

GAHC010116542016



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

**Case No. : Crl.A./208/2016**

SRIMUNINDRA KUMAR  
S/O SRI JAGALAL KUMAR OF NO. 1, BANDAKHATI GAON, UNDER P.O. and  
P.S. BAGHJAN

VERSUS

THE STATE OF ASSAM and ANR

2:UMESH MORAN  
S/O LATE LAKHESWAR MORAN OF VILL. JAKAICHUKGAON UNDER  
NAHARKATIA POLICE STATION IN THE DIST. OF DIBRUGARH  
ASSAM

**Advocate for the Petitioner : MS.J GOGOI**

**Advocate for the Respondent :**

**BEFORE**  
**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**  
**HON'BLE MR. JUSTICE MANISH CHOUDHURY**

**JUDGMENT AND ORDER (CAV)**

Date of Hearing : 23.01.2019  
Date of Judgment : 28.06.2023

*(M.R. Pathak, J)*

1. Heard Mr. Dhiren Chandra Chetia Phukan, learned counsel for the accused appellant and Mr. Makhan Phukan, learned Additional Public Prosecutor, Assam for the respondent State. The respondent No. 2, informant of the case, did not appear in the matter.

2. This criminal appeal has been filed by the accused appellant Sri Munindra Kumar being aggrieved with the judgment of conviction and sentence dated 11.03.2016 passed by the learned Additional Sessions Judge-1 (FTC), Tinsukia in Sessions Case No. 240 (T) of 2014, arising out of Baghjan Police Station Case No. 03/2011, (corresponding to G R Case No. 866/2011) whereby he has been convicted under Sections 364/302/109/201/34 of the IPC and sentenced with (i) Life Imprisonment with a fine of Rs. 30,000/- for the offence under Section 302/34 IPC, in the event of non-payment of fine, to undergo another Rigorous Imprisonment for 6 (six) months; (ii) further sentenced with Rigorous Imprisonment for 10 (ten) years with a fine of Rs. 10,000/- for the offence under Section 364/34 IPC, in the event of non-payment of fine, to undergo another Rigorous Imprisonment for 3 (three) months; (iii) further sentenced with Rigorous Imprisonment for 3 (three) years with a fine of Rs. 3,000/- for the offence under Section 201 IPC, in the event of non-payment of fine to undergo another Rigorous Imprisonment for 1 (one) month and (iv) further sentenced with Life Imprisonment and a fine of Rs. 30,000/- for the offence under Section 109/34 IPC and in the event of non-payment of fine to undergo another Rigorous Imprisonment for 6 (six) months, where the sentences to run concurrently and the period of detention already undergone by him in custody to be set off against the aforesaid sentences of imprisonment as envisaged under Section 428 CrPC.

3. The accused named above earlier filed an appeal from Jail against the impugned

judgment of conviction and sentence dated 11.03.2016 that was registered as Criminal Appeal No. 34 (Jail) of 2016. As the said accused subsequently preferred this appeal engaging his own counsel, his said Criminal Appeal No. 34 (Jail) of 2016 was closed and this appeal was taken up for consideration.

**4.** The prosecution's case as narrated in the *ejahar* (Exhibit-1) is that on 10.07.2011 informant Umesh Moran (PW.1) submitted a written *ejahar* before the Officer-in-Charge of Baghjan Police Station stating that on 25.06.2011 noticing physical change over his minor daughter, namely, Anuradha Moran, they enquired about the matter from her, then she informed that Munindra Kumar, son of Jaharlal Kumar of Diamuuli Bandar Kahti Tenga Line had established physical relation with her and as a consequence she became pregnant of 4/5 months. But on the same day around 12:00 noon said Munindra Kumar took away his daughter and they eloped and since then they did not find any trace of them and as they were busy in search of them, they got delayed in lodging the *ejahar*. By the said *ejahar* the informant requested the police authority to do the needful.

**5.** Said *ejahar* (Exhibit-1) was accordingly registered as Baghjan Police Station Case No. 03/2011 under Section 366/376(F)/493 IPC corresponding to G R Case No. 866/2011 and the Officer-in-Charge of Baghjan Police Station and Sub-Inspector Bapukan Morang was entrusted with the case to investigate the case.

**6.** The Investigating Officer of the case on 10.07.2011 itself recorded the statement of the informant; visited the place of occurrence and drawn its sketch map showing the house of the informant/victim and others (Exhibit-3); recorded the statements of the witnesses acquainted with the facts of the case under Section 161 CrPC; arrested the accused person on 12.07.2011; visited the bank of the river Burhi Dihing and its nearby places where the dead body of the victim Anuradha Moran was allegedly kept in a drain and also visited the place where the dead body of Anuradha Moran was allegedly thrown into the said river by the accused person and drawn its sketch map (Exhibit-5); seized one wooden boat that was allegedly used to carry the dead body of Anuradha Moran, Material Exhibit No. 3/11 by preparing Seizure List (Exhibit-2); sent one of the witness Rajesh Mura (PW.8) to the Magistrate to record his statement under Section 164 CrPC (Exhibit-4) and on completion of the investigation of the case, finding prima facie materials, the Investigating Officer of the case submitted the Charge Sheet in said Baghjan P.S. Case No.

