

**HIGH COURT OF TRIPURA**  
**AGARTALA**  
**Crl. A(J) 55/2024**

**Sri Bir Manik Jamatia**

son of late Khagendra Jamatia, resident of Golmura (Tulamura),  
P.S. Kakraban, District- Gomati, Tripura

----Appellant

**Versus**

**The State of Tripura**

----Respondent

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For the Appellant(s) : Mr. P. Majumder, Legal Aid  
Counsel

For the Respondent(s) : Mr. Raju Datta, PP

Date of hearing & delivery  
of Judgment & Order : **07.01.2026**

Whether fit for reporting : **Yes/No**

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**BEFORE**  
**HON'BLE JUSTICE DR. T. AMARNATH GOUD**  
**HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**  
**JUDGMENT(ORAL)**

*(Dr.T.Amarnath Goud, J)*

Heard Mr. P. Majumder, learned Legal Aid Counsel appearing for the appellant also heard Mr. Raju Datta, learned Public Prosecutor, appearing for the respondent-State of Tripura.

2. The appellant, by means of filing the present appeal has challenged the judgment and order of conviction and sentence dated 12.09.2022 passed by the learned Sessions Judge, Gomati District, Udaipur, in connection with case No. S.T. 13 of 2021, wherein the appellant has been convicted under Section 302 of the IPC, and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 10,000/- with default stipulation.

3. Facts leading to the present appeal is that, on 17.09.2020, the informant lodged a written complaint alleging *inter alia* that on 17.09.2020 on receipt of an information he went to his house where he found that his step-father i.e. the appellant here, had killed his mother Amulya Rani Jamatia, by hitting her with a lathi. The complainant also alleged that the incident took

place on that date itself at around 5.00 p.m. afternoon. In the FIR it was also stated that the appellant himself confessed that he had killed his wife i.e. mother of the complainant.

4. On receipt of such information, the I.O. being endorsed by the officer- in-charge of the police station started investigation, and during the course of investigation, he recorded the statements of the witnesses, arrested the accused. After completion of investigation, the I.O has submitted charge-sheet against the appellant under Section 302 IPC. On receipt of the charge-sheet, cognizance was taken by learned CJM, Gomati, Udaipur. Subsequently, the case was committed to the court of Sessions for trial. At the commencement of trial, charge was framed against the accused under Sections 302 IPC, to which the appellant pleaded not guilty and claimed to be tried.

5. The prosecution to substantiate the charge adduced as many as 19 witnesses and introduced some documents which were exhibited by the learned trial court. On closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. to which he denied all the allegations but, wanted to adduce one defence witness. Summon was issued upon the said defence witness but the same returned unserved. After completion of recording of evidences and having heard the learned counsel appearing for the parties, the learned Sessions Judge convicted and sentenced the accused, as stated here-in-above. Hence, this appeal before this court.

6. Mr. Majumder, learned counsel appearing for the appellant has submitted that the entire case is based on confessional statement which is a weak piece of evidence and the same cannot be the sole evidence for conviction in absence of corroboration from independent witness. Learned counsel also has raised question regarding credibility of the witnesses since

there are discrepancies in the deposition of the witnesses. Learned counsel also submitted that confession made to the police is generally inadmissible in law. Mr. Majumder, also submitted that there is no eye witnesses to the alleged incident, and all the witnesses are hearsay witnesses and their deposition has no credible value. Mr. Majumder, has also submitted that the report of TSFSL is not made available. Mr. Majumder, also stated that as per the complainant (PW-8), after the alleged incident, the appellant firstly confessed his guilt to his nephew Amar Manik Jamatia, but, said Amar Manik Jamatia was not cited as witness. Learned counsel also has submitted that during examination of the accused under Section 313 Cr.P.C., the appellant has desired to adduce one Pachandra Jamatia as defence witness, but said Pachandra Jamatia was not examined and cross-examined as defence witness. Mr. Majumder, learned counsel has further submitted considering all aspects at best the case can be a case under Section 304 Part I of the IPC which deals with punishment for culpable homicide not amounting to murder. Showing all the discrepancies therein learned counsel has submitted that the entire investigation is perfunctory, hence, has submitted that this is a clear case of acquittal. With regard to his submission, learned counsel has placed his reliance on *Ramu Appa Mahapatar vs. State of Maharashtra*, reported in (2025) 3 SCC 565, paras 19, 20, 21. Learned counsel also has placed reliance on the judgment passed by this Court on 30.08.2023 in *Crl. A(J) 08 of 2022* [Sri Papan Biswas vs. State of Tripura].

