



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

CRL.A. No.42 OF 2023

C. Lalremliana,
S/o- Runluaia,
R/o- Vaphai, Champhai District,
Mizoram.

.....Appellant

-Versus-

- 1.** The State of Mizoram,
Represented by the Secretary to the Govt.
of Mizoram, Home Department.
- 2.** SI V.L. Chama Ralte,
C/o- Champhai P/S,
Champhai-796321
- 3.** Sh. Thanzuala,
S/o- Mankima,
R/o- Vaphai,
Champhai District, Mizoram
- 4.** Sh. Lalramchullova,
S/o- Lalchuailova,
R/o- Vaphai,
Champhai District, Mizoram.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant(s) : Mr. C. Tlanthianglima, Advocate.
For the Respondent(s) : Ms. Mary L. Khiangte, Additional Public
Prosecutor, assisted by Mr. Daniel Hrahsel,
for respondent No. 1.

Mr. P. C. Lalthangmawia, Advocate for the
respondent No. 4.

Date on which judgment
is reserved : **11.09.2026.**

Date of pronouncement
of judgment : **18.09.2026.**

Whether the pronouncement
is of the operative
part of the judgment? : N/A.

Whether the full judgment
has been pronounced? : **Yes.**

JUDGMENT & ORDER (CAV)

Heard Mr. C. Tlanthianglima, learned counsel appearing for the appellant. Also heard Ms. Mary L. Khiangte, learned Additional Public Prosecutor assisted by Mr. Daniel Hrahsel, learned counsel, appearing for the State respondent and Mr. P. C. Lalthangmawia, learned counsel appearing for the respondent No. 4.

2. This criminal appeal has been preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C."), against the

judgment dated **19.07.2023** passed by the learned Additional District & Sessions Judge, Champhai (hereinafter referred to as the "trial Court") in **S.R. No.5/2019 (Crl. Tr.No.116/2019)** (Ref: Champhai P.S. Case No. 126/2018), whereby the respondent No.4, namely, **Sh. Lalramchullova**, was acquitted of the charges framed against him. By the said judgment dated **19.07.2023**, respondent No.3, namely, **Sh. Thanzuala**, was also convicted under section 304 Part-II of the Indian Penal Code, 1860, (hereinafter referred to as the "IPC"). However, the present appeal is confined to the acquittal of respondent No. 4 alone.

3. The brief facts of the case are that on 28.10.2018, an F.I.R. was lodged by the appellant, C. Lalremliana, stating that his younger brother, Lalramsiam (hereinafter referred to as the "deceased"), had visited the residence of respondent No. 4 on 27.10.2018 but had not returned home. The appellant subsequently came to know that the deceased had been assaulted at the residence of respondent No. 4. Upon reaching the said residence on 28.10.2018, he found the deceased lying unconscious and injured on the floor. The deceased succumbed to his injuries at about 12:30 p.m. on the same day. Accordingly, the F.I.R. was lodged against the accused persons.

4. Upon commencement of investigation, statements of the witnesses were recorded, a sketch map of the place of occurrence was prepared and the body of the deceased was sent for post-mortem examination. Respondent Nos. 3 and 4 were arrested and their statements were recorded. Upon

completion of investigation, a charge-sheet was submitted against both accused persons under Sections 302/34 of the IPC.

5. The learned trial Court, upon the accused/respondent Nos. 3 and 4 pleading not guilty, framed charges against them under Sections 302/34 of the IPC. During trial, the prosecution examined five witnesses.

6. In his examination under Section 313 Cr.P.C., respondent No. 4 denied having assaulted the deceased. He stated that he had intervened to separate the deceased and respondent No. 3 when they were fighting and had restrained the deceased when he attempted to take up a knife. Respondent No. 3, in his examination under Section 313 Cr.P.C., admitted that an altercation had taken place between himself and the deceased, but denied that the deceased died as a consequence of his assault. According to him, the deceased was subsequently assaulted by respondent No. 4 after they had gone to sleep. Respondent No. 3 examined himself as DW-1. Respondent No. 4 examined T.S. Thangchung as DW-2, who deposed that he had gone to the residence of respondent No. 4 for dinner but had left along with respondent No. 4 for his own residence, where he remained in conversation with respondent No. 4 till about 11:00 p.m., after which respondent No. 4 returned to his own residence.