03/2011 vide No. 03/2013 dated 20.03.2013 (Exhibit-6) under Sections 493/366/302/201/109 IPC against three accused persons including the appellant Munindra Kumar (Exhibit-5).

**7.** From the case record we have seen that the learned Additional Chief Judicial Magistrate, Tinsukia vide order dated 12.07.2011 granted default bail to the accused person Munindra Kumar in the G.R. Case No. 866/2011 arising out of said Baghjan P.S. Case No. 03/2011.

**8.** Learned Chief Judicial Magistrate, Tinsukia on 25.06.2013 transferred the said G R Case No. 866/2011 to the Court of learned Judicial Magistrate First Class, Tinsukia for disposal. Finding that the charge sheet in said Baghjan P.S. Case No. 03/2011 contains charge under Section 302 IPC that is exclusively triable by the Court of Sessions only, the learned JMFC, Tinsukia, by order dated 30.08.2014 committed the said G R Case No. 866/2011 to the Court of learned Sessions Judge, Tinsukia, fixing 20.09.2014 for appearance of the accused persons before learned Sessions Judge, Tinsukia.

**9.** On receipt of the record of said G.R. Case No. 866/2011 after its commitment on 30.08.2014 it was registered as Sessions Case No. 240 (T) of 2014 in the Court of learned Sessions Judge, Tinsukia. By order dated 20.09.2014 the said Sessions Case No. 240 (T) of 2014 was transferred to the Court of learned Additional Sessions Judge-1 (FTC), Tinsukia for disposal.

**10.** The learned Additional Sessions Judge-1 (FTC), Tinsukia by its order dated 17.10.2014 passed in said Sessions Case No. 240 (T) of 2014 framed charge under Sections 364/417/302/109/201/34 IPC against the accused persons of said case that were read over and explained to them, to which the accused persons pleaded not guilty and claimed to be tried and accordingly, the trial of the case began.

**11.** To bring home the charge against the accused person of the case, the prosecution examined eleven witnesses before the Trial Court, including the Investigating Officer of the case and placed above noted Exhibits. It is to be noted herein that before the Trial Court the prosecution has also exhibited statements of three prosecution witnesses recorded by police during investigation of the case made under Section 161 CrPC more particularly by PW.7 Jadav Sonowal (Exhibit-7), PW.8 Rajesh Mura (Exhibit-8) and PW.9 Hanot Sonowal (Exhibit-9). The defence for the accused/appellant Munindra Kumar did not adduce any evidence on its behalf but cross examined the prosecution witnesses.

**12.** After closure of the evidence for the prosecution witnesses in the case, the Trial Court on 07.01.2016 recorded the statements of the accused appellant under Section 313 CrPC and on being asked, he claimed to be innocent, denied the accusations made against him by the prosecution, refused to say anything on his defence and also denied to lead any evidence.

**13.** Learned Additional Sessions Judge-1 (FTC), Tinsukia after hearing the parties passed the impugned Judgment and conviction dated 11.03.2016 in said Sessions Case No. 240 (T) of 2014 convicting the appellant under Sections 364/302/109/201/34 of the IPC for committing murder of Anuradha Moran, committed abetment in consequence of her murder, hidden her dead body, thrown her dead body into the river causing disappearance of evidence of evidence in furtherance of common intention and accordingly sentenced him.

**14.** Mr. D.C.C. Phukan, learned counsel for the accused appellant submitted that there are inconsistent prosecution evidence in the case, contradictions amongst those witnesses and that the prosecution has failed to establish the complete chain of circumstantial evidence against the appellant accused Munindra Kumar and thereby failed to prove the guilt of the accused beyond all reasonable doubt. Mr. D.C.C. Phukan, learned counsel for the appellant relying on the decisions of this Court in the case of *Abdul Kalam -Vs- State of Tripura*, reported in 2001 (3) GLT 35 (Single Bench) and *Nurul Miah and Others -Vs- State of Tripura*, reported in 2004 (2) GLT 531 (Division Bench) submitted that the prosecution with the aid of the statements of its witnesses made before police under Section 161 CrPC during investigation, though brought on record by Exhibits- 7, 8 and 9, but those cannot be treated as substantive piece of evidence that can be used only for the purpose of contradiction and not for corroboration of statement/evidence of witness who allegedly made the statement. Therefore, Mr. D.C.C. Phukan, learned counsel for the accused appellant, submitted before the Court that the learned Trial Court committed illegality in convicting the accused appellant and as such, the impugned judgment of conviction and sentence dated 11.03.2016 passed in Sessions Case No. 240 (T) of 2014 should be set aside and quashed, acquitting the appellant Munindra Kumar from the said case.

**15.** On the other hand, Mr. Makhan Phukan, learned Additional Public Prosecutor, Assam submitted that the learned Additional Sessions Judge-1 (FTC), Tinsukia in Sessions Case No. 240 (T) of 2014 arising out of Baghjan Police Station Case No. 03/2011 (corresponding to G R Case No. 866/2011) had rightly passed the impugned judgment on proper scrutiny of the evidence as

well as the exhibits adduced by the prosecution. Therefore, Mr. Makhan Phukan submitted that since the accused/appellant had been rightfully convicted, the impugned Judgment of conviction and sentence dated 11.03.2016 and conviction dated 11.03.2016 need not be interfered with.