7. On the other hand Mr. Raju Datta, learned PP appearing for the State-respondent has submitted that the presence of the accused at the scene of occurrence on that fateful date and time has been proved beyond reasonable doubt. Mr. Datta, learned Additional PP has submitted that from conjoint

reading of the deposition of the witnesses, it is aptly clear that the accused had killed his wife by hitting her on head by a lathi. Mr. Datta, learned PP has further submitted that from the record it is evident that the seized articles also contain blood stain. Mr. Datta, learned PP also has submitted that the relation between the appellant and his wife was not cordial and there was regular issue of assaulting the victim by the appellant. Mr. Datta, learned PP has further submitted that the in the inquest report it is specifically stated that the victim died due to head injury and from the evidence of PW-12, last seen together theory also comes into play. Mr. Datta, also has submitted that the evidence of PWs 3, 4, 5, 6 and 7 are corroborating evidence. Mr. Datta, learned PP also has submitted that the duty casts upon the accused to examine his defence witness but, he did not. Lastly, learned PP has submitted that the case has been proved beyond reasonable doubt and requires no interference of this Hon'ble Court.

**8.** We have considered the submissions of learned counsel appearing for the parties, and have perused the records.

**9.** We have given our thoughtful considerations to the evidences brought on record. According to this Court, none of the witnesses are eye witness. PW-1, stated that the accused on interrogation by the police has confessed that he had killed his wife, Amulya Rani Jamatia by hitting her with a stick on her head in his house. PW-2 is a seizure witness. PW-3 deposed that on 17.09.2020 the accused came to his house and stated that he had killed his wife by beating with lathi on her head and thereafter on going to his house found Amulya Rani Jamatia lying dead with bleeding injuries on her head. PW-4, 5, 6, 7, 9, 10, 11, 13, 14, also corroborated the deposition of PW-3. PW-8, is the complainant who deposed that on 18.09.2020 on receiving an

information that his step father i.e. the appellant herein, had confessed to his nephew Amar Manik Jamatia stating that he has killed his wife with a lathi. PW-8 also deposed that his step father used to physically assault his mother. PW-12, deposed that about one year three months back on the occasion of Biswakarma Puja, he went to the house of the accused and saw that he was sleeping in his bed and his wife was lying dead in a pool of blood on the floor. PW-12 also deposed that he saw a blood stain lathi on the floor. PWs 15 and 16 are seizure witness and PW-17 is the scribe. PW-18 is the medical officer who conducted post mortem over the dead body of the deceased and prepared the post mortem report. PW-19 is the Investigating Officer.

**9.1.** From the deposition of PW-3, 4, 5, 6, 7, 9, 10, 11, 13, 14, it is found that these witnesses are not the eye witnesses to the alleged incident, on the contrary, after the alleged incident the accused went to the house of PW-3 on the occasion of Biswakarma Puja and in front of them confessed that he has murdered his wife by hitting her with a lathi on her head, but all these witnesses conjointly deposed that there was an altercation between the husband and wife i.e. the appellant and his wife (victim) following which the appellant has killed his wife and on going to his house they found his wife dead. Subsequently, PW8, on getting the information lodged the complaint. Moreover, the alleged incident took place on 17.09.2020 and after one day i.e. on 18.09.2020, PW-8 has lodged the complaint regarding murder of his mother. However, the appellant initially had made his confessional statement before PW-3, 4, 5, 6, 7, 9, 10, 11, 13, 14. Only PW-12 deposed that long back the incident when he went to the house of the appellant, where he saw the accused sleeping on bed and his wife was lying dead in a pool of blood on the floor. As per section 106 of Indian Evidence Act, 1872, burden of proving the

same entirely lies upon PW-12, since it was within his knowledge, but PW-12 failed to prove the same, moreover deposition of PW-12 has not been supported by any of the prosecution witness. Thus, from the entirety it emerge that the appellant has confessed before the said witnesses that he has killed his wife but, none has seen the offence to take place. It is no more *res integra* that an extra judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. In *Ramu Appa Mahapatar* (*supra*), the Apex Court in para 19, 20 and 21, has held as under:-

