



IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE DEBANGSU BASAK

AND

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 15 OF 2021

SHIBU BARMAN @ KUBAL

VS

STATE OF WEST BENGAL

For the Appellant : Mr. Sourav Ganguly, Adv.

**For the State : Mr. Aditi Shankar Chakraborty, Ld. A.P.P.
Dr. Nilay Chakraborty, Adv.**

Last heard on : 13.01.2026

Judgement on : 06.02.2026

Uploaded on : 06.02.2026

CHAITALI CHATTERJEE DAS:-

1. This criminal appeal has been filed challenging the judgement and order of conviction dated November 21, 2020 passed by the learned Additional Session Judge, Dinhata , District Cooch Behar, in connection with Sessions case No. 53 of 2017 arising out of Dinhata Police Station Case No. 175 of 2017 under section 302 of the Indian Penal Code ,1860.

**Fact of the case**

2. The complaint was lodged by Rajdhar Barman the defacto complainant on February 17, 2017 at about 9 AM when he found one dead body of a Hindu female aged about 35 years in the agricultural land of Dulal Barman, and the nature of injuries on her neck was suggestive of the fact that she was killed. On the basis of such written complaint, Dinhata police Station initiated a case under Section 302 of the Indian Penal Code registered against unknown accused person. On completion of investigation the police arrested the accused/appellant on the alleged confession made by him while he was under police custody, regarding commission of murder of his wife by strangulation. The charge-sheet was submitted on completion of investigation and the case being exclusively triable by the Court of session the learned Magistrate committed the case to the additional session Judge Dinhata, Cooch Behar. On conclusion of trial the learned trial court passed the judgement and order of conviction on November 21, 2020 against the appellant. Being aggrieved thereby this appeal has been filed for setting aside the said judgement and order of conviction.

Submissions

3. The first point raised by the learned advocate appearing on behalf of the appellant that as per the post-mortem report the death occurred on or after 1am on February 17, 2017 and the deceased was last seen with the accused in the morning on February 16, 2017. Nothing in the case record show that deceased was with the accused after morning on February 16, 2017 till February 17, 2017 at 1 A.M. Therefore the theory of last seen together cannot



be applied in this case against the appellant. In this regard reliance was placed on the case of **Anjan Kumar Sharma and others versus State of Assam**¹.

Further reliance was made on **Padman Bibhar versus State of Orissa** ²

4. The learned advocate also relied upon a recent decision of **Monoj alias Munna versus State of Chhattisgarh**³, where the doctrine of last seen together is analysed. It is submitted before this court by the learned advocate that concept of an extrajudicial confession is primarily of judicial creation and must be used with extra caution. The recent decision in Shanti **Devi versus State of Haryana reported in**⁴ has explained the evidentiary value of extrajudicial confessions and concluded that such confession has a very weak evidentiary value and should be accepted with great care and caution. The Supreme Court taking note of the case of **Sahadevan vs State of Tamil Nadu**⁵, reiterated certain guiding principles for the admissibility of extrajudicial confession and those are lacking in the instant case.
5. The further stand taken by the Learned Advocate that the suspicion, however strong cannot take place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proven guilty beyond a reasonable doubt. The learned Advocate relied on the decision of **Raghunathpura and another versus State of Karnataka**⁶ in this regard.
6. The learned Advocate on the point of circumstantial evidence relied upon the decision of **Laxman Prashad @ Laxman versus State of mother brother –**

¹ (2017) 14 S CC 359

² SCC online SC 1190.

³ 2025 SCC online SC 2858

⁴ 2025 SCC online SC 1704

⁵ (2012) 6 SCC 403

⁶ (2024) SCC online SC 365



reported in⁷ where it has been observed that in case of circumstantial evidence, the chain has to be complete in all respect to indicate the guilt of the accused and also exclude any other theory of crime.

7. The further point taken regarding non-examination of vital witnesses either during the investigation or during the trial. The prosecution did not establish by introducing evidence that the deceased was seen in the company of the accused and was never seen thereafter. Malati Barman with whom the deceased went to meet for taking back of ₹ 30,000 which was given as the loan by the accused to her was never interrogated during the investigation. That apart that the alleged incident as per the prosecution's version was on February 16, 2017 from 1 A.M. to 1 P.M and the body was recovered on February 17, 2017 at the western side of the cultivated land of one Dulal Roy. The accused was arrested after 11 days but he was detained on 19th by the police illegally and showed him as arrested before the ACJM Dinhata on February 28, 2017 and this raises serious suspicion not only regarding the manner of investigation but the conduct of the trial and the learned court brushed aside all the self-contradictory statement and the unexplained questions and delivered the judgement. Hence the judgement is liable to be set aside.
8. The learned Advocate for prosecution on the other hand submits that a systematic escalation of domestic cruelty culminating in murder is well founded. The case rests on the doctrine of 'last seen together' supported with testimonies of the minor children, corroborated by medical evidence of

⁷ (2023) 6 SCC 399



homicide strangulation and bolstered by the post -crime conduct of the accused.

