GAHC010241262023

2025:GAU-AS:11586-DB

THE GAUHATI HIGH COURT

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

Criminal Appeal no. 468/2023

Md. Abul Bashar @ Abdul Bashar, son of Late Giasuddin, resident of Village – Hahchara, Ward No. 10, Police Station – Bhelewguri, District – Morigaon, Assam, Pin – 782126.

……Appellant

-**VERSUS**-

1. The State of Assam, represented by the Public Prosecutor, Assam.

2. Md. Mainul Haque, son of Late Giasuddin, resident of Village – Hahchara, Police Station – Bhelewguri, District – Morigaon, Assam, Pin – 782126.

……Respondent

Advocates :

Appellant	:	Mr. D.K. Bhattcharyya, Advocate; Mr. A. Atreya, Advocate; Ms. C. Kalita, Advocate
Respondent State	:	Ms. B. Bhuyan, Senior Advocate & Additional Public Prosecutor, Assam
Date of Hearing	:	05.06.2025
Date of Judgment & Order	:	29.08.2025

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MRS. JUSTICE MITALI THAKURIA

JUDGMENT & ORDER

[Manish Choudhury, J]

The instant criminal appeal, preferred under Section 374[2], Code of Criminal Procedure, 1973 ['the Code' or 'CrPC', for short], is directed against a Judgment and Order dated 31.05.2017 passed by the learned Sessions Judge, Morigaon in Sessions Case no. 161 of 2015. By the Judgment and Order dated 31.05.2017, the learned Court of Sessions, Morigaon has convicted the accused-appellant under Section 302 of the Indian Penal Code [IPC] and the accused-appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 30,000/-, in default of payment of fine, to undergo simple imprisonment for one year.

2. It was on 30.06.2015, a First Information Report [FIR] was lodged by one Mainul Hoque as the informant before the Officer In-Charge, Bheloguri Police Station stating inter-alia that at around 09-30 p.m. on 29.06.2015, the father of the informant, Giyas Uddin, aged about 70 years, was sitting inside his house. At that time, the accused-appellant, who was informant's brother, killed his own father, Giyas Uddin by stabbing him on his back, chest and hands with a dagger.

3. On receipt of the FIR, the Officer In-Charge, Bheloguri Police Station registered the same as Bheloguri Police Station Case no. 37 of 2015 under Section 302, IPC on 30.06.2015 and took up the investigation of the case himself.

4. Prior to institution of the FIR on 30.06.2015, Bheloguri Police Station received an information telephonically at 09-45 p.m. on 29.06.2015 from one Amsar Ali, a Secretary of the Village Defence Party [VDP]. It was telephonically informed that a murder had taken place at Hahsora Village. On receipt of the telephonic information, an entry was made in the General Diary of Bheloguri Police Station vide General Diary Entry no. 573 dated 29.06.2015. After registering General Diary Entry no. 573, the Officer In-Charge, Bheloguri Police Station & Investigating Officer [I.O.] proceeded to the place of occurrence [P.O.], that is, the house of the deceased, Giyas Uddin with a team of Police personnel. Going there, the I.O. who testified as P.W.8, found the deadbody of the deceased, Giyas Uddin lying on the floor and the accused-appellant [hereinafter also referred as 'the appellant', for short, at places, for easy reference] being kept detained there. He found a dagger with the appellant and the same was seized by a seizure list. As it was dark and there was little light in the room where the deadbody was lying, according to the I.O. [P.W.8], inquest proceeding could not be done that night. The I.O. brought the appellant to the Police Station. It was on the following day, that is, on 30.06.2015, the Officer In-Charge, Bheloguri Police Station & I.O. received the FIR in writing from the informant, Mainul Hoque. The appellant was arrested and after arrest, he was forwarded to the Court of the jurisdictional Magistrate. On being produced before the jurisdictional Magistrate's Court on 30.06.2015, the appellant was sent to judicial custody.

5. During the course of investigation, the I.O. recorded the statements of the witnesses; prepared a Sketch Map of the P.O.; and conducted inquest proceeding on the deadbody of the deceased on 30.06.2015 to prepare an Inquest Report. The deadbody was thereafter, forwarded to Morigaon Civil Hospital for post-mortem examination. The post-mortem examination on the deadbody of the deceased was performed by the Senior Medical & Health Officer, Morigaon Civil Hospital on 30.06.2015. After collecting the Post-Mortem Examination [PME] Report and completing investigation in connection with Bheloguri Police Station Case no. 37 of 2015 [corresponding G.R. Case

no. 1466 of 2015], the I.O. submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 40/2015 on 30.09.2015 finding a prima facie case against the appellant for committing the offence of patricide.

6. On submission of the Charge-Sheet, the appearance of the appellant was secured before the Court of learned Judicial Magistrate, First Class, Morigaon from jail custody on 23.11.2015. As the copies were ready, the copies were furnished to the appellant in compliance of the procedure laid down in Section 207, CrPC. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Morigaon committed the case records of G.R. Case no. 1466 of 2015 by an Order of Commitment dated 23.11.2015 under Section 209, CrPC to the Court of Sessions, Morigaon for trial. The learned Public Prosecutor was notified accordingly. The appellant was remanded to jail custody with a direction to the Superintendent of the Jail to produce the appellant before the Court of Sessions, Morigaon on 30.11.2015 for further and necessary order.

7. On receipt of the case records of G.R. Case no. 1466 of 2015, the case was registered as Sessions Case no. 161 of 2015. The appearance of the appellant was secured before the Court of Sessions, Morigaon ['the Trial Court', for short]. The prosecution case was opened by the learned Public Prosecutor as per Section 226, CrPC. After hearing the learned Public Prosecutor and the learned defence counsel; and after going through the materials on record; the Trial Court framed a charge under Section 302, IPC against the appellant on 10.02.2016. When the charge was read over and explained to the appellant, the appellant pleaded not guilty to the charge and claimed to be tried.

8. During the course of the trial, the prosecution side examined eight nos. of witnesses and exhibited seven nos. of documentary evidence to bring home the charge against the appellant. After closure of evidence from the prosecution side, the appellant was examined under Section 313, CrPC by putting before him the adverse circumstances emerging from the evidence led

by the prosecution. During such examination, the appellant admitted the adverse circumstances as true and had also provided an explanation, which would be adverted to in a later part of the Judgment. When the appellant was asked whether he would adduce evidence in his defence, he declined to adduce any evidence in his defence. After hearing the learned counsel for both the sides at the stage of argument; and upon evaluation of the evidence/materials on record; the Trial Court proceeded to deliver the verdict of guilt against the appellant by the impugned Judgment and Order of conviction and sentence, mentioned hereinabove.

9. We have heard Mr. D.K. Bhattacharyya, learned counsel for the appellant and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor assisted by Ms. S.E. Murtaza, learned counsel for the respondent State.

10. Mr. Bhattacharyya, learned counsel for the appellant has strenuously submitted that the Trial Court had erred in not treating the appellant as a person of unsound mind. He has submitted that it was evident from the testimony of the prosecution witnesses that the appellant was a person of unsound mind at the time of the alleged incident resulting in the death of his father. He has submitted that it is evident from the testimony of the prosecution witnesses that prior to the incident, the appellant was being treated in the mental hospital at Tezpur and at the time of the alleged incident, he was under medication for his mental condition. In support of his such submissions, Mr. Bhattacharyya has referred to the testimony of P.W.1, P.W.2, P.W.3, P.W.4 and P.W.7.

