

Munnaf Ali Vs State of Assam

Court: Gauhati High Court

Date of Decision: Sept. 1, 2015

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 313, 342

Evidence Act, 1872 - Section 24, 8

Penal Code, 1860 (IPC) - Section 120-B, 201, 220, 302, 34

Citation: (2016) 1 CCR 196 : (2015) 4 GLT 434

Hon'ble Judges: Prasanta Kumar Saikia and Dr. Indira Shah, JJ.

Bench: Division Bench

Advocate: M. Dutta, Sr. Advocate and A. Haque, Advocate, for the Appellant; K.A. Mazuradar, Addl. P.P., for the Respondent

Final Decision: Dismissed

Judgement

Prasanta Kumar Saikia, J.

This appeal is directed against the judgment and order dated 06.08.2011, passed by the learned Addl.

Sessions Judge, Kamrup, Guwahati in Sessions Case No. 144(K)/2009 convicting Sri Munnaf Ali (hereinafter referred to as the accused person)

of offence U/s. 302 IPC and sentencing him to imprisonment for life and to pay a fine of Rs. 1000/- (one thousand). It may be stated here that the

judgment in question remains silent regarding the imprisonment which the appellant is to undergo in the event of his failure to pay the fine.

2. Being aggrieved by and dissatisfied with the aforesaid judgment, the appellant has preferred this appeal citing several infirmities in the judgment

under challenge.

3. We have heard Mr. M. Dutta, learned Senior counsel assisted by Mr. A. Hoque, learned counsel for the appellant and also heard Mr. K.A.

Mazumdar, learned Addl. P.P. Assam.

4. The case, projected in the F.I.R. dated 20.02.2007 and in subsequent trial, in short, is that on 20.02.2007 one Dudu Mian lodged an F.I.R.

with I/C., Jorshimalu Police Out Post stating that his daughter Maina Khatun (since deceased) was socially married of to the accused person

sometime in 2002. After her marriage, she started living with the accused person as husband and wife. However, the accused person started

torturing his wife both physically and mentally sometime after the marriage for which the wife of the accused person had to leave her matrimonial

house several times.

5. But on every occasion, aforesaid, she was persuaded by the accused person to go to her matrimonial house. However, on 20.02.2007 at about

7-8 am, in the morning one Halem came to the house of Dudu Mian, the informant (PW 7) and told PW 7 that his daughter, wife of the accused

person, was no more. On getting such information, he along with some other villagers went to the house of the accused person and found his

daughter lying dead inside the house of the accused person. In that connection, PW 7 lodged an F.I.R. with I/C, Jorshimalu Police Out Post

6. On receipt of such F.I.R., I/C, Jorshimalu Police Out Post made a GD Entry and forwarded the same to the O/C, Chhaygaon P.S. for

registering a case and for doing further needful in accordance with law. On receipt of the case, O/C, Chhaygaon P.S., registered a case vide

Chhaygaon P.S. Case No. 12/2007, U/s. 302 IPC and ordered one Sri Bhola Nath Sarma, SI of police to investigate the case.

7. Sri Sarma, SI of Police who was entrusted with the investigation of the case, visited the place of occurrence (in short PO) during the course of

investigation, held inquest on the dead body, arrested the accused person, did other things needful including the recording of confessional statement

of the accused person and thereafter, he submitted charge sheet U/s. 302 IPC against the accused person and forwarded him to the court to stand

his trial.

8. The learned Magistrate before whom charge sheet was so laid committed the case to the Court of Session since the offence U/s. 302 PC is

exclusively triable by Court of Session. Learned Sessions Judge on receipt of the case on commitment, transferred the same to the file of learned

Addl. Sessions Judge for disposal in accordance with law.

9. Learned Addl. Sessions Judge on receipt of the case on transfer and on hearing the learned counsel for both the parties was pleased to frame

charge U/s. 302 IPC and charge, so framed, on being read over and explained to the accused person, he pleaded not guilty and claimed to be

tried. During trial, the prosecution has examined as many as 13 (thirteen) witnesses including the informant, Medical Officer who conducted

autopsy on the dead body and the 10 of the case.

10. The statement of the accused person U/s. 313 Cr.P.C. was also recorded. He claims to be innocent. However, on being so required, he

declined to adduce any evidence of his own. On conclusion of trial, learned Add. Sessions Judge was pleased to convict the accused person of

offence U/s. 302 IPC and was also pleased to sentence him to punishment as aforesaid. It is that judgment which has been assailed in the present

appeal.

