GAHC010278112019

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

Case No. : CRL.A(J)/102/2019

Kalyan Barman,
Bongaigaon, Assam .....**Appellant.**

Versus

1. The State of Assam,
Represented by the Public Prosecutor, Assam.

2. Namita Ray,

.....**Respondents.**

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MRS. JUSTICE MALASRI NANDI

For the appellant : Mr. A. Dhar .... Amicus Curiae

For the respondent no.1 : Ms. B. Bhuyan .... Additional PP, Assam.
Mr. J. Das ... Advocate

Date of hearing : 26.07.2023
Date of judgment : 31.07.2023

JUDGMENT AND ORDER (CAV)

(M. Zothankhuma, J)

Heard Mr. A. Dhar, learned Amicus Curiae for the appellant and Ms. B. Bhuyan, learned Additional Public Prosecutor for the State.

2. This appeal has been preferred against the judgment dated 20.05.2019 passed by the Court of the Sessions Judge, Bongaigaon in Sessions Case No. 120(BGN)/2015, by which the appellant has been convicted under Section 302 IPC and 498(A) IPC and sentenced to undergo imprisonment for life with a fine of Rs. 5,000/-, in default, to undergo further imprisonment for 6 (six) months for the offence under Section 302 IPC and to undergo rigorous imprisonment for 3 (three) years with a fine of Rs.1,000/-, in default further imprisonment of 1 (one) month under Section 498(A) IPC, on the ground that the appellant had killed his wife by pouring kerosene over her and setting her on fire.

3. The Prosecution case in brief is that an FIR dated 03.04.2010 was submitted by Prosecution Witness No.4 (PW-4), who is the mother of the deceased victim and mother-in-law of the appellant at 10:30 p.m. The FIR is to the effect that the appellant used to torture the deceased demanding dowry. It further states that on 02.04.2010, PW-4 came to learn that the appellant had demanded Rs.10,000/- in cash from the deceased. As the deceased refused to give money to the appellant, the appellant poured kerosene on her body and set her on fire at around 2 p.m, with an intention to kill her. The FIR further states that the deceased was undergoing treatment at Dangtol Railway Hospital and that PW-4 was thinking of taking her to a nursing home in Coochbehar for better treatment. In pursuance to the FIR, Bongaigaon P.P. GDE No.59 dated

03.04.2010 and Bongaigon P.S. Case No.136/2010 under Section 498(A) IPC was registered.

4. After completion of the investigation, the First Investigating Officer (PW-6) submitted the Charge-sheet, on having come to a *prima facie* finding that the appellant was guilty of having committed an offence under Section 302/498(A) IPC. Charges under Section 302 and 498(A) IPC were thereafter framed against the appellant, to which the appellant pleaded not guilty and claimed to be tried.

5. In the trial proceedings before the learned Trial Court, 8 (eight) Prosecution witnesses were examined. The appellant was also examined under Section 313 Cr.P.C, in which he denied having any involvement in the death of his wife. The learned Trial Court thereafter came to a finding that the appellant was guilty of having murdered his wife, by setting her on fire and also came to a finding that the appellant was guilty of the offence under Section 498(A) IPC. Accordingly, the appellant was convicted under Section 302 IPC and 498(A) IPC and sentenced accordingly, as indicated in the foregoing paragraphs.

6. The learned Amicus Curiae submits that a reading of the evidence of the witnesses and the other documents on record, would go to show that there were discrepancies, not only with regard to date of death of the deceased, but also with regard to the time of death of the deceased. He also submits that the prosecution has deliberately not exhibited the Inquest Report, which had been made in Coochbehar, as the same would have contradicted the contents of the FIR and would also show that the prosecution case against the appellant was a fabricated case.