**16.** The accused appellant Munindra Kumar who was on bail in the said criminal case since 12.07.2011 was taken into custody after the impugned judgment on 11.03.2016 to serve the sentences. However, after admitting this appeal, the Court by order dated 21.06.2017 passed in I.A. (Crl) No. 223/2016 in Crl. Apl No. 208/2016 granted bail to the appellant and since then he is on bail in the case. It is also to be noted herein that one of the three accused of the case, namely, Jogeswar Orang @ Tepena did not appear in the Trial inspite of issuance of summons and the said Sessions Case No. 240 (T) of 2014 proceeded against the accused Munindra Kumar and Sunil Proja.

**17.** To appreciate the contentions made on behalf of both the parties, i.e. the appellant/accused as well as the State, let us examine the evidence on record of the witnesses in the case.

**18.** PW.1, Sri. Umesh Moran deposed that the deceased Anuradha Moran was his daughter and that the incident took place in the year 2011. On noticing the physical change of his daughter, his sister-in-law, Junu Moran (PW.2) asked his daughter regarding her physical change to which she replied that about four months back, on her way back from school, she went to the house of the accused Munindra Kumar to fill air in her bicycle and at that time, the accused Munindra Kumar raped her in his house consequently, she became pregnant. He deposed that her daughter told him that she would marry with the accused Munindra and that after 2/3 days of the said incident, his daughter Anuradha eloped with the accused Munindra Kumar. Thereafter, they searched for his daughter but, could not trace her out. Later, he lodged an *Ejaha*r in the police station, Exhibit.1 and he proved the same and also proved his signature on it. Later police apprehended the accused Munindra Kumar and he was sent to jail hajot. He deposed that after 4/5 days of arrest of Munindra Kumar, his son Diganta Moran met the accused in jail hajot (custody) and enquired from him about his daughter to which the accused replied that by strangulating he committed murder of his daughter with the help of another accused namely, Tepena Orang and thereafter, they threw the dead body of his daughter in the Dehing river. He also deposed that police came and recorded his statement and that the dead body of his

daughter could not be recovered.

During his cross-examination, PW.1 stated that one petition writer wrote the *Ejahaar* and after writing the same, he read out its contents and then he endorsed his signature on it Exhibit.1 and he did not do anything thereafter. He stated that police did not seize any document in respect of age of his deceased daughter and since he did not have any document relating to the age of his deceased daughter, he could not state her actual age at the time of the incident. He denied the fact that the accused Munindra Kumar did not rape his daughter and that he did not ask his daughter regarding her physical change. He also stated that though they noticed her physical change but he did not take his daughter before any doctor for her examination. He stated that he did not see his daughter while eloping with the accused and that he did not state before police that as to how he came to know about the elopement of his daughter. He denied that his daughter did not tell his sister-in-law, Junu Moran that she was raped by the accused Munindra and as a result of that she became pregnant. He also stated that Junu Moran resides in a separate house situated at a distance of about one Kilometre from his residence and his daughter resided with them and that said Junu Moran visits his house now and then. He denied the fact that Junu Moran did not ask his daughter regarding her physical change and also denied that that his daughter did not reply that she was raped by the accused Munindra Kumar for which she became pregnant. He stated that after lodging the *Ejahaar* police recorded his statement on the next day.

PW.1 Umesh Moran during his cross examination also stated that he did not state before police as to when his son Diganta Moran asked the accused about his daughter, where the accused replied that he committed murder by strangulating his daughter with the help of another accused, namely, Tepena Orang and thereafter, they threw the body of my daughter to Dehing river. He stated that he did not state before police the specific name, from where his family members came to know regarding the pregnancy of his daughter. He stated that he knew the accused Munindra Kumar since he resided at a distance of 1½ Km from his residence and that he had seen the other accused Sunil Proja only once or twice but, he had no knowledge about the residence of the said accused. PW.1 stated that he did not suspect on the accused Sunil Proja in respect of the incident involved in the case and that he did not mention the cause of delay in lodging the *ejahaar* and denied that the contents of the *ejahaar* was false. He stated that Police recorded his statement only once and did not record thereafter.

**19.** PW.2, Smt. Junu Moran deposed that he knew the accused persons and also knew the deceased Anuradha Moran as she was her relative. She deposed that the incident took place in the year 2011 and she came to know about Anuradha's pregnancy because of her physical change. She deposed that when she asked her as to how she became pregnant, the victim replied that about four months back, while she was returning after attending the school, she went to the house of the accused Munindra Kumar to fill air in her bicycle and at that time, the accused Munindra Kumar raped her in the house of the accused as a result, she became pregnant. PW.2 also deposed that she (Anuradha) also told her that at the relevant time the family members of the accused were not present and that Anuradha also told her that she was in love with the accused Munindra and that the accused promised to marry her. She deposed that after 2/3 days of the said incident, the victim was not found present in her house and thereafter, they went to the residence of the accused Munindra to enquire about the matter, but at that time they did not find him at his home. PW.2 deposed that the victim read up to Class-IX and she left her school one year prior to the incident and thereafter, the father of the victim lodged an *ejahar* in the Police Station. She stated that police came and recorded her statement and later, she came to know that the accused Munindra was arrested by police and after arrest of said Munindra, brother of the victim, namely, Diganta Moran met the accused Munindra in Jail Hajot and asked him about his sister, then the accused replied that he murdered her by strangulation with the help of other accused person namely, Tepena Orang and thereafter, they threw the dead body in the Dehing river. PW.2 deposed that she came to know about all those facts from the brother of the victim, Diganta Moran.