11. Mr. M. Dutta, learned Senior counsel appearing for the appellant/accused person submits that the prosecution case is based on the

circumstantial evidence as well as on confessional statement which the accused/appellant reportedly made before the learned Magistrate during the

course of investigation. According to the learned Senior counsel, the confessional statement made by the appellant cannot be relied on since the

alleged confession cannot be treated as confession as contemplated in law.

12. In that connection, it has been stated that in his confession before the learned Magistrate, the appellant states that on the fateful night, he saw

his wife with a group of boys in a very objectionable position. When he enquired as to who those boys were, his wife tried to kill him with a dao

for which he had to push her down and in that process, she got injured and died.

13. According to learned Senior counsel, in terms of law laid down in *Veera Ibrahim Vs. The State of Maharashtra*, , aforesaid statement being

exculpatory in nature, cannot be treated as confession. The relevant part of the judgment in *Veera Ibrahim (supra)* is reproduced below:-

15. To attract the prohibition enacted in s. 24 . Evidence Act, these facts must be established;

16. (i) that the statement in question is a confession;

17. (ii) that such confession has been made by an accused person;

18. (iii) that it has been made to a person in authority;

19. (iv) that the confession has been obtained by reason of any inducement, threat or promise proceeding from a person in authority;

20. (v) such inducement, threat or promise, must have reference to the charge against the accused person;

21. (vi) the inducement, threat or promise must in the opinion of the Court be sufficient to give the accused person grounds, which would appear to

him reasonable, for 677 supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the

proceedings against him.

22. In the present case, facts (i), (iv) and (vi) have not been established. Firstly, the statement in question is not a ""confession" within the

contemplation of s. 24 . It is now well-settled that a statement in order to amount to a ""confession"" must either admit in terms the offence, or at any

rate substantially all the facts which constitute the offence. An admission of an incriminating fact, howsoever grave, is not by itself a confession. A

statement which contains an exculpatory assertion of some fact, which if true, would negative the offence alleged, cannot amount to a confession

(see *Pakala Narayana v. R. Plavinder Kaur v. State of Punjab*: *Om Prakash v. State*

14. It is also the case of learned counsel for the accused person that there is evidence on record to show that on the fateful night, the accused

person was not in his house. Rather he was in Guwahati, a place far away from his house. Situation being such, he could not have been convicted

of offence U/s. 302 IPC since it is not possible for him to commit murder of his wife at his native place since on the night in question, he was at

Guwahati.

15. It has also been contended that examination of the accused U/s. 313 Cr.P.C. was not conducted in accordance with prescription of law.

Rather it was done in total disregard to the law laid down on the examination of the accused person U/s. 313 Cr.P.C. Equally important, some

important facts which was never notified to him while being examined U/s. 313 Cr.P.C. were relied upon by the trial court while ascertaining the

allegations against him but same is not permissible as held in the case of Rautu Bodra Vs. State of Bihar, reported in 1999 SCC (CrI) 1319. The

relevant part of the judgment is reproduced be-low:-

Though the above findings of the trial court and the High Court are based on proper appreciation of the evidence, we are unable to sustain the

conviction of the appellants in view of the grave error committed by the trial court, in that while examining the appellants under section 313 Cr.P.C.

it did not ask them to explain any of the circumstances appearing in the evidence against them. Indeed, except one question as to what they have

got to say about the prosecution case, the trial court did not put any other question to the appellants. In the context of the facts of the instant case,

it was obligatory on the part of the trial Judge, in view of section 313 Cr.P.C., to put questions to the appellants relating to the evidence of PW 6

and their going to the police station with the head of the deceased and the weapons of offence immediately after the occurrence. What would be

the effect of such non-compliance was considered by a three-Judge Bench of this Court in Sharad Birdhichand Sarda vs. State of Maharashtra

and it was held, following earlier decisions of this court, that the circumstances which are not put to the accused in his examination under section

313 Cr.P.C. must be completely excluded from consideration because he did not have any chance to explain them.

16. Such contention was, however, disputed by the learned Addl. P.P. Assam, appearing for the State contending that the confession in question

contains inculpatory as well as exculpatory statement but the exculpatory statement is wholly untruthful/improbable since such statement is found

totally incompatible with the materials on record. The fact that the story projected through the aforesaid exculpatory statement had never been

sought to be substantiated during trial is further proof of such exculpatory statement being false out and out.

17. Relying on the decision in Nishi Kant Jha Vs. The State of Bihar, , it has been submitted that when the exculpatory part of the confession is

found to be wholly impossible/unacceptable while inculpatory part of the same is found to be truthful, such inculpatory part can still be relied on.