7. Upon completion of the evidence and hearing the parties, the learned trial Court acquitted respondent No. 4 for

want of sufficient evidence, while respondent No. 3 was convicted under Section 304 Part II of the IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/-, in default whereof to undergo a further period of imprisonment for eight months.

8. Being aggrieved by the acquittal of respondent No. 4, the informant/appellant has preferred the present appeal.

9. Mr. C. Tlanthianglima, learned counsel appearing for the appellant submits that the learned trial Court erred in acquitting respondent No. 4 despite the deceased having spent the night at his residence and having been found there in an unconscious and severely injured condition on the following morning. According to learned counsel, respondent No. 4 was therefore required to explain the circumstances in which the deceased sustained the injuries.

10. Learned counsel further submits that respondent No. 3, while deposing as DW-1, categorically stated that after respondent No. 4 returned home and came to know that the deceased had spilled the food, respondent No. 4 punched and kicked the deceased several times. It is contended that this evidence ought to have been considered on its own merits and not discarded merely because DW-1 was a co-accused. Learned counsel also relies upon the evidence of PW-5, the Investigating Officer, who deposed regarding the statement allegedly made by respondent No. 3 during investigation that respondent No. 4 had kicked the deceased on his back and pelvic area. Reliance is also placed upon Section 30 of the

Indian Evidence Act, 1872 (hereinafter referred to as the "Evidence Act") to contend that the confession of a co-accused can be taken into consideration against another accused. He accordingly submits that the evidence, when considered cumulatively, establishes the involvement of respondent No. 4 and that the acquittal is the result of an erroneous appreciation of the evidence.

11. Ms. Mary L. Khiangte, learned Additional Public Prosecutor, adopting the submissions made on behalf of the appellant, submits that the evidence of a defence witness is required to be assessed by the same standard as that of a prosecution witness. According to learned counsel, the learned trial Court ought to have considered the testimony of DW-1 on its merits and ought not to have acquitted respondent No. 4 merely because PW-2 did not witness the alleged assault by him. She further submits that since PW-2 has left the deceased in the company of respondent No.4 after waking up in the morning to inform the brother of the deceased, respondent No. 4 was liable under Section 106 of the Evidence Act to explain as to what had happened in the intervening period leading ultimately to the death of the deceased in the house of respondent No. 4.

12. *Per contra*, Mr. P. C. Lalthangmawia, learned counsel for respondent No. 4, submits that the deceased was not in the exclusive company of respondent No. 4 at the relevant time and that the mere fact that the deceased died at the residence of respondent No. 4 does not, by itself, attract Section 106 of the Evidence Act so as to displace the

prosecution's primary burden of establishing the guilt of the accused beyond reasonable doubt. It is contended that Section 106 cannot be invoked to dispense with the requirement of proving the complete chain of circumstances connecting respondent No. 4 with the commission of the offence. He further submits that the learned trial Court, upon a proper appreciation and analysis of the evidence on record, particularly the testimony of PW-2, rightly acquitted respondent No. 4. According to the learned counsel, the view taken by the learned trial Court is a possible and reasonable view on the evidence, and there being no compelling circumstance warranting interference, the acquittal of respondent No. 4 ought not to be disturbed in the present appeal.

13. I have considered the submissions advanced on behalf of the parties and have carefully examined the evidence and other materials available on record.

14. At the outset, it is necessary to bear in mind the limited scope of the present appeal. The challenge before this Court is confined to the acquittal of respondent No. 4. The conviction and sentence imposed upon respondent No. 3 under Section 304 Part II of the IPC are not under challenge in the present appeal and, therefore, do not fall for consideration.