7. The learned Amicus Curiae submits that though the deceased had been undergoing treatment in Dangtol Railway Hospital for around 30 hours, before being taken to Coochbehar for treatment, the prosecution has not produced any doctor of the Dangtol Railway Hospital as a witness, nor produced any medical certificate, with regard to the treatment given to the deceased in Dangtol Railway Hospital, Bongaigaon. He also submits that the maker/author of the Inquest Report in Coochbehar was not made a prosecution witness and examined in the Court. The learned Amicus Curiae also submits that PW-2 and PW-3 had clearly stated in their evidence, that the incident of setting the deceased on fire by the appellant had taken place on 01.04.2010, while the case of the prosecution was that it had taken place on 02.04.2010. He accordingly submits that in view of the major discrepancies in the testimonies of the witnesses and in the documents relied upon by the prosecution, the impugned judgment has to be set aside and the appellant should be acquitted of the charges framed against him, as the Prosecution has not been able to prove the guilt of the appellant beyond all reasonable doubt.

8. Ms. B. Bhuyan, learned Additional Public Prosecutor, on the other hand submits that the date of incident has been wrongly stated by the PW-2 & PW-3 in their testimonies, as the incident had taken place on 02.04.2010, which is a minor discrepancy and does not go to the root of the prosecution case. She submits that the evidence of PW-3, who is not only an eyewitness, but also the son of the deceased and the appellant, cannot be doubted, as he has got no reason to tell a lie. She submits that there can be no ulterior reason, for a young boy of 9 (nine) years, to make a false allegation against his father with regard to offence in question.

9. The learned Additional Public Prosecutor also submits that Post Mortem Examination (PME) Report made by a Doctor in Coochbehar and the evidence of PW-7, who had authored PME Report, having clearly stated that the deceased had died due to shock from the burn injuries sustained by the deceased, which was ante-mortem nature, the guilt of the appellant in causing the death of the deceased had been proved. She accordingly submits that though there are minor lapses in the investigation and minor discrepancies in the testimonies of the witnesses, the same can be overlooked by this Court, as it does not go to the root of the prosecution case. Accordingly, the impugned judgment of the learned Trial Court should not be interfered with.

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

11. As per the documents and the evidence of the Prosecution witnesses, barring PW-2 & PW-3, we find that the date of the incident, i.e. the burning of the deceased by fire had taken place on 02.04.2010 between 2 p.m. to 3 p.m. The FIR states that PW-4's daughter was undergoing treatment at Dangtol Railway Hospital and that the PW-4 was thinking of taking her to a nursing home in Coochbehar for better treatment. The said FIR was filed on 03.04.2010 at 10:30 p.m. The above facts shows that the deceased was alive and undergoing medical treatment in Dangtol Railway Hospital at Bongaigaon from 3/4 p.m. on 02.04.2010 till 10:30 p.m. of 03.04.2010, i.e. for approximately 30 hours. The fact that the deceased had been taken to Dangtol Railway Hospital, Bongaigaon has also been clearly stated in the evidence given by the First IO (PW-6).

12. The above being said, PW-4 in her evidence has also stated that she had seen her deceased daughter in the hospital and after consultation with the Doctor, was taking her daughter to Coochbehar for better treatment. However, she died on the way. PW-4 also stated that the Hospital Referral Letter had been submitted at the police station. She also submits that the Inquest and Post Mortem Examination of the deceased were conducted in Coochbehar. Surprisingly, the prosecution has not made any Doctor, who had treated the deceased in Dangtol Railway Hospital, Bongaigaon and the doctor who referred her for treatment to Coochbehar as a prosecution witness. Further, the Inquest Report made in Coochbehar and the Referral Letter made by the Doctor at Dangtol Railway Hospital, Bongaigaon has also not been exhibited by the prosecution in this case.