According to learned Addl PP, in the case in hand, the inculpatory part of the confession, being truthful and also being made voluntarily, can be

relied on and such inculpatory part of the confession unmistakably evinces that the accused was the author of the crime in question.

18. In Nishikant Jha (supra) having discussed various other authorities including the decision in Plavinder Kaur Vs. State of Punjab; Om Prakash

V. State, Hanumant Vs. The State of Madhya Pradesh, Narain Singh Vs. The State of Punjab, the Apex court held that when the exculpatory part

of the confession is found to be wholly impossible/unacceptable while inculpatory part of the confession is found to be truthful, such inculpatory

part can still be relied on. The relevant part of decision in Nishikant Jha (supra) is reproduced below:-

In all cases the whole of the confession should be given in evidence; for it is a general rule that the whole of the account which a party gives of a

transaction must be taken together; and his admission of a fact disadvantageous to himself shall not be received, without "receiving at the same time

his contemporaneous assertion of a fact favourable to him, not merely as evidence that had made such assertion, but admissible evidence of the

matter thus alleged by him in his discharge.... It has been said that if there be no other evidence in the case, or none which is incompatible with the

confession, it must be taken as true; but the better opinion seems to be that, as in the case of all other evidence, the whole should be left to the jury,

to say whether the facts asserted by the prisoner in his favour be true.

In this case the appellant's statement in Ex. 6 on which reliance is placed to show that the appellant could not be guilty of the crime was found

wholly unacceptable. His version of Lal Mohan Sharma's commission of the crime, his being prevented from getting down from the train at Jasidih,

Lal Mohan apparently committing the crime forcing the appellant to be a witness to it and the latter's version of the manner in which he received

the injury were unacceptable to the High Court and we see no reason to come to any different conclusion. The other incriminating circumstances

already tabulated, considered along with the appellant's statement that he was present in the compartment when the murder was committed, that

he, jumped from the train near the river, that he gave a different version as to how he had received his injury, his statement that he had lost his way

to the village Roshan being unacceptable, all point conclusively to having committed the murder. There is nothing in the judgments of this Court to

which reference was made which can help the appellant. In Hanumant v. The State of Madhya Pradesh (1) the facts were as follows. On a

complaint filed by the Assistant Inspector. General of Police, Anti Corruption Department, two persons by name Nargundkar and Patel, were tried

for the offence of conspiracy to secure a contract of Seoni Distillery by forging the tender Ex. P-3A. and for commission of the offence of forgery

of the tender and of another document Ex. P-24... The Special Magistrate convicted both the appellants on all the three charges. The Sessions

Judge quashed the conviction of both the appellants under the first Charge of Criminal conspiracy but maintained the convictions and sentences

under s. 465 I.P.C. on the charges of forging Ex. P-3A and P-24. Both the appellants went up in revision to the High Court without any success.

Examining the evidence in the appeal by special leave, this Court held that the peculiar features relied on by the courts below in Ex. P-3A should

be eliminated from consideration and it was held that there were really no circumstances inconsistent with Ex. P-3A being a genuine document. In

respect of the charge regarding Ex. P-24 the trial Magistrate and the Sessions Judge used the evidence of experts to arrive at the finding that the

letter Ex. P-24 was typed on article A which had not reached Nagpur till the end of December 1946 and therefore the letter was antedated. The

High Court although of the view that the evidence of the experts was inadmissible proceeded nevertheless to discuss it and place some reliance on

it. The lower courts held that the evidence of experts was corroborated by the statements of the accused recorded under s. 342 . In rejecting this

conclusion it was observed by this Court:

If the evidence of the experts is eliminated, there is no material for holding that Ex. P-24 was typed on article A. The trial Magistrate and the

learned Sessions Judge used part of the statement of the accused for arriving at the conclusion that the letter not having been typed on article B

must necessarily have been typed on article A. Such use of the statement of the accused was wholly unwarranted. It is settled law that an

admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be

used either as a whole or not at all. If the statement of the accused is used as a whole, it completely demolishes the prosecution case and, if it is not

used at all, then there remains no material on the record from which any inference could be drawn that the letter was not written on the date it

bears..... we hold that there is no evidence whatsoever on the record to prove that this letter Ex. P-24 was antedated and that being so, the charge

in respect of forgery of this letter also fails.

Learned counsel for the appellant sought to rely on the above statement of law in aid of his Contention that the statement in Ex. 6 should either be

taken as a whole or rejected altogether. In our view that was not the ratio decidendi in Hanumant's case (1). As was pointed out by this Court,

with the elimination of the evidence of the experts, there was no material for holding that Ex. (1) 1045

P-24 was typed on article A and consequently the only evidence on the subject being in the statement of the accused a part of it could not be

relied on leaving apart the exculpatory part.

