GAHC010199372021

2026:GAU-AS:3258-DB

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

Case No. : CRL.A(J)/47/2021

BABLU BHUYAN
SIVASAGAR, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the appellant : Mr. A. Ahmed, Amicus Curiae.
Advocate for the respondent : Ms. B. Bhuyan, APP, Assam.

:::BEFORE:::
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date of hearing and judgement : 05/03/2026

JUDGMENT & ORDER (ORAL)

(M. Zothankhuma, J)

1. Heard Mr. A. Ahmed, learned Amicus Curiae, appearing for the appellant. Also heard Ms. B. Bhuyan, learned senior counsel and APP, Assam, appearing for the State.

2. The appellant has put to challenge the impugned judgement dated 26/04/2021 passed by the learned Additional Sessions Judge, Sivasagar in Sessions Case No. 269 (S-N)/2017, by which the

appellant has been convicted under section 302/201 IPC and sentenced to undergo rigorous imprisonment for life with a fine of Rs. 10,000/-, in default, rigorous imprisonment for 6 months.

3. The appellant's counsel submits that the entire case of the prosecution for convicting the appellant, is due to the fact that the present appellant Bablu Bhuyan and the co-accused Dilip Bhuyan were seen carrying the dead body of the deceased by PW-4 from a distance of only 5 feet. As the circumstantial evidence against the appellant and Dilip Bhuyan was the same regarding the death of the deceased, the conviction and sentence of both the co-accused should have been similar. However, only the present appellant has been convicted and sentenced under section 302/201 IPC. On the other hand, the co-accused Dilip Bhuyan has been convicted and sentenced only under section 201 IPC. He submits that in terms of the decision of the Supreme Court in ***Yogarani Vs. State by the Inspector of Police*** reported in ***2024 SCC OnLine SC 2609***, the Court cannot convict one accused and acquit the other, when there is similar or identical evidence of the eye witnesses against the two accused persons, ascribing the same or similar roles. The Supreme Court in the above case held that the cases of both the accused persons will have to be covered by the principle of Parity. The learned Amicus Curiae thus submits that when the co-accused Dilip Bhuyan has been convicted and sentenced only under section 201 IPC, the appellant should have also been convicted and sentenced only under 201 IPC.

4. The learned counsel for the appellant further submits that the incriminating evidence of PW-4, showing the appellant and Dilip Bhuyan to be carrying the dead body of the deceased, has not been put to the appellant in his examination under section 313 Cr.P.C. He accordingly submits that the procedural safeguard given to accused for providing him an opportunity to explain the evidence adduced against him has been lost and that the said incriminating material not having been put to the appellant, the conviction on the basis of PW-4's evidence that he saw the appellant and Dilip Bhuyan carrying the deceased, is not sustainable in law. In this regard, he has relied upon the decision of the Supreme Court in the case of ***Vaibhav Vs. The State of Maharashtra [Criminal Appeal No. 1643/2012]***. The learned Amicus Curiae submits that in view of the above, the matter may be remanded back to the learned Trial Court to direct retrial of the case, from the stage of recording of the examination of the appellant under section 313 Cr.P.C.

5. Ms. B. Bhuyan, learned APP, on the other hand, submits that there is no denial of the fact that the appellant and Dilip Bhuyan had carried the body of the deceased, after coming from a marriage

party. She submits that instead of reporting the death of his wife to the Police or other persons, the appellant-husband had surreptitiously taken away the dead body of his wife with the co-accused Dilip Bhuyan. She submits that if there was no foul play in the death of the deceased, the appellant would have surely reported the death of his wife not only to the Police, but also to his mother, with whom they were staying. The learned APP further submits that the plea of *alibi* taken by the appellant, which is to the effect that he was in some other village, has not been proved by the appellant, as he has not produced any defence witness to prove the said fact, especially the villager with whom the appellant allegedly stayed the night with. The learned APP also submits that as per the principle of parity, Dilip Bhuyan should also have been convicted and sentenced under section 302 and 201 IPC.

6. We have perused the examination of the appellant under section 313 Cr.P.C. and the question and answer to question no. 7 is reproduced herein below, as follows :-

> "*7. Q. The PW 4 Amrit Karmakar stated in his evidence that when he reached near you (5 feet distance) he asked as "who were there" and then You/Dilip Bhuyan held him from back side on his neck and warned him that not to disclose the incident else they would kill him and his family members. What do you say?*
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> *Ans : It is true*."

7. As can be seen from the above, the incriminating evidence adduced by PW-4, which is to the effect that he had seen the appellant and Dilip Bhuyan carrying the dead body for throwing, has not been put to the appellant during his examination under section 313 Cr.P.C. In the case of ***Kuldip Singh Vs. State of Delhi*** reported in ***(2003) 12 SCC 528***, the Supreme Court held that when an incriminating circumstance was not put to the accused during his examination under section 313 Cr.P.C, the prosecution cannot place reliance on the said piece of evidence. The Supreme Court in the case of ***Nar Singh Vs. State of Haryana*** reported in ***(2015) 1 SCC 496*** has also relied upon various other decisions of the Supreme Court, wherein it has been held that the accused should be drawn to every inculpatory material during his examination under section 313 Cr.P.C, to enable him to explain the same. Though such an omission may not *ip-so-facto* vitiate the proceedings, the Court must ordinarily eschew such material for consideration. It has also been held in para 30 that whenever a plea of omission to put a question to the accused on a vital piece of evidence is raised in the appellate Court, it is within the

power of appellate Court to examine and further examine the convict or the counsel appearing for the accused. However, if non-compliance of the provisions of section 313 Cr.P.C. had occasioned or was likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused, from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 Cr.P.C. Para 30 to 30.4 of the said judgement in ***Nar Singh (Supra)*** is reproduced herein below as follows :-

> "*30. Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarised as under:-*
>
> *30.1 Whenever a plea of non-compliance of Section 313 Cr.P.C. is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer;*
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> *30.2 In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.*
>
> *30.3 If the appellate court is of the opinion that noncompliance with the provisions of Section 313 Cr.P.C. has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 Cr.P.C. and the trial Judge may be directed to examine the accused afresh and defence witness if any and dispose of the matter afresh;*
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> *30.4 The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the*

accused."

8. On considering the fact that the incriminating evidence of PW-4 regarding the appellant and Dilip Bhuyan carrying the body of the deceased for throwing, has not been put to the appellant at the time of his examination under section 313 Cr.P.C., which we find has caused prejudice to the appellant, we are of the view that the said incriminating evidence should be put to the appellant, to enable the appellant to make an explanation to the same.

9. In view of the reasons stated above, we remand the matter back to the learned trial Court to have a retrial of the case, from the stage of examining the appellant under section 313 Cr.P.C.

10. It is clarified herein that the present case has been remanded back only in relation to the appellant Bablu Bhuyan, inasmuch as, the State has not put to challenge the conviction and sentence of Dilip Bhuyan under section 201 IPC. Consequently, the impugned judgement dated 26/04/2021 passed by the learned Additional Sessions Judge, Sivasagar in Sessions Case No. 269 (S-N)/2017 is hereby set aside, in so far as it relates only to the appellant.

11. The appeal is accordingly disposed of.

12. Send back the TCR.

13. In appreciation of the assistance provided by Mr. A. Ahmed, learned Amicus Curiae, his fee should be paid by the Assam State Legal Services Authorities, as per norms.

JUDGE **JUDGE**

Comparing Assistant