13. Though the Inquest Report made in Coochbehar has not been exhibited by the prosecution, the same is in the Trial Court records and it shows that the date and hour of death of the deceased was on 03.04.2010 at 7:05 p.m. The above cannot be the exact time of death of the deceased, inasmuch as, the deceased had been apparently brought dead to the MJN Hospital, Coochbehar on 03.04.2010 at 1905 hours, i.e. 7:05 p.m. However, in terms of the said document, the deceased was dead as on 03.04.2010 at 7:05 p.m. One interesting issue that has arisen on the basis of the non-exhibited Inquest Report is that while that the date and time of death of the deceased was 03.04.2010 at 7:05 p.m., PW-4 had submitted the FIR 3½ hours later, i.e. on 10:30 p.m. on 03.04.2010 in Bongaigaon, which is apparently around 142 km away, stating that she was intending to take the deceased to Coochbehar for

better treatment.

14. The above discrepancies in the date and time of death of the deceased, coupled with the date and time of submission of the FIR, leaves a big question mark as to when the deceased had actually died and whether at all the deceased required any treatment for the burns she allegedly suffered at the hands of the appellant. The further question that arises is whether the deceased died due to shock on being burnt by fire. The above question requires us to examine the Post Mortem Examination Report and the evidence given by the author of the same, i.e. PW-7.

15. The evidence of P.W. No.7 is to the effect that on 04.04.2010, he conducted the Post Mortem Examination (PME) while he was posted as Medical & Health Office at M.J.N. Hospital at Coochbehar. On examination of the dead body, he found that there was superficial burn injuries on the whole body, except the face and foot. The extract of the PME Report of the deceased is as follows :

"EXTERNAL APPEARANCE :

An average built female body. There was superficial burn injuries of the whole body excepting the fact and foot.

CRANIUM AND SPINAL CANAL:

1. Scalp, skull, vertebrae - Intact.

2. Membrane – Congested.

3. Brain and spinal cord - Intact and congested.

THORAX:

1. Walls, ribs and cartilages - Intact.

2. Pleurae - Intact.

3. Larynx and trachea - Congested. Contains dark soot particle.

4. Right lung-Intact and congested.

5. Left lung - Intact and congested.

6. Pericardium -Intact.

7. Heart - Intact.

8. Vessels - Intact.

ABDOMEN:

1. Walls - Intact. 2. Peritoneum - Intact. 3. Mouth, Pharynx, Oesophagus Intact. 4. Stomach and its contents - Congested. 5. Small intestine and its contents - Intact. 6. Large intestine and its contents - Intact.. 7. Liver Intact. 8. Spleen - Intact. 9. Kidneys - Intact. 10. Bladder - Empty. 11. Organs of generation - external and internal:- Normal size.

MUSCLES, BONES AND JOINTS:

Injury - Nil. Disease or deformity - Nil. Fracture - Nil. Dislocation- Nil

MORE DETAILED DESCRIPTION OF INJURY OR DISEASE:

Nil

OPINION: In my opinion, the cause of death was due to shock from the above stated burn injuries which was ante-mortem in nature. Ext 5 is the postmortem report wherein Ext-5(1) is my signature."

In his cross-examination, PW-7 stated that he had not mentioned the percentage of burn injuries. It was also stated by PW-7 in his cross-examination that if a patient party takes away the patient from the hospital, the responsibility lies on the patient party. He also stated that as per the record, the deceased was admitted in M.J.N. Hospital at Coochbehar. He stated in his report that he had not mentioned the time since death of the deceased as well as the age of

the burn injuries.

16. The evidence given by PW-7 is to the effect that the burn injuries were skin deep and as such cannot be serious, as the burn injuries were stated to be superficial burn injuries. The percentage of burn injuries is not reflected in the Post Mortem Report. Further, the deceased was admitted into M.J.N. Hospital, Coochbehar, which would imply that the deceased was alive at the time of admission into M.J.N. Hospital.

If that be the case, treatment would have been given to the deceased in M.J.N. Hospital, Coochbehar by a doctor. However, the doctor who had attended upon the deceased has not been made a witness in the case. The unexhibited Inquest Report states that the deceased was brought dead into the hospital, which contradicts the PME Report.