10.1. It is contended that when the fact regarding unsoundness of mind of the appellant was deposed to in the Trial Court, the Trial Court ought to have the enquired about mental condition of the appellant before proceeding further with the trial. The Trial Court had committed a fundamental error in proceeding with the trial without first trying the fact of unsoundness and incapacity of the appellant. He has submitted that the Trial Court had also

omitted to examine the capacity of the appellant as per the provisions of Section 329 of the Code. In such view of the matter, the entire trial stood vitiated.

10.2. Mr. Bhattacharyya has further submitted that the appellant was found to have admitted the allegations brought against him in his statement under Section 313, CrPC. Considering the fact that the appellant when the charge was read over to him, denied the charge, the Trial Court should have ascertained the mental soundness and capacity of the appellant at that stage before returning to the finding of guilt. It was an obligation on the part of the Trial Court to find out whether the appellant was mentally fit to understand the consequence of admitting to the inculpatory circumstances allegedly brought by the prosecution against him. In view of such voluntary admission on the part of the appellant, it is not safe to maintain the conviction and sentence passed against the appellant. To buttress his submissions on the above aspect, Mr. Bhattacharyya has relied upon a decision of a Division Bench of this Court in **Bangla Bagti vs. State of Assam, [2012] 1 GLR 115**. He has also referred to two decisions of the Hon'ble Supreme Court titled **Reena Hazarika vs. State of Assam, [2019] 13 SCC 289**, and **Dinesh Kumar vs. State of Haryana, [2023] SCC OnLine 564**.

10.3. The learned counsel for the appellant has contended that the Trial Court had failed to follow the procedure laid down in Chapter XXV of the Code, more particularly, Section 329 of the Code during the trial. He has contended that the duty of the Presiding Judge in a criminal trial is not only to watch the proceedings as a mute spectator but also to exercise the discretion conferred under Section 165 of the Evidence Act to find out about the mental soundness and capacity of the accused to face the trial, more particularly, when the prosecution witnesses had deposed specifically about the mental unsoundness of the appellant. Failure on the part of the Trial Court to have the appellant examined for finding out whether he was suffering from unsoundness of mind or not, during the trial, has clearly vitiated the trial. A decision of a Division

Bench of this Court in **Upen Basumatary vs. State of Assam, 2023 SCC OnLine Gau 4181**, has been referred to by him to support his submission on this point.

11. Ms. Bhuyan, learned Additional Public Prosecutor appearing for the State has contended that none of the submissions advanced by the learned counsel for the appellant is based on the evidence/materials on record. It has been submitted that the first duty of the prosecution is to establish the charge of murder beyond all reasonable doubt. By extensively referring to the evidence/materials on record including the testimony of the prosecution witnesses, the learned Additional Public Prosecutor has submitted that the prosecution was successful in leading cogent, credible and reliable evidence to bring home the charge.

11.1. It has been submitted that evidently, the case is based on circumstantial evidence as the incident of assault had occurred inside the house where the appellant and the deceased were the only inmates during that night. From the circumstances established, the only conclusion that can be drawn is that the appellant was the perpetrator of the crime. The admission made by the appellant during his examination under Section 313, CrPC had added further weight to the prosecution case, which, in any way, was already established.

11.2. The learned Additional Public Prosecution has submitted that the fact that other than the official witnesses, the prosecution witnesses who were either close relations of the appellant or his next door neighbour, cannot be ignored at all. Though the deceased was also similarly circumstanced to them, as like the appellant, the prosecution witnesses had subtly taken a line during their cross-examination with an attempt to bring the case of the appellant within one of the general exceptions covered by Section 84 of the Penal Code. The strategy adopted by the witnesses to project the appellant as a person of unsound mind was a belated one as a result of afterthought. If the appellant had really been under treatment for unsoundness of mind in a mental hospital

then it could have been easily possible for the defence to produce documentary evidence and evidence of the Doctors who treated him, in support of such treatment in a mental hospital. But, there was abject failure on the part of the defence to adduce any evidence in support of such plea. During the course of the entire trial, the defence had also failed to produce even a prescription of a doctor/psychiatrist prescribing medicine to the appellant as against the contention that the appellant was under medication from a point of time anterior to the incident. Learned Additional Public Prosecutor has contended that in view of such abject failure, the plea as regards unsoundness of mind of the appellant has been rightly discarded by the Trial Court.

11.3. The learned Additional Public Prosecutor has further contended that during the entire course of the trial, there was no application from the defence before the Trial Court to make a determination whether any unsoundness of mind of the appellant had rendered him incapable of entering in the defence. In so far as the contention raised regarding the role played by the Trial Court during the course of the trial is concerned, it is contended that the Trial Judge would have the occasion to try the fact of unsoundness and mental incapacity on the part of an accused only if it had appeared to him that the accused was a person of unsound mind and he was incapable of making his defence. If it did not appear so, there was no question of trying the fact. In the facts and circumstances of the case in hand, there is no prima facie material, other than the bald indication of the close relatives of the appellant, to indicate that the appellant was a person of unsound mind.

11.4. It is contended on behalf of the State that after failing to raise the plea of insanity during the course of the trial with prima facie material, it is not open to raise any such plea at the appellate stage. It was during the trial, the Trial Court which was presided over by a Sessions Judge with a trained judicial mind having sufficient experience, had the opportunity of making direct interaction with the appellant and had there been any abnormal behaviour on

the part of the appellant during the trial, the Trial Court would have the occasion to find out about the unsoundness of mind of the appellant and for that matter, his mental capacity or otherwise to enter the defence.

11.5. The learned Additional Public Prosecutor has referred to the decisions **in I.V. Shivaswamy vs. State of Mysore, 1971 [3] SCC 220; T.N. Lakshmaiah vs. State of Karnataka, [2002] 1 SCC 219; Suvender Mishra vs. State of Jharkhand, [2011] 11 SC 495; Prem Singh vs. State [NCT of Delhi], [2023] 3 SCC 372;** and **Prakash Nayi @ Sen vs. State of Goa, [2023] 5 SCC 673,** in support of her submissions.

12. We have given due consideration to the submissions advanced by the learned counsel for the parties. We have also gone through the evidence/materials including the testimony of the prosecution witnesses and the documentary evidence, led by the prosecution during the trial and available in the case records of Sessions Case no. 161 of 2015, in original.