This is made clearer in the next case which was cited by learned counsel. In Palvinder Kaur v. The State of Punjab (x) "the appellant was tried for

offences under sections 302 and 201454689, Indian Penal Code in connection with the charge of murder of her husband". She was convicted by

the Sessions Judge under s. 302 but no verdict was recorded regarding the charge under s. 201 . On appeal, the High Court acquitted her of the

charge of murder but convicted her under s. 201 I.P.C. With regard to this, the High Court held that the most-important piece of evidence in

support thereof was the confession made by the appellant which though retracted was corroborated on this point by independent evidence so as to

establish the charge. This Court held that there was no evidence to establish affirmatively that the death of the appellant's husband was caused by

poisoning and that being so the charge under s. 201 I.P.C. also must fail. According to this Court, the High Court in reaching a contrary conclusion

not only acted on suspicions and conjectures but on inadmissible evidence. With regard to the alleged confession of the appellant, it was held that

the High Court not only was in error in treating the same as evidence in the case but was further in error in accepting a part of it after finding that

the rest of it was false. In that case, the evidence showed that the body of the appellants husband was found in a trunk and discovered in a well

and that the accused had taken part in the disposal of the body but there was no evidence to show the cause of his death or the manner and

circumstances in which it came about. Referring to the decision of Hanumant's case (2) it was reiterated that the Court cannot accept the

inculpatory part of a statement and reject the exculpatory part. The Court also referred to the observations of the Full Bench of the Allahabad.

High Court in Emperor v. Balmakund (3) and fully concurred therein. In the Allahabad case the question referred to the Full Bench was, whether

the court could accept the inculpatory part of a confession which commended belief and reject the exculpatory part which was inherently

incredible. On reference to a large number of authorities cited the Full Bench observed that these authorities actually established no more than this

that (a) where there is other evidence, a portion of the confession may in the light of that evidence; be rejected while acting upon the remainder

with the other evidence; and (b) where there is no other evidence and the exculpatory element is not inherently incredible, the court cannot accept

the inculpatory element and reject the exculpatory element. According to the Full Bench of the Allahabad High Court the two rules above stated

had been applied during the last one hundred years and the Full Bench answered the reference by holding "where there is no other evidence to

show affirmatively that any portion of the exculpatory element in the confession is false, the court must accept or reject the confession as a whole

and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently" incredible.

Relying on the above statement of the law it was said by this Court in Palvinder Kaur's case (1) that no use could be made of her statement

contained in the alleged confession to prove that the death of her husband was caused by poisoning or as a result of an offence having been

committed and once this, confession was excluded altogether, there remained no evidence for holding that her husband had died as a result of the

administration of potassium cyanide. The last decision of this Court referred to by counsel, viz. Narain Singh v. The State of Punjab (2) does not

add anything which need be taken note of to the propositions of law laid down in the above-mentioned case. In this case the exculpatory part of

the statement in Ex. 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury which the

appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This

was contradicted by the statement of the accused himself under s. 342 Cr.P.C. to the effect that he had received the injury in a scuffle with a

herdsman. The injury found on his body when he was examined by the doctor on 13th October 1961 negatives both these versions. Neither of

these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in the river Patra the amount of bleeding

and the washing of the bloodstains being so considerable as to affect the attention of Ram Kishore Pandey. P.W. 17 and asking him about the

cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise book and his belt and

shoes. More than that the knife which was discovered on his person was found to have been stained with blood according to the report of the

Chemical Examiner. According to the postmortem report this knife could have been the cause of the injuries on the victim. In circumstances like

these there being enough evidence to reject the exculpatory part of the statement of the appellant in Ex. 6 the High Court had acted rightly in

accepting the inculpatory part and piecing the same with the other evidence to come to conclusion that the appellant was the person responsible for

the crime. The appeal therefore fails and the conviction and sentence are upheld.

19. That apart, according to learned Addl. P.P., there are other several incriminating circumstances which stare direct at the accused person and

when such circumstances are read together in the light of unchallenged evidence of Doctor who clearly opined that the death of the victim was

homicidal in nature as well as the fact that the relationship between the accused person and the deceased was far from cordial since before the

incident, there cannot be any doubt that on the fateful night the accused, and none else, had killed his wife in his own house.

