GAHC010203222018

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

Case No. : CRL.A(J)/81/2018

GONESH BHOMIJ
S/O. LT. SAMSING BHIMIJ,
R/O. NALANI T.E. KHAMUTI GOWALI NATUN LINE,
P.S. TINSUKIA, DIST. TINSUKIA, ASSAM.

…….....Appellant

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

…….....Respondent

:: BEFORE::

HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the Petitioner : Mr. Mrinmoy Dutta, Amicus Curiae.

Advocate for the Respondent : Ms. B. Bhuyan, Addl.P.P.

JUDGMENT & ORDER(CAV)

(N. Kotiswar Singh, J)

Heard Mr Mrinmoy Dutta, Ld. *Amicus Curie* for the appellant and Ms. B. Bhuyan Ld. Additional Public Prosecutor, Assam for the State.

2. The present appeal has been preferred against the judgement and order dated 18/07/2018 passed in Sessions Case No. 96 (T) of 2016 by the Court of Sessions Judge, Tinsukia convicting the appellant under Section 302 I.P.C. and the sentencing him to undergo Rigourous Imprisonment for life.

3. The facts of the case as unfolded in course of the trial in brief are that an FIR was lodged on 20/04/2016 by the younger brother of the deceased Smt. Saraswati Bhumij that on the previous night of 19/06/2016, her husband the appellant herein, assaulted her and on proceeding to his sister's place he found her lying dead inside the house, suspected of being killed by the appellant.

4. An investigation was accordingly carried out and on completion of the same, the appellant was charge sheeted. The prosecution examined as many as 8 (eight) witnesses. The defence, however, denied the charges and did not adduce any evidence. The Ld. Sessions Judge on the basis of the testimonial and other evidences brought on record convicted the appellant under Section 302 IPC.

5. As can be seen from the records, there was no eyewitness as to the commission of the crime, but there were circumstantial evidences clearly pointing the guilt to the appellant.

6. Sri Gram Bhumij was the P.W.1, who testified that the deceased was his stepmother and the appellant, his father. He stated that his younger sister, Gita, (P.W.5) came to his house and told him that her mother was not found in the house and asked him to search for her. He then went to the house of the stepmother and upon searching found her in a pond and by that time she had died. He then brought out his stepmother from the pond. He also noticed injury marks on her upper lip. P. W. 1 also stated that the relation between his father and the stepmother was strained and they used to quarrel frequently and as his father used to create nuisance in the house, he resided separately.

7. Sri Gram Sawashi, P.W.2, lived in the neighbourhood of the appellant. He testified that one day in the morning at about 9 AM, the appellant came to him and told him that his wife had high fever in the night and she died in the morning. When he went to the house of the appellant, he found the dead body lying on the ground, but he noticed injury mark on her upper lip. He also stated that when he enquired from the neighbours, they told him that the deceased had high temperature the night before and as such she died.

P.W. 2 was declared hostile on the prayer of the Prosecution and was cross-examined by the Prosecution. He admitted that he came to know in the morning at about 7 AM that he learnt from the people in the locality that the wife of the appellant was lying dead in the pond. He also admitted that he had stated before the police that he had heard from the villagers that on the previous night, the appellant had a quarrel with the deceased after taking liquor and the he killed her and had thrown her in the pond.

On being cross-examined by the defence, P.W. 2 stated that he heard from the villagers that the deceased had a high fever and as such she jumped into the pond.

8. P.W. 3 is the younger sister of the deceased. She was not an eyewitness. She was also informed by the daughter of the deceased that the appellant had a quarrel with the deceased the previous night and the appellant assaulted her with a bottle and thereafter thrown her in the pond and later she was brought back in the morning in dead condition. P.W. 3, thereafter, lodged the ejahar in the police station. She was a witness to the inquest report and she stated that she had noticed injury on the head of the deceased. She also stated that the relation between the appellant and the deceased was not cordial as they used to quarrel.

9. P.W. 4 was the President of Assam Chaa Majdoor Sangha of Nalini Tea Estate and he knew both the appellant and the deceased. He testified that the son of the accused, Gram (P.W.1) told him that his mother was suffering from fever. However, when he reached their home, he found that the deceased was lying on the ground and her body covered with a cloth. On being asked, Gita (P.W.5), the daughter of the appellant, told him that that the previous night the appellant had assaulted the deceased. Then he advised them that it is not wise to bury the dead body. Rather, the police should be informed. He testified that when Gita told him about the incident, the appellant was also present.