13. At the inception, it is apposite to mention that during the trial, the prosecution side examined the following prosecution witnesses, and exhibited the following documents and material object, :-

Prosecution Witness	
P.W.1	Mainul Hoque – Informant
P.W.2	Abu Bakkar Siddique
P.W.3	Siraj Ali
P.W.4	Kad Banu
P.W.5	Halima Khatoon
P.W.6	Dr. Sailendra Bardhan Bora – Medical Officer
P.W.7	Morjina Begum
P.W.8	Rudra Kanta Bora – Investigating Officer
Exhibits	
Ext.-1	Seizure List

Ext.-2	Post-Mortem Examination Report
Ext.-3	---
Ext.-4	General Diary Entry dated 29.06.2015
Ext.-5	Ejahar
Ext.-6	Inquest Report
Ext.-7	Sketch Map
Ext.-8	Charge-Sheet
Material Exhibit	
Mat. Ext.-1	A Dagger

14. In his evidence-in-chief, P.W.1 deposed to the effect that the occurrence took place at around 09-00/10-00 p.m. on a day during the last Ramzan month. P.W.1 stated that at that time, he was in his own house, which was across the road in front of the house where the appellant and the deceased used to be inmates. Having heard disturbance from the house of the appellant and the deceased, P.W.1 went there and his other brothers also assembled there. He found the door of the house closed from inside. Then by forcibly opening the door, they went inside the house and going inside the house, they saw that their father was lying on the ground in an injured condition and the appellant was standing there holding a dagger in his hands. Then, they caught hold of the appellant and tied him with a rope to keep him detained there. P.W.1 stated that after a shortwhile, their father who sustained injuries on his person, died. Information was given to Police and Police personnel arrived at the P.O. after an hour. The Police personnel seized the dagger in their presence and he gave his thumb impression in the Seizure List. P.W.1 further stated that he had seen the dagger, which was seized by the Police, in the Court during his testimony. P.W.1 further stated that he filed the FIR.

14.1. During cross-examination, P.W.1 stated that they were five brothers and the appellant was fourth among them by seniority. All the brothers used to stay separately. P.W.1 further stated that prior to three-four months of the incident, the appellant was in the Mental Hospital at Tezpur. He denied a

suggestion that he did not state before the Police that hearing voice of his father, he went to the P.O. P.W.1 admitted that he did not witness the actual incident. P.W.1 also denied a suggestion that the appellant was not in sense at the time of the incident.

15. P.W.2, in his examination-in-chief, deposed that when the incident took place in the night hours one year ago, he was sleeping in his house. Hearing noise, he woke up from sleep and went to the house of his father along with his other brothers. Going there, they found the door locked from inside. Then, they got the door broken by force. On entering the house, he saw his father lying on the ground in an injured condition and the appellant standing in the room with a dagger in his hands. P.W.2 stated that his father died after a short time. Then, they tied the appellant to keep him there. P.W.2 further stated that the dagger was seized by Police by preparing a Seizure List. P.W.2 exhibited the Seizure List as Ext.-1 and his signature therein as Ext.-1[1]. P.W.2 also identified the weapon of assault, dagger as Material Ext.-1.

15.1. When P.W.2 was cross-examined, he reprised that they had seen their father lying on the ground inside the house. P.W.2 also stated that all the brothers used to live separately. P.W.2 stated that the appellant was an insane person and as because the appellant was mentally ill, their father kept the appellant with him. P.W.2 stated that the appellant was on medication at that time. He further stated that Police came to the P.O. in between half an hour to one hour. P.W.2 admitted that he did not see the actual incident of assault.

16. P.W.3, in examination-in-chief, deposed that the incident took place at around 09-00/10-00 p.m. He further stated that on the date of the incident, the appellant and the deceased were staying in the same house. When he heard noise coming from the house of his elder brother, that is, the deceased, he went there and saw that the appellant was kept tied with a rope there. The people assembled there told him that the appellant murdered his father. P.W.3 stated that he saw the deadbody of the deceased lying on the ground

with injury marks on chest. P.W.2 further stated that there he saw a dagger, which, later on, was seized by the Police. P.W.3 further stated that he gave his thumb impression in the Seizure List.

16.1. During cross-examination, P.W.3 admitted that he did not see the actual incident. He further stated that he did not see the dagger during his testimony in the court room. P.W.3 further stated that the appellant suffered from mental illness and for the same reason, the appellant was taken to the Mental Hospital at Tezpur and was kept there for treatment.

17. P.W.4, in her evidence-in-chief, stated that the incident took place at around 09-00 p.m. in the month of Ramzan. She stated that she was the next door neighbour of the deceased and at the time of the incident, she was sleeping inside her house. On hearing commotion, she went to the house where the appellant and the deceased used to live together. Going there, she found the deadbody of the deceased lying on the floor inside the house and she saw marks of injuries on his body. The deadbody was lying in a pool of blood. P.W.3 also saw that the appellant was kept tied there with a rope.

17.1. In cross-examination, P.W.4 stated that the appellant was suffering from mental illness and he was once admitted in the Mental Hospital, Tezpur. The treatment of the appellant was going on since before the incident. P.W.4 admitted that she did not see the appellant murdering his father.

18. During evidence-in-chief, P.W.5 testified that the occurrence took place at around 09-00/10-00 p.m. on a day in the month of Ramzan previous year. P.W.5 deposed that at the time of the incident, she was sleeping inside her house. When she heard noise, she along with her husband went to the house of the deceased. The door was broken to make entry into the house where the appellant and the deceased used to reside. On entering the house, she saw the appellant standing inside the room holding a dagger in his hands. Then, the appellant was tied with a rope. She saw that the deceased was

lying on the ground in a pool of blood. P.W.5 further stated that the deceased breathed his last at the spot.

18.1. During cross-examination, P.W.5 stated that the deceased had five sons including the appellant and her husband, and they all used to live separately. P.W.5 also stated that when she reached the P.O. she saw ten to twelve persons there and others came later. P.W.5 stated that she did not see the dagger during her testimony inside the Court room. P.W.5 also denied a suggestion that she did not see the appellant standing inside the room holding a dagger in his hands.

19. P.W.7, in her examination-in-chief, deposed to the effect that the incident took place at around 09-00/10-00 p.m. around eight-nine months earlier. At that time, she was sleeping in her house. P.W.7 stated that the appellant and the deceased stayed in a separate house. Hearing cries of her father-in-law, that is, the deceased, she woke up and went to the house where the appellant and the deceased used to reside. Going there, she found her father-in-law lying on the ground in a pool of blood and the appellant standing inside the room holding a dagger in his hands.

19.2. In cross-examination, P.W.7 reiterated that the appellant and the deceased resided together. Her house was situated at a distance of about tweenty feet from the house of the appellant and the deceased. P.W.7 further deposed that the deceased had five sons and they all used to live separately in different houses. P.W.7 stated that the brothers of the appellant went to the P.O. earlier and she followed them. The other persons from the locality also came to the P.O. P.W.7 further stated that about three-four months earlier, the appellant came back from the Mental Hospital at Tezpur. The appellant was suffering from mental illness and used to take sleeping pills. On the night of the incident, she gave the appellant the prescribed medicine after the night meal. P.W.7 iterated that when she entered the room she saw her father-in-

law lying on the floor in a pool of blood and the appellant was also standing there with a dagger in his hands.