17. In the present case, it is surprising that the FIR which was filed on 03.04.2010 at 10:30 p.m. does not mention the fact that the deceased had died at 7:05 p.m., while the non-exhibited Inquest Report made in Coochbehar shows that the deceased had died 3 hours earlier, i.e. at 7:05 p.m. The above facts lead us to believe that there is fabrication of facts so as to deny the appellant an opportunity to prove his innocence.

18. The evidence of PW-2 & PW-3 is to the effect that the deceased was set on fire by the appellant on 01.04.2010. However, the evidence of the other prosecution witnesses and the 164 Cr.P.C statement made by the PW-2, which is to the effect that the incident occurred on 02.04.2010, goes to show that the

incident had occurred on 02.04.2010. The discrepancy in the date of occurrence given by PW-2 & PW-3 in their evidence is a minor discrepancy, which can be overlooked by this Court, as the fact that the deceased was on fire and had died is not a disputed issue.

19. With regard to whether the appellant was the perpetrator of the crime, the evidence of PW-3 points to the guilt of the appellant. Though in a normal circumstances we would not have much problem in believing the testimony of PW-3, who is not only an eyewitness but the son of the appellant and the deceased, the discrepancy with regard to the date and time of death of the deceased, coupled with the fact that doctors who had in all probability attended upon the deceased in Dangtol Railway Hospital, Bongaigaon and M.J.N. Hospital, Coochbehar not having been made prosecution witnesses, besides documents not being exhibited by the prosecution, gives rise to a suspicion as to whether the prosecution hid material facts from the Trial Court and this Court.

20. We have also noticed that the PW-3 in his statement made under Section 164 Cr.P.C. stated that one day around 3 p.m. his father came home in an inebriated condition and asked his mother to cut tomatoes. When his mother refused to do so, the appellant assaulted his mother and set her on fire by pouring kerosene on her body in the kitchen. Thereafter they tried to extinguish the fire by pouring water on her body and his father fled away. However, in his evidence, PW-3 does not make any statement to the fact that his father had asked his mother to cut tomatoes and when she refused to do so he set her on fire. PW-3 was also under the care of his maternal grandparents after the death

of his mother and as such, there is a possibility of him being tutored.

21. In the case of ***State of M.P. vs. Ramesh & Another***, reported in ***(2011) 4 SCC 786***, the Supreme Court has held that deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.

22. The Supreme Court has held that non-examination of persons who are the primary source of knowledge of the prosecution witnesses goes to the root of the matter and raises serious doubts. ***Dhal Singh Dewangan vs State of Chhattisgarh***, reported in ***(2016) 16 SCC 701***

23. In the case of ***State of H.P vs Gian Chand,*** reported in ***(2001) 6 SCC 71,*** the Supreme Court has held that the non-examination of a material witness is not always fatal to the prosecution case. The charge of withholding a material witness from the Court levelled against the prosecution should be examined, in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examination in the Court and were yet withheld by the prosecution. It also held that if available evidence

suffers from some infirmity or cannot be accepted in the absence of other evidence which though available has been withheld from the Court then the question of drawing an adverse inference against the prosecution for non-examination of such witness may arise.

The above being said, no doctor of the hospital in Bongaigaon or the hospital in Coochbehar who had in all probability, attended upon the deceased, have been made prosecution witnesses.

24. It is also surprising that while PW-4 had stated in her evidence that she had consulted the doctor who had referred the deceased to the hospital at Coochbehar and accordingly submitted a Hospital Referral Letter at the police station, the said letter has also not been exhibited by the prosecution, besides the Inquest Report made in Coochbehar.