**“19. Extra-judicial confession of an offence made by the accused before a witness is one of the several instances of circumstantial evidence; there are other circumstances, such as, the theory of last seen together; conduct of the accused before or immediately after the incident; human blood being found on the clothes or person of the accused which matches with that of the accused; leading to discovery, recovery of weapon etc. As we know, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. The chain must be complete and each fact forming part of the chain must be proved. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances would not only have to be proved beyond reasonable doubt, those would also have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. All these circumstances should be complete and there should be no gap left in the chain of evidence. The proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. The circumstances taken cumulatively must be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. While there is no doubt that conviction can be based solely on circumstantial evidence but great care must be taken in evaluating circumstantial evidence. If the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted.**

**20. In State of Rajasthan Vs. Raja Ram, reported in (2003) 8 SCC 180, this Court explained the concept of extra-judicial confession. Confession may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a magistrate or a court. Extra-judicial confessions are generally those that are made by a party before a private individual who may be a judicial officer also in his private capacity. As to extra-judicial confessions, two questions arise: firstly, whether they are made voluntarily and secondly, are they true? If the court is of the opinion that the confession was not made voluntarily but was a result of an inducement, threat or promise, it would not be acted upon. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind and if it is not caused by any inducement, threat or promise having reference to the charge against him proceeding from a person in authority. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case judged in the light of Section 24 of the Indian Evidence Act, 1872 (briefly ‘the Evidence Act’**

hereinafter). The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary. At that stage, the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity and voluntariness of the confession, the court may refuse to act upon the confession even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession is deserving of the highest credit because it is presumed to flow from the highest sense of guilt.

21. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the reliability of the witness to whom it is made and who gives the evidence. Extra-judicial confession can be relied upon and conviction can be based thereon if the evidence about the confession comes from a witness who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused. The words spoken by the witness should be clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and that nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

In *Papan Biswas (supra)* this Court, in para 19, 22, 23, 24 and 25, held as under:

"[19] In support of his case, has placed his reliance in a case of the Apex Court in *Chandrapal v. State of Chhattisgarh (Earlier M.P.)*, [Crl. A. No.378 of 2015] wherein, the Court has held as under:

"5. The learned counsel Mr. Akshat Shrivastava appearing for the appellant taking the Court to the evidence of the witnesses examined by the prosecution. more particularly of PW-2, PW-4, PW-5 and PW-6, submitted that there were major contradictions in their evidence as regards the alleged extra judicial confession made by the accused Videshi before them. Relying upon various decisions of this Court, he submitted that conviction cannot be based on the extra judicial confession made by the co-accused, which is of a very weak kind of evidence. Repelling the theory of 'Last seen theory', he submitted that the statement of PW1 Dhansingh who had allegedly last seen Kanhaiya, having been called by the present appellant, was recorded after 4 months of the incident. Even as per the case of the prosecution, the said incident of calling Kanhaiya by the appellant was 10 days prior to the date on which the dead bodies were found in the Kajubadi, and there being long time gap between the day the deceased was allegedly last seen with the appellant and the day when his dead body was found, it was very risky to convict the appellant solely on such evidence. He further submitted that the doctor who had performed the postmortem had also opined that the cause of death was asphyxia as a result of hanging and the nature was suicidal. Thus, in absence of any clear or cogent evidence against the appellant, both the courts had committed gross error in convicting the appellant.

6. However, the learned counsel appearing for the respondent State submitted that there being concurrent findings recorded by the Sessions Court as well as High Court with regard to the guilt of the appellant, the Court may not interfere with the same. While fairly agreeing that an extra judicial confession would be a weak piece of evidence, he submitted that there was other corroborative evidence adduced by the prosecution which conclusively proved the entire chain of circumstances leading to the guilt of the present appellant. According to him, after the alleged incident on 02.12.1994, till the dead bodies were recovered on 11.12.1994, nobody had seen the deceased Brinda and Kanhaiya in the village, and therefore the evidence of PW-1 Dhansingh who had seen Kanhaiya lastly with the present appellant was required to be believed, as believed by the courts below. According to him, the concerned doctor who had carried out the postmortem had also opined that the death of the deceased could be homicidal death also.