20. On 30.06.2015, P.W.6 was working as the Senior Medical & Health Officer at Morigaon Civil Hospital. In his testimony-in-chief, P.W.6 stated that at about 02-30 p.m. on 30.06.2015, he performed post-mortem examination on the deadbody of the deceased, Giyas Uddin, after the deadbody was identified by a Constable and two others. P.W.6 stated that on conducting post-mortem examination on the deadbody, he recorded the following findings :-

> Findings :
> Walls, ribs and cartilages : Fractured at wound site at different level mention at wound description.
> Pleurae : Torn at wound site.
> Larynx and trachea : Intact
> Lungs were congested
> Heart : Pierced by sharp force and torn anteriously haematoma in chest cavity.
> Vessels : Torn injured at wound site.
> Average built, Rigor Mortis present, Eye and Mouth were closed.
>
> Injuries :
> 1. Incised piercing wound on the front of the left side of the chest, 6 cm from the mid divide. 4 cm x 1.5 cm pierce the heart.
> 2. Incised piercing wound left chest back 3 cm x 1 cm.
> 3. Incised piercing wound in left shoulder 4 cm x 2 cm x 2 cm.
> 4. Incised piercing wound in the right infrascapular region.
> 5. Incised piercing wound in left hand medical aspect avulsion in type.

P.W.6 testified that on the basis of the above findings recorded in the Post-Mortem Examination Report [Ext.-2], he gave his opinion that the

cause of death was due to shock and haemorrhage as a result of multiple injuries. Injuries were to the major vessels and heart as result of sharp force.

20.1. In cross-examination, P.W.6 stated that he did not mention in the Post-Mortem Examination Report about the type of weapon used and the approximate time duration from death. He further stated that there were five injuries on the person of the deceased.

21. The I.O. who testified as P.W.8, deposed about the manner in which the investigation was carried out, as mentioned in Paragraph 4 hereinabove. P.W.8 exhibited the General Diary Entry no. 573 dated 29.06.2015 as Ext.-4. He further stated that he seized the dagger in presence of witnesses by way of a Seizure List, Ext.-1 and he identified his signature therein as Ext.-1[4]. He further stated that he questioned the appellant regarding the incident and having found materials, he arrested the appellant. P.W.8 exhibited the FIR as Ext.-5 and also identified his signature therein as Ext.-5[1]. The dagger which was seized vide Ext.-1, Seizure List, was exhibited by P.W.8 as Material Ext.-1. P.W.8 also exhibited the Inquest Report, the Sketch Map of the P.O. and the Charge-Sheet as Ext.-6, Ext.-7 and Ext.-8 respectively. P.W.8 also identified his signatures in Ext.-6, Inquest Report as Ext.-6[1] and Ext.-7, Sketch Map of the P.O. as Ext.-7[1]. P.W.8 stated that he almost completed the investigation and it was Abdus Sattar Choudhary, Sub-Inspector of Police who finally submitted the Charge-Sheet, Ext.-8. P.W.8 identified the signature of Abdus Sattar Choudhary in Ext.-8 as Ext.-8[1].

21.1. During cross-examination, P.W.8 stated that he did not examine Amsar Ali who informed about the incident telephonically. P.W.8 further stated that witnesses he examined were the relatives of the deceased. P.W.8 stated that the seized dagger was not sent to the Forensic Science

Laboratory [FSL] for examination. He stated that the FIR was received at about 08-30 a.m. on 30.06.2015.

22. From the above set of evidence led by the prosecution, we are of clear view that the following situations have been conclusively established :-

[i] The deceased had five sons and, in order of seniority, the appellant was the fourth son of the deceased;

[ii] All the four other sons of the deceased resided separately with their families in separate houses, near to each other;

[iii] The appellant and the deceased used to stay together as inmates in one house and in that house, no third person used to stay;

[iv] At around 09-00/10-00 p.m. on the date of the incident, noise was heard from the house where the appellant and the deceased stayed together as the only inmates during that night. There was no other inmate in that house. The noise emanated from the house was heard by the prosecution witnesses, P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.7, whose houses were near to the house where the appellant and the deceased stayed in that night;

[v] Out of the afore-mentioned six prosecution witnesses, P.W.1 and P.W.2 are brothers of the appellant and were sons of the deceased. The prosecution witness, P.W.3 is an uncle of the appellant and was an younger brother of the deceased. The prosecution witnesses, P.W.5 and P.W.7 are sisters-in-law of the appellant and were daughters-in-law of the deceased. The prosecution witness, P.W.4 is a next-door neighbour of the deceased. All of them had heard the noise emanating from the house where the appellant and the deceased stayed together in that night;

[vi] The prosecution witnesses, P.W.1 and P.W.2 were the first ones to reach near the house where the appellant and the deceased stayed together in that night. Going there, they found that the

door of the house was locked from inside. The door was then forcibly opened by them for making entry into the house;

[vii] The prosecution witnesses, P.W.5 and P.W.7, hearing the noise, reached the P.O. immediately after P.W.1 and P.W.2. Like P.W.5 and P.W.7, P.W.4, the next-door neighbour, also reached the P.O. in and around the same time hearing the noise. P.W.3 hearing commotion from the house of his elder brother, Giyas Uddin also reached the place in and around the same time;

[ix] When these prosecution witnesses entered the house after forcibly opening the door of the house, they found the deceased lying on the ground of the house in an injured condition and the appellant standing inside the room with a dagger in his hands;

[x] Injuries on the person of the deceased were noticed by these prosecution witnesses and the deceased was seen lying on the ground in a pool of blood;

[xi] Finding the appellant also near his father who was lying injured on the floor, with a dagger in his hands, the appellant was caught hold of and thereafter, he was kept tied there with a rope;

[xii] The Post-Mortem Examination Report [Ext.-2] and testimony of the Autopsy Doctor [P.W.6] revealed that the deceased sustained five piercing wounds on his person;

[xiii] The deceased breathed his last immediately after the arrival of the prosecution witnesses, P.W.1, P.W.2 and others;

[xiv] Information was received telephonically at Bheloguri Police Station at around 09-45 p.m. on 29.06.2015, which was registered as General Diary Entry no. 573 dated 29.06.2015 and the Police personnel proceeded to the P.O. immediately thereafter; and

[xv] At the time of arrival of the Police personnel at the P.O., the appellant was found at the P.O. and he was kept tied at the P.O. with a rope. A dagger was also seized by the Police personnel at the P.O.

23. Evidently, there was no eye-witness to the incident of assault. The case of the prosecution is based on circumstantial evidence. It is settled that where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances so established, should be of a conclusive nature and tendency and the circumstances should be such as to exclude every other hypothesis, other than the hypothesis that it was the accused alone who was the author of the crime. In other words, the circumstances taken together should form a chain so complete that there should be no escape from the conclusion that in all probability the crime was committed by the accused and it should be incapable of explanation on any hypothesis other than that of the guilt of the accused. It is for the court to presume the existence of any fact which is likely to have happened and for drawing such presumption of fact, the court can have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case.

24. Upon analysis of the evidence led by the prosecution, the presence of the afore-mentioned prosecution witnesses at the P.O. immediately after hearing clamour from the house where the appellant and the deceased stayed together as the only inmates at the relevant time of the incident, is found to be natural. The act of proceeding to the P.O. by the prosecution witnesses, P.W.1, P.W.2, P.W.3, P.W.5 and P.W.7 being closely related to the appellant and the deceased and being inhabitants of the houses in close vicinity, immediately after hearing clamour and their reaching there to find out the source of clamour immediately aftermath the incident of assault are found to be quite natural. Similarly, the presence of the prosecution witness, P.W.4 being a next-door neighbour, at the place of occurrence immediately aftermath the incident is also found to be normal, emanating from normal human curiosity. On

scrutiny of their evidence as regards the chain of events, there is hardly anything improbable. The defence side has failed to discredit the veracity of the evidence of these prosecution witnesses on the aspects, noted above. The testimony of these prosecution witnesses is found to be cogent, reliable and consistent on material points.

