

GAHC010057952022



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

Case No. : CrI.A./73/2022

MUSTT. MIRIJA BEGUM
W/O- HABIBUR RAHMAN, R/O- VILLAGE BARAMBOI , P.S.- HAJO, DIST-
KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PUBLIC PROSECUTOR, ASSAM.

2:SAMIR ALI
S/O- LATE SADEK ALI
R/O- VILLAGE BARAMBOI
P.S.- HAJO
DIST- KAMRUP
ASSA

Advocates for the appellant : Mr. D.K. Bhattacharyya.Advocate.

Advocates for the respondent no.1 : Ms. B. Bhuyan. ..Sr. Counsel. & Addl. P.P., Assam.

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date on which judgment is reserved : **25.02.2026**

Date of pronouncement of judgment : **26.02.2026**

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

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

1. Heard Mr. D.K. Bhattacharyya, learned counsel for the appellant. Also heard Ms. B. Bhuyan, learned Senior Counsel and Additional Public Prosecutor, Assam, assisted by Ms. R. Das, learned advocate for the State.

2. This is an appeal against the conviction of the appellant under Section 302 IPC, pursuant to the impugned judgment dated 27.02.2018 passed by the learned Court of the Sessions Judge, Kamrup, Amingaon in Sessions Case No.208/2014 and the sentence imposed upon the appellant to undergo rigorous imprisonment for life, with a fine of Rs.2,000/-, in default, to undergo simple imprisonment for another 2 months.

3. The appellant's case is that while the offence of the appellant hacking the neck of the victim with a dao was alleged to have been committed on 18.05.2007, the FIR has been filed 12 days later i.e. 30.05.2007. Though the deceased had been allegedly cut in the neck with a dao by the appellant on 18.05.2007 and the deceased was taken to Hajo Primary Health Centre and then to the Guwahati Medical College & Hospital (GMCH) and had died one day after being discharged from GMCH, no report regarding the attack on the deceased by the appellant had been made to the police by anybody prior to 30.05.2007. There is also no medical document whatsoever, to show the nature of injury that had been suffered by the deceased on 18.05.2007. The evidence of the Doctor, i.e. PW-3, who conducted the Post-mortem Examination on 30.05.2007, is to the effect that there was one injury on the head of the victim

which was stated to be-

"An old stitched wound over the right tempero, prarito occipital region, 18 cm in length.

The thoracic organs are congested and healthy.

In the abdomen organs were healthy, stomach was healthy and empty.

In the cranial spinal canal, injuries to the scalp is already described, on the skull, there were fractures involving the right parietal and occipital bones, Vitribe was healthy. Membrence are cut over the right parietal and the occipital region, (..Illegible..) as subarachnoid hamarage is present on the right side.

Brain is cut in the right occipital region".

4. The learned counsel for the appellant submits that if any serious injury had been made by the appellant on the deceased on 18.05.2007, the same should have been informed to the police. However, there has been an inordinate delay in filing the FIR, which raises doubts about the truthfulness of the allegations made by the witnesses and the Prosecution against the appellant. In this respect, he has relied upon the judgment of the Supreme Court in the case of ***Manoj Kumar Sharma & Others vs. State of Chhattisgarh & Another***, reported in ***(2016) 9 SCC 1***.

5. The learned counsel for the appellant submits that the original copy of the Post-mortem Report had not been submitted to the learned Trial Court and only a carbon copy of the same had been submitted, without any signature of the maker of the said Post-mortem Report. The original copy not having been produced, the learned Trial Judge could not have allowed the Prosecution to prove the Post-mortem Report, as it was inadmissible in evidence. In this regard, he has relied upon the judgment of the Supreme Court in the case of

Vijender vs. State of Delhi, reported in ***(1997) 6 SCC 171***.

6. The learned counsel for the appellant submits that no doctor, who had treated the deceased during the period between 18.05.2007 to 30.05.2007 had been made a Prosecution Witness or examined by the Court. He submits that there was no proof that the injury on the deceased had been made on 18.05.2007, as the learned Court failed to examine the said Doctor/s, who could have proved that the injury stated in the Post-mortem Report was the injury that had been received by the deceased on 18.05.2007. He also submits that no weapon of assault has been seized by the police.