During her cross examination by the defence PW.2 stated she knew the deceased Anuradha since the date of her marriage that was solemnised in the year 2004 and that Anuradha resided with her father. For examination of the victim Anuradha, PW.2 stated that she did not take her to any doctor, but she was examined by "ASHA Karmi" [ASHA (Accredited Social Health Activist) Employee] and that after examining in a "testing kit", she was found positive indicating pregnancy and that the police did not seize any medical document provided by ASHA Karmi. She denied that fact that she took the victim to doctor for her examination and stated that she had no personal knowledge regarding the actual age of the victim girl as only after her marriage she met the said victim. PW.2 denied the fact that the victim did not tell her that after attending the school, she went to the house of the accused Munindra Kumar to fill air in her bicycle and then the accused Munindra Kumar raped her in his house due to which she became pregnant. She

also denied that the victim did not tell her that she was in love with the accused Munindra and that the accused promised to marry her. PW.2 also denied the fact that she had stated before police as to how she came to know that the victim had eloped with the accused Munindra.

PW.2 stated that Anuradha did not tell her regarding the incident till she enquired her about it and she cannot recollect as to when police visited her house to record her statement under Section 161 CrPC and that she did not state before police that Diganta told her that the accused committed murder by strangulating the victim with the help of the other accused person, namely, Tepena Orang and thereafter, they threw the dead body of the victim in Dehing river. She stated that she did not see as to when Anuradha eloped with the accused and that she had no idea as to whether the victim girl was missing or went with the accused person with her own will. PW.2 denied the fact that they did not go to the house of the accused Munindra to find out the victim girl and also denied that she had deposed falsely before the Court.

**20.** PW.3, Smt. Surabhi Moran Borah deposed that she knew the accused Munindra Kumar and also knew Anuradha Moran as she was her friend. She deposed that they assumed that Anuradha had died and that there was love affair in between the accused and Anuradha and that she was in love with the accused from her school days i.e. from Class VIII and regarding pregnancy of Anuradha, she came to know from Junu Moran (PW.2), paternal aunt of Anuradha. PW.3 deposed that said Junu Moran also told her that Anuradha became pregnant by the accused Munindra Kumar and later, she came to know that Anuradha eloped with the accused Munindra Kumar and that the father of Anuradha lodged an *ejahar* in the Police Station in respect of the said case, but, she did not know whether Anuradha was alive or dead.

During her cross examination PW.3 stated that Police asked her whether the accused had a love affair with Anuradha and besides the same, police did not enquire anything from her. She stated that she read up to Class-X but, Anuradha read up to Class IX and that she had no knowledge regarding day to day activities of Anuradha since she left the school. She stated that she informed the family of Anuradha regarding love affair between Anuradha and the accused Munindra Kumar and she denied that she did not inform the family of Anuradha regarding her love affair with the accused Munindra Kumar. She stated that the distance in between her residence and the house of Anuradha was about 1 Km and that she did not ask Anuradha and her family members regarding her pregnancy. PW.3 denied the fact that she did not know regarding pregnancy of Anuradha and that she did not state before police that she heard Anuradha had

eloped with the accused Munindra Kumar. PW.3 also denied the fact that she did not hear about eloping of Anuradha with the accused Munindra and that she did not know anything beyond the statements she made before the Court. She denied the fact that she had deposed false evidence in the Court.

**21.** PW.4, Smt. Archana Moran elder sister of the victim deposed that she knew the accused Munindra Kumar and that she came to know from her paternal aunt Junu Moran that Anuradha became pregnant by the accused Munindra Kumar. She deposed that she came to her paternal house and asked Anuradha regarding her pregnancy to which she replied her that she became pregnant by the accused Munindra Kumar. PW.2 deposed that she also told her that she would marry the accused Munindra and thereafter, she returned to her matrimonial house. She deposed that later she came to know from her father that Anuradha left her house and then, her father went to the house of the accused to enquire whereabouts of Anuradha but, he did not met the accused and then her father lodged an ejahar at Baghjan Police Station and accordingly, police arrested the accused. PW.2 also deposed that after his arrest, her elder brother Diganta Moran met the accused and on being enquired, the accused replied to her brother that he had killed Anuradha and police recorded her statement.