20. There is evidence on record to show that the wife of the accused was hale and hearty till the time of her death. How such a woman died a

homicidal death on the night in question despite she was in a very normal health has not at all been explained by the accused person. His inability to

explain as to how his wife, otherwise healthy, till the time of her death, died all on a sudden coupled with his inability to explain very many other

incriminating circumstances despite he was given opportunity to explain those circumstances again come down heavily on the plea of innocent

raised by the accused person-argues learned Adl PP.

21. It has also been contended that soon after the incident, the accused absconded and thereafter he surrendered before the police at Guwahati.

His abscondence as well as his subsequent surrender, and that too at a place far from his house, in the facts and circumstances, become more and

more testimonies of accused being the author of the crime in question. The learned Addl. P.P. Assam, therefore, urges this Court that the appeal

be dismissed on affirming the judgment under challenge.

22. We have considered the rival submissions having regard to the judgment under challenge and the materials on record. However, before we

proceed further, we find it necessary to have a look at the evidence of Doctor who conducted autopsy on the dead body of the person concerned.

He is Dr. Rituraj Chaliha and was examined as PW 6. According to him, on 1st of February, 2007, he was posted as Professor and Head of the

Department, Gauhati Medical College & Hospital. On that day, he conducted autopsy on the body of one Maina Khatoon and found the

following:-

An average built female dead body age about 26 years, wearing a checked Saree, red blouse and green petticoat. She was of dark brown

complexion. Head and neck and upper part of the chest were livid. Eyes were closed, conjunctiva congested, mouth partly opened. Tip of tongue

protruding through the mouth. Blood mixed fluid coming out from both nostrils. Anus and vagina are healthy. Rigor mortis present all over the

body. Post mortem hypostasis present over the back at places.

Lower abdomen is distended.

No ligature mark seen on the neck.

Nail marks are present on the neck one on the left side two on the right side.

On dissection of the neck sub-calcareous tissues were contused.

Muscles of the necks were also contused Thyroid cartilage and thyroid bone were found fractured,

In the thorax pleura was congested.

In the larynx and trachea mucosa was contused at places

Both the lungs were congested

Pericardial hemorrhage was present at places in the pericardium.

Heart was healthy and contains about 150 ml of liquid blood.

In the abdomen pharynx and esophagus showed contusion of the mucosa at places.

Stomach was healthy and contains partially digested food materials with no suspicious smell.

Uterus was enlarged and contains a female foetus of approximately 32 week gestation.

Rest of the abdominal organs were healthy.

In the cranium and spinal cord organs were healthy.

Opinion:- Death was due to asphyxia resulting from manual strangulation which was homicidal in nature.

Time since death 20 to 30 hrs.

23. The evidence of Doctor reveals that the death of the victim was homicidal in nature and it was occasioned by asphyxia caused by manual

strangulation. So situated, let us see who occasioned the death of the victim on or around 20.02.2007.

24. It may be noted here that prosecution places huge reliance on the testimonies of PW 1, Sri Hamid Ali, PW 3, Abdul Halim, PW 4, Abdul

Hussain, PW 9, Baber Ali, PW 10, Mariman Khatoon, PW 12, Md. Hasmat Ali but all those witnesses refused to support the prosecution case in

a way expected of them. However, it is found from their evidence that on the morning of 20.02.2007, they found the wife of the accused lying

dead inside the house of the accused person. Further, none of them uttered any word about their having found the accused in his house when they

went to the PO on 21.02.2007 in the morning.

25. On perusal of evidence on record, we have found that in his evidence, PW 1 clearly states that though the accused and deceased lived in the

same compound, yet, they lived separately from their parents. Though PW 9 and 10, they being father and mother of the accused person

respectively, were declared hostile since they reportedly resiled from their previous statements, yet, their evidence too shows that the deceased

and the accused lived separately from the parents of the accused person during the relevant time.

26. It is in these settings, let us consider the prosecution case based on confessional statement which the accused reportedly made before the

Magistrate during the course of investigation. It is worth noting that the defence attacked the confessional statement on grounds more than one.

Referring to the decision in *Palvinder Kaiir* (Supra), it has been alleged that the confession in question is not a confession as contemplated in law

since in his purported confessional statement, the accused did not utter even for a moment that he killed his wife. Quite contrary to it, his confession

contains statement which is exculpatory in nature and as such, same cannot be treated as confession in view of law laid down in *Palvinder Kaur*

(Supra).