15. It is well settled that an appellate Court hearing an appeal against acquittal is competent to reappreciate the entire evidence and arrive at its own conclusion. However, the

mere fact that another view of the evidence is possible is not, by itself, sufficient to justify interference with an acquittal. Where the view taken by the trial Court is a reasonable and plausible view of the evidence, the appellate Court would ordinarily be slow to substitute its own view unless the finding is shown to be perverse, manifestly erroneous or wholly unsustainable.

16. The Apex Court in *Banwari Ram & Others v. State of U.P.*, reported in *(1998) 9 SCC 3*, has reiterated that although the High Court possesses full power to reappreciate evidence in an appeal against acquittal, interference is warranted where the reasons given by the trial Court are wholly unsustainable or its appreciation of evidence is perverse. Where two views are reasonably possible, one supporting the acquittal and the other indicating guilt, the appellate Court should not interfere merely because it may prefer the latter view.

17. The question, therefore, is whether the evidence on record, independently of the alleged statement of the co-accused, establishes the participation of respondent No. 4 in the assault which caused the death of the deceased.

18. **PW-1** is the informant and brother of the deceased. His evidence regarding the alleged assault by respondent No. 4 is admittedly not based upon his own perception. He reached the residence of respondent No. 4 only after the morning Church service and had learnt about the occurrence from others. His evidence regarding the alleged assault by

respondent No. 4 is therefore hearsay and cannot, by itself, establish his involvement.

19. The evidence of **PW-2** assumes particular significance, as he was present during the material events and witnessed the physical altercation preceding the deceased being taken to sleep. PW-2 deposed that respondent No. 4 had slaughtered a pig and invited him for dinner. He initially went to the residence but left before dinner and returned at about 8:00 p.m. Upon his return, he found the deceased and respondent No. 3 engaged in a quarrel.

20. According to PW-2, respondent No. 3 told him that the deceased had kicked the pot containing the meat, spilling its contents, which had led to the quarrel. The verbal altercation thereafter became physical. The deceased attempted to punch respondent No. 3. When respondent No. 3 dodged the blow, the deceased lost his balance and fell against a long bench, hitting his stomach and face. He thereafter stood up and punched respondent No. 3, who retaliated by giving him two or three punches. The deceased then took hold of a traditional Mizo bowie/dao. It was at this stage that respondent No. 4 returned home. PW-2 stated that respondent No. 4 intervened, managed to take the dao from the deceased and restrained him. The fight stopped thereafter. This part of the testimony is important because it places respondent No. 4 at the scene only after the physical altercation between the deceased and respondent No. 3 had already occurred.

21. PW-2 further deposed that after the situation had calmed down, they continued chatting. As the deceased was too intoxicated to return home, respondent No. 4 asked him to stay the night and arranged a place for him to sleep on the floor. Thereafter, PW-2, the deceased and respondent No. 3 all went to sleep at the residence of respondent No. 4.

22. Thus, the deceased did not spend the relevant night alone with respondent No. 4. PW-2 and respondent No. 3 were also present and remained in the same house. This circumstance assumes considerable importance in examining the submission founded upon Section 106 of the Evidence Act.

23. On the following morning, PW-2 noticed the deceased tossing and turning and appearing unwell. They went to inform the elder brother of the deceased. PW-2 thereafter left and returned at about 1:00 p.m., when he found the deceased in a serious condition, with people attending to him. He stated that he believed the deceased might have suffered the injury when he fell against the bench.

24. In cross-examination, PW-2 specifically clarified that he was the only person present when the deceased and respondent No. 3 were fighting. He stated that respondent No. 4 was not present at that time and came home only after the fight had taken place. He reiterated that respondent No. 4 intervened and stopped the fight. The evidence of PW-2, therefore, provides a continuous account of the material events preceding the deceased being taken to sleep, i.e., the

fight between the deceased and respondent No. 3, the deceased's fall against the bench, the punches delivered by respondent No. 3, the subsequent arrival of respondent No. 4 and his intervention to stop the fight.

25. PW-3 deposed regarding the condition in which the deceased was found on the following morning. His evidence, however, does not disclose who inflicted the injuries.