During her cross examination PW.4 stated that she got married in the year of 2009 at Erani Gaon that was situated at a walking distance of ½ Km from her paternal house and after her marriage, she did not know regarding the day to day activities of her paternal house. She stated that her paternal aunt Junu Moran informed her over cell phone to come to her house, but she did not remember the date as to when her said paternal aunt informed her over cell phone. PW.4 denied the fact that she did not state before police that she came to her paternal house after receiving phone call from her paternal aunt and enquired from Anuradha regarding her pregnancy. She also denied that she did not state before police that her paternal aunt informed her to come to her house. However, she stated that she did not state before police that Anuradha told her that she would marry the accused Munindra and also did not state that she went away with the accused. She stated that she had no personal knowledge regarding any incident after she returned from her paternal house on the same day. PW.4 stated that she did not ask her father as to why he went to the house of the accused and that her sister Anuradha did not tell her that as the accused Munindra raped her she became pregnant. She stated that she did not state before police that after the accused was arrested by police, her elder brother

Diganta Moran met the accused and on being enquired, the accused told him that he had killed Anuradha. PW.4 denied the fact that her elder brother Diganta did not tell her those facts and that she did not know whether her sister Anuradha was alive or dead. She denied that she had deposed false evidence before the Court.

**22.** PW.5, Dharani Sonowal deposed that he knew the accused persons and that about four years back, police arrested the accused Munindra Kumar and took him to Gorla Khati village near the river Burhi Dihing and in presence of police and local people gathered there, the accused Munindra Kumar confessed his guilt that he committed murder of a girl and also, threw her dead body in the said river and that the said accused also showed the place wherein the dead body was thrown.

During his cross examination he stated that at the relevant time he was residing at Chakoliapather and that it took 15 to 20 minutes to reach the place Gorla Khati from his residence. He stated that his shop was situated at Gorla Khati, near the Shiva Temple and as he was running his shop personally, he spent most of the time at his shop and that police did not interrogate him. PW.5 stated that he did not state before Police that he had deposed in his chief before the Court. He stated that he had no personal knowledge regarding the incident and that he did not state before police the names of the persons those gathered at the place of occurrence at the time of confession made by the accused. He denied that he had deposed falsely before the Court.

**23.** PW.6, Jayanta Sonowal deposed that he knew the accused persons and that about four years back during morning hours, police arrested the accused Munindra Kumar and took him to Gorla Khati Ghat (bank) of river Burhi Dihing. He deposed that in presence of police and local people, gathered there, the accused Munindra Kumar confessed his guilt that he committed murder of a girl and also, threw her dead body in the said river and that the accused also showed the place, where the dead body was thrown.

During his cross examination PW.6 stated that to reach the place Gorla Khati Ghat of river Burhi Dihing from his residence it took about five minutes and that at the relevant time, he was a student of Class-X at Dihinghula High School. He stated that on that relevant day his school was open and that police did not record his statement. He stated that whatever he had deposed before the Court during his examination-in-chief, he did not state those before Police. He denied

that he had falsely deposed before the Court.

**24.** PW.7, Jadav Sonowal deposed that he knew the accused persons and that about 3/4 years back, police arrested the accused Munindra Kumar and brought him on the bank of river Burhi Dihing near Gorla Khatai village and that he also went there and that police told the people gathered there that the accused committed murder of a girl and at that time, he was standing at a few yards away.

At that stage, the prosecution, with due permission from the Court, declared the said witness PW.7 as hostile.

On being examined by the prosecution said PW.7 denied that he had stated before police that on 13.07.2011 at about 12.00 noon, police brought the accused Munindra Kumar on the bank of river Burhi Dihing during which he was present there and that on being asked, the accused Munindra Kumar confessed in his presence that on 27.06.2011 at night, he along with one Jogeswar Orang @ Tepena cause death of Anuradha Moran by strangulating her neck and thereafter, they concealed the dead body of the said girl near the bank of the said river and also showed the place, where he concealed the dead body of Anuradha.

Said PW.7 also stated that he did not state before police that on 28.05.2011 at night, the accused Munindra along with Sunil Proja and Rajesh Mura went on the other side of river by boat, where the dead body of the said girl was kept concealed and thereafter, the accused Munindra Kumar along with Sunil Proja took the dead body from the place where they kept it concealed and threw it in the said river and that the accused also showed the place to police, from where he threw the dead body in that river.

PW.7 denied that fact that he had falsely deposed before the Court to save the accused persons.

During his cross examination by the defence, PW.7 stated that police did not record his statement. And that only asked him his name and address and also obtained his signature that whatever he had stated before the Court was true and that he did not tell anyone regarding the incident. He denied that police did not bring the accused on the bank of the river Burhi Dihing near Gorla Khatai village and also denied that when police came he did not go to the bank of the said river. PW.7 also denied that police did not inform people, gathered on the bank of river Burhi Dihing regarding the involvement of the accused in committing murder of a girl. He

stated that he had no knowledge regarding the incident and he denied that he had falsely deposed before the Court.

**25.** PW.8, Rajesh Mura deposed that he knew the accused persons and that the incident occurred about 3/4 years back. He deposed that on the relevant day in the morning, police took him to Police Station and they told him that he was involved in a murder of a girl along with other accused persons namely, Munindra Kumar and Sunil Proja and also told him that after committing the said crime, the dead body of the girl was thrown in the river Burhi Dihing. PW.8 deposed that later, he came to know that the accused Munindra Kumar committed murder of that girl.

At that stage, the prosecution, with due permission from the Court, declared the said witness PW.8 as hostile.