9. The learned Advocate for the Prosecution relied upon the decision of ***State of Rajasthan vs Kashi Ram*⁸ , *Chetan vs The State of Karnataka*⁹** in order to establish that in cases the accused did not explain the incriminating evidences pointed out to him during his examination under Section 313 Cr.P.C, but merely denied or feigned ignorance to the Court, The learned Advocate for the prosecution further relied upon the decision of ***Abdul Nassar vs State of Kerala & Anr*¹⁰** , where certain guidelines were framed regarding the analysis of the testimonies of each prosecution witnesses which are to be assessed in its entirety to ensure no material aspect is overlooked . Thus the reasonable inference that can be drawn from the testimony of each witness must be explicitly delineated. It is further submitted that in order to bring home the charges the prosecution has examined as many as 25 witnesses and proved that the chain of circumstantial evidence was fully completed. The deceased was last seen with the present appellant and the prosecution has discharged the responsibility to bring home the charge against the accused person beyond the shadow of all reasonable doubt.

Accordingly he prayed for dismissal of the appeal.

Analysis

10. Heard the submissions. On careful perusal of the materials on record as well as considering the submissions advanced by the learned advocates the moot question now falls for consideration is that as to whether the prosecution

⁸ (2006)12 SCC 254

⁹ 2025 INSC 793

¹⁰ 2025 INSC 35



was able to prove the case beyond the shadow of all reasonable doubt against the appellant qua the judgment and order of conviction was rightly passed by the learned Trial Court.

11. The prosecution case was launched on the basis of a complaint lodged before the I/C Dinhata Police by the de facto complainant Rajdhar Barman who came to learn on that day that a dead body of a female is found in the land of Dulal Barman . It was presumed seeing the injury found on her neck that someone might have murdered her. This person was examined as PW2. From his evidence it could be gathered that the body was found on the land of one Dulal Barman of their village having a blackish injury mark around the throat. They informed the police and police conducted inquest over the body in their presence and they put signature on that. The executive Magistrate conducted inquest and they also put their signature on that. After that he lodged the written complaint.

12. The father of the deceased lady, adduced evidence as P W4 who deposed that the accused was his son-in-law and his daughter was given marriage about 16 years ago. His son-in-law inflicted physical and mental torture upon his daughter and a village Salish was organised by the local panchayat where the accused undertook not to inflict any torture upon his daughter in future and took her to his house. However after two months he again started torturing her and sprinkled kerosene oil on his daughter and set her on fire. The Fire brigade was informed and rescued his daughter who was admitted in the hospital. This witness on hearing when reached hospital found his daughter lying in the hospital in a burnt condition. On this issue, his wife lodged a written complaint at the local PS against the accused and a village



salish was arranged by the local panchayat and then his daughter went to her matrimonial house. Even after that on February 16, last year (on the date of his deposition) he again inflicted physical torture on his daughter and she took shelter in his residence but within 10 minutes his son-in-law reached and took her to his house. On the next day 17th February this witness was informed by the grandson that his mother went missing and also informed that his father went with his mother in a bicycle on the previous day intimating that he would go to the house of Malati Barman but did not return home. The deceased had two sons and one daughter who were aged about 14 years and 7 years and 12 years respectively.

- 13.** P.W.5 the mother of the deceased identified her son-in-law in the court to whom her daughter was given in marriage. She also stated about the fire incident when she rushed to the hospital and after recovery she took her daughter to their house. After that, village salish called her son-in-law and he undertook not to inflict torture upon her daughter in future but he did so after that. On the date prior to the incident her daughter was assaulted by her son-in-law and she took refuge at her residence along with the minor son. She sustained swelling injury on her cheek, i.e. is and head. But within couple of minutes after her reaching the son-in-law came and told her daughter to accompany him to the house of Malati Barman to take refund of ₹ 30,000 from her which was lent to her by the accused person. After that both of them went away by riding a bicycle and did not return home. On the next day her grandson Badal Barman informed her about the missing of their mother. No specific date of the physical torture on her daughter can be found from the



evidence nor that when she went to meet her daughter at the hospital or when the incident of fire took place.