26. PW-4, the Medical Officer who conducted the post-mortem examination, deposed that the death could be due to blunt injury to the frontal and left temporal region with an underlying fracture of the base of the skull resulting in subdural and subarachnoid haemorrhage.

27. Pertinently, the medical evidence is not inconsistent with the physical altercation described by PW-2. The prosecution's own evidence establishes that, before respondent No. 4 returned, the deceased had fallen against a bench and had thereafter received two or three punches from respondent No. 3. The medical evidence does not exclude the possibility that the serious injury was sustained during the said altercation. It is not necessary in the present appeal to conclusively determine the precise manner in which the fatal injury was caused. What is relevant is that the prosecution has not excluded, by reliable evidence, the possibility arising from its own eyewitness account.

28. PW-5, the Investigating Officer, deposed regarding the investigation and proved the relevant documents. He also stated that respondent No. 3 had told him during

interrogation that respondent No. 4 had kicked the deceased on his back and pelvic area. PW-5 further stated that respondent No. 4 had told him during interrogation that respondent No. 3 had beaten the deceased and that respondent No. 4 had subsequently kicked him three times.

29. The alleged statements made by the accused persons to PW-5, the Investigating Officer, in the course of investigation, cannot, by themselves, be regarded as substantive evidence of their guilt. The testimony of PW-5 as to the statements allegedly made by the accused does not, in the absence of any legally admissible corroborative material, establish the truth of the facts asserted therein. It is a settled principle of law that a statement made by an accused to a police officer during investigation is not admissible as substantive evidence against the maker, save to the limited extent permitted by law. Consequently, the mere fact that PW-5 has deposed as to what the accused allegedly stated during investigation cannot be made the basis for recording a finding of guilt. [**Refer: - *Murli alias Denny v. State of Rajasthan*, reported in *1995 Supp (1) SCC 39*, and *Commissioner of Police, New Delhi v. Narender Singh*, reported in *(2006) 4 SCC 265*.]**

30. The appellant also relies upon Section 30 of the Evidence Act. The provision, however, does not permit the confession of a co-accused to be treated as substantive evidence against another accused. In ***Hari Charan Kurmi and Jogia Hajam v. State of Bihar***, reported in ***1964 SCR (6) 623***, the Apex Court held that the confession of a co-

accused is not substantive evidence against another accused and can only be used to lend assurance to a conclusion otherwise reached on the basis of independent evidence.

31. The aforesaid principle assumes significance in the facts of the present case. The Court cannot begin with the alleged statement of respondent No. 3 and thereafter search for circumstances to support it. The prosecution must first establish, through independent and substantive evidence, the involvement of respondent No. 4. Only thereafter can the confession of a co-accused, subject to the requirements of law, be considered for limited corroborative assurance.

32. No such independent evidence implicating respondent No. 4 emerges from the testimony of the prosecution witnesses. PW-1 did not witness the occurrence. PW-2, the material eyewitness, does not implicate respondent No. 4 and, on the contrary, states that he intervened to stop the fight. PW-3 only speaks about the condition in which the deceased was found. PW-4 establishes the cause of death but not the identity of the assailant. PW-5 merely narrates the alleged statements made during investigation.

33. The evidence of **DW-1**, respondent No. 3, must next be considered. In ***Munshi Prasad and Ors.***, reported in **(2002) 1 SCC 351**, the Apex Court has held that the evidence tendered by the defence witness is to be treated on a par with prosecution witness. Therefore, the testimony of a defence witness cannot be discarded merely because he has been examined by the defence. His evidence has to be

assessed on its intrinsic worth, consistency and compatibility with the other evidence on record.

34. In his examination-in-chief, DW-1 stated that after respondent No. 4 returned home and learnt that the deceased had spilled the food, respondent No. 4 became angry and punched and kicked the deceased several times. The appellant places considerable reliance upon this portion of his testimony.