25. It is well settled by a long line of decisions that when an offence like murder is committed in secrecy inside a house, the initial burden to establish a case, in view of the rule of evidence embedded in Section 101 of the Evidence Act, is undoubtedly upon the prosecution, but the nature and amount of evidence to be led by the prosecution to establish the charge is not of the same degree as is required in other cases of circumstantial evidence. In **Trimukh Maroti Kirkan vs. State of Maharashtra, [2006] 10 SCC 681**, it has been observed by the Hon'ble Supreme Court to the effect that if an offence takes place inside the privacy of a house and in such circumstances where the assailant has all the opportunity to plan and commit the offence at the time and in circumstances of his choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principles of circumstantial evidence is insisted upon.

26. The rule of evidence contained in Section 106 of the Evidence Act has provided that when any fact is especially within the knowledge of any person, then the burden of proving that fact is upon him. In the present case, the prosecution has succeeded in leading cogent, reliable and consistent evidence to establish that the appellant and the deceased were staying in the same house at the relevant time of the night and the assault which resulted in five piercing wounds on the person of the deceased, was made inside that house with the door locked from inside. When the door was forcibly opened, the deceased was found lying on the ground inside a room of the house with five piercing wounds on his person and in a pool of blood with the appellant standing near him in the

same room with a dagger in his hands. The appellant here has not disputed his presence inside the house in any manner whatsoever.

27. In the backdrop of such evidence led by the prosecution on record, the rule of evidence contained in Section 106 of the Evidence Act had clearly been activated in this case. The prosecution had succeeded in proving facts from which a reasonable inference can indubitably be drawn that it was due to assault made on the deceased by the appellant the deceased sustained the injuries, described above, on his person and the same led to his homicidal death shortly thereafter. The defence side during cross-examination of the prosecution witnesses did not put forward any suggestion as about any reason how the deceased sustained those fatal injuries when it was only the appellant who alone, in the above obtaining fact situation, could have explained in what circumstances and in what manner his father, that is, the deceased sustained those fatal injuries.

28. The Hon'ble Supreme Court in the case of **Deonandan Mishra vs. State of Bihar**, reported in **AIR 1955 SC 801**, considered the effect of failure of the accused to offer any explanation for circumstances appearing in evidence against him in a prosecution based on circumstantial evidence. It has been expounded that in a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which, if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain.

29. Following the decision in **Deonandan Mishra** [supra], a three-Judge Bench decision in **Sharad Birdhichand Sarda vs. State of Maharashtra, [1984] 4 SCC 116**, which has attained the status of locus

clasicus for a case to be established on the basis of circumstantial evidence, has observed that absence of explanation or a false explanation from the accused would amount to an additional link to complete the chain of circumstances. The Hon'ble Supreme Court has added that before a false explanation can be used as additional link, the following essential conditions must be satisfied : [i] various links in the chain of evidence led by the prosecution have been satisfactorily proved; [ii] the said circumstance points to the guilt of the accused with reasonable definiteness; and [iii] the circumstance is in proximity to the time and situation. If these conditions are fulfilled, then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. We are of the view, upon considering the evidence on record, that these essential conditions were fulfilled in the case in hand.

30. Two kinds of examination are envisaged in Section 313 of the Code. The first kind of examination under Section 313[1][a] of the Code can take place at any stage of the inquiry or trial. The second kind of examination, as provided under Section 313[1][b] of the Code, takes place after the witnesses for the prosecution have been examined and before the accused is called on for his defence. The idea behind Section 313[1][b] of the Code is to place the substance of allegations to the knowledge of the accused to enable the accused to provide explanations to those circumstance appearing in the evidence against him, if he chooses to do so. The object and purpose behind the examination under Section 313[1][b], CrPC is to adhere to the rules of natural justice for the accused. In other words, the object and purpose of the examination under Section 313[1][b], CrPC is to provide the accused a reasonable opportunity to explain the adverse circumstances which have emerged against him during the course of trial.

31. It is true that a statement given by the accused during examination under Section 313[1][b], CrPC, as not on oath, does not qualify as evidence under Section 3 of the Evidence Act. It is also a settled principle of law that the statement made by the accused under Section 313[1][b], CrPC can be used by the Court to the extent it is in tune with the case of the prosecution. However, such statement cannot be made the sole basis for convicting an accused. At the same time, any admission or confession made by the accused in his statement during the examination under Section 313[1][b], CrPC can be acted upon and the Court can rely on such admission or confession along with the other evidence to proceed to convict him.

32. In the present case, when the Trial Court placed the adverse circumstances appearing against the appellant in the evidence of the prosecution witnesses, the appellant had, without showing any hesitation and in candid manner, admitted those. He admitted clearly that he had killed his father. When the appellant was asked by the Court whether he had anything to add he told that he loved a village girl named X [name withheld by this Court] and he wanted to marry her. The appellant further stated that when he told his father about it, his father did not agree. The appellant proceeded to tell that during the relevant night, he brought a dagger and killed his father by the dagger. When the appellant was asked whether he would adduce evidence in support of his defence, the appellant declined to adduce any evidence.

33. Having regard to the above evidence/materials brought on record including the testimony of the prosecution witnesses and the medical evidence, satisfaction has already been reached by us that the prosecution was successful in establishing the case against the appellant beyond reasonable doubt. The explanation provided by the appellant during his examination under Section 313[1][b] of the Code has added further weight to the prosecution case regarding the charge of murder

under Section 302, IPC to dispel all other hypothesis, other than the hypothesis of guilt of the appellant. The possibility of the appellant being falsely implicated for the charge of patricide stands ruled out completely.

34. The learned counsel for the appellant, as noted above, has placed reliance in the decision of the Hon'ble Supreme Court in **Reena Hazarika** [supra]. In **Reena Hazarika**, it has been held that if the accused takes a defence after the prosecution evidence is closed under Section 313[1][b], CrPC, the court is duty-bound under Section 313[4], CrPC to consider the same. If there has been no consideration at all of the defence taken under Section 313, CrPC, in the given facts of a case, the conviction may well stand vitiated. It has been held that a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313, CrPC and to either accept or reject the same for reasons specified in writing.

35. Upon due consideration, we find ourselves reaching at a firm view that the decision in **Reena Hazarika** [supra] is not applicable to the fact situation obtaining in the present case. In the present case, the appellant has not put forth any defence inconsistent with the case of the prosecution. Rather, the explanation provided by the appellant is found in complete alignment with the case of the prosecution.

36. The learned counsel for the appellant has highlighted that when after the charge of murder was framed, it was read over and explained to the appellant on 10.02.2016, the appellant pleaded not guilty to the charge. The learned counsel has contended that in such backdrop, it is not fathomable that the appellant would admit about committing the offence of patricide at a later stage when he was examined at the stage examination under Section 313, CrPC after closure of evidence from the prosecution side.