7. At the outset, it may be stated that undisputedly the entire case of the prosecution rested on the circumstantial evidence, as there was no eye witness to the alleged incident. The law on the appreciation of circumstantial evidence is also well settled. The circumstances concerned 'must or should be established and not 'may be' established, as held in *Shivaji Sahabrao Bobade & Anr. Vs. State of Maharashtra*, (1973) 2 SCC 793. The accused 'must be' and not merely 'may be' guilty before a court can convict him. The conclusions of guilt arrived at must be sure conclusions and must not be based on vague conjectures. The entire chain of circumstances on which the conclusion of guilt is to be drawn, should be fully established and should not leave any reasonable ground for the conclusion consistent with the innocence of the accused. The five golden principles enumerated in case of *Sharad Birdhichand Sarda Vs. State of Maharashtra*, (1984) 4 SCC 116 laid down in para 152 may be reproduced herein for ready reference:

152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793: 1973 SCC (Cri) 1033: 1973 CrLJ 1783]* where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] 'Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- (3) the circumstances should be of a conclusive nature and tendency,
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

8. It is also needless to reiterate that for the purpose of proving the charge for the offence under Section 302, the prosecution must establish 'homicidal death' as a primary fact. In order to convict an accused under Section 302, the court is required to first see as to whether the prosecution has proved the factum of homicidal death. So far as the facts of present case are concerned, the evidence of PW-13 Dr. R.K. Singh, who had carried out the post-mortem of the deceased Brinda and Kanhaiya, would be most relevant in this regard. He had stated in his deposition before the court, inter alia, that on 12.12.1994, he had carried out the post-mortem of Kumari Brinda, daughter of Bhagirathi, and of Kanhaiya alias Chandrashekhar Gaur. The dead bodies of both the deceased were in decomposed state. He had further stated that the knot mark present on the neck of the deceased Brinda was ante-mortem, and that the cause of death appeared to be Asphyxia due to hanging. The death had taken place within 8 to 10 days and the nature of death was Suicidal. The said Doctor had stated similar facts for Kanhaiya that the dead body of Kanhaiya was found bent towards left side from his neck and a ligature mark having size 10' x 5' was present on the neck. The cause of death appeared to be Asphyxia due to hanging and the death appeared to have taken place within 8 to 10 days. He had further stated that there was neither fracture found on the dead bodies of the deceased, nor any blood clots were found, nor any injuries were found, and therefore he had opined that the cause of death was hanging which normally is found in case of suicide. He specifically stated that as the dead bodies were decomposed, he could not express any opinion whether it was a homicidal death. In the cross examination by the learned counsel for the accused, he had categorically admitted that he did not find any symptom of homicidal death, nor he had opined in his report given on 12.12.1994 that the deaths of the deceased were homicidal. Of course, he had stated that on the basis of the report submitted on 30.04.1995, an inference could be drawn that the deaths could be homicidal deaths.

11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession. As held in case of State of M.P. Through CBI & Ors. Vs. Paltan Mallah & Ors., (2005) 3 SCC 169, the extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused.

12. In Sahadevan & Anr. Vs. State of Tamil Nadu, (2012) 6 SCC 403, it was observed in para 14 as under:

14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.'

The said ratio was also reiterated and followed by this court in cases of Jagroop Singh Vs. State of Punjab, (2012) 11 SCC 768, S.K. Yusuf Vs. State of West Bengal, (2011) 11 SCC 754 and Pancho Vs. State of Haryana, (2011) 10 SCC 165, wherein it has been specifically laid down that the extra judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution. It should be truthful and should inspire confidence. An extra judicial confession attains greater credibility and evidentiary value if it is supported by chain of cogent circumstances and is further corroborated by other prosecution evidence. In the instant case it is true that the coaccused Videshi had allegedly made self-inculpatory extra judicial confession before the PW-4 Bhola Singh, and had made extra judicial confession before the other witnesses i.e., PW-5 Chandrashekhar, PW-6 Baran Singh Thakur and PW-7 Dukaluram stating, inter alia, that the other three accused i.e., Bhagirathi, Chandrapal and Mangal Singh had committed the murder and he (i.e. Videshi) was asked to assist them in disposing the dead bodies and concealing the evidence. However, the High Court, considering the inconsistency between the said two extra judicial confession made by the co-accused Videshi, did not find it safe to convict the other accused i.e., Bhagirathi, Mangal Singh and Videshi himself, and the High Court surprisingly considered the said extra judicial confession made by Videshi as an incriminating circumstance against the appellant Chandrapal for convicting him for the offences charged against him. In our opinion if such weak piece of evidence of the co-accused Videshi was not duly proved or found trustworthy for holding the other co-accused guilty of committing murder of the deceased Brinda and Kanhaiya, the High Court could not have used the said evidence against the present appellant for the purpose of holding him guilty for the alleged offence.