35. However, DW-1's testimony has to be read as a whole. During cross-examination, he stated that after some of the guests had left, respondent No. 4 had asked him and the deceased to take care of the house and heat the leftover meat. It was then that the quarrel between him and the deceased took place. He further stated that PW-2 entered the house, saw them fighting and asked them to stop. Thereafter, they went to sleep.

36. The cross-examination of DW-1 does not disclose the presence of respondent No. 4 during the time of the assault. Significantly, his subsequent answers confirm the presence of PW-2 during the quarrel and that the quarrel was stopped before they went to sleep. This part of DW-1's evidence is substantially consistent with PW-2, who independently stated that respondent No. 4 was not present when the physical fight occurred and returned thereafter, at which point he intervened and stopped the situation.

37. The appellant cannot selectively rely upon the incriminating portion of DW-1's examination-in-chief while

disregarding the material answers elicited in cross-examination. His testimony has to be considered in its entirety. So considered, it does not furnish an unambiguous and consistent account establishing that respondent No. 4 assaulted the deceased after returning home.

38. The presence of PW-2 and respondent No. 3 in the house throughout the relevant night is also significant. PW-2 was an eyewitness to the altercation. Respondent No. 3 was himself involved in that altercation. Both remained in the house after the fight and went to sleep along with the deceased. There is therefore no basis for proceeding on the assumption that the deceased was in the exclusive company or custody of respondent No. 4 during the relevant period.

39. This also answers the submission founded upon Section 106 of the Evidence Act. The provision does not displace the fundamental rule that the prosecution must establish the guilt of the accused by legally admissible evidence. Section 106 operates only in respect of facts which are especially within the knowledge of the accused and cannot be invoked merely because the occurrence is alleged to have taken place at a place associated with him. The prosecution must first establish such foundational facts as would furnish a reasonable basis for drawing an inference against the accused. Section 106 cannot be employed to bridge a deficiency or lacuna in the prosecution evidence, nor does it cast upon the accused the burden of proving his innocence. The Apex Court, in ***State of Madhya Pradesh v. Balveer Singh, reported in (2025) 8 SCC 545***, reiterated

that where the prosecution fails to establish the requisite chain of circumstances, the failure of the accused to discharge the burden under Section 106 is of no consequence. The falsity of the defence, by itself, cannot furnish a basis for conviction when the chain of circumstances relied upon by the prosecution remains incomplete. Relevant paragraphs of the aforesaid judgment read as under: -

“85. Thus, from the aforesaid decisions of this Court, it is evident that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.

86. Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.

87. Section 106 obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But if the accused in such a case does not give any explanation at all or gives a false or

unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. In the language of Prof. Glanville Williams:

“All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into account the silence of the accused or the absence of satisfactory explanation appearing from his evidence.”
(Emphasis supplied)

88. To recapitulate the foregoing : What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is therefore for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams—Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion—para 527 negative averments and para 528 — “require affirmative counter-evidence” at page 438 and foil, of Kenny's outlines of Criminal Law, 17th Edn. 1958.

89. But Section 106 has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only to the accused but also to others, if they happened to be present when it took place. The intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived. Therefore, if the prosecution has established that the character and circumstance of an act suggest that it was done with a particular intention, then under illustration (a) to this section, it may be assumed that he had that intention, unless he proves the contrary.

90. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the

burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with countervailing evidence, if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise therefrom. Although not legally required to produce evidence on his own behalf, the accused may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution [See: Balvir Singh v. State of Uttarakhand and Anees v. State Govt. of NCT]”

40. The same principle has been reiterated by the Apex Court in ***Anees v. State Government of NCT***, reported in **(2024) 15 SCC 48**. Section 106 is intended to address those exceptional situations where a particular fact is pre-eminently or exclusively within the knowledge of the accused. It does not, however, relieve the prosecution of its primary obligation to establish, by evidence, the essential circumstances constituting the offence. The provision may, in an appropriate case, require the accused to offer an explanation in respect of facts specially within his knowledge; but such obligation arises only after the prosecution has laid the necessary factual foundation. Relevant paragraphs of the aforesaid judgment read as under: -

“37. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word “especially” means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish the facts which are, “especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience”.