25. On considering all the above facts and discrepancies in the investigation conducted by the police and the consequential prosecution of the case, we are of the view that the respondents have intentionally hidden some facts from this Court, thereby denying the learned Trial Court and this Court, the possibility of going into the truth of the matter. In that view of the matter, we are of the view that the conviction of the appellant cannot be based solely on the evidence given by PW-3, who is the son of the appellant and the deceased. The reason being that though it was possible for PW-3 to be tutored as he was only 9 years living with PW-4, the pertinent question that arises is as to whether the deceased had died due to being burnt by fire.

26. Though the Doctor in Coochbehar, who had conducted the Post Mortem had stated that the deceased died due to shock from the burn injuries suffered by her, we are not convinced that the shock was due to the superficial burn injuries. Further, the percentage of burns has not been stated by PW-7 to indicate the severity of the burn injuries. Post Mortem Report only states that there was superficial burns on the deceased.

27. In the case of ***Tomaso Bruno vs. State of UP & Another,*** reported in ***(2015) 7 SCC 178,*** the Supreme Court has held that the purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion, but such report is not a conclusive one. The Court is expected to analyse the report, read it in conjunction with the other evidence on record and form its final opinion as to whether such report is worthy of reliance or not.

28. In the case of ***Ghulam Hassan Beigh vs Mohammad Maqbool Magrey,*** reported in ***(2022) 12 SCC 657***, the Supreme Court has held that the Post Mortem report by itself is not a substantive piece of evidence. The Doctor's statement in Court is alone the substantive evidence. A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of a symptoms found on examination. Thus the Court, though not an expert may form it's own judgment on the materials provided, after giving due regard to the expert's opinion because once the expert opinion is accepted, it is not the opinion of the medical officer but of the Court.

29. On perusing the PME Report and the evidence given by the author, i.e PW-7, we are not convinced that the burn injuries suffered by the deceased was the cause of death of the deceased. To ascertain the actual cause of death, material witnesses and documents, such as the Doctors in Dangtol Railway Hospital, Bongaigaon and M.J.N. Hospital, Coochbehar should have been made prosecution witnesses. The Medical Reports, Inquest Reports, documents referring the deceased to Coochbehar Hospital should have been made a part of the charge-sheet and exhibited. Unfortunately the same has not been done. While the prosecution should be given all opportunity to prove relevant facts to enable the Court to arrive at a conclusion with regard to the death of the deceased, the same principle would have to be followed to enable the appellant/accused to prove his innocence. However, the Investigating Authority has by it's shoddy investigation work not examined material witnesses and material documents and neither has it allowed the accused to do the same.

30. In Modi's Medical Jurisprudence and Toxicology 24th Edition, burns have been defined and classifications of burns have also been made as follows :

> "***Classification of Burns***.- *Dupuytren classified burns into six degrees, according to the nature of their severity. Modern classification (Heba's classification) accords three degrees only by grouping the first and second (epidermal), third and fourth (dermo- epidermal), and fifth and sixth (deep) degrees together. Another classification grades burns into superficial and deep burns.*
>
> *(i)* ***Epidermal Burns***
>
> *(a)* ***First Degree***. - *First degree burns consists of erythema or simple redness of the skin caused by the momentary application of flame or hot solids, or liquids much below boiling point. It can also be produced by*

mild irritants. The erythema marked with superficial inflammation usually disappear in a few hours, but may last for several days, when the upper layer of the skin peels off but leaves no scars. They disappear after death due to the gravitation of blood to the dependent parts.

(b) ***Second Degree****.-Second degree burns comprise acute inflammation and blisters produced by prolonged application of a flame, liquids at boiling point or solids much above the boiling point of water. Blisters can be produced by the application of strong irritants of vesicants, such as cantharides. Blisters may also be produced on those parts of the body which are exposed to decomposing fluid, such as urine or faeces, and subject to warmth, as seen in old bed-ridden patients. In deeply comatose persons, bullae may occur over pressure areas. If burns are caused by flame or a heated solid substance, the skin is blackened, and the hair singed at the seat of lesion, which assumes the character of the substance used. No scar results as only the superficial layers of the epithelium are de-stroyed. However, subsequently, some slight staining of the skin may remain.*