On being examined the prosecution, said PW.8 denied that he had stated before police that on 28.05.2011, the accused Munindra Kumar came to his residence and told him to accompany him (Munindra Kumar) towards other side of the river by my boat and thereafter, at about 9.30 to 10.00 PM, he along with Munindra Kumar and Sunil Proja went to the other side of the river. Their they (Munindra and Sunil Proja) showed him a dead body of a girl, that was lying in the nala (drain) near the river Burhi Dihing and they also told him to throw the dead body of the said girl to the river Burhi Dihing and that he asked them about the dead body and then Munindra told him that on the previous day, he along with Tepena committed the murder of the girl and concealed the dead body in the drain and thereafter, both the accused threw the said dead body in the said river.

PW.8 denied that he deposed falsely before the Court to save the accused persons.

During his cross objection by the defence, PW.8 stated that police did not record his statement and that he did not know about the incident and that he came to know about it, when police told him. He stated that he could recollect from whom he came to know the name of the accused involved in the said murder. He denied that he did not hear the names of the person, involved in the said crime and that he came to know from police that after committing murder, the dead body was thrown in the river Burhi Dihing. He denied that police did not tell him that the accused committed the murder of a girl and later he threw the dead body of the said girl in the said river. PW.8 stated that he knew the accused persons as they were his neighbours and he stated that he did not have any intimacy with them. He also denied that he had deposed falsely

before the Court.

**26.** PW.9, Hanot Sonowal deposed that he knew the accused persons and that the incident occurred about 2 to 3 years back and police from Tengakhat Police Station went to Gorla Khati Ghat of river Burhi Dihing. He deposed that at that time, he met police there and saw that they brought the accused Munindra Kumar on the said bank of the river Burhi Dihing and police told the people gathered there that the accused Munindra Kumar committed murder of a girl and then he came to know from the people of the locality, gathered there that the accused threw the dead body of the said girl into the river Burhi Dihing after committing murder and as police told him to put his signature on a paper, he had put the same on it.

During his cross examination by the defence PW.9 stated that from his residence situated at Chakoliapather it takes about five minutes on foot to reach Gorla Khati Ghat and that police did not record his statement. He stated that the statements that he had made in evidence in chief were never stated before the Police by him and when police asked him regarding the incident he replied that he had no knowledge regarding the incident. He stated that he came to know regarding the incident only from police and no one told him about the said incident. PW.9 stated that he had no personal knowledge regarding the incident and he denied that when police reached at Gorla Khati Ghat of river Burhi Dihing, he was not present there and also denied the fact that police did not tell them regarding the incident. PW.9 also denied that police did not tell him to put signature on a paper.

**27.** PW.10, Moni Kanta Kumar deposed that he knew the accused persons and that the incident occurred about 3 to 4 years back and police brought the accused Munindra Kumar on the bank of Gorla Khati of river Burhi Dihing. He deposed that after half an hour or so he reached there and saw many people of the locality gathered therein and from them he came to know that the accused brought a girl on the said bank of the river Burhi Dihing and thereafter, murdered her.

At that stage, the prosecution, with due permission from the Court, declared the said witness PW.10 as hostile.

During his examination by prosecution said PW.10 denied that police seized his boat in connection with Baghjan Police Station Case No. 3/2011. He stated that Exhibit.2 was the seizure list, he identified the same and also proved his signature on it. He denied that he had stated

before police that on 23.07.2011 at about 12.00 PM, his cousin Munindra Kumar i.e., the accused was brought by police on the bank of Gorla Khata of river Burhi Dihing and that he was also present at that time. When police asked the accused Munindra Kumar in their presence regarding the incident, he confessed that on 27.06.2011 at night, he brought a girl, namely, Anuradha Moran to the said bank of river Burhi Dihing with another accused Jogeswar Orang @ Tepena and thereafter, they strangled and caused death of Anuradha Moran. After committing murder of the said girl, they concealed the dead body near the bank of river Dehing and on the following day i.e., on 28.06.2011 at night, he carried the dead body of the said girl with co-accused Sunil Proja and Rajesh Mura on his boat and thereafter, threw the dead body into the river Burhi Dihing.

PW.10 denied that he had falsely testified before the Court to save the accused as he was his nephew.

During his cross examination by the defence said PW.10 stated that he did not remember the name of person from whom he came to know that the accused Munindra brought a girl and thereafter committed murder of the said girl. He denied the fact that he did not hear the said fact from those people gathered in the said bank of river Burhi Dihing.

PW.10 stated that as he did not see the incident, so he had no personal knowledge regarding the incident and when he reached there, the police was about to leave the place of Gorla Khata bank and told him to put signature on a paper, so he had put it. He stated that police did not record his statement and that he did not know as to why he had given his signature on Exhibit.2 and that it was blank at the time of giving of his signature on it. Said PW.10 stated that he could not recollect whether there was any signature on Exhibit.2 before he had given his signature on it and that he knew that as to why police had seized his boat. He stated that police seized his boat as it was used for carrying the dead body of the said girl and the people gathered therein told him that as the dead body was carried in his boat, so police seized it. He stated that he could not recollect the name of the person, who told him the aforesaid facts. He denied that he did not come to know from the people gathered therein that as the boat was used for carrying the dead body of the said girl, so police seized his boat. He also denied that he did not hear from the people gathered there that the accused brought a girl on the said bank of the river Burhi Dihing and thereafter, committed murder.