41. Tested on the aforesaid principles, the very factual foundation for invoking Section 106 against respondent No. 4 is absent in the present case. The deceased was not in the exclusive company of respondent No. 4 during the material events of the preceding night. PW-2 and respondent No. 3 were also present. More importantly, PW-2 witnessed the physical altercation which preceded the deceased being taken to sleep. The present case is, therefore, materially distinguishable from cases where the deceased is found dead in a secluded place while in the exclusive company of the accused and the circumstances immediately preceding the death remain unexplained.

42. The circumstance that the deceased was ultimately found injured at the residence of respondent No. 4

undoubtedly requires consideration. However, that circumstance, standing alone, cannot establish that respondent No. 4 inflicted the fatal injury. It has to be assessed in the context of the entire evidence on record, particularly the ocular testimony of PW-2 and the medical evidence. The prosecution cannot rely upon the mere place of occurrence to dispense with proof of the intervening circumstances connecting respondent No. 4 with the injury.

43. The prosecution's own evidence discloses a physical altercation between the deceased and respondent No. 3 during the preceding night. PW-2 states that, in the course of the altercation, the deceased fell against a bench and was thereafter punched two or three times. The medical evidence establishes a blunt-force injury to the head. Significantly, however, the medical evidence does not disclose any additional injury suggestive of a subsequent assault. Nor does it establish that a further assault necessarily occurred after the parties had gone to sleep.

44. Equally significant is the evidence of PW-2 regarding the events subsequent to the altercation. PW-2 remained in the house after respondent No. 4 returned and intervened to stop the quarrel. According to his testimony, the parties thereafter continued chatting and subsequently went to sleep. PW-2 does not attribute any subsequent assault upon the deceased to respondent No. 4. If the prosecution case is that respondent No. 4 thereafter assaulted the deceased, that circumstance was required to be established by cogent and reliable evidence. No such evidence has been adduced. Such

an assault cannot be presumed merely from the subsequent condition of the deceased.

45. The evidence of DW-1 does not advance the appellant's case against respondent No. 4. Though, in his examination-in-chief, DW-1 attributed an assault upon the deceased to respondent No. 4, his testimony in cross-examination materially detracts from that version. His answers in cross-examination do not support the assertion of a subsequent assault by respondent No. 4 and are consistent with the presence of PW-2 during the relevant events and the parties thereafter going to sleep. His testimony, when read as a whole, therefore does not furnish a clear, consistent and reliable account establishing that respondent No. 4 assaulted the deceased after the earlier quarrel had ended.

46. PW-2 was present during the relevant events and witnessed the altercation between the deceased and respondent No. 3, the deceased falling against the bench and the subsequent punches delivered by respondent No. 3. He further stated that respondent No. 4 returned thereafter, intervened and stopped the altercation. PW-2 remained in the house along with the deceased and respondent No. 3 thereafter, yet did not speak of any subsequent assault upon the deceased by respondent No. 4. The explanation furnished by respondent No. 4 in his examination under Section 313 Cr.P.C. is also substantially consistent with the account given by PW-2. It is settled law that the statement of an accused under Section 313 Cr.P.C. is not substantive evidence and cannot, by itself, form the basis of conviction. However, the

answers given by an accused may be taken into consideration and may lend assurance to, or corroborate, the prosecution evidence where such evidence otherwise inspires confidence. In ***Mohan Singh v. Prem Singh and Anr.***, reported in **(2002) 10 SCC 236**, the Apex Court held that a statement under Section 313 Cr.P.C. is not substantive evidence or a substitute for the prosecution evidence. Likewise, in ***Ashok Debbarma alias Achak Debbarma v. State of Tripura***, reported in **(2014) 4 SCC 747**, it was held that the statement of the accused under Section 313 Cr.P.C., by itself, cannot constitute the basis for conviction, though it may be taken into consideration along with other evidence on record. Viewed thus, the statement of the accused recorded under Section 313 of the Cr.P.C., if favourable to the accused and also is corroborating the testimony of the prosecution witness itself, the same cannot be brushed aside by the trial Court.