7. The learned counsel for the appellant submits that where death is due to injuries or wounds caused by a lethal weapon, the guilt of the appellant would require the Prosecution to prove the whole of that case in all respects. He submits that when there is nothing to show that the appellant had caused the injury on the deceased and in the absence of any information being given by the informant or the Doctors of the Hospitals in which the deceased had been treated, it could not be said that the Prosecution had been able to prove the guilt of the appellant beyond all reasonable doubt. He accordingly submits that the appellant should be acquitted of the charge under Section 302 IPC.

8. Ms. B. Bhuyan, learned Additional Public Prosecutor, on the other hand, submits that the delay in lodging the FIR is not fatal to the Prosecution and that the evidence of PW-1 was enough to convict the appellant, as his evidence was credible evidence. In support of her submission, she has relied upon the

judgment of the Supreme Court in the case of **Prasad Pradhan & Another vs. State of Chhattisgarh**, reported in **(2023) 11 SCC 320**.

9. We have heard the learned counsels for the parties.

10. The contents of the FIR dated 30.05.2007 submitted by the informant, who is PW-1 and his evidence given before the learned Trial Court are reproduced hereinbelow as follows :

"FIR dated 30.05.2007

Humble submission is that around 10 o' clock on 18.5.2007, the said accused person hacked my wife Hasan Banu with a sharp dao from behind as a result of which she sustained grievous injury. She was initially treated in Hajo Primary Health Care Centre and thereafter she was referred to GMCH for better treatment. Yesterday, i.e on 29/5/2007, the injured woman was released from GMCH and was allowed to come home but around 4 a.m. on 30.5.2007 i.e. today, the said injured woman breathed her last.

I therefore pray to you to take necessary action regarding this incident and oblige."

"EVIDENCE BEFORE LEARNED TRIAL COURT

On Oath

The accused of this case namely Mirija Begum is my daughter-in-law. Deceased Hasan Banu was my wife. About 6/7 years ago, Hasan Banu died. Around 9 a.m. on the day of the incident, I was milking the cow. My

deceased wife Hasan Banu was holding the calf near me. At that time, my daughter-in-law Mirija Begum came taking a dao in her hand and hacked on the head of my wife Hasan Banu. Then, I left that task of milking the cow and held my wife's head. After hacking my wife with the dao, I saw Mirija running away from the place of occurrence. Thereafter, my neighbour Khateja and I lifted my wife to a 'Sumo' vehicle and took her to the medical. Since she was referred from Hajo medical to Gauhati Medical, I took her there. My wife was treated in Gauhati Medical for 6/7 days. Thereafter, as she recovered to some extent, I took her to the house from Gauhati Medical. After staying in the house for 2 days, Hasan Banu died in the house itself. Thereafter, I lodged an ejahar at Hajo P.S. in connection with this incident. Ext. 1 is the ejahar lodged by me and Ext. 1(1) is my signature. After lodging of the ejahar, police held inquest on the dead body of my wife. I put my signature in the inquest report as a witness. Ext. 2 is the inquest report and Ext. 2(1) is my signature therein.

XXXXXXXXXXXX

After the incident, the police questioned me. I did not state before the police that blood was coming out from the injury of my wife. I did not state before the police that Khateja and I had lifted my wife to the Sumo vehicle and had taken her to the medical. My daughter-in-law Mirija and my son live together. Mirija does not have any mental illness. I cannot say as to why my daughter-in-law Mirija had hacked my wife. On the day of the incident, I did not lodge the ejahar, I lodged it after the death of my wife. It is not a fact that Mirija Begum was not mentally sound and that if she did anything under mentally unstable condition; it was not a conscious act on her part.

It is not a fact that my daughter-in-law Mirija lost her stability at the time of the incident and that she was not aware of what she had done."

11. The evidence of PW-2 is to the effect that she heard a hue and cry in the house of the informant and when she went there, she saw her sister-in-law (deceased) was lying with an injury to her head. Her brother-in-law Samir Ali told her that the appellant had hacked the deceased. Later, PW-1 and PW-2

wrapped the head of the deceased with a cloth and took her to Hajo Medical Health Centre in a vehicle. The Doctor/s stitched her injury and thereafter she was taken to GMCH, where she was treated. After staying for a few days in GMCH, the deceased was taken home. However, she died after staying a few days in her house. Thereafter PW-1 filed an FIR.

12. The evidence of PW-3, who is the Professor & Head of Forensic Medicines in GMCH, is to the effect that he performed the Post-mortem examination on the body of the deceased on 30.05.2007 and his findings and opinion on the injury and cause of death of the deceased are as follows :

“External appearance

Female dead body of about 50 years wearing blouse and a mekhela. Eyes and mouth were closed, external orifices are healthy. Rigormortis was present in both upper and lower limbs.