14. The son of the appellant Badal Barman deposed as P.W. 7. He was aged about 14 years in the year 2018. According to his version his mother died about one year ago and his father used to brutally assault his mother on each and every day and his mother had to take refuge at her maternal grandfather's house and her father return back to his house. Two days back prior to the date of incident his father assaulted his mother mercilessly and she went to take shelter in the maternal grandfather's house and his father also went there and took her mother back. The father told his mother that he would go to the house of Malati Barman with the mother to take refund of ₹ 30,000, by riding a bicycle and not returned home at that night. On the next day at 4 PM he went to his maternal grandparents' house and informed that his parents were missing. This witness gave statement before the learned Magistrate. On perusal of such statement which is marked with Exhibit 5, it is seen that he stated the same thing as deposed before the court.

15. P.W.8 Rimy Barman the daughter of the appellant deposed that her mother died about one year ago who took refuge at her maternal grandfather's house as her father used to take her back. She also stated the same fact to her brother P.W. 7. She also said that her father committed the murder of her mother and she was last seen lastly in the company of her father. The learned advocate draws the attention of this court to this part of the evidence of the witness and argued that the witness aged about 13 years and it was not possible for her to raise a point of law of last seen together and this manifest



how she was tutored. This witness also recorded her statement before the learned Magistrate.

16. P.W.10 Sonthosh Roy, a member of local gram panchayat of village Alokjhari deposed that the incident took place on February 17, 2017 .On February 28, 2017, police personnel of Dinhata Police Station informed the parents of Ratna Roy over telephone that the appellant was apprehended and police told them to visit police Station along with some neighbours. They rushed to the police station and in their presence the accused/appellant confessed his guilt by stating that he had committed the murder of his wife by strangulation. This witness informed that at the time of confession Bipul Roy and Jatan Roy were present. This witness was not examined by the police.

17. Jatan Roy deposed as P.W. 11. He identified the accused being his neighbour. He also said that that the appellant in presence of Santosh Roy and Bipul Chandra Roy Bablu Miah confessed his guilt that he had committed the murder of his wife by strangulation. P.W. 17 Ratan Roy knew the deceased Ratna Roy as she was his niece by village courtesy. After marriage her husband used to inflict physical and mental torture on her. He came to learn that Ratna had died. On hearing he along with 15/20 neighbours went to Dinhata P.S and found the dead body lying there. Other than these witnesses. P.W.3 a neighbour only found the dead body of a lady but could not say the reason of death. His evidence was declined.

18. P.W.6 Chandana Roy identified the accused who is her brother-in-law. She also deposed about the torture both physical and mental inflicted upon her sister and the incident of setting her on fire. She also said about the written complaint lodged and police apprehended her brother-in-law. After being



released on bail her brother-in-law visited their house accompanied by some localities. She also said that her brother-in-law in their presence confessed his guilt and not to inflict torture upon her sister and took her to his house. But after lapse of couple of days he again started inflicting torture upon her sister and within a year her elder sister died. She also said that on February 16, 2017 in the early morning her elder sister visited their house along with the minor son. She is the witness who stated that within 10 minutes of her sister reaching their house heard brother-in-law reached there and told her sister to accompany him to the house of Malati Barman and thereafter her brother-in-law went away with her sister by riding a bicycle. On the next day at 4 P.M. higher her nephew Badal informed them that his mother point missing and his father who took away with has mother is also not available. At about 9 PM one of hard neighbour informed that he has been committed under dead body was recovered and sent to police station. This witness also cannot alleged physical and mental torture inflicted upon hard elder sister. From the evidence of P.W.1 Swapan Roy, it can be found that he knew the complainant and after the body was found by them and they informed the police. He is also the inquest report witness.