27. In order to appreciate such a contention, we find it necessary to have a look at the confession which the accused reportedly made before the

Magistrate during the course of investigation. For ready reference, same is reproduced below:-

On last Monday, i.e. on 19.02.07, coming back from Byrnihat around 12 noon, I took my bath and went out to the market. Having returned there

after around 8 p.m., I looked for my wife, but I did not find her. Then I searched for her around the house. Then I heard a sound towards the

fishery that is in the east of my house. Looking there, I saw three persons armed with lathes, were guarding there. I saw my wife Maina committing

had act with a person while the others were guarding. When I gave a call by addressing her as "Maina" the three persons on guard held me and

tried to assault me. One of them left after assaulting me on my shoulder. My wife returned home. Then I asked my wife as to who was the person

who had been with her. Then my wife denied to reveal (his name). When I threatened her, she tried to hit me with a dao. Then I pushed my wife so

that I can save myself. My wife fell down. Then I found that she was not breathing. Then I left for the police station".

28. On perusal of the above statement, one would find that said statement contains several contradictory and wholly incompatible episodes since in

his confession, the accused claims that on the eventful night, he saw his wife indulging in sexual intercourses with several boys on the bank of a

pond in their backside for which he had to enquired her as to who those miscreants were which angered his wife so much so that she tried to kill

him with a dao and in trying to save himself from such assault, he had to push her down and in that process, his wife fell down and died. But such a

story is found to be false out and out.

29. It is because of the fact that the story of the accused person that on the eventful night, he found his wife indulging in sexual intercourses with

several boys on the bank of a pond in their backside for which he had to enquired her as to the identities of those miscreants for which his wife

tried to kill him with a dao and in trying to save himself from such assault, attempted on him, he had to push her down and in that process, she died,

is inherently unbelievable and improbable story. The fact that Doctor, who conducted autopsy on the body of the deceased decisively found the

deceased to have died due to asphyxia occasioned by strangulation, makes such a conclusion inevitable.

30. However, his stories that his wife did not die a normal death on the night in question, that she died in his own house, and that too, in his very

presence on such a night and that he left his house soon thereafter are found to be totally truthful. More importantly, such truthful part of confession

is also found to have been made voluntarily and such truthful part can easily be segregated from the untruthful exculpatory part of the confession in

question. Being so, in terms of law laid down in Nishikant Jha (supra), the inculpatory part of the confession can still be acted upon in ascertaining

the allegations against the accused person. When so read, such confession vividly shows the complicity of the accused person in the crime in

question.

31. So situated, let us consider the prosecution case base on various circumstances relied on by the prosecution. In that connection, it may be

stated that prosecution heavily relies on the testimonies of PW 2, PW 7, PW 8 and PW 11. Sri Jamser Ali, Gaonburah, (PW 2), deposes that one

day at about 12 noon, he came to know that Munnaf, son of Babar Ali, fled after killing his wife. Being so informed, he enquired whether police

was informed or not. He learnt that police was informed but it had not reached the PO till then.

32. Therefore, he started proceeding to the Police Station. However, while he was going to the police station, he saw police coming to the place of

occurrence and as such, he accompanied them to the PO and on arriving there, they found the wife of the accused lying dead inside his house. He

also noticed swelling on the neck of the deceased. In due course, Police conducted an inquest on the dead body of the victim and he prepared a

report in that connection as well.

33. PW 7, Sri Dulu Miah deposes that he is the father of the deceased. After their marriage, his daughter and the accused started to live in the

house of the later as husband and wife. Some time before her death, her daughter told him that the accused kept on complaining that had he

married another girl, he would have received more money from her. Thereafter, the accused started torturing the daughter of PW 7 for which he

took her daughter to his house. In that connection, a bichar (extra judicial trial) was held and on being advised by people in bichar, he allowed the

accused to take his daughter to his house.

34. But then, the accused again assaulted her daughter for which she again left her matrimonial house. For such torture on her daughter, PW 7

lodged a case against the accused person. However, the accused again convened a meeting and as per decision in that meeting, the accused took

his wife back to his house. Only a month thereafter, he (PW 7) got the information that his daughter was no more. Getting such information, he

rushed to the house of his son-in-law and found his daughter lying dead inside the house of the accused person.

35. When he was in the house of the accused person, he got the information that the accused killed his daughter and thereafter, fled. But he

surrendered before the police at Guwahati. In the meantime, he lodged an F.I.R. On receipt of the F.I.R., Police came to the PO and conducted

an inquest on the dead body in presence of witnesses. According to him, his daughter died after 5 years of marriage. In his cross examination, he

admitted that he did not know how his daughter actually got killed.