47. The aforesaid evidence materially weakens the prosecution's attempt to invoke Section 106 of the Evidence Act against respondent No. 4. Though PW-2 and DW-1 stated that they went out of the house in the morning to inform the brother of the deceased about his injured condition, thereby leaving the deceased with respondent No. 4 for some time, that circumstance cannot be considered in isolation. The prosecution's own evidence furnishes an account of the material circumstances preceding the death. The deceased had already sustained the head injury during the preceding night, in the course of the altercation, and was already in an injured condition when he was taken to sleep. There is no

evidence of any intervening assault thereafter. Significantly, the post-mortem examination does not disclose any fresh or additional injury suggestive of a subsequent assault. Thus, there is no evidentiary foundation for drawing an inference that the deceased sustained any further injury during the period when he was left alone with respondent No. 4. In these circumstances, the mere fact that respondent No. 4 remained with an already injured deceased for some time in the morning cannot, by itself, attract Section 106 or cast upon him the burden of explaining the fatal injury.

48. In these circumstances, the fact that respondent No. 4 was present with the deceased for a period in the morning cannot, by itself, attract Section 106 of the Evidence Act. The prosecution's own evidence substantially accounts for the relevant sequence of events and does not establish any intervening act attributable to respondent No. 4. Section 106 of the Evidence Act cannot be invoked merely because the deceased subsequently died at the residence of respondent No. 4, particularly when the prosecution has failed to establish that any fresh assault took place during the period in question. In other words, to require respondent No. 4 in the facts of the present case, to explain the death in such circumstances would effectively amount to shifting the primary burden of proof onto him, which Section 106 does not permit.

49. Nor can the alleged statements made by the accused persons to the Investigating Officer supply the deficiency in the prosecution evidence. Such statements cannot be treated

as substantive evidence of guilt. In particular, the alleged statement of respondent No. 3 implicating respondent No. 4 cannot, by resort to Section 30 of the Evidence Act, be made the foundation for recording a finding of guilt against respondent No. 4 in the absence of substantive and independent evidence connecting him with the commission of the offence.

50. On an overall consideration of the evidence, the prosecution has undoubtedly established the death of the deceased and the nature of the fatal injury. What, however, remains unestablished is the essential link connecting respondent No. 4 with the infliction of that injury. The mere circumstance that the deceased was found in an injured condition at the residence of respondent No. 4, in the absence of reliable evidence establishing the intervening circumstances and his participation in the assault, cannot sustain a finding of guilt. The circumstance may give rise to suspicion, but suspicion, however strong, cannot take the place of proof. The prosecution having failed to establish the requisite link beyond reasonable doubt, the benefit of such doubt must necessarily enure to respondent No. 4.

51. In an appeal against acquittal, the issue is not whether another inference against respondent No. 4 is possible, but whether the view taken by the learned trial Court is so unreasonable or perverse as to warrant appellate interference. On a reappraisal of the evidence, the finding that the prosecution failed to establish the involvement of

respondent No. 4 is plainly a possible and reasonable view of the record.

52. This Court, therefore, finds no perversity, manifest error or other compelling circumstance warranting interference with the acquittal of respondent No. 4. The impugned judgment and order, insofar as it acquits respondent No. 4, consequently calls for no interference.

53. It is clarified that the present appeal is confined to the acquittal of respondent No. 4. The conviction and sentence imposed upon respondent No. 3 under Section 304 Part II of the IPC are not under challenge and, accordingly, no opinion is expressed thereon.

54. For the foregoing reasons, the appeal, insofar as it challenges the acquittal of respondent No. 4, is dismissed. The judgment and order of acquittal passed by the learned trial Court in favour of respondent No. 4 are affirmed.

55. The Registry shall return the records to the learned trial Court forthwith.

JUDGE

Comparing Assistant

Pranab
Chandra
Das

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Pranab Chandra Das
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