10. The most significant witness was Gita Bhumij, P.W. 5, the daughter of both the deceased and the appellant. When she testified before the trial court, she was about seven years of age. She testified that on the previous night of the incident, her father had assaulted her mother and hit her mouth with a wine bottle. Thereafter, her father threw away the dead body of her mother in the pond. Then she went to the house of her elder brother, Sukru. When she returned to her house on the next day morning, her mother had died. Thereafter, her father and another brother, Gram (P.W.1) brought out the dead body of her mother from the pond to the house and changed the wearing apparel of her mother.

She also stated that the police interrogated her and she was produced before the Magistrate for recording her statement. She also stated that she went to the court along with her brother, Gram for making her statement before the Magistrate.

11. P.W. 6 was the doctor, who conducted the post-mortem on the body of the deceased. He testified that he found the following injuries,

> "One lacerated wound measuring 1 cm x 0.5 cm x 0.5 cm seen over the upper lip in the middle below the nose with swelling of the wound. Bruise seen in the inner side of the upper lip."

He also found that stomach contained food materials and sand particles with water and in his opinion, death was due to asphyxia as a result of ante mortem drowning and the approximate time since death was 24 to 48 hours.

However, he stated that he cannot say whether the drowning was suicidal, accidental or homicidal in nature.

12. P.W. 7 was the Addl. C.J.M. who had recorded the statement of Gita Bhumij, P.W. 5, the minor daughter of the deceased.

P.W. 8 was the I.O. of the case.

13. The appellant in his examination under Section 313 of the CrPC denied the allegations and the depositions made against him. However, he agreed to the statement of P.W.1 Gram Bhumij that upon finding the dead body in the pond, he lifted it to the ground.

14. The Ld. Trial Court held that the death of the deceased due to asphyxia as a result of

ante mortem drowning was proved, so as the injury caused on upper lip of the deceased, which was caused by the appellant by hitting her with a bottle.

The Ld. Trial Court also held that the evidence of the child witness, Gita Bhumij (P.W.5), the daughter of the deceased and the appellant was credible, so are the evidences of other witnesses Gram Bhumij, P.W.1 and Birsa Kurmi, P.W.4 which had corroborated evidence of Gita Bhumij, P.W.5. The trial court also held that non recovery of the bottle which was used by the appellant to hit the deceased at the time of occurrence was to be merely a *faux pas* which does not go to the root of the prosecution.

Accordingly, the Ld. Trial Court held that it was proved beyond all reasonable doubts that on the day of occurrence, the appellant had hit the deceased on her mouth with a bottle and thereafter, threw her into a pond after which she died of drowning, which was corroborated by the medical evidence and accordingly, convicted the appellant under Section 302 of the IPC.

15. As to the death of the deceased in an unnatural manner it is clearly evident from the forensic report which clearly indicates that the deceased died because of asphyxia due to drowning.

That there is a pond in the house of the appellant is proved and that there are evidences especially as per evidences of P.W.1 to show that the body of the deceased was recovered from the pond. Thus, in the light of the forensic evidence, the death of the deceased due to drowning can be said to have been proved.

16. The question to be considered by this Court is whether the appellant is responsible for her death by drowning as the prosecution has projected to be the case, or was it suicidal as sought to be suggested by the appellant, or is it the case of no evidence against the appellant so that he may be given the benefit of doubt as to be not responsible for the death of the deceased.

17. From the perusal of the evidences on record, what one notices is that there was no eye witness at the actual time of death by drowning. Nobody, excluding Gita Bhumij, the daughter of the deceased was present when her mother was hit by the appellant. But she also did not say in categorical terms that her father, the appellant had pushed her mother on the pond

thus drowning her, though she states before the court that on the date of the incident, and there was a quarrel between her father and her mother about 12 midnight and her father assaulted her mother on her mouth with a wine bottle. Thereafter, her father threw away the dead body of her mother in a pond. Then she went to the house of her elder brother Sukru and in the next morning when she came to her house, she found her mother dead. Thereafter, her father and her brother Gram brought out the dead body of her mother from the pond to their house and the changed the wearing apparel of the deceased.