36. PW 8, Sri Moniruddin Ahmed, a teacher in ME Madrassa deposes that one day in the morning, he got the information that a murder had taken

place at Sampowpara village. He along with other people went there and learnt that the accused killed his wife. Police was also present there and it

conducted inquest on the dead body. He also learnt that during the night in question, the accused and deceased lived in the same house and having

killed his wife, he fled the scene but surrendered before the police at Guwahati. In his cross-examination, he admitted that he did not know what

was written in the inquest.

37. PW 11, Smti. Kenchen Choudhury deposes that one day, in the morning, she came to know that a pregnant woman was killed by her husband

and such incident occurred at Sampowpara village. Thereafter, she along with his brother came to the PO and found a woman lying dead inside

her house. Police was also there at that point of time and conducted inquest on the dead body and prepared a report in that connection which he

proved as Ext. 11. According to her, she noticed some injuries on the body of the deceased.

38. It is also in her evidence that she learned that the husband of the woman had killed her by pressing her neck and thereafter, he left his house but

surrendered before the police at Guwahati. In the meantime, the body of the deceased was sent to hospital for post mortem examination. In her

cross-examination, she denied the suggestion that she did not visit the place of occurrence on 20.02.2007 or the suggestion that she has falsely

implicated the accused with the crime in question.

39. Above being the evidence non official witnesses, let us consider the evidence of PW 13, Sri Bhola Nath Sarma SI of Police, IO of the case.

According to him, on 20.02.2007, he was posted as Incharge, Jorsimulo Police Outpost. On that day, he received an F.I.R. from Dudu Miah

(PW 7). On receipt of the F.I.R. he made a GD Entry thereon and forwarded the same to OC, Chhaygaon Police Station for doing needful. In the

meantime, a case was registered on such F.I.R. (Ext. 7) vide Chayygaon PS Case No. 12 of 2007 u/s. 302 IPC and PW 13 was entrusted to

investigate the case.

40. During the course of investigation, he visited the place of occurrence and having found the body of the deceased inside the house of the

accused person, he conducted inquest thereon in presence of witnesses, prepared a report in that connection which he proved as Ext. 11, sent the

same to hospital for post mortem examination, prepared a sketch map of the place of occurrence which he proved as Ext. 10. On that day, he did

not find the accused in his house.

41. In the meantime, PW 13 learnt that the accused had surrendered before the OC Panbazar PS. He therefore, went to such police station,

arrested the accused person, produced him before the Magistrate in due course to have his confessional statement recorded, did other needful and

on the conclusion of investigation, he submitted charge sheet u/s. 302 IPC against the accused person. In his cross-examination, he admitted that

there was not a whisper in the F.I.R. about the accused person torturing the daughter of PW 7 since before the incident in question. In his cross-

examination, he further stated that PW 7 did not disclose him during investigation that the accused tortured his wife contemplating to marry another

girl.

42. On perusal of evidence of PW 2, PW 7, PW 8 and PW 11, we have also found that there are some inconsistencies in the testimonies of some

of those PWs, more particularly, in the testimonies of PW 7 informant However, such inconsistencies are very minor in nature and appeared in

peripheral aspects of the prosecution case and being so, such infirmities in the testimonies of aforesaid PWs no way adversely affect the credibility

of the PWs or for that matter of the prosecution case. In other words, testimonies of those PWs are found to be trustworthy and reliable.

43. On the perusal of the evidence of PWs in between the lines, we have found that the prosecution has proved some facts and circumstances to

the hilt. Such circumstances are:-

i) The victim was married by the accused person about 5 years before her death,

ii) The relationship between the accused and the deceased was far from cordial since the deceased had to leave her matrimonial house on

occasions more than one only to be sent back to her matrimonial house at the intervention of villagers,

iii) Parents of the accused person and the accused reside in the same compound but they live in different houses,

iv) On the fateful night, the deceased and the accused person had resided in their respective house,

v) There is absolutely nothing on record to show that on the night in question any person other than the accused and the deceased occupied the ill-

fated house,

vi) The victim died due to asphyxia caused by strangulation on the night in question,

vii) The accused was not found in the house in the morning which followed the night in question.

viii) The accused surrendered before the police at Panbazar, Guwahati on 21.02.2007.

ix) The claim of the accused that the victim died when he pushed her down on the ground in order to save himself from the assault of the victim is

found to be wholly untrue.

x) His claim that he was not at his house on the night in question is also found to be without any element of truth.

xi) The witnesses who gathered at the P.O. on the morning of 20.02.2007, heard the people saying that the accused had killed his wife and fled, a

conduct relevant U/s. 8 of the Evidence Act.