37. It is often noticed that an accused when he is examined under Section 313[1][b], CrPC, he gives answers to the questions in the form of flat denial or by clearly discarding the circumstances claiming falsity in them. Sometimes, the accused proffers some explanations to the incriminating circumstances appearing in the evidence of the prosecution witnesses. The explanation of the accused can be explanation simpliciter and sometimes, the purpose behind the explanation offered for adopting defences or for bringing his case within an exception available under the law. It is not unusual that in some cases, though the numbers are not substantive, the accused even admits the circumstances appearing adverse to him. The admission may borne out of regret or remorse out of self reflection. Remorse is often interwined with guilt and self reproach. It could arise when the accused realizes that his reprehensible act had caused harm or suffering to person[s] close to him.

38. In the case in hand, the appellant faced a charge of patricide. It is a possibility that the admission on the part of the appellant as regards the adverse incriminating circumstances, when he had a direct interaction with the court, was borne out of regret or remorseness of his act which resulted in the death of his father. Thus, this Court is not in a position to accept the contention raised regarding fathomability behind candid admission by the appellant to the incriminating circumstances after abjuring guilt at the stage of framing of charge.

39. Having held as above, we would now proceed to deal with the contention advanced on behalf of the appellant that the case of the appellant would fall within one of the exceptions. It has been submitted that the prosecution witnesses had, during their testimony, mentioned about the mental illness of the appellant at the time of commission of the offence, but, the Trial Court had failed to appreciate the said aspect, which is a vital one, and had discarded the aspect by holding that the appellant did

not suffer from any kind of mental illness at the time of occurrence of the incident.

40. The manner in which the prosecution witnesses – P.W.1, P.W.2, P.W.3, P.W.4 and P.W.7 – had mentioned about the aspect of mental illness purportedly suffered by the appellant, has already been recorded in the preceding paragraphs. At this juncture, it is apposite to take notice of the relevant aspects of the law as regards the manner in which a plea regarding unsoundness of mind of a person accused of an offence can be considered to bring a case within an exception.

41. Section 84 of the Indian Penal Code [IPC] has spelled out about an act of a person of unsound mind. As per Section 84, IPC, nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and the burden always lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. Thus, it is always the burden of the prosecution in view of the rule of evidence embedded in Section 101 of the Evidence Act to prove the case, either by way of direct evidence or by way of circumstantial evidence. The prescription contained in Section 84 of the IPC being an exception, it is the rule of evidence embedded in Section 105 of the Evidence Act which would be operational once the prosecution is successful to bring home the charge against the accused beyond reasonable doubt.

42. Section 105 of the Evidence Act has prescribed for the burden of proving that the case of the accused comes within exceptions. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code, or within any Special Exception or proviso contained in

any other part of the Penal Code, or in any law defined in the offence, is upon him, and the Court shall presume the absence of such circumstances. Illustration [a] to Section 105 of the Evidence Act has amply illustrated about the burden in the following manner :-

> [a] A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.
> The burden of proof is on A.

43. On an analysis of the testimony of the prosecution witnesses – P.W.1, P.W.2, P.W.3, P.W.4 and P.W.7, it can be noticed that these prosecution witnesses had supported the case of the prosecution during their examination-in-chief by testifying in conformity with their previous statements given during the stage of investigation. After the stage of examination-in-chief was over, these prosecution witnesses in a nuanced manner introduced a plea of mental illness of the appellant for the obvious reason to bring the case of the appellant within the General Exception covered by Section 84 of the Penal Code.

44. It cannot be lost sight of the fact that the prosecution witnesses – P.W.1, P.W.2, P.W.3 and P.W.7 – were close relatives of the appellant with the prosecution witness, P.W.4 being a next door neighbour of the appellant. These prosecution witnesses were as much related to the deceased as related to the appellant. When a witness is equidistant in relation to the accused and the deceased, their testimony should be scrutinized with more care and caution, considering the potential for bias in either direction. It is true that a witness's connection to both the deceased and the accused may not be a reason to discard his or her testimony entirely, but at the same time, it demands a more critical evaluation to ensure the truthfulness of that part of his or her account whereby the witness appears to have brought in a new aspect in a subtle manner at the stage of cross-examination. If such a situation is faced, the Court has to

carefully examine the testimony of the witness and has to look for corroboration and should examine about any potential motive for introducing a new aspect in such manner.

45. It is well settled that the crucial point of time at which unsoundness of mind should be established is the time when the act of murder is actually committed and the burden of proving unsoundness of mind clearly lies on the accused. The rule of evidence entrenched in Section 105 of the Evidence Act has the mandate that while the burden of proving the existence of circumstances bringing the case within one of the exceptions is upon the person accused of any offence, the Court 'shall presume' the absence of such circumstances.

46. Section 4 of the Evidence Act has provided for the explanation of 'shall presume'. As the explanation of 'shall presume' is inter-connected with a fact, either 'proved' or 'disproved', which are also explained in the Interpretation Clause contained in Section 3 of the Evidence Act, it is apposite to refer to them, :-

> 'Proved'. – A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
>
> 'Disproved'. – A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

> 'Shall presume'. – Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

47. The statutory provisions contained in Section 84 of the Penal Code has recognized that the existence of an unsound mind is a condition precedent for bringing in the applicability of the exception. But, mere unsound mind per se would not be sufficient for applicability. The unsoundness of mind should be of such an extent that the person committing the act was incapable of knowing, at the time of its commission, the nature of the act. In the alternative, the unsoundness of mind should be to such an extent that the person committing the act was incapable of knowing, at the time of committing the act, that the act he had done was either wrong or contrary to law. It has been held in **Prakash Nayi @ Sen** [supra] that a mere medical insanity cannot be said to mean unsoundness of mind. There may be a case where a person suffering from medical insanity would have committed an act, however, the test is one of legal insanity to attract the mandate of Section 84, IPC. There must be an inability of a person in knowing the nature of the act or to understand it to be either wrong or contrary to law.

48. On the aspect of an act of a person of unsound mind provided in Section 84 of the Penal Code, the Hon'ble Supreme Court in **Surendra Mishra** [supra], has observed in the following manner :-

> 11. In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Penal Code is to prove legal insanity and not medical insanity. Expression 'unsoundness of mind' has not been defined in the Penal Code and it has mainly been treated as equivalent to insanity. But the term 'insanity' carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto

> exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer, are not sufficient to attract the application of Section 84 of the Penal Code.

49. The prosecution witnesses – P.W.1, P.W.2, P.W.3, P.W.4 and P.W.7, who are close relations and next door neighbour of the appellant, had mentioned about undergoing treatment by the appellant for his medical illness in the Mental Hospital at Tezpur and also about the appellant to be under medication at the relevant time. However, no evidence regarding the medical treatment of the appellant in the Mental Hospital at Tezpur was placed before the Court during the course of the trial to raise the plea of unsoundness of mind of the appellant. Similarly, no effort was made during the trial to raise a plea that the appellant was under medication for his mental illness. In absence of any such endeavour by the defence during the trial, the Trial Court had no documentary evidence before it during the trial to infer anything regarding mental illness of the appellant, not to speak of the legal insanity, required to activate the defence that the case is to be treated under an exception. If the appellant had received treatment for his mental illness in the Mental Hospital at Tezpur or was under medication for his mental illness, it would have been easily possible for the defence to produce materials in support. Non-production of any such material is relevant considering the fact that the defence through the afore-mentioned prosecution witnesses had made the endeavour, in a subtle manner, to introduce the plea of unsoundness of mind of the appellant.