- 19.** So from the testimonies of the father, mother, sister and minor children a history of persistent torture upon Ratna can be found and also she was once set ablaze and was admitted to hospital but no prior complaint to that extent has come during evidence. The victim lady had a long married life having three children .The prosecution also tried to make out a case that on account of torture meted out to her on she came to her father's house in the morning on 16.2.2017 to take refuge but none of the witnesses had disclosed whether



there was any sign of bodily injury or the cause of her coming to the house excepting the omnibus statement of inflicting torture on her. The distance between the house of the victim and her parent is about 2 ½ to 3 miles approx. and the distance between Dinhata Police and his house is about 4 kms and there are several means of conveyance in the route. Despite seeing the daughter suffering torture in the hands of the husband who came to take refuge in their house and was taken back by the husband/son -in law within 10 minutes ,the parents, sister never bothered to inform the police nor went to her house for the entire day to enquire about her well-being and only came to learn from the grandson at 4 p.m. on the next day about the missing of their daughter .Nothing has come that the there was any resistance by their daughter while taking back by her husband .The eldest son has not been cited as witness . The statement of the minor children were recorded on March 16, 2017 and they went to record their statement from their grand father's house.

20. P.W. 18 is the doctor who conducted post-mortem examination over the dead body of Ratna Roybarman in connection with the case No. 12/2017 dated February 17, 2017. On examination he found Rigor mortise was present at all aims with mild putrefactive changes, mouth was open, lips swollen, pursed bleeding from angles of mouth and there was expulsion of stool, face was swollen with blue and rate bruises of 3 inch 4 inch size approx. and lips are swollen parsed with red serosanguinous discharge from both nostrils and both angles of mouth, the rest of the body was normal except some scratch mark over both forearms that may be considered as defence injury. There are noticeable finger marks and scratch marks by nails, arranged in lines on both sides of neck and also act back of the l neck on left side with marked



aberrations and bruises and bleeding from those injuries. It was the opinion of Dr Navonil Chakravarty that these are consistent with suggested because of the death due to asphyxia due to throttling and smothering. The thyroid and cricoid cartilages were broken and all neck cartilages were disorganised with neck tissues compression and injury. The scalp was congested, red and swollen; brain was also congested but intact. The genital organ was usual mature. According to the period of the doctor the probable time since death was around 24- 36 hours approx. and the immediate death was asphyxia due to throttling and smothering which was ante-mortem and justifies the death. Manner of causation of injury was homicidal. The injury was sufficient to cause death and viscera were preserved and sent for examination to exclude rape and possibility of poisoning along with vagina swab. He proved the post-mortem examination report. So when in the morning none found any injuries the other mark of injuries were sustained during her defence but the Investigating Authority never tried to examine it by the forensic expert.

- 21.** In this case a sniffer dog namely Denim was brought after the body was found and the investigating authorities administered scent the dog and left the dog free who travelled up to 1 to ½ and half kilometre jungle road and reached at Pucca road and stopped there.
- 22.** So on meticulous assessment of the evidences adduced by the witnesses including family members and neighbours it found that the prosecution tried to establish a case of consistent torture inflicted upon the deceased prior to such incident by the husband/appellant herein and immediately prior to the incident the deceased rushed to the paternal house to take refuge but her husband reached there within 10 minutes and took her in a bicycle to the



house of Malati Barman to recover a loan amount of ₹ 30,000 given to her by the appellant. However other than oral evidences not a single piece of evidence was produced to establish that she was subjected to torture since long. The son and daughter alleged about the torture on their mother by the father. Regarding challenge also no materials were produced at the members of gram panchayat also did not utter a single word regarding salish.

23. The foundation of this case rest upon the circumstantial evidence in absence of any direct evidence against the appellant. The learned trial court put much emphasis on the fact that the appellant got absconded immediately after the incident leaving his own children, a loan and hence his motive is succinctly established. On examining the evidence of the accused made under Section 313 of the Code of Criminal Procedure it is same that excepting claiming to be innocent the appellant did not utter word to destabilise the incriminating materials placed before him. In the case of **Anjan Kumar Sharma and others versus State of Assam (supra)** badly mutilated body was found from track. The trial court acquitted the accused person who was last seen with the deceased. The High Court held that there was no in ordinate delay between the time when accused persons were last seen together with victim and recovery of her dead body and hailed that onus was on accused person to explain and exculpate themselves when last seen theory was established. In absence of any satisfactory explanation, presumption would suggest guilt of accused and on aforementioned reasoning revers the order of acquittal. It went up to Supreme Court and it was held that only circumstances of lasting together and absence of satisfactory explanation cannot be made basis of conviction. It was further observed that where links



have been satisfactorily made out and circumstances point to guilt of accused, circumstances of last seen together and absence of explanation would provide an additional link which complete the chain. In absence of proof of other circumstances, only circumstances of last seen together cannot be made the basis of conviction.