(ii) ***Dermo-Epidermal Burns***

(a) ***Third Degree****.-Third degree burn refers to the destruction of the cuticle and part of the true skin, which appears horny and dark, owing to it having been charred and but no shrivelled. Exposure of nerve endings gives rise to much pain. This leaves a scar, contraction, as the scar contains all the elements of the true skin.*

(b) ***Fourth Degree****.-In fourth degree burns, the whole skin is destroyed. The sloughs which form are yellowish-brown and parchment-like, and separate from the fourth to the sixth day, leaving an ulcerated surface, which heals slowly forming a scar of dense fi-brous tissue with consequent contraction and deformity of the affected parts. The burns are not very painful as the nerve endings are completely destroyed.*

(iii) ***Deep Burns***

(a) ***Fifth Degree****.-Fifth degree burns include the penetration of the deep fascia and implications of the muscles, and results in great scarring and*

deformity.

*(b) **Sixth Degree**.-Sixth degree burns involve charring of the whole limb including the bones and ends in inflammation of the subjacent tissues and organs, if death is not the immediate result. This degree, it may be noted, is not necessarily related to danger to life. Charring of a limb may be compatible with recovery, once the initial shock is overcome."*

The Post Mortem Report shows that the deceased suffered superficial burns which can be said to be epidermal burns. Further, as there is nothing stated by PW-7 that there was inflammation and blisters in the body of the deceased, it can be said that the burns suffered by the deceased was of the First Degree, i.e. the least severe burn.

31. Modi's Medical Jurisprudence and Toxicology also states that burns can be the immediate cause of death and also delayed cause of death. The immediate causes of death have been further sub-divided into three broad categories, which are (a) Shock, (b) Suffocation and (c) Accidents or Injuries. Death due to shock from burns has also been stated as follows

"*(a) **Shock**.-Severe pain and marked protein rich fluid loss from extensive burns which result in increased capillary permeability, cause shock and produce a feeble pulse, pale and cold skin, and hypotension resulting in death instantaneously or within 24 to 48 hours. In children, it may lead to stupor and insensibility deepening into coma and death due to primary shock within 48 hours.*

Shock may also occur from fright before the individual is affected by burns, if his heart is weak or diseased.

If death does not occur from shock, it may subsequently occur from toxaemia due to the absorption of toxic products from the injured tissues in the burned area. In this condi- tion, the temperature rises perhaps to

104°F, the pulse rate increases in frequency, restlessness supervenes and passes into unconsciousness and death, due to delayed shock."

32. In the present case, there is nothing to show that there was increased capillary permeability or that her heart was weak or diseased. To enable this Court to come to a finding with regard to whether the shock had been caused due to the burn injuries or due to some other reason, would have required examination of the Doctors treating the deceased and the treatment being given to the deceased. Sadly, the prosecution case is completely silent in this regard. As the burn injury on the deceased is of the least severe degree and in the absence of any evidence by the Doctors who treated the deceased, we are of the view that the evidence of PW-7 is not acceptable with regard to the shock being caused by the least severe superficial burns suffered by the deceased. Consequently, we are of the view that the prosecution has not been able to prove that the shock which caused the death, had occurred due to the burn injuries suffered by the deceased.

33. In the case of ***State of Mizoram Vs. Abdul Jalil & Ors***., reported in ***2008 (1) GLT 610***, the Division Bench of this Court held that all documents including the FIR, Charge-sheet, Post Mortem Examination Report, Seizure List, Inquest Report etc. which are relevant and necessary for the prosecution case are to be exhibited and considered. The above case was in relation to the accused person having been found guilty under Sections 302/384/341 IPC read with Section 25(1-B)(a) of the Arms Act. In the criminal reference filed by the State for confirmation of the conviction and sentence awarded upon the accused

persons, in terms of Rule 9 of the Rules for the Regulation of the Procedure of Officers Appointed to Administer Justice in the Lushai Hills, 1937, the Amicus Curiae for the accused persons had taken a stand that the FIR, Charge-sheet, Post Mortem Examination Report, Seizure List, Inquest Report had not been exhibited and considered during trial. It was in the above context that the Division Bench of this Court had directed that all documents including FIR, Charge-sheet, Post Mortem Examination Report, Seizure List, Inquest Report etc., which are relevant and necessary for the prosecution case, are to be exhibited and considered.