**28.** PW.11, Bapukan Morang the Officer-in-Charge of Baghjan Police Station at the relevant time and the Investigating Officer of the case deposed that on 10.07.2011, he was serving as the O.C. of Baghjan P.S. and that on that day, the informant Umesh Moran (PW.1) lodged an *Ejaha*r stating that his daughter namely, Anuradha Moran was pregnant of 4/5 months from the side of Munindra Kumar and that on 15.06.2011 around 12:00 noon, his said daughter was taken away by the accused Munindra Kumar and since then she was untraceable. PW.11 deposed that on receipt of said the said *ejaha*r, he registered it as a case being Baghjan Police Station Case No. 3/2011 under Sections 366/376(f)/493 of the IPC and took charge for investigation. He proved the said *ejaha*r, Exhibit-1 and identified his signature on it. Said PW.11 deposed that at first, he recorded the statement of the complainant at the Police Station itself and thereafter, he visited the place of occurrence. He also deposed that that he drew the sketch of the place of occurrence, Exhibit-3, proved the same and identified his signature on it and that thereafter, he proceeded to the residence of the accused Munindra Kumar for recovery of the victim. On being enquired, the family members of the accused informed him that the accused resides at Gorla Khata village under Tengakhat Police Station in the district of Dibrugarh and then he rushed there with other police personnel of the Police Station to nab the accused, but, he did not find the accused at that place. PW.11 deposed that at Gorla Khata village he met two other persons, namely, Sunil Proja and Rajesh Mura (PW.8), who also resided together with the accused Munindra Kumar. PW.11 deposed that when he enquired from those two persons they stated before him that the accused Munindra Kumar had killed the victim Anuradha Moran and thereafter, threw her dead body in the river Burhi Dihing. He deposed that after vigorous search, he could apprehend the accused Munindra Kumar at Doomdooma ASTC Bus Stand and during interrogation, the said accused confessed that he committed murder of Anuradha Moran and thereafter, threw the dead body of the victim in the river Burhi Dihing. PW.11 deposed that he recorded the statement of one witness namely, Rajesh Mura (PW.8) under Section 161 CrPC and thereafter, he was brought at Hon'ble Court for recording of his statement under Section 164 CrPC. PW.11 proved the Section 164 CrPC statement of Rajesh Mura Exhibit-4 and his signatures thereon. He deposed that thereafter, he brought the accused Munindra Kumar at Gorla Khata on the bank of river Burhi Dihing, where he committed the said crime and also threw the dead body into the said river during and the said accused showed the place, wherein he committed the murder of Anuradha Moran. The PW.11 then drew another sketch map of the place of occurrence, where he committed the said crime, Exhibit.5 that he proved and identified his signature on it. PW.11 deposed that thereafter, he

recorded the statements of the other witness under Section 164 of the CrPC, also seized a boat, that was used for carrying the dead body and thereafter, threw it into the said river, by preparing a Seizure List Exhibit.2 which the said PW.11 proved and also identified his signature on it.

PW.11 deposed that though he tried to recover the dead body of Anuradha Moran, but could not recover it and also tried to apprehend the another co-accused Jogeswar Orang @ Tepena, but could not arrest him. He deposed that he could take into custody the accused Sunil Proja at the police station. He deposed that on completion of his investigation, he submitted charge sheet against the accused persons under Sections 493/366/302/201/ 109 of the IPC and that the Exhibit.6 is the said Charge Sheet that he proved and also identified his signature thereon.

PW.11 deposed that he recorded the statement of PW.7 Jadav Sonowal and he stated before him that on 13.07.2011 at about 12:00 noon, police brought accused Munindra Kumar on the bank of river Burhi Dihing and at that time, he was present there and that on being asked, the accused Munindra Kumar confessed in his presence that on 27.06.2011 at night, he along with one Jogeswar Orang @ Tepena caused death of Anuradha Moran by strangulating her neck and thereafter, they concealed the dead body of the said girl near the bank of the said river and also showed the place, where the accused concealed the dead body of Anuradha. He also deposed that the said PW.7 stated before him that on 28.05.2011 at night, the accused Munindra along with Sunil Proja and Rajesh Mura went on the other side of the river by boat, where the dead body of said girl was kept concealed and then the accused Munindra Kumar along with Sunil Proja took the dead body and threw it into the said river. PW.11 deposed that the PW.7 also stated before him that in his presence the accused showed the place to police from where the accused threw the dead body in the river. PW.11 proved the statement of PW.7 Jadav Sonowal the Exhibit.7 and also his signature on it as well as the signature of Jadav Sonowal PW.7 thereon.