24. In the case of ***Padman Bibhar versus State of Orissa (Supra)*** the Hon'ble Supreme Court held that evidence on last seen theory is a weak piece of evidence and conviction only based on last seen theory without there being any other corroborative evidence against the accused is not sufficient to convict. The accused for the offence under Section 302 IPC.

25. The Hon'ble Supreme Court in a landmark decision of ***Sharad Bridhichand Sarda vs State of Maharashtra***¹¹ laid down the golden rules in the cases basing circumstantial evidence which is to be proved by the prosecution which are as follows:

- a) that chain of evidences is complete*
- b) circumstances relied upon by prosecution should be conclusive in nature*
- c) fact established should be consistent only with the hypothesis of the date of the accused*
- d) circumstances relied upon should exclude every possible hypothesis except the one to be proved.*

26. In the case of ***Manoj @ Mona versus State of Chhattisgarh (supra)*** it was held that the doctrine of last seen rest on the logical presumption that where an individual is last seen alive in the close company of an accused, and is soon thereafter found dead, the accused must reasonably account for the

¹¹ (1984) 4 SCC 116



circumstances in which they parted ways, as such facts fall particularly within his knowledge. Thus rests on the presumption that human behaviour follows natural possibilities and hence the person who was seen last with the deceased must be able to explain the facts that resulted in the subsequent death of the deceased. Taking note of the decision of **Ramprakash versus State of Chhattisgarh**¹² it was observed that, it is trite law that a conviction cannot be against the accused merely on the ground that the accused was last seen with the deceased. In other words, conviction cannot be based on the only circumstances of last seen together.

27. In the case at hand, the parents the children of the victim and other family members tried to make out a case of continuous physical and mental torture on the victim deceased but in absence of any material in support of such like previous complaint or any her medical paper/hospital documents or any version of the local people of the area of the appellant the evidence did not inspire confidence in the mind of court. Even if for the sake of argument it is accepted it would certainly create a cloud of suspicion but mere suspicion cannot be the ground of passing an order of conviction.

28. In this case the victim and the appellant were last seen together going to the house of Malati Barman for refund of an amount of ₹ 30,000 on February 16, 2017 in the morning and the body was found on the next day in the evening and as per post-mortem report the death took place approximately 24- 36 hours ago which comes to 16th night at 1 P.M. In between this entire day of February 6, 2017 nobody found them together and this inordinate delay of seeing them together again can create enough suspicion in the mind of all but

¹² (2016) 12 SCC 251



again as discussed by the Hon'ble Supreme Court in a number of decisions that merely the same cannot be sufficient to pass an order of conviction. The police did not interrogate the lady Malati Barman who would have otherwise so light regarding the visit of the appellant and his wife to her house.

29. The confession made by the appellant before the police in presence of some of the persons who are made witnesses in this case, whether can be accepted as sufficient evidence for passing order of conviction or not it is necessary to see the law laid down in this regard.

In the case of ***Shantidevi versus State of Haryana (supra)*** it was held that the law is well settled that confessional statement of an accused recorded in presence of a police officer cannot be admitted in evidence, except to the extent as provided under Section 27 of the Evidence Act and that too when such disclosure leads to the discovery of incriminating facts. In the decision of ***Sahadevan vs State of Tamil Nadu (Supra)*** the Supreme Court undertook a thorough examination of the jurisprudence of the evidentiary value of extrajudicial confessions and laid down certain guiding principles which are re-produced below;

‘ Upon a proper analysis of the above referred judgement of this court, it will be appropriate to state the principles which would make and extrajudicial confession and admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extrajudicial confession alleged to have been made by the accused.



The principles;

- i) the extrajudicial confession is an weak evidence by itself . It has to be examined by the court with greater care and caution.*
- ii) It should be made voluntarily and should be truthful.*
- iii) It should inspire confidence*
- iv) an extrajudicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and his further corroborated by other prosecution evidence.*
- v) For an extrajudicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.*
- vi) Such statement essentially has to be proved like any other fact and in accordance with law.*

30. In the case of *Raghunath and another versus State of Karnataka*

(supra) it was held that it is the primary principle that the accused must be and not merely may be proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but legal distinction between ‘may’ be proved and ‘must’ be or ‘should’ be proved. The facts so established should be consistent only with the guilt of the accused that is to say they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances which should be such that they exclude every possible hypothesis except one to be proved. The 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 probabilities the act must have been done by the accused.