In the present case, no medical documents, including the Inquest Report and referral letter have been exhibited.

34. Unfortunately the learned Trial Court had also not been apprised of the discrepancies in the date and time of death of the deceased, coupled with the fact that material witnesses and important documents which would have enabled the learned Trial Court to adjudicate the case in a fair manner had not been brought out. Though the learned Trial Court came to a finding that the appellant's alibi that he was not in the house at the time of the incident and that PW-3 had been tutored was not proved, the learned Trial Court did not consider the issue whether the shock was caused by the burn injury, which apparently caused the death of the deceased. The learned Trial Court also came to a finding that the appellant's alibi that he was not present in his house at the time of incident was a false plea which was a link in the chain of circumstances. The manner in which the learned Trial Court has applied the alleged false plea/alibi of the appellant is not in consonance with the judgment of the Supreme Court,

wherein it has been held that a false plea can only lend credence to the circumstantial evidence proving the guilt of the accused. A false defence can only be considered to be an additional link, if the other circumstantial evidence prove the guilt of the appellant. Otherwise it would amount to requiring an accused to prove his innocence, which would be completely opposite to the requirement of the prosecution requiring to prove the case against an accused, beyond all reasonable doubt. It was in this context that the Supreme Court in the case of ***Pappu. vs. State of UP***, reported in ***(2022) 10 SCC 321*** has held that a false plea cannot be a link in the chain of circumstantial evidence, but can be considered to be an additional link only if the other circumstantial evidence unfailingly point to the guilt of the accused.

35. The Courts have to arrive at the truth which is necessary for a just and proper disposal of the case. Further in the case of ***Rajendra Prasad vs Narcotic Cell Through Its Officer In Charge, Delhi,*** reported in ***(1999) 6 SCC 110***, the Supreme Court has held that lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. In the present case, the prosecution having failed to produce witnesses (doctors) and failing to exhibit documents to enable the appellant/accused to have all the opportunity available to him to prove his innocence, we are of the view that the advantage in the inherent weakness of the prosecution case should be to the advantage of the appellant. Though for the ends of justice it might have been proper for this Court to remand the case back to enable the State to collect the medical documents and make doctors

prosecution witnesses, besides exhibiting documents such as Inquest Report etc. due to the fact that the incident had occurred in the year 2010, we are of the view that it would not be proper to remand the matter after such a long period of time. There is every possibility of the doctors and the documents not being available any longer. In that view of the matter, we are of the view that it should be decided on the basis of the materials on record.

36. Accordingly, in view of the reasons stated above, we are of the view that the prosecution has not been able to prove the guilt of the appellant beyond all reasonable doubt and as such, the appellant would have to be given the benefit of doubt in respect of the charges under Section 302 IPC and 498(A) IPC framed against him. Accordingly, the appellant is acquitted of the charges under Section 302 IPC and 498(A) IPC, by giving him the benefit of doubt. Consequently the impugned judgment dated 20.05.2019 passed by the Court of the Sessions Judge, Bongaigaon in Sessions Case No. 120(BGN)/2015 is hereby set aside. The appellant should be released from judicial custody immediately, if not wanted in any other criminal case. Send back the LCR.

37. In appreciation of the assistance provided by Mr. A. Dhar, learned Amicus Curiae, his fees as per the fee structure should be paid by the Assam State Legal Services Authority.

JUDGE **JUDGE**

Comparing Assistant