Injury No 1 An old stitched wound over the right tempero, prarito occipital reason, 18 cm in length.

The thoracic organs are congested and healthy.

In the abdomen organs were healthy, stomach was healthy and empty.

In the cranial spinal canal, injuries to the scalp is already described, on the skull, there is an fractures involving the right parietal and occipital bones, Vitribe was healthy. Membrence are cut over the right parietal and the accipital reasons, (..Illegible..) as subarachnoid hamarage is present on the right side.

Brain is cut in the right occipital reason.”

Opinion

In my opinion death was due to coma as a result of injuries on the head the injuries were anti mortem being cause by heavy sharp cutting weapon and were homicidal in nature. Time since death 6 to 12 hours. Ext.'3' is the post mortem report and Ext. 3(1) and 3(2) are my signatures.

XXXXXXXXXXXXXXXXXX

Ext. '3' is the carbon copy including my signatures. I found only one injury."

13. The evidence of PW-4 is to the effect that on hearing a hue and cry in the house of PW-1, she was told by PW-1 that the appellant had hacked the head of the deceased with a dao. When she arrived at the place of occurrence, she saw the deceased in the courtyard in an injured condition with PW-1 who was holding her. Thereafter the injured was taken to the hospital. PW-4 also stated that the deceased died 6/7 days after the incident.

14. The evidence of PW-5, who is the Investigating Officer, is that on 12.12.2009 while working as the O/C of the Hajo Police Station, he received the Case Diary of Hajo P.S. Case No.103/2007. On perusing the Case Diary, he found that the case had already been investigated by Sub-Inspector M. Rahman. On 07.06.2008, the Case Diary had been handed over to the then O/C who endorsed the same to Sub-Inspector Mukul Saikia on 25.05.2009 for investigation. Thereafter on transfer of S.I. Mukul Saikia, the case was endorsed to S.I. Mukul Das on 18.08.2009. On transfer of S.I. Mukul Das, the case was transferred to PW-5. The further evidence of PW-5 is to the effect that as per the Case Diary, the previous I/O had searched for the appellant, but could not

find her. On finding sufficient materials in the documents given to him, PW-5 submitted a Charge-sheet against the appellant under Section 302 IPC, indicating her as an absconder.

15. PW-5 in his cross-examination also stated that no reason for the delay in lodging the FIR has been mentioned and that no statement of the deceased had been recorded prior to her death. He also stated that the victim was discharged from GMCH on 29.05.2007 and expired on the next day. The Discharge Certificate was not available in the Case Diary and he could not say whether any injuries were indicated in the Discharge Certificate of the victim.

The above being said, it is surprising to see that PW-5 has referred the accused person as "him".

16. In the examination of the appellant under Section 313 Cr.P.C, the appellant stated that she was innocent and did not know about the Medical Report. She also stated that she had been falsely implicated in the case.

17. The learned Trial Court thereafter came to a finding that the probable sequence of events of the incident, as per the testimony of the Prosecution Witnesses, which is reflected in paragraph-18 of the impugned judgment, showed the following—

"18) From the foregoing discussion of the testimony of witnesses I like to draw the probable sequence of happenings as per testimony of prosecution witnesses. The circumstance that has been emerged and the sequence of happenings derived from the evidence on record is of the following nature-

- (i) It was around 10 A.M. in the morning the informant was milking his cow and he was assisted by his wife, the deceased.*
- (ii) Suddenly, the accused who is none but the daughter in law of the deceased came with a dao and gave a blow on her head and fled away from there.*
- (iii) The informant while holding his wife with a severe head injury one of his close relative (wife of the brother of the informant) arrived who bandaged on the wound of the deceased and thereafter they altogether took the victim to hospital.*
- (iv) The incident was immediately informed by the informant to P.W. 2 i.e. his wife of his brother and also another P.W. 4 a neighbor.*
- (v) The deceased was admitted at GMCH from the date of incident till 29.05.2007 and after discharge from hospital she died on 30.05.2007.*
- (vi) The prosecution case was initiated only after the death of the deceased and release from hospital.*
- (vii) Thereafter on the death of the victim the FIR was lodged and the post-mortem was conducted over the dead body and Medical Officer opined that the death was due to coma as a result of Injury on the head and according to him the injuries were ante-mortem and caused by sharp cutting weapon.*
- (viii) The accused woman was absconding and the Police submitted charge sheet against the accused showing her as absconder."*