44. These circumstances when read together, it would lead to an irresistible conclusion that the accused, and none else, was the author of the crime

in question.

45. We have found that all the incriminating facts and circumstances, including the fact that the victim died a homicidal death having been subjected

to strangulation, were brought to the notice of the accused person seeking his explanation thereto. However, he could not offer any reasonable

explanation to those highly incriminating circumstances towards him. Rather he simply doles out the plea that he is innocent which is found to be

wholly incompatible with the evidence on record.

46. In that connection, we may peruse the decision of Hon"ble Apex court in the case of Prithipal Singh etc. Vs. State of Punjab and Another etc.,

. In Prithipal Singh Etc (supra), one Shri Jaswant Singh Kharla, a human right activist was alleged to have been abducted from his residence, A

person who saw such an incident became a witness in the case initiated in respect of such incident. Prithipal Singh did not return home alive after

the incident. In that connection, a case was registered but since State police did not investigate the case properly for which on the application of the

wife of the victim, the High Court transferred the case to CBI for investigating, the case and to do the needful according to law.

47. It may be stated here that dead body of the aforesaid person was never found. On the conclusion of the investigation CBI submit the charge-

sheet against Prithipal Singh Etc and others u/s. 120-B /365 /220 IPC. In the trial, Prithipal Singh and others were convicted u/s. 364 IPC whereas

one Jaspal Singh and Amarjeet Singh were convicted u/s. 302 /201 /34 IPC. There was evidence on record to show that all the accused persons

had abducted the victim aforesaid whose dead body, as stated above, could not be found. But those accused persons did not explain as to what

happened to said person after his abduction from his house. In such a scenario, Apex could held as follows:-

44. Both the courts below have found that the accused/appellants have abducted Shri Jaswant Singh Khalra. In such a situation, only the accused

person could explain as what happened to Shri Khalra, and if he had died, in what manner and under what circumstances he had died and why his

corpus delicti could not be recovered. All the accused/appellants failed to explain any inculcating circumstance even in their respective statements

under Section 313 Cr.P.C. Such a conduct also provides for an additional link in the chain of circumstances. The fact as what had happened to the

victim after his abduction by the accused persons, has been within the special knowledge of the accused persons, therefore, they could have given

some explanation. In such a fact-situation, the Courts below have rightly drawn the presumption that the appellants were responsible for his

adduction, illegal detention and murder.

48. In view of above decision, the inability of the accused person to offer explanation to those circumstances, more particularly, the victim having

been found dead after suffering strangulation in her own house when the accused person was found to be there in his house on the night aforesaid,

in the facts and circumstances of the case, in our opinion, gives more and more strength to the claim of the prosecution that on the fateful night the

accused, and none else, had killed his wife.

49. We have already found that a part of the confession is held to be truthful. Same is also found to be made voluntarily. Being so, in view of the

decision in Nishikant Jha (supra), such truthful but voluntary part of confession can be acted upon. Such confession, which again draws more and

more support from various circumstances, which we have already detailed herein before, firmly shows that on the fateful night the accused, and

none else, had killed his wife in his own house.

50. We have found that prosecution case was challenged also on the ground that all the incriminating facts and circumstances were not brought to

the notice of the accused person seeking his explanation thereto. It has also been alleged that some of the testimonies which were though not

brought to the notice of the accused person while he was examined U/s. 313 Cr.P.C. were acted upon in ascertaining the allegation against the

accused person.

51. We have considered such submissions in the light of the materials on record more particularly, materials which emerge during the examination

of the accused person U/s. 313 Cr.P.C. and found that such contentions are without any substance since it is found well apparent that all the

incriminating facts and circumstances were brought to the notice of the accused person and only those facts and circumstances which were notified

to the accused person while being examined U/s. 313 Cr.P.C. were acted upon in ascertaining the allegations against the accused person.

52. In view of what we have discussed herein above and what have emerged there from, we are of the opinion that the prosecution has proved the

charge U/s. 302 IPC against the accused person beyond all reasonable doubt and as such, having convicted the accused person of offence U/s.

302 IPC and sentenced him to punishment as aforesaid, the learned trial court has committed no error of law whatsoever.

53. Since the learned trial court did not impose any sentence in default of payment of fine, we direct the accused person to undergo RI for another

3(three) months in default of fine for the offence U/s. 302 IPC.

54. Barring above small infirmity in sentencing the accused person which stands clarified as aforesaid, we have found no infirmity whatsoever in the

judgment under challenge and, therefore, same is upheld.

55. Consequently, the appeal is dismissed. Return the LCR forthwith.