18. We will compare her testimony before the trial court with her statement recorded under Sec. 164 CrPC. In her Sec. 164 CrPC statement, she stated that on 19.04.2016, at night there was a quarrel between her father and mother and her father hit her mother with a bottle and seeing this she got frightened and ran away to the house of her uncle where she stayed that night. She stated that in the morning when she came home she found her mother lying on the floor of the house dead. Thereafter, people gathered in their house. She also stated that the appellant used to beat her mother often and even used to assault her. Her elder brother lived in the house of her uncle as he was ousted by her father. She categorically stated that she saw her father hitting her mother with a bottle. Thereafter, she did not see anything.

Juxtaposing the statement of the child witness, who was about seven years old, made under Section 164 CrPC with her statement made before the trial court, it can be said without any doubt that there was a quarrel the previous night between her father and mother and that her father hit her mother with a bottle. Thus, the fact that there was a quarrel and the appellant hit the deceased with a bottle which resulted in the injury caused on the upper lip which is corroborated by medical evidence, can be said to have been proved beyond any reasonable doubt.

19. It is also to be noted that though the P.W. 5 stated in her statement before the trial court that the appellant assaulted the deceased and thereafter, had thrown her in the pond, it was not stated by her in her statement recorded under Section 164 Cr.P.C. In her statement made under Section 164 Cr.P.C., she said that she saw her father hitting her mother with a bottle and thereafter, she did not see anything. Thus, there seems to be certain lack of consistency in the evidence about the case of the Prosecution that the body of the deceased

being thrown by the appellant in the pond.

20. However, what happened thereafter, resulting in the death of the deceased, and that the appellant is responsible for her death, is a matter for the Prosecution to prove. Since there was apparently no eyewitness as to the happening when the death of the deceased actually occurred, except for what had been stated by P.W.5 before the trial court, the same has to be examined with the aid of the circumstantial evidences and other evidences on record. If the statement of P.W.5 that her father threw her deceased mother in the pond is to be held to be proved, the circumstantial evidences will be complete to fasten the guilt to the appellant. Thus, this Court has to examine as to the existence of any corroborative evidence to what P.W.5 had stated before the trial court.

21. It may be noted that the fact remains that the medical report shows that the stomach of the deceased contained food material and sand particles with water and the doctor had opined that the deceased died due to asphyxia as a result of drowning, which is possible only when the deceased was brought to the pond. Though, there is no direct witness to testify that the appellant had thrown the deceased in the pond (except what P.W.5 stated before the trial court), that is the only possibility unless, the deceased herself went to the pond and got drowned, which could be either suicidal or accidental.

There is evidence to the effect that the body was found in the pond as testified by P.W.1, the stepson of the deceased, who stated that he brought out the body from the pond.

22. It is in this context that the explanation of the appellant becomes crucial. But the appellant did not offer any explanation and on the contrary made a suggestion that the deceased jumped in the pond as she had high fever as can be seen from the cross examination of P.W. 2, Gram Sawashi, a neighbour.

23. In order to appreciate this issue, it would be necessary to keep in mind that the incident occurred within the boundary of the house of the appellant in a night-time in a village. There is nothing on record to show that there were other persons inside the house except the appellant, the deceased and their daughter, P.W. 5. As such, the possibility of any other third person to be involved in the incident is almost non-existent. It is to be also noted if the statement of the P.W. 5 is to be believed that she ran away from the house being

frightened after her father the appellant hit her mother on her face, then only the appellant and the deceased were in the house and no other person.

Under such circumstances, as per the testimony of P.W. 5, even if her testimony that she saw the appellant throwing her deceased mother in the pond is not fully accepted, the fact remains that the appellant was the last person seen with the deceased in the house and since the appellant was the only person alive at the relevant time, he had an explanation to offer. He was the best person to explain what actually happened to the deceased after he hit her on her face, since the fact that he hit her on the face is already proved by the evidence of P.W.3 which is fully corroborated by the medical evidence.

24. The fact that the appellant hit the deceased with a bottle on the face would show that he was in a dominating position. Further, the deceased was hit with a bottle on the face, it will certainly have a disorienting effect on her. Under such circumstances, in all probability the appellant threw the deceased on the pond next to their house, where she got drowned. This view is quite consistent with the evidences on record. Any other view including that the deceased went on her own to the pond where she drowned does not appear to be consistent with the evidences. If the deceased out of anger had run out and jumped on the pond, as seems to have been suggested during the cross-examination, it was not the plea of the appellant. His plea as reflected in the testimony of P.W.2 as informed by the appellant was that the deceased had a high fever the previous night and she died in the morning. Moreover, the appellant opted to remain silent when he was examined by the Court under Section 313 CrPC.