18. The learned Trial Court thereafter held that in view of the evidence of the eyewitness, who had seen the incident and the fact that the deceased had been first taken to Hajo Medical Health Centre and then to GMCH, there was no scope to have any suspicion with regard to the fact that the appellant was the person who had killed the deceased. The learned Trial Court further held that the evidence of the other eyewitnesses corroborated the evidence of PW-1. Besides the above, the appellant was not found and she had been absconding. Thus,

the totality of the evidence on record proved that a case under Section 302 IPC had been made out

19. In the case of ***Manoj Kumar Sharma (supra)***, the Supreme Court held that delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. It further stated that the danger in a delayed FIR is that there is a danger of introduction of a coloured version or exaggerated story creeping it. Paragraph 30 of the said judgment is reproduced hereinbelow as follows :

“18) Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. In our opinion, such extraordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by Respondent No. 2 herein against the appellants, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations, Respondent No. 2 herein has tried to rope the appellants in criminal proceedings. We are of the confirmed opinion that continuation of the criminal proceedings against the appellants pursuant to this FIR is an abuse of the process of law. Therefore, in the interest of justice, the FIR deserves to be quashed. In this context, it is apt to quote the following decision of this Court in Jai Prakash Singh vs. State of Bihar & Anr.(2012) 4 SCC 379 wherein it was held as under:-

“12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names

of the eyewitnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first-hand account of what has actually happened, and who was responsible for the offence in question."

20. In the case of ***Vijender (supra)***, the Supreme Court held that the Trial Court should not have allowed the Prosecution to prove the Post-mortem Report, as it was not the original report but only a carbon copy thereof, and that too not certified. The relevant portion of the said judgment which is at paragraph-19 is reproduced hereinbelow –

".....The other reason for which the trial Judge ought not to have allowed the prosecution to prove the post-mortem report is that it was not the original report but only a carbon copy thereof, and that too not certified. Under Section 64 of the Evidence Act document must be proved by primary b evidence, that is to say, by producing the document itself except in the cases mentioned in Section 65 thereof. Since the copy of the post-mortem report did not come within the purview of any of the clauses of Section 65 it was not admissible on this score also."

21. In the present case also the Post-mortem report is only a carbon copy and though there is a seal, there is no original signature of any person on the said Post-mortem Examination Report. As such, we are also of the view that the document has not been proved in terms of Section 64 of the Evidence Act.

22. In the case of ***Md. Abdul Azit vs. State of Assam*** (Criminal Appeal No.222/2018), which was disposed of vide judgment dated 26.02.2021, the Division Bench of this Court had taken into consideration the fact that the Prosecution did not examine the surgeon who undertook the surgical operation upon the deceased, nor had it examined any doctor who treated the deceased during the time the deceased was in the hospital. This Court held that in the absence of such evidence, it was difficult to arrive at an unhesitant view that the genesis of the death of the deceased was the assault allegedly inflicted on him on the date of the alleged incident. Further, no weapon of assault had been recovered and there was no medical evidence as regards the use of any weapon, which ultimately led to the death of the deceased.

In the present case also, the Doctor/s who had allegedly treated the deceased in Hajo Medical Health Centre and GMCH, prior to her discharge on 29.05.2007, have not been examined, not only by the Police, Prosecution but also by the learned Trial Court. Further, no weapon of assault has been recovered. Even though it can be assumed that a dao could have been the weapon of assault, the fact remains that no doctor of the Hajo Medical Health Centre or GMCH has been examined. No medical documents or the treatment provided in Hajo Medical Health Centre and GMCH have been produced. All these lead us to believe that there is something not quite right, with regard to the allegation of the appellant having killed the deceased.

23. In the case of ***Mohinder Singh vs. State***, reported in ***AIR 1953 SC 415***, the Supreme Court has held at paragraph 18 as follows :

"18. In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the

prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it must prove the whole of that case.

24. In the case of ***Hariprasad alias Kishan Sahu Vs. State of Chattisgarh***, reported in ***(2024) 2 SCC 557***, the Hon'ble Supreme Court held that the delay in lodging an FIR, by itself cannot be regarded as sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated to be fatal to the case of prosecution. The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of the prosecution.

