



REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). _____ OF 2026
(Arising out of SLP(Crl.) No(s). 8846 of 2025)

THE STATE OF ASSAM APPELLANT(S)

VERSUS

MOINUL HAQUE @ MONU RESPONDENT(S)

ORDER

Mehta, J.

1. Heard.
2. Leave granted.
3. The State of Assam is in appeal before us by special leave for assailing the judgment and final order dated 22nd December, 2022 passed by the Division Bench of the Gauhati High Court¹ in Criminal Appeal (J) No. 72 of 2018, whereby the High Court partly allowed the appeal filed by the accused-respondent.

¹ Hereinafter, referred to as “High Court”.

4. By the impugned judgment, the High Court set aside the conviction and sentence of death imposed by the learned Additional District and Sessions Judge, Fast Track Court, Hojai², *vide* judgment dated 24th July, 2018 and order on sentence dated 1st August, 2018, upon the respondent, Moinul Haque³, for the offences punishable under Sections 302 and 376A of the Indian Penal Code, 1860. While affirming the conviction of the accused-respondent under Section 201 of the IPC, the High Court reduced the sentence for the said offence from rigorous imprisonment for seven years, as awarded by the trial Court, to rigorous imprisonment for three years, along with a fine of Rs. 20,000/-.

BRIEF FACTS

5. Succinctly stated, the facts relevant and essential for disposal of this appeal are noted hereinbelow.

6. The dead body of Smt. Arnomai Bora⁴, concealed in a bag, was found lying on the banks of the Kopili River on 31st May, 2017. The deceased was

² Hereinafter, referred to as “trial Court”.

³ Hereinafter, referred to as “accused-respondent”.

⁴ Hereinafter, referred to as “deceased”.

serving as the Headmistress of Changjurai Elachi Deuri L.P. School in the Jamunamukh area, located on the north bank of the said river. Information regarding the discovery of the dead body was lodged by the husband of the deceased, Shri Bimal Bora, at the Police Station Jamunamukh *vide* G.D. Entry no.493 dated 31st May, 2017. Based thereupon, an FIR, being Crime No. 52 of 2017, came to be registered for offences punishable under Sections 302 and 201 of the IPC. During the course of investigation, the Investigating Officer proceeded to apprehend the accused-respondent and the co-accused, Salim Uddin @ Salim, who were chargesheeted for the offences punishable under Sections 302, 201 and 376A read with Section 34 of the IPC, upon conclusion of investigation.

7. Since the offences punishable under Sections 302 and 376A of the IPC were exclusively triable by the Court of Sessions, the case was committed and made over to the trial Court, where Sessions Case No.70(N) of 2017 came to be registered against the two accused named above. The trial Court framed charges against both the accused who pleaded not guilty and claimed trial. To establish its case, the

prosecution examined nineteen witnesses (PW-1 to PW-19) and exhibited twenty-eight documents (Ex. 1 to Ex. 28), alongside various material articles.

8. Upon a comprehensive appreciation of the evidence on record, the trial Court convicted and sentenced both the accused as below:-

a. The accused-respondent Moinul Haque @ Monu was convicted and sentenced to death for offences punishable under Sections 302 and 376A of the IPC. He was also sentenced to undergo rigorous imprisonment for a period of seven years, along with a fine of Rs. 20,000/-, under Section 201 of the IPC.

b. The co-accused, Salim Uddin @ Salim, was sentenced to undergo rigorous imprisonment for life, along with a fine of Rs. 20,000/-, for the offence punishable under Section 302 of the IPC, and further to undergo rigorous imprisonment for a period of five years, along with a fine of Rs. 10,000/-, for the offence punishable under Section 201 of the IPC.

9. Since the accused-respondent was awarded death penalty by the trial Court, a reference was

made to the High Court under Section 366 of the Code of Criminal Procedure, 1973⁵ for confirmation. Concurrently, both the accused persons preferred appeals against their conviction. It is further noteworthy that the husband of the deceased, Shri Bimal Bora, also preferred an appeal seeking enhancement of the sentence of life imprisonment awarded to the co-accused, Salim Uddin @ Salim, to death penalty.

10. The High Court, by judgment and order dated 22nd December, 2022, upheld the conviction of the co-accused Salimuddin @ Salim for the offences punishable under Sections 302 and 201 of the IPC, while reducing the sentence imposed for the offence punishable under Section 201 of the IPC.

11. The conviction of the accused-respondent for the offence punishable under Section 201 of the IPC was affirmed and the sentence imposed thereunder was reduced to rigorous imprisonment for a period of three years with fine and default stipulation. However, his conviction for the offences punishable

⁵ Hereinafter, referred to as “CrPC”.

under Sections 302 and 376A of the IPC was set aside and he was acquitted of these charges.

12. Being aggrieved, the State of Assam is before us by way of this appeal with special leave.

13. Since the accused-respondent did not appear despite service of notice, this Court was initially compelled to issue bailable warrants against him on 13th October, 2025 and 11th November, 2025, and thereafter a warrant of arrest on 30th January, 2026. Pursuant thereto, the accused-respondent was arrested and presented before this Court on 26th February, 2026, whereupon he was remanded to judicial custody.

14. Considering the fact that the accused-respondent was not represented by any counsel, this Court requested Shri P.V. Dinesh, learned senior counsel, to assist the Court in the matter.

SUBMISSION ON BEHALF OF THE APPELLANT

15. Shri Chinmoy Pradip Sharma, learned senior AAG appearing for the State of Assam, submitted that the High Court while rendering the impugned judgment has fallen into grave error in its appreciation of the circumstantial evidence on record. It was contended that the prosecution had

duly established a complete and coherent chain of circumstances which, when considered cumulatively, unequivocally point towards the guilt of the accused-respondent and effectively excludes every reasonable hypothesis consistent with his innocence.

16. Shri Sharma submitted that the recovery of the deceased's umbrella at the instance of the accused-respondent constitutes a significant incriminating circumstance, relevant under Section 27 of the Indian Evidence Act, 1872⁶. It was contended that the said recovery, having been effected pursuant to the disclosure made by the accused-respondent under Section 27 of the Evidence Act, is demonstrative of special knowledge within the meaning of the said provision. It was further urged that the incriminating recovery made from a place within the exclusive knowledge of the accused-respondent lends credence to the prosecution's case and establishes a proximate nexus between the accused-respondent and the crime.

17. Shri Sharma further submitted that the co-accused, Salim Uddin @ Salim, had implicated the

⁶ Hereinafter, referred to as "Evidence Act".

accused-respondent in his testimony. It was contended that, though such a statement requires cautious scrutiny, it nevertheless lends support to the prosecution's case to the extent that it discloses the involvement of the accused-respondent in the commission of the offence. The implication of the accused-respondent by the co-accused, when considered in conjunction with the other incriminating circumstances on record, serves to reinforce the prosecution case and cannot be lightly disregarded.

18. On these grounds, learned AAG, sought reversal of the impugned judgment insofar as it records the acquittal of the accused-respondent and prayed that the appeal be allowed.

SUBMISSION ON BEHALF OF THE RESPONDENT

19. *Per contra*, Shri P.V. Dinesh, learned senior counsel representing the accused-respondent, submitted that there is no substantive or legally admissible evidence available on record against the accused-respondent, save and except the alleged discovery of umbrella purportedly made under Section 27 of the Evidence Act. It was contended that the prosecution's case rests solely on such disclosure

and discovery, which, by its very nature, is limited in scope and admissibility.

20. Shri Dinesh further urged that even the alleged discovery does not, in any manner, establish a direct or proximate nexus between the accused-respondent and the commission of the alleged offence. In the absence of any independent, corroborative, or incriminating material, the reliance placed by the Courts below on such discovery is wholly insufficient to sustain the charges against the accused-respondent.