13. This takes the court to examine the theory of Last seen together propounded by the prosecution. As per the case of prosecution, PW-1 Dhansingh had seen the accused Chandrapal calling the deceased Kanhaiya and taking him inside his house on the fateful night. Apart from the fact that the said Dhansingh had not stated about the time or date when he had lastly seen Kanhaiya with Chandrapal, even assuming that he had seen Chandrapal calling Kanhaiya at his house when he was sitting at the premises of village panchayat, the said even had taken place ten days prior to the day when the dead bodies of the deceased were found. The time gap between the two incidents i.e., the day when Dhansingh saw Chandrapal calling Kanhaiya at his house and the day Kanhaiya's dead body was found being quite big, it is difficult to connect the present appellant with the alleged crime, more particularly when there is no other clinching and cogent evidence produced by the prosecution.

16. In *Jaswant Gir Vs. State of Punjab*, (2005) 12 SCC 438, this court held that in absence of any other links in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of 'Last seen together', even if version of the prosecution witness in this regard is believed.

17. In *Arjun Marik & Ors. Vs. State of Bihar*, 1994 Supp (2) SCC 372, It was observed that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused, and therefore no conviction on that basis alone can be founded.

18. As stated hereinabove, in order to convict an accused under Section 302 IPC the first and foremost aspect to be proved by prosecution is the factum of homicidal death. If the evidence of prosecution falls short of proof of homicidal death of the deceased, and if the possibility of suicidal death could not be ruled out, in the opinion of this Court, the appellant accused could not have been convicted merely on the basis of the theory of „Last seen together“

[22] In view of the above discussions and observation, we are of the view that the pin pointed discussion would be on the point of last seen theory and the circumstantial evidence. Absence of any other links in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of last seen together, even if version of the prosecution witness in this regard is believed, last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible in order to convict and accused under Section-302 IPC the first and foremost aspect to be proved by the prosecution falls short of proof of homicidal death of the deceased and if the possibility of suicidal death could not be ruled out, in the opinion of this Court, the appellant accused could not have been convicted merely on the basis of the theory of last seen together.

[23] In our opinion, when the case of the prosecution rested on circumstantial evidence, it was imperative for the prosecution to prove beyond reasonable doubt that the death of the deceased was homicidal death and not suicidal. There is also no extra judicial confession from the accused person. It has also been contended that the motive behind the murder of the deceased was also not established. PW-1, the doctor who opined that the death of the deceased could be homicidal death also. The law on the appreciation of circumstantial evidence is also well settled. The circumstances concerned must or should be established and not may be established, as held in *Shivaji Shabrao Bobade and Another v. State of Maharashtra*, reported in (1973) 2 SCC 793. The accused must be and not merely may be guilty before a Court can convict him. The conclusion of guilt arrived at must be sure conclusions and must not be based on vague conjectures. The entire chain of circumstances on which the conclusion of guilt is to be drawn, should be fully established and should not leave any reasonable ground for the conclusion consistent with the innocence of the accused.

[24] It is worth noting that the Court below in the impugned judgment has not considered at all the evidence of the doctor to come to the conclusion whether the death was homicidal death, before confirming the conviction of the appellant for the offence punishable under Section-302 of IPC. This takes the Court to examine the incriminating evidence relied upon by the prosecution that is the pointing out of memorandum. As stated hereinabove, in order to convict an accused under Section-302 of IPC the first and foremost aspect to be proved by the prosecution is the factum of homicidal death. If the evidence of prosecution falls short of proof of homicidal death of the deceased and if the possibility of suicidal death could not be ruled out, in the opinion of this Court, the accused could not have been convicted merely on the basis of the theory of last seen together.

[25] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspicions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, we find it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant.”