25. In the above case of ***Hariprasad alias Kishan Sahu (supra)***, the Supreme Court further held that the object of insisting upon prompt lodging of the report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as names of the eye witnesses present at the scene of occurrence.

26. In the case of ***Apren Joseph alias Current Kunjunju and Ors. Vs. The State of Kerala***, reported in ***(1973) 3 SCC 114***, the Hon'ble Supreme Court has held that FIR is very useful if recorded before there is time and opportunity to embellish, or before the informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to suspicion which put the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or

otherwise of the prosecution version.

27. In the present case, there is no reason given as to why there was a delay in filing the FIR. The incident having occurred on 18.05.2007 and the deceased having been treated in Hajo Hospital and GMCH for around 11 days, prior to her discharge from hospital, there was ample time for lodging an FIR with respect to the alleged crime. Even after the deceased was discharged from the hospital, no action was taken by the informant or other prosecution witnesses, for lodging an FIR with regard to the alleged crime. It was only after the death of the deceased on 30.07.2007 that an FIR was lodged. There could have been a variety of genuine causes for not lodging the FIR promptly. However, there is no whisper made by any of the prosecution witnesses, as to why FIR had not been lodged earlier by the informant or the Doctors in the two hospitals or the prosecution witnesses, with regard to the alleged crime. It is not the case of the respondents that they were ignorant or that there was lack of transport facilities to the Police Station to report the alleged crime or that they were inflicted with some ailment, which prevented them from filing the FIR on time. Though delay in filing an FIR by itself may not be a ground to doubt the prosecution case, the absence of any attempt to give any reason for the delay in filing the FIR in this case raises a suspicion, that the allegation of murder made against the appellant may not be completely true. It raises a suspicion that there has been a concoction and embellishment of facts. No Doctor who had examined or treated the deceased had been examined. No document showing the medical treatment or the injuries sustained on the deceased at the time of treatment has been produced by the prosecution. If the injury was of such a serious nature, due to hacking the neck of the deceased with a dao, the Doctors in the two hospitals who had treated the deceased would have surely reported the

matter to the police, as it was a **medico legal case**. The entire evidence against the appellant is based entirely on the sole testimony of PW-1 (informant). Though the Doctor (PW-3) stated, that in his opinion that death was due to coma as a result of the injuries on the head caused by a heavy sharp cutting weapon which were homicidal in nature, there is no evidence given by any of the other prosecution witnesses that the deceased fell into a coma after being discharged from the GMCH. Further, the post-mortem examination report being a carbon copy without the original being produced by the prosecution, we are unable to convince ourselves that the contents of the carbon copy of the post-mortem examination report proved that the appellant had caused the death of the deceased.

28. As stated above, the deceased had been discharged from GMCH which implied that the deceased had recovered from whatever medical problem or injury that might have been inflicted upon her. Once the deceased had been discharged from GMCH, the subsequent death of the deceased cannot be said to be due to the injuries sustained by her on 18.05.2007. The evidence of PW-3 cannot be proved that the deceased had died due to the alleged injuries sustained by her on 18.05.2007, when we do not know what injuries sustained by her on 18.05.2007.

29. There is no evidence to show that the deceased was not able to speak between the date of the incident and the date of her death. Interestingly, there is no evidence to the effect that the deceased had stated to anybody that the appellant had inflicted the wound which had been stitched over in terms of the evidence of PW-3.

30. In the present case the various deficiencies in the prosecution case,

especially with regard to non-filing of the FIR at the earliest coupled with the non-recovery of any weapon makes us wary of accepting the decision of the learned Trial Court in convicting the appellant only on the basis of the testimony of PW-1. There is no corroboration of the evidence of PW-1 which would prove the guilt of the appellant beyond all reasonable doubt.

31. The above being said, we find that the appellant had absconded. In fact, the evidence of PW-1 is to the effect that after the appellant had hacked the victim's head with a dao, he saw the appellant running away. The evidence of the prosecution witnesses and the records show that the appellant was absconded due to which Warrant of Arrest and a Proclamation of being an absconder had been issued by the learned Trial Court against the appellant. The issue to be decided is whether the act of absconding by the appellant would tantamount to admitting her guilt to the offence of murder.

32. In the case of ***Matru Alias Girish Chandra vs. State of Uttar Pradesh***, reported in ***(1971) 2 SCC 75***, the Supreme Court has held that mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime which is the instinct of self-Preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence, but its value would always depend on the circumstances of each case. It further held that normally the Courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the

accused.