25. It will be very difficult to prove on the part of the Prosecution what actually transpired after the deceased was hit by the appellant and their daughter ran away from the house till the dead body was found on the pond of the house on the next day morning. As the appellant was last seen with the deceased and thus the deceased was literally under the custody of the appellant and the appellant was in a dominating position, it was incumbent upon the appellant to give a reasonable explanation in terms of Section 106 of Evidence Act which provides that when any fact is especially within the knowledge of the person, the burden of proving that fact is upon him.

26. In this regard, one may refer to the decision of the Hon'ble Supreme Court in ***Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681,** wherein it was held that,

> "**4.** If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland* v. *Director of Public Prosecutions* [1944 AC 315 : (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in *State of Punjab* v. *Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135] .) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (*b*) appended to this section throws some light on the content and scope of this provision and it reads:
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> > "(*b*) *A* is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."
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> **15.** Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.
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> **16.** A somewhat similar question was examined by this Court in connection with Sections 167 and 178-A of the Sea Customs Act in *Collector of Customs* v. *D. Bhoormall* [(1974) 2 SCC 544 : 1974 SCC (Cri) 784 : AIR 1974 SC 859] and it will be apt to reproduce paras 30 to 32 of the reports which are as under: (SCC pp. 553-54)
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> > "*30*. It cannot be disputed that in proceedings for imposing penalties under clause (8) of Section 167, to which Section 178-A does not apply, the burden of proving that the goods are smuggled goods, is on the Department. This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But, in appreciating its scope and the nature of the onus cast by it, we must pay due

regard to other kindred principles, no less fundamental, of universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and — as Prof. Brett felicitously puts it—'all exactness is a fake'. El Dorado of absolute proof being unattainable, the law accepts for it probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.

31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered—to use the words of Lord Mansfield in *Blatch* v. *Archer* [(1774) 1 Cowp 63 : 98 ER 969] , Cowp at p. 65—'according to the proof which it was in the power of one side to prove, and in the power of the other to have contradicted'. *Since it is exceedingly difficult, if not absolutely impossible, for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.*

32. Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the persons concerned in it. *On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned; and if he fails to establish or explain those facts, an adverse inference of fact may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result, prove him guilty.* As pointed out by Best (in *Law of Evidence*, 12th Edn., Article 320, p. 291), the 'presumption of innocence is, no doubt, *presumptio juris*; but every day's practice shows that it may be successfully encountered by the presumption of guilt arising from the recent (unexplained) possession of stolen property', though the latter is only a presumption of fact. Thus the burden on the prosecution or the Department may be considerably lightened even by such presumptions of fact arising in their favour. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. *It will only alleviate that burden, to discharge which, very slight evidence may suffice.*"

(emphasis supplied)

17. The aforesaid principle has been approved and followed in *Balram Prasad*

Agrawal v. *State of Bihar* [(1997) 9 SCC 338 : 1997 SCC (Cri) 612 : AIR 1997 SC 1830] where a married woman had committed suicide on account of ill-treatment meted out to her by her husband and in-laws on account of demand of dowry and being issueless.

18. The question of burden of proof where some facts are within the personal knowledge of the accused was examined in *State of W.B.* v. *Mir Mohd. Omar* [(2000) 8 SCC 382 : 2000 SCC (Cri) 1516] . In this case the assailants forcibly dragged the deceased, Mahesh from the house where he was taking shelter on account of the fear of the accused and took him away at about 2.30 in the night. Next day in the morning his mangled body was found lying in the hospital. The trial court convicted the accused under Section 364 read with Section 34 IPC and sentenced them to 10 years' RI. The accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for murder charge. The accused had not given any explanation as to what happened to Mahesh after he was abducted by them. The learned Sessions Judge after referring to the law on circumstantial evidence had observed that there was a missing link in the chain of evidence after the deceased was last seen together with the accused persons and the discovery of the dead body in the hospital and had concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond any reasonable doubt. This Court took note of the provisions of Section 106 of the Evidence Act and laid down the following principle in paras 31 to 34 of the reports: (SCC p. 392)"

27. Further, it was held in ***Harivadan Babubhai Patel v. State of Gujarat, (2013) 7 SCC 45*** that if the accused chooses not to give any explanation or gives a false answer, the same can be counted as providing the missing link in the chain of circumstances as follows:

"**28.** Another facet is required to be addressed to. Though all the incriminating circumstances which point to the guilt of the accused had been put to him, yet he chose not to give any explanation under Section 313 CrPC except choosing the mode of denial. It is well settled in law that when the attention of the accused is drawn to the said circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances. (See *State of Maharashtra* v. *Suresh* [(2000) 1 SCC 471 : 2000 SCC (Cri) 263] .) In the case at hand, though a number of circumstances were put to the accused, yet he has made a bald denial and did not offer any explanation whatsoever. Thus, it is also a circumstance that goes against him."