50. The plea of unsoundness of mind being an exception, the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused in view of Section 105 of the Evidence Act, otherwise the Court shall have to presume the absence of such circumstances. When the rule of evidence contained in Section 105 of the Evidence Act is read together with the definition of 'shall presume', it is evidently clear that it is the accused who will have to rebut the presumption that such circumstances did not exist, by placing materials before the Court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. This onus on the accused, under Section 105 of the Evidence Act, is, however, not of the same standard similar to the prosecution as the prosecution has to establish its case beyond all reasonable doubts. The accused has only to establish his defence on a preponderance of probabilities.

51. As the defence did not bring any material as regards the medical treatment and medication of the appellant other than introducing the aspect of mental illness of the appellant through the afore-mentioned prosecution witnesses at the stage of their cross-examination, such introduction of the story of unsoundness of mind of the appellant is clearly a case of afterthought taken belatedly with a design to help the appellant. It is pertinent to note that in the FIR lodged on the next day of the incident on 30.06.2015 by an own brother of the appellant, P.W.1 there was no mention of any mental illness on the part of the appellant. P.W.1 in his testimony also denied a suggestion that the appellant was not in sense at the time of the incident. The notion of unsoundness of mind of the appellant had been defenestrated by the explanation provided by the appellant to the Court when he was examined under Section 313[1][b] of the Code. By no stretch, the explanation provided by the appellant why he had committed the act can be attributable to a person of unsoundness mind. The appellant did not mention about

unsoundness of mind on his part during such examination. The explanation provided by the appellant during his examination under Section 313[1][b], CrPC is attributable to a person of normal mental state.

52. In view of the discussions made above and the reasons recorded hereinabove, this Court is of the considered view that the plea of legal insanity cannot be made applicable in the case of the appellant to bring his act of assault on his father within the exception under Section 84, IPC.

53. In **Dinesh Kumar** [supra], the Hon'ble Supreme Court had discussed about the powers of a Presiding Judge in a criminal trial by stating that it is his duty to explore every evenue open to him in order to discover the truth and to advance the cause of justice. The duty of the Presiding Judge of a criminal trial is not to watch the proceedings as a spectator or a recording machine. He has to participate in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. The case in **Dinesh Kumar** [supra] was a case based on circumstantial evidence and the plea of legal insanity was not an issue there.

54. In **Bangla Bagti** [supra], the Appellate Court had observed that it transpired from the Order-Sheet of the case record that during the pendency of the case, the accused-appellant who faced a charge of murder in the trial and had been convicted for the charge thereafter, was found to be of unsound mind. He was treated in the Lokapriya Gopinath Bordoloi Regional Institute of Mental Health ['LGBRIMH', for short], Tezpur and also at the Silchar Medical College & Hospital ['SMCH', for short] for quite a long period. It was found out that as per the report issued by the LGBRIMH, Tezpur the accused had recovered considerably which meant that he did not recover fully. It was also found out that

subsequently, the accused-appellant was required to be sent to the Psychiatry Department, SMCH, Silchar. The Trial Court neither recorded as to what were the findings regarding mental health of the accused-appellant, nor examined the Medical Officers, who examined/treated the accused-appellant and submitted reports. In such backdrop, the Appellate Court observed that the Trial Judge did not try the fact regarding unsoundness and incapacity of the accused-appellant. From the materials on record the accused-appellant was found to be suffering from schizophrenia. The Appellate Court had, thus, held that the accused-appellant was suffering from mental disorder. Having regard to the provisions contained in Section 329 of the Code, the Appellate Court had viewed that the Trial Court should have taken resort to the provisions provided in Section 329 of the Code to inquire and come to a definite finding, on the basis of the medical evidence, regarding the mental health of the accused-appellant. As the Trial Court failed to ascertain the fact regarding unsoundness and incapacity of the accused-appellant, the Appellate Court considering the entire aspect of the matter and the evidence regarding mental illness of the accused-appellant, proceeded to hold that it would not be safe to hold that he had made the admissions voluntarily, fully knowing the legal consequence of such admission. The Appellate Court had interfered with the conviction and sentence of the accused-appellant.

54.1. In **Bangla Bagti** [supra], the Appellate Court after appreciation of the evidence on record, proceeded to hold that there was no reliable independent evidence, except the admission made by the accused-appellant, in his statement, made under Section 313, CrPC, to substantiate that the accused-appellant had killed the deceased. The evidence indicated that the deadbody of the father of the accused-appellant was lying in the courtyard and the accused-appellant was also present in the courtyard. A *dao*, which was lying near the deadbody was

seized. During his examination under Section 313, CrPC, the accused-appellant admitted the allegations brought against him.

55. It is a settled proposition that a case is a decision on its facts. A decision is an authority for which it is decided and not what can logically be deduced therefrom. What is binding is the ratio of the decision to be gathered from the principles of law on the basis whereof the case has been decided. A little difference in facts or additional facts may make a lot of difference in the precedental value of a decision.

56. In the case in hand, it has clearly emerged from evidence, which are found cogent, credible and consistent, the witnesses had to enter the house where the deceased and the appellant were the only inmates, forcibly by breaking the door. This piece of evidence, fully established, has made the case distinguishable from the afore-quoted case cited on behalf of the appellant.

57. It is true that like in **Bangla Bagti** [supra], the appellant herein had admitted the charge of patricide during his examination under Section 313[1][b], CrPC. In the present case, the appellant was taken into custody immediately after the incident on 29.06.2015. After submission of the Charge-Sheet on 30.09.2015, the charge was framed against the appellant on 10.02.2016. The prosecution side started examining the PWs from 25.02.2016 and the evidence from the prosecution side was closed on 31.08.2016 after examination of the I.O. as P.W.8. The appellant was examined under Section 313[1][b] on 15.09.2016. Thereafter, the Judgment and Order of conviction and sentence was delivered on 31.05.2017. We have gone through the records including Order-Sheet of Sessions Case no. 161 of 2015, in original, as well as the Order-Sheet of G.R. Case no. 1466 of 2015. It has not emerged from the Order-Sheet that during the period starting from the date when the appellant was remanded to custody after arrest to the date of delivery of

the Judgment and Order of conviction and sentence, there was no application from the appellant side, who was represented by a lawyer, before the Trial Court whereby the fact of mental illness, not to speak of legal insanity, was ever sought to be brought to the notice of the Trial Court. The defence had also not placed any medical document regarding mental illness and medical treatment, alleged to have been undergone by the appellant at the LGBRIMH, Tezpur.

