 a.m. one day later. Police personnel came to the house of the accused no. 1 [A-1] and then only, he went to the house of the accused no. 1 [A-1]. P.W.5 stated that going to the P.O., he saw that the deadbody was lying in the courtyard and by that time, a lot of people had already gathered. As per P.W.4, when on receipt of the information she went to the P.O., she found her younger sister lying in dead condition inside the house with injury marks on her neck and legs and there was gathering of persons. If by the time P.W.1 had reached the P.O. many persons had already assembled at the P.O., it can be easily inferred that there was a time gap between the arrival of P.W.1 at the P.O. and the death of the deceased.

28. From the nature of testimony of the prosecution witnesses, P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5, it is evident that none of them had reached the P.O. immediately after the incident. However, from the versions given by these prosecution witnesses it has emerged that in and around the house where the deceased was found lying dead, there were many houses. As per P.W.1, the houses of Bhojen Biswas, Basu, Rabin Mandal and Maheshwari were in the vicinity. If Rabin Mandal and Maheshwari, referred to by P.W.1, were P.W.5 and P.W.2, then the fact that their houses were in the neighbourhood of the house of the accused persons and the deceased did not emerge from the testimony of P.W.2 and P.W.5. As per the testimony of P.W.2, the houses of Subhash Dhali, Bhojen Biswas, Basu Biswas, Dimbu Mandal and Banka Biswas were situated near the P.O. P.W.4 testified that the houses of Subhash, Dimbu, Bhushan, Rupchand Bhojen and Basu Biswas along with the house of Binoy Barman [P.W.3] were located in the vicinity. But, the prosecution did not examine any of them to lead evidence on the aspect that during day time on the date of incident or at any time prior to the incident, they noticed the presence of the accused persons in their house. Subhash Dhali who was the person, according to P.W.1, P.W.2 and P.W.4, had reported them about the deceased first, perhaps, in proximity of time to the incident was not examined by the prosecution.
29. One aspect from the testimony of P.W.6, the doctor who had performed the post-mortem examination, is noticeable. In his evidence-in-chief, P.W.6 stated that in his findings, he had seen a ligature mark in the neck between chins and thyroid cartilage and it was continuous. He also opined that in case vigorous force is applied on the neck, then the hyoid bone can be fractured. On dissection, he found that hyoid bone was fractured. He further deposed that the death was homicidal in nature. During cross-examination, he stated that the ligature mark found in the neck was complete i.e. continuous. He stated that in case of strangulation, there would be chance of breaking of the hyoid bone. It is noticed by the Court that fracture of hyoid bone might also be caused in case of hanging. But in the PME Report [Ext.-3], which was prepared by P.W.6 only, it was mentioned that the

ligature mark seen in the neck between chin and thyroid cartilage was non-continuous. Thus, the testimony of P.W.6 as regards ligature mark is at variance with the finding recorded by him in the PME Report [Ext.-3]. No opinion was recorded in the PME Report [Ext.6] to the effect that the death was homicidal in nature. In cross-examination, P.W.6 admitted that in the PME Report [Ext.-3], he did not specifically mention whether the death was homicidal or suicidal.

30. The opinion given by a medical witness need not be the last word on the subject. Such an opinion is to be tested by the Court. But, due weight must be given to opinions given by persons who are experts in the particular subject. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries would not possibly have been caused in the manner alleged.
31. There was no specific medical opinion whether the death was homicidal or suicidal in the PME Report [Ext.-3]. It was only when P.W.6 testified before the Court, he mentioned that the death was homicidal in nature. The weight to be given to such piece of medical opinion would therefore, be dependent upon other evidence on record. However, we proceed further accepting that the death of the deceased, in all probability, was a homicidal one to analyse the other evidence brought on the table by the prosecution.
32. The informant-P.W.1 when cross-examined, admitted that after the marriage, the relationship between the accused no. 1 [A-1] and the deceased was cordial and the accused no. 1 [A-1] made expenditure towards medical treatment of the deceased at the time of delivery of the child. P.W.2, an elder sister of the deceased, had testified to have knowledge that the conjugal life between the accused no. 1 [A-1] and the deceased was peaceful and there was no dispute between them. P.W.3, a neighbour of the accused persons and the deceased and not a relative of either side, deposed that he did not hear at any point of time that the accused persons

committed torture in pursuance of their demand for dowry. P.W.4, another elder sister of the deceased, stated that the deceased had a good relationship with her husband after marriage. From such testimony of the witnesses, it has emerged that the marital relationship between the accused no. 1 [A-1] and the deceased after marriage was cordial and peaceful. There was no demand or torture for dowry from the accused persons in the absence of any challenge on that count. The related witnesses had, however, made a mention that the marital relationship deteriorated after the death of the child.