28. In this regard, we may recollect the law governing circumstantial evidence as recapitulated in ***Pattu Rajan v. State of T.N., (2019) 4 SCC 771 : (2019) 2 SCC (Cri) 354,*** in the following words,

"**31.** As mentioned supra, the circumstances relied upon by the prosecution should be of a conclusive nature and they should be such as to exclude every other hypothesis except the one to be proved by the prosecution regarding the guilt of the accused.

There must be a chain of evidence proving the circumstances so complete so as to not leave any reasonable ground for a conclusion of innocence of the accused. Although it is not necessary for this Court to refer to decisions concerning this legal proposition, we prefer to quote the following observations made in *Sharad Birdhichand Sarda* v. *State of Maharashtra*[9]: (SCC p. 185, paras 153-54)

> "*153*. 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:
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> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
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> 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*[10] where the observations were made: (SCC p. 807, para 19)
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> > '*19*. … 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.
>
> *154*. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."
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> (emphasis in original)

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9 : (1984) 4 SCC 116
10 : (1973) 2 SCC 793

29. In the present case, the facts are established that there was a quarrel between the appellant and the deceased the previous night and the appellant had assaulted the deceased and hit her with a bottle causing injury on her lip. Thereafter, she was found in the pond the next morning within a gap of few hours only and was found dead which has been characterised as death by drowning by the medical evidence. The appellant, who was the only person in the house in the night, who was in the dominating position vis-a-vis a battered wife. He, instead of explaining the circumstances of her death, rather took a false plea that she was suffering from high fever as told to his neighbours, that too, by concealing the fact that her body was brought from the pond to the house. His son, P.W. 1 had testified that he has lifted the body of the deceased from the pond. The fact that the body of the deceased was found lying in the house the next morning by everybody shows that the dead body was removed from the pond to inside the house, of which the appellant gave a false and misleading information that the deceased died of fever. Further, a feeble attempt was made during cross-examination to show that she jumped into the pond as she had a high fever. This failure to provide a cogent explanation, rather providing a false explanation certainly provides the missing link to the chain of circumstances leading to the death of the deceased.

Since the appellant had physically assaulted the deceased a few hours before her death, the propensity of the appellant to do more harm to the deceased is a distinct possibility. There is also the history of frequent quarrel between them and also of beating of his wife by the appellant.

The attention of the appellant was drawn to the incriminating facts during his examination by the trial court under Section 313 Cr.P.C.

When the appellant was told by the trial court that P.W. 1 Gram Bhumij had stated that the appellant had quarrelled frequently with his wife, the appellant denied the same. The appellant also denied that his wife was found dead with the injury on the upper lip. These denials are contradicted by the evidence of other witnesses, clearly indicating that the appellant was not truthful in respect of these facts. However, he agreed to the statement of PW 1 that upon finding the dead body in the pond, he lifted it on the ground. By this the appellant admits that the body of the deceased was removed from the pond to the house.

The appellant also denied the statements of the P.W.3 and P.W.5 that he assaulted her at the time of incident. The appellant also claimed to be ignorant to the statement of the doctor who conducted the post-mortem that the deceased died as a result of drowning in water. Thus, the appellant was hiding certain facts, which only he could have clarified.

30. Under the circumstances, in the light of the evidences which have emerged in course of the trial, which clearly indicate the guilt of the appellant of an unnatural death, which happened within the house of the appellant in the night time and where there is no evidence of the presence of any other person, with only a the feeble attempt by the appellant to mislead the neighbourhood that the deceased jumped in the pond because of high fever, we are of the view that all the circumstantial evidences which clearly point to his guilt have been established and proved.

31. As regards non production and proof of the bottle with which the deceased was hit as pointed out by the Ld. Counsel for the appellant, which according to the appellant throws doubt on the prosecution case, we are of the view that it would not materially affect the prosecution case as the injury on the upper lip is proved by medical evidence and testimonial evidences.

32. For the reasons discussed above, we dismiss this appeal as devoid of merit.

JUDGE **JUDGE**

Comparing Assistant