31. It is a consistent observation of the Hon'ble Supreme Court that suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

32. The body found in this case had finger marks and scratch mark by nails on both sides of neck and also at the back of the knee on left side and bleeding from those injuries were found but it was never sent for forensic examination to establish whether it tallies with the fingerprint of the accused. The viscera and vagina swab of the deceased was forwarded to a cell for chemical examination however that report was not received. The evidence of I.O/. P.W. 24 discloses that he seized blood stained earth and controlled earth under proper seizure list and obtained signatures of the witnesses but he did not forward the same for forensic examination. The appellant accused was arrested on February 20, 2017 and it was informed over telephone to the parents of Ratna Roy and as per saying of police the witnesses being P.W.4 the father P.W. a member of local gram panchayat P.W. 9 and P.W. 11 the neighbours in whose presence the accused confessed his guilt but the police officer who informed them to come to police station and in presence of whom the accused made such statement before the above witnesses are not found. The I.O. did not utter a single word on this vital point. Police also did not examine P.W. 10 the member of gram Panchayet and also he failed to recollect the date of his visit to the Police Station. Therefore the tenor of the examination to establish that the accused confessed his guilt in presence of all the witnesses fails to inspire any confidence. The testimony of the minor



daughter saying about the theory of last seen together of her father and mother clearly manifest she was absolutely tutored. However though it may be presumed that the father being the appellant failed to give enough love or affection to his children but again that act of the appellant of committing torture upon his wife (though not proved beyond doubt) even if accepted will not be sufficient to hold that the appellant committed the murder of his wife and there cannot be any other version of the same.

33. In the decision relied upon by the Prosecution in ***State of Rajasthan vs Kashi Ram***¹³ it was held by the Hon'ble apex court that accused's failure to give satisfactory explanation to an incriminating circumstances provides an additional circumstances in the chain of circumstantial evidence. In terms of Section 106 of the Indian Evidence Act failure of an accused to give satisfactory explanation to an incriminating circumstances which was within knowledge amounts to failure to discharge the onus which lies on accused. In this case the accused failed to furnish the explanation of his presence during the period last seen and his arrest. In that case from the possession of the accused a waist cord and keys of the locks put on two doors were recovered wherefrom the dead bodies were found. In the instant case the body was found from a field of one Dulal Kar but that person was not cited as witness neither Malati Burman to whose house the appellant and his wife preceded. The silence of the accused to explain the incriminating substances definitely add a chain in the link of circumstances but the chain remains incomplete because of lack of evidence proving the case beyond all reasonable doubt.

¹³ (2006)12 SCC 254



34. In the case of ***Abdul Nasser (supra)*** the body was found adjacent to the bathroom of the accused and it was found that when the witnesses kept on persevering to search the house of the accused he tried to parry their attempts and the accused tried to shift the body from inside the house to the bathroom. There was DNA test, FSL reports whereby the DNA profile matched with that of the accused. In the case in hand there is no report to that extent and excepting the oral testimony of persistent torture upon victim by her husband the marriage was continuing for 16 years having three children without any complaint before any authority ,no proof of previous incident of setting up on fire .Most importantly even after considering the factum of prolong torture by the appellant upon his wife and they were last seen on 16th February morning, no other materials can be found to say that the chain of circumstances were complete excepting that a very strong suspicion is well founded against the accused appellant and merely on the basis of strong suspicion the order of conviction cannot sustain .

Conclusion

35. In criminal jurisprudence the onus lies upon the prosecution to establish the case beyond the shadow of all reasonable doubt and the merit of the case does not depend upon the deficiency in disproving the case or because only the accused did not divulge anything during his examination under section 313 of the Code of Criminal Procedure. Hence in view of the above facts and circumstances this court is not inclined to accept the analogy of the Learned Trial Court to pass the order of conviction.



36. In light of the above discussion, we are of the view that the prosecution was not able to substantiate the charges levelled against the appellant beyond all reasonable doubts. He is entitled to be acquitted from this case.

37. Accordingly, the appellant is acquitted from all the charges he had been charged with. The present appellant is directed to be set at liberty forthwith, if not wanted in connection with any other case. He shall, however, furnish a bond to the satisfaction of the trial Court in terms of Section 437A of the Code of Criminal Procedure Code which shall remain valid for 6 months from date.

38. All pending applications, if any, including application for bail, shall stand disposed of in the above terms.

39. Let a copy of the judgement along with the Trial Court records be sent down to the Trial Court at once.

40. Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(CHAITALI CHATTERJEE DAS, J.)

41. I agree

[DEBANGSU BASAK, J.]