33. From the testimony of P.W.1, P.W.2 and P.W.4, discrepancies as regards the time period between the birth and consequent death of the child delivered by the deceased and the death of the deceased could be noticed. According to P.W.1, the death of the deceased was after one month of the delivery of the child. On the other hand, P.W.2 stated that the death of the deceased occurred after three days from the delivery of the girl child. P.W.4 had stated that the deceased died three months after the death of the child who died three days after birth. The testimony of these witnesses as regards the time gap between the birth/death of the child and the death of the deceased is found inconsistent and irreconcilable. These witnesses sought to project that the relationship between the accused no. 1 [A-1] and the deceased, which was earlier cordial, deteriorated after the death of the child.
34. In the absence of any evidence regarding demand of dowry and convincing evidence of torture, the Trial Court has already acquitted the accused persons from the charge under Section 304B/34, IPC and we have no reason to disagree with such finding.
35. Both P.W.1 and P.W.4 had admitted that both of their parents had committed suicide. Highlighting the said aspect, the defence has sought to project that there was a suicidal tendency in the family of the deceased and after the death of her child, the deceased had ended her life suffering from depression. A mother who had faced a premature death of her child few days after delivery would be

melancholic and full of grief. In such a situation, the possibility of giving rise to thoughts of suicide cannot be ruled out altogether, more so, when the family of the deceased has a previous history of committing suicide.

36. The case in hand, in the absence of any direct evidence, is one based on circumstantial evidence. In a case based on circumstantial evidence, motive assumes greater relevance than in a case based on direct evidence. It is not a settled proposition that absence of motive would dislodge the entire prosecution story. In **Sakharam vs. State of Andhra Pradesh** [supra], it has been observed that absence of motive may not be relevant in a case where the evidence is overwhelming but it is a plus point for the accused in a case where the evidence against him is only circumstantial. From the evidence brought on record, the prosecution has not been able to bring forth any clear motive on the part of the accused-appellant to cause the death of the deceased.
37. The last seen theory in criminal law is a principle of circumstantial evidence which holds that if an accused was the last person seen to be in the company of the victim before the victim's disappearance or death, a presumption may arise that the accused is responsible.
38. In a case where the prosecution seeks to bring conviction based on circumstantial evidence, an obligation is cast on the prosecution to establish each of the circumstances by way of evidence which are of cogent, reliable and conclusive nature. In the case in hand, it was the duty of the prosecution to lead evidence of such nature to establish the facts that on the date of the incident, both the accused persons were in their house along with the deceased. Not only the presence, the prosecution should have established conclusively that either at the time of the incident or in time proximity to the incident of death, the accused persons were seen in the house in the company of the deceased. In the present case, the prosecution side did not produce any evidence on that count.

39. In **Sharad Birdhichand Sarda vs. State of Maharashtra**, [1984] 4 SCC 116, which has attained the status of locus classicus, the Supreme Court while drawing distinction between 'must be' and 'may be' has observed that the circumstances from which the conclusion of guilt is to be drawn should be fully established and the circumstances concerned 'must or should be' and not 'may be' established. The accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. The circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one to be proved.
40. It is also settled, as held in **Deonandan Mishra vs State of Bihar**, AIR 1955 SC 801 and **Sharad Birdhichand Sarda** [supra], that only if the circumstances established by the prosecution are of a conclusive nature and tendency pointing towards the accused as the assailants excluding every other possible hypothesis consistent with the innocence of the accused, a Court can use a false explanation or a false defence as an additional link to lend an assurance to the Court and not otherwise. It has been held that before a false explanation can be used as an additional link, three essential parameters must be satisfied and they are, firstly, various links in the chain of evidence led by the prosecution have been satisfactorily proved; secondly, the said circumstance points to the guilt of the accused with reasonable definiteness; and thirdly, the circumstance is in proximity to the time and situation.
41. In **Reena Hazarika vs. State of Assam**, the deceased resided along with the appellant and his minor daughter in a tenanted premises and the allegation against the appellant was that she had assaulted the deceased in the intervening night. Three prosecution witnesses deposed that they had heard noises and on going

there, they found the deceased with head injury. The post-mortem examination revealed a number of injuries on the person of the deceased and the injuries were anti-mortem in nature and caused by moderately heavy sharp cutting weapon and homicidal in nature. The Trial Court and the High Court held the appellant guilty as the last seen theory had established the presence of the appellant with the deceased at night. In appeal, the Hon'ble Supreme Court has observed as under :-

9.Suffice it to observe that in a case of circumstantial evidence the prosecution is required to establish the continuity in the links of the chain of circumstances, so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused. Mere invocation of the last-seen theory, sans the facts and evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a prima facie case. If the links in the chain of circumstances itself are not complete, and the prosecution is unable to establish a prima facie case, leaving open the possibility that the occurrence may have taken place in some other manner, the onus will not shift to the accused, and the benefit of doubt will have to be given.

42. Mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel tremulous and try to evade arrest when wrongly suspected of a grave crime. The act of absconding can be a relevant piece of evidence and the same can be considered along with other evidence but its value would always depend on the circumstances of each case. Ordinarily, much importance is not to be attached to the act of absconding. In **Matru vs. State of Uttar Pradesh**, [1971] 2 SCC 75, it has been held that it can scarcely be held as determining lead in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of accused. Following

Matru [supra], the Supreme Court in **Sujit Biswas** [supra] has observed that in a case based on circumstantial evidence, mere abscondence of an accused may be part of the natural conduct. Abscondence is in fact relevant evidence, but its evidentiary value depends upon the surrounding circumstances, and hence, the same must only be taken as a minor item in evidence for sustaining conviction. An adverse inference can be drawn against the accused only and only if the incriminating materials stand fully established, and the accused is not able to furnish any explanation for the same.

43. It has been held to be a settled legal proposition in **SK. Yusuf** [supra] that in case a person is absconding after commission of offence of which he may not even be the author, such a circumstance alone may not be enough to draw an adverse inference against him as it would go against the doctrine of innocence. It is quite possible that he may be running away merely on being suspected, out of fear of police arrest and harassment. Mere abscondence of the accused cannot be taken as a circumstance which gives rise to draw an adverse inference against him.
44. While reaching the finding of guilt the Trial Court has relied upon the proposition laid down in **Trimokh Maroti Kirkan vs. State of Maharashtra, [2006] 10 SCC 681**. In **Trimokh Maroti Kirkan**, when an accused was alleged to have committed a murder inside the premises of a private property and the prosecution succeeds in leading evidence to show that either immediately before the commission of time or at the time of 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.
45. To get the rule of evidence embodied in Section 106, Evidence Act operational, the prosecution has a prior duty under the rule contained in Section 101, Evidence Act.

As per Section 101, Evidence Act, the burden to prove the case resting on circumstantial evidence would always be on the prosecution. Unless the prosecution leads reliable, cogent and conclusive evidence to establish that either immediately before the commission of the crime or at the time of the commission of the crime, the accused and the deceased were together inside the house without there being any other person with them, there is no corresponding obligation on the part of the accused to offer an explanation under Section 106, Evidence Act. In the case in hand, the prosecution has not succeeded, in the considered view of this Court, in leading evidence to show that shortly before the alleged death, be it homicidal or suicidal, the accused and the deceased were seen together to draw an inference that at the time of death of the deceased, the accused persons were present inside the dwelling house. In view of failure on the part of the prosecution to lead such evidence on that count, the accused had no duty to offer an explanation as to how the deceased had sustained the injuries on her person and how the deceased met her death.

46. So, any false explanation or any defence taken by the accused persons in such backdrop cannot be considered as an incriminating circumstance acting against the accused persons. Therefore, the Trial Court's finding regarding false explanation or false plea of alibi is found unacceptable. Rather, the explanation given by the accused persons was a reasonable explanation and there was no reasonable basis to cast doubt on it in the absence of any evidence to the contrary. There was no recovery of any weapon of assault to establish a connection with the accused persons. In such obtaining fact situation, the question whether death was homicidal or suicidal is not required to be gone.
47. In the light of the discussions made above and for the reasons assigned therein, more particularly, in view of a number of missing links in the chain of circumstances, we have not been able to persuade ourselves to be in agreement with the finding of guilt arrived at by the Trial Court. In the administration of criminal justice, it is a golden principle that when two views are possible on the

evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. As the prosecution has failed to prove this case against the accused-appellants along with any common intention beyond all reasonable doubt by way of clear, reliable and credible evidence, we find that the Judgment and Order dated 11.01.2022 of conviction and sentence passed by the learned Trial Court is not sustainable in law and the same is liable to be set aside. It is accordingly set aside.

48. Consequently, the criminal appeal is allowed.
49. Both the accused-appellants are to be released from custody forthwith if their custody is not required for any other case or purpose.
50. We recommend for disbursement of compensation to the eligible next kith and kin of the deceased under Section 357A, CrPC and the extant Victim Compensation Scheme framed thereunder. We further observe that such enquiry shall be undertaken and completed with expedition and thereafter, to award and disburse appropriate compensation thereunder to the victim[s] entitled upon conclusion of such enquiry.
51. Before parting with the record, we wish to place our appreciation on record as regards the services rendered by Mr. A. Ahmed, learned Amicus Curiae appearing for the appellants and direct the Registry to make available to him just remuneration as per the notified fee structure applicable to the Amicus Curiae.
52. The records of the Trial Court are to be sent back forthwith.

JUDGE

JUDGE

Comparing Assistant