33. In the case of ***Surendra Mishra Vs. State of Jharkhand*** reported in ***(2011) 11 SCC 495***, the Supreme Court had held that the act of the accused in running away from the scene of the crime subsequent to the commission of the offence, clearly suggest that he knew that whatever he had done was wrong and illegal.

34. In the case of ***Chetan Vs. State of Karnataka***, reported in ***(2025) 9 SCC 31***, the Supreme Court reiterated the decision of the Supreme Court in the case of ***Matru Alias Girish Chandra (supra)***. However, it has also said that the act of absconding is certainly a relevant piece of evidence to be considered along with other evidence and is a conduct under Section 8 of the Evidence Act, 1872, which points to it's guilty mind. The needle of suspicion gets strengthened by his act.

35. Though the Supreme Court in the case of ***Matru Alias Girish Chandra (supra)*** had stated that the evidence of the act of absconding would always depend on the circumstance of each case, the fact in this case is that the eyewitness saw the appellant absconding after she had allegedly hacked the victim with a dao.

36. On considering all the above three judgments, it clearly suggest that the appellant had a guilty mind and thus the needle of suspicion regarding the murder of the victim by the appellant gets strengthened. However, even if we

are to assume that the appellant had hit the victim with a dao, the question as to whether the injury allegedly inflicted on the victim was the cause of death of the victim is a disputed question of fact. Though PW-3, who conducted the Post Mortem examination on the victim has stated that in his opinion death was due to a coma, as a result of injuries on the head of the victim, there is no evidence given by PW-1 or any other prosecution witness that the victim was in coma. The victim having died in her house. PW-3 could not have seen the victim alive. This is also borne out by the Post Mortem examination report, wherein the victim was brought dead to the hospital. No evidence being laid between the date of the incident and the filing of the FIR, as to the injury caused to the head of the victim and the treatment that had been given, which led to her discharge from hospital, there is no way for the learned Trial Court to have come to a finding that the alleged injuries sustained by her on 18.05.2007 was the cause of death of the deceased. Thus, taking all the evidences in totality including the fact that there was an unexplained delay of 12 days in filing the FIR, non-recovery of the weapon and no evidence being laid to show the seriousness or otherwise of the injury sustained by the victim, we are of the view that the learned Trial Court committed an error in convicting the appellant on the basis of circumstantial evidence, which we find does not form a complete chain. Thus, we find that the prosecution did not prove the case of murder against the appellant beyond all reasonable doubt.

37. The above being said, when we look at the examination of the appellant under Section 313 Cr.P.C, we find that the appellant has not been asked to give her explanation as to why she had absconded, so as to allow the appellant to establish her innocence. The same not being done, the learned Trial Court

committed an error in using the fact of the appellant absconding from the place of occurrence as one of the reasons for coming to a finding of guilt of the appellant. In this respect, it would be profitable to refer to the decision of the Supreme Court in the case of **Reena Hazarika vs. State of Assam**, reported in **(2019) 13 SCC 289**, wherein it has held that Section 313 Cr.P.C cannot be simply seen as a part of *audi alteram partem*. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2) Cr.P.C. Paragraph 19 of the said judgment is reproduced hereinbelow as follows :

“19. Section 313, Cr.P.C. cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2) Cr.P.C. The importance of this right has been considered time and again by this court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) Cr.P.C. the Court is duty bound under Section 313(4) Cr.P.C. to consider the same. The mere use of the word ‘may’ cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on

the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing.”

38. In view of the judgment of the Supreme Court in the case of **Reena Hazarika (supra)**, it is clear that the failure of the learned Trial Court to examine the appellant under Section 313 Cr.P.C on the question of her absconding cause prejudice to the appellant and thereby denial her right to put forward a reasonable defence which could be true.

39. Accordingly, we are of the view that the benefit of doubt has to be given to the appellant in view of the reasons stated in the foregoing paragraph. The appellant is acquitted from the charge framed against him under Section 302 IPC. Consequently, the impugned judgment dated 27.02.2018 passed by the Sessions Judge, Kamrup, Amingaon in Sessions Case No.208/2014 is hereby set aside. The appellant is to be released immediately from judicial custody, if not wanted in any other case.

40. The appeal is accordingly allowed.

41. Send back the TCR.

JUDGE

JUDGE

Comparing Assistant