9.2. Further, as per deposition of PW-1, on interrogation by the darogababu in the police station, the appellant confessed his crime, and thereby it is was duty of the police officer to record the said statement of the accused before a Magistrate, but no such statement was recorded under Section 164(2) Cr.P.C. and, hence, as per settled principle in criminal jurisprudence such report has got no evidentiary value. Further, the accused

during his examination under Section 313 Cr.P.C. has categorically replied that he did not kill his wife and also that he has not made any confessional statement before anybody. The accused also during his examination under Section 313 Cr.P.C. has stated that at the time of the alleged incident he was in the shop of Pachandra Jamatia where from his wife i.e. the deceased has borrowed Rs.50/- from his and thereby he desired to secure the evidence of Pachandra Jamatia as defence witness but, in course of trial deposition of Pachandra Jamatia was not cited as defence witness. However, as per deposition of the witnesses the appellant has hit the head of his wife by a stick and the post mortem report also shows that the victim died due to injuries on her head. PW-19, the IO deposed that he had seized a gamcha and one blood soaked dhuti from the possession of the appellant and as per TSFSL report the said seized articles contains blood stains of human origin.

**10.** On appreciation of the evidences of the prosecution witnesses, it reveals that the appellant is the step-father of the complainant, PW-8, and PW-8 in his deposition stated that his step father i.e. the appellant herein, used to physically assault his mother. Furthermore, PW-3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, had conjointly deposed that on the alleged date of incident there was an altercation between the appellant and his wife. From the deposition of the prosecution witnesses, it is aptly clear that the relation between the appellant and his wife (victim) was not cordial, and learned counsel for the parties have also submitted that quarrel between the appellant and the victim often took place and several village meetings were convened to resolve their dispute. Considering the nature of the altercation, it could easily be presumed that on the alleged date of incident there would be possibility of quarrel on account of strain family relationship between the appellant and the deceased; and in a

sudden fight out of rage and in the heat of the moment, assault by the appellant upon the deceased cannot be ruled out. As per the injury report, there was only a single blow injury on the head of the victim i.e. his wife. If the appellant had intention to kill his wife, he would not have inflicted single blow that too with a stick, which is reasonably presumed to be a branch. It is, therefore, cannot be said that there was any premeditation. Thus, the offence presumably would not fall under Section 302 IPC rather under Section 304 Part I IPC.

**11.** After analyzing the evidences on record, this Court note that in the present case, there is a single injury which admittedly has been caused by the appellant out of rage on the head of the deceased by a stick. The injury has been caused by the appellant in course of altercation with the deceased since their family relation was not cordial. There is nothing on record to demonstrate that the appellant had an intention to cause death of the deceased victim. Thus, it could be presumed that the act on the part of the appellant was in course of sudden quarrel which also previously took place with the victim relating to their strain family relation. Similarly, on the alleged date of incident, there was hot altercation between the appellant and the victim resulting which the appellant out of rage and in the heat of the moment gave a single blow on the head of the victim by a stick for which she died. It can be squarely concluded from these facts that there was an absence of a motive and prior intention to kill the deceased. Based on these specific facts and circumstances, we are of the view that there is no clear intent and *mens rea* shown in this case which is required to prove culpable homicide amounting to murder. Thus, this court is of the view that the conviction of the appellant is liable to be converted from murder under Section 302 of the IPC to culpable

homicide not amounting to murder under Section 304(1) of the IPC. Additionally, we are also cognizant of the fact that the appellant is presently 76 years old and has already undergone a sentence of more than three years, a thus, inclined to reduce of quantum of sentence.

**12.** In the light of the above evidence as discussed earlier, the appeal is partly allowed. The conviction under Section 302 IPC is converted to Section 304 (Part-I), IPC. Accordingly, the sentence to suffer rigorous imprisonment for life is reduced to a period of 8 (eight) years. It is made clear that the period of imprisonment undergone by the appellant shall be computed accordingly. Consequently, the judgment and order dated 12.09.2022 passed in S.T. 13 of 2021 by the learned Sessions Judge, Gomati, Udaipur, is modified to the extent as indicated above.

**13.** With the above observations and directions, the instant appeal stands allowed in-part to the extent as indicated above, and thus, disposed of.

Send down the LCRs.

**S.DATTA PURKAYASTHA,J**

**DR.T. AMARNATH GOUD,J**