PW.11 also deposed that he recorded the statement of PW.8 Rajesh Mura, who stated before him that on 28.05.2011, the accused Munindra Kumar came to his residence and told him to accompany Munindra Kumar towards the other side of the river by his boat and thereafter, around 09:30 to 10:00 P.M., he along with Munindra Kumar and Sunil Proja went to the other side of the river and that they showed him (PW.8) a dead body of a girl that was lying in a nala (drain) near the river Burhi Dihing and that they told him (PW.8) to throw the dead body of the said girl in the said river then he (PW.8) asked them (accused persons) about the dead body and the

accused Munindra Kumar told him that on the previous day, he along with Tepena committed the murder of the said girl and concealed the dead body in the drain and thereafter, both the accused threw the dead body in the said river. PW.11 deposed that the said statement of PW.8 Rajesh Mura was recorded as Exhibit-8 and he proved the said Exhibit as well as his signature on it.

PW.11 further deposed that he recorded the statement of PW.10 Moni Kanta Kumar and that said Moni Kanta Kumar stated before him that on 23.07.2011 at about 12:00 P.M., his cousin Munindra Kumar i.e., the accused was brought by police at Gorla Khata on the bank of the river Burhi Dihing during which he was also present and that when police asked the accused Munindra Kumar in his presence regarding the incident, the accused Munindra Kumar confessed that on 27.06.2011 at night, he brought a girl namely, Anuradha Moran on the aforesaid bank of river Burhi Dihing with another co-accused Jogeswar Oraon @ Tepena and thereafter, they strangled and caused death of said Anuradha Moran and that after committing murder of the said girl, they concealed the dead body near the bank of river Dehing and on the following day i.e., on 28.06.2011 at night, he carried the dead body of the said girl with co-accused Sunil Proja and one Rajesh Mura on his (PW.10) boat and then threw the dead body into the river Burhi Dihing. PW.11 deposed that said PW.10 also stated before him that police seized his boat in connection with Baghjan Police Station Case No. 3/2011 and PW.11 proved the statement of said PW.10 Moni Kanta Kumar Exhibit.9 and identified his signature thereon.

During his cross objection by the defence, PW.11 stated that he did not mention in the case diary that as to when the complainant came to the police station to lodge the *ejahar* and the name of the person accompanied him at that time. He stated that the *ejahar* was written by one Arijit Deb and that in the case diary he did not mention the relationship of the complainant with Arijit Deb. The PW.11 also stated that he did not record the statement of Arijit Deb, the concerned *ejahar* writer of this case and that he did not investigate whether the victim was a minor or not as stated in the *ejahar* by the informant. He stated that he did not seize any age related documents to authenticate the age of the deceased Anuradha Moran and also did not procure any document nor examined any medical officer or 'ASHA Karmi' regarding physical change of the victim Anuradha Moran and that he did not seized anything in that regard.

He stated that at the time of recording of statements of the witnesses under Section 161 CrPC, none of the witnesses stated before him that they saw the accused Munindra Kumar at the time of taking away the victim. He also stated that the informant Umesh Moran (PW.1) did not

state before him that he saw the accused at the time of taking away the victim girl and that the informant told before him that as he knew that there was love affair between the accused and the victim, as such he stated the fact that the accused might had taken away the victim. Said PW.11 also stated that the informant did not state before him from whom he came to know that the accused took away the victim. He denied that the informant did not state before him that as there was love affair between the accused and the victim, so the accused took away the victim girl.

PW.11 stated that he did not make any enquiry about those who resided along with the informant Umesh Moran in his residence and that at the time of recording of statement of the informant under Section 161 CrPC, the said informant did not mention any name of his family members as to who enquired the victim girl regarding her pregnancy and that the informant did not state before him regarding the delay in lodging the *ejahar* nor he stated the name of any such place wherein he searched for the victim girl.

PW.11 stated that the PW.1 Umesh Moran did not state before him that after 4/5 days of arrest of accused Munindra Kumar, his son Diganta Moran met the accused in the jail hajot and also did not state when Diganta asked the accused about his (PW.1) daughter, the accused replied that he with the help of co-accused namely, Tepena Orang murdered her by strangulation and thereafter, they threw her dead body in to the Dehing river.

PW.11 stated that the PW.2 Junu Moran was the aunt of the victim and she was a resident of Jokaichuk Gaon under Baghjan Police Station and there was no mention in his case diary regarding the distance between the residence of the informant and the residence of Junu Moran, Pw.2 and whether they resided separately in different houses. He stated that the PW.2 Junu Moran did not state before him the name of "ASHA Karmi" before whom the victim was taken where her urine was examined to ascertain whether the victim became pregnant or not. He denied that the PW.2 Junu Moran did not state before him that she took the victim to a ASHA Karmi for examination of her urine to ascertain as to whether the victim was pregnant or not. He also stated that the PW.2 Junu Moran did not state before him that after missing of victim girl, the PW.2 along with others went to the residence of the accused Munindra Kumar to enquire about the matter, but the accused was not found at home at that time and that PW.2 did not state before him that after the arrest of the accused Munindra Kumar, the brother of the victim namely, Diganta Moran met the accused in jail hajot and when Diganta asked the accused about his sister,

then the said accused replied that he committed murder of the victim by strangulating her with the help of the co-accused Tepena Orang and thereafter, they threw the dead body in to the Dehing river and that the PW.2 did not state before him that she came to know about those facts from Diganta Moran, i.e., the brother of the victim.

PW.11 stated that the PW.3 Surabhi Moran Borah did not state before him that