58. In the Judgment and Order of the Trial Court, it is reflected that during argument, the learned defence counsel had drawn the attention of the Trial Court to the cross-examination of the PWs wherein they deposed about the suffering of the appellant from some mental illness for which treatment was undertaken at the LGBRIMH, Tezpur. It was observed by the Trial Court that during the proceeding of the case, the accused or the defence did not take any plea with regard to any kind of mental illness of the accused at the time of the incident. The jail authority also did not make any application before the Court giving any information regarding mental illness of the accused. The Trial Court further observed that the prosecution witnesses were the brothers and other relatives of the accused and they also failed to produce any documentary proof of mental illness of the accused at the time of occurrence of the incident. The Trial Court had, thus, held that in the absence of any cogent proof with regard to mental illness of the accused, it cannot hold that the accused was suffering from any kind of mental illness at the time of occurrence of the incident.

59. Section 329 of the Code has provided for the procedure in case of a trial of a person of unsound mind. As per sub-section [1] of Section 329 of the Code, if at the trial of any person before a Magistrate or Court of Sessions, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such

unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case. As per sub-section [1A] of Section 329 of the Code, if during trial, the Magistrate or Court of Sessions, finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind.

59.1. The proviso to Section 329[2] and Section 329[3] has provided that if the Magistrate/Court finds a prima facie case is made out against an accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as is required for the treatment of the accused. If the Magistrate or the Court finds that a prima facie case is made out that the accused is incapable of entering defence by reason of unsoundness of mind or mental retardation, then the case of the accused is to be treated as per the provisions of Section 330 of the Code.

60. In a case where the exception under Section 84 of the IPC is claimed, it has been obesrved in **T.N. Lakshmaiah** [supra] that the court has to consider whether, at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. The entire conduct of the accused, from the time of the commission of the offence up to the time the sessions proceedings commenced, is relevant for the purpose of ascertaining as to whether plea raised was genuine, bona fide or an afterthought.

61. In **Upen Basumatary** [supra], unlike in the case in hand, the accused-appellant therein during his examination under Section 313[1][b], CrPC stated that at the time of occurrence he was a person of unsound mind. The Appellate Court on perusal of the records found that when the accused was examined by the Medical Officer on 11.03.2012 after the incident on 10.03.2012, the Medical Officer advised for psychiatry consultation. During the course of the trial, the Trial Court made an observation that the accused seemed to be a person of unsound mind and ordered for his examination by expert Medical Officers. After receipt of the report the Trial Court came to a finding that the act of the appellant did not attract Section 84 of the IPC. At the appellate stage, the Appellate Court directed for constitution of a Medical Board to examine the aspect of insanity of the accused and as per the medical report submitted by the Medical Board, the accused-appellant was found suffering from chronic paranoid schizophrenia needing medical treatment. The Appellate Court observed that the records had revealed that right from the inception of the case, there was indication that the accused-appellant appeared to be mentally unsound at the time of the incident. Having considering the mental illness, chronic paranoid schizophrenia, the Appellate Court came to a finding that the Trial Court ought to have resorted to the procedure outlined in Section 329 of the Code and since such procedure was not followed, the trial got vitiated and the benefit of doubt should be extended to the accused-appellant.

62. It is a proposition that a reliance on a decision cannot be placed without discussing whether it is rendered in the same factual and legal background as a judgment of court is not to be construed as statues. In the context of principle regarding precedental value of a decision, we are not persuaded to reach a view that the decision, **Upen Basupatary** [supra] cited on behalf of the appellant on the vitiating aspect of the trial for sufferance of the appellant from legal insanity is applicable to the

case in hand in view of different factual and legal backgrounds, as already alluded above.

63. It has already been outlined above that during the period from 29.06.2015 to 31.05.2017, the case proceeded through various stages of investigation, enquiry and trial. Before the Trial Court, the appellant started appearing on and from 30.11.2025 till 31.05.2017. The Trial Court was in best position during the said period to observe any kind of abnormal behaviour on the part of the appellant. As already mentioned above, it has not emerged from the case record that there was any submission of application raising the plea of unsoundness of mind or legal insanity or submission of any medical document in that regard before the Trial Court. In their absence, it was only the observational power of the Presiding Judge, that is, his ability to carefully watch, notice, and to draw inference form the behaviour and demeanour of the accused using all senses, which was the only source left to call for an enquiry under Section 329 of the Code. As during the entire course of the trial it did not appear to the Trial Court that the appellant was a person of unsound mind incapable of making his defence, this Court as the Appellate Court is handicapped to make any further inroads into the aspect of legal insanity and unsoundness of mind of the appellant.

64. In **I.V. Shivaswamy** [supra], plea of insanity was not raised as a defence. It has been observed therein if it does not appear to the Sessions Judge that the accused was insane then it is not necessary for him to conduct a regular enquiry. The word 'appears' imports a lesser degree of probability than 'proof', but the same does not mean that whenever a party raises the point before a Sessions Judge, he has to straight away proceed for an elaborate enquiry into the matter. If on examining the accused it does not appear to the Sessions Judge that the accused is insane, it is not necessary that he should go further and send for and examine medical witnesses and other relevant evidence. If the

Sessions Judge has any serious doubt in the matter than he should hold a proper enquiry. The Sessions Judge in the case found no evidence of insanity from the behaviour of the accused and the Hon'ble Supreme Court upheld the conviction.

65. In **Prem Singh** [supra] the Hon'ble Supreme Court has observed that if there was no material on record on the aspect of the accused being of unsound mind and no other reason appeared during trial, the Trial Court would not be obligated to take recourse of the procedure contemplated by Section 329 of the Code. Noticing that there was nothing, the Hon'ble Supreme Court has further held that post conviction behaviour is hardly of any relevance so far as the appellant was concerned. The appellant's post-conviction abnormalities were reported nearly after two years from the verdict of guilt returned by the Trial Court. In that context, it has been observed that such behaviour cannot even remotely be co-related with the question whether the accused was a person of unsound mind at the time of commission of the crime or was a person of unsound mind when tried during the trial.

66. During the course of hearing, it has been urged by the learned counsel for the appellant that the medical reports relating to the appellant indicate that he is a 'prisoner with mental illness' falling within the ambit and scope of the definition provided in Section 2[w] of the Mental Healthcare Act, 2017. If such is the case, the remedy for the appellant lies under the provisions of the Mental Healthcare Act, 2017, the rules, namely, the Mental Healthcare [Rights of Persons with Mental Illness] Rules, 2018 framed thereunder, and the Assam Prisoners Act, 2013. Therefore, the appellant is required to resort to such remedy if his case is to be treated is a case of a 'prisoner with mental illness'. As in this criminal appeal, the Judgment and Order dated 31.05.2017 was questioned, such kind of post-conviction mental health issue is not in its scope and ambit.

67. In the light of the discussion made above and for the reasons recorded therein, this Court, summing up, is of the considered view that the submissions advanced on behalf of the appellant as regards the case of the appellants is one under the general exception do not deserve acceptance. On the other hand, it is found that the case of the prosecution against the appellant has been established for the offence of patricide by cogent, reliable and credible evidence. Resultantly, the criminal appeal is found to be devoid of merits. Thus, the criminal appeal fails.

68. The case records of the Trial Court are to be send back forthwith.

JUDGE **JUDGE**

Comparing Assistant