21. Shri Dinesh thus submitted that the prosecution has failed to discharge its burden of establishing the case against the accused-respondent in accordance with law and beyond all manner of doubt. The material placed on record, at best, gives rise to mere suspicion, which cannot substitute the standard of proof required to bring home the charges in a criminal trial. In the absence of cogent and reliable evidence connecting the accused-respondent with the alleged offence, his conviction even for the offence punishable under Section 201 of IPC is wholly unsustainable in law.

22. Shri Dinesh also submitted that, as against the sentence of three years' rigorous imprisonment awarded by the High Court under Section 201 of the IPC, the accused-respondent has already undergone incarceration for a period of approximately five years. It was contended that the period of custody undergone by the accused-respondent thus exceeds the sentence awarded by the High Court post reduction from that awarded by the trial Court and hence, he is entitled to be released forthwith.

ANALYSIS AND DISCUSSION

23. We have heard and considered the submissions advanced by Shri Chinmoy Pradip Sharma, learned senior AAG appearing for the State of Assam and Shri P.V. Dinesh representing the accused-respondent and have gone through the impugned judgment and the material placed on record.

24. Shri P.V. Dinesh has placed on record a convenience compilation incorporating therein the copies of the relevant documents and the statements of the witnesses.

25. On a perusal of the judgment of the High Court, it becomes apparent that the case of the prosecution was based purely on circumstantial evidence. In this

context, the law laid down by this Court in ***Sharad Birdhichand Sarda v. State of Maharashtra***⁷, assumes significance, wherein it was held as follows:-

“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:

(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] where the observations were made: [SCC para 19, p. 807]

“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,

⁷ (1984) 4 SCC 116.

(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.”

(Emphasis Supplied)

26. It is an admitted case as evident from record that the solitary circumstance relied upon by the prosecution to connect the accused-respondent with the crime was the recovery of the umbrella made in furtherance of his disclosure statement recorded by the Investigating Officer under Section 27 of the Evidence Act. The High Court held that the said umbrella was concealed by the accused-respondent in an attempt to destroy evidence of the crime, and accordingly, affirmed his conviction for the offence punishable under Section 201 of the IPC. However, the sentence awarded by the trial Court for the said offence was reduced from rigorous imprisonment for

seven years to rigorous imprisonment for three years, along with fine and default stipulation.

27. The factum of recovery of the umbrella, recorded *vide* seizure memo (Ex. 1), was sought to be proved through the evidence of the Investigating Officer, Abhishek Bodo (PW-19)⁸. Upon a perusal of the testimony of the said witness (PW-19), we find that the very arrest of the accused-respondent in the present case is shrouded in a cloud of doubt.

28. Insofar as the recovery of the umbrella is concerned, the Investigating Officer proved the disclosure statement of the accused-respondent as Ex. 19. Pursuant to the said disclosure statement, a black-coloured umbrella was purportedly recovered by the Investigating Officer on 14th June, 2017, upon being pointed out by the accused-respondent. Thus, there is a significant gap of approximately 14 days between the date of the incident and the recovery of the umbrella.

29. It also emerges from the evidence that the Investigating Officer deposed that he summoned the family members of the deceased to the police station

⁸ Hereinafter, referred to as “Investigating Officer”.

and got the umbrella identified by them. It is further apparent from the evidence on record that the umbrella did not bear any specific or distinctive features so as to be conclusively linked to the deceased.

30. The identification procedure conducted by the Investigating Officer, i.e., by simply calling the family members of the deceased to the police station and asking them to identify the umbrella as belonging to the deceased, is in clear contravention of the established procedure for identification of articles. Ordinarily, the recovered article ought to have been sealed, and the test identification proceedings should have been conducted in the presence of a Magistrate so as to make the procedure of identification unimpeachable.

31. The Investigating Officer's evidence referred to *supra* does not specify compliance with either of the aforesaid requirements, both of which are absolutely necessary to hold that the seizure of an umbrella was proved by cogent and reliable evidence.

32. Thus, we are of the firm opinion that neither was the recovery of the umbrella proved as per law nor does the identification thereof inspire confidence

so as to link the same either to the accused-respondent or to the crime. Furthermore, the significant gap of 14 days in effecting the recovery creates a doubt on the sanctity of the procedure of recovery.

33. Insofar as the submission advanced by Shri Sharma, learned AAG appearing for the State of Assam, that the co-accused, Salim Uddin @ Salim, has implicated the accused-respondent in his testimony/confession is concerned, we are least persuaded by the said submission, having regard to the limited evidentiary value of such a statement in law. In this regard, we may gainfully refer to constitution bench judgment in ***Haricharan Kurmi v. State of Bihar***⁹, wherein the Court observed as follows:-

“15. The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against and accused person, the court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the court has to adopt in dealing with

⁹ AIR 1964 SC 1184.

these two types of evidence is thus clear, well understood and well-established. It, however, appears that in *Ram Prakash case* some observations have been made which do not seem to recognise the distinction between the evidence of an accomplice and the statements contained in the confession made by an accused person. “An examination of the reported decisions of the various High Courts in India,” said Imam, J., who spoke for the Court in that case, “indicates that the preponderance of opinion is in favour of the view that the retracted confession of an accused person may be taken into consideration against a co-accused by virtue of the provisions of Section 30 of the Act, its value was extremely weak and there could be no conviction without the fullest and strongest corroboration on material particulars”. The last portion of this observation has been interpreted by the High Court in the present case as supporting the view that like the evidence of an accomplice, a confessional statement of a co-accused person can be acted upon if it is corroborated in material particulars. In our opinion, the context in which the said observation was made by this Court shows that this Court did not intend to lay down any such proposition. In fact, the other evidence against the appellant Ram Prakash was of such a strong character that this Court agreed with the conclusion of the High Court and held that the said evidence was satisfactory and in that connection, the confessional statement of the co-accused person was considered. We are, therefore, satisfied that the High Court was in error in this case in taking the view that the decision in *Ram Prakash* was intended to strike a discordant

note from the well-established principles in regard to the admissibility and the effect of confessional statements made by co-accused persons.”

34. The findings recorded by the High Court acquitting the accused-respondent of the charges under Section 302 and 376A of the IPC are based on sound and cogent reasoning arrived at after proper appreciation of evidence on record and do not warrant any interference in this appeal against acquittal at the instance of the State. However, we are of the view that the High Court clearly fell into error in affirming the conviction of the accused-respondent for the offence punishable under Section 201 of the IPC.

35. It is not in dispute that the accused-respondent has not preferred any appeal challenging his conviction for the said offence. However, the absence of an appeal by the accused-respondent does not, by itself, denude this Court of its appellate jurisdiction. In exercise of powers under Section 386 of the CrPC [corresponding to Section 427 of the Bharatiya Nagarik Suraksha Sanhita, 2023], the appellate Court is vested with the power to examine the

correctness of the findings and sentence recorded by the Court below and to reverse, alter or affirm the same, as the interests of justice may require.

36. Accordingly, having regard to the entirety of the matter, and in exercise of the aforesaid appellate powers, we deem it appropriate to interfere with the conviction and sentence of the accused-respondent under Section 201 of the IPC as indicated above.

CONCLUSION

37. As an upshot of the above discussion, we are of the firm view that the finding recorded in the impugned judgment dated 22nd December, 2022, to the extent it affirms the conviction of the accused-respondent for the offence punishable under Section 201 of the IPC and the sentence awarded thereunder, is unsustainable in facts and in law and is accordingly set aside. The impugned judgment shall, however, remain undisturbed in all other aspects.

38. The accused-respondent is acquitted of the charge for the offence punishable under Section 201 of the IPC. He is in custody and shall be released from prison forthwith, if not wanted in any other case.

39. The appeal preferred by the State of Assam is dismissed.

40. The Registry is directed to forthwith forward a copy of this order to the trial Court concerned for taking necessary action in accordance with law.

41. Pending application(s), if any, shall stand disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
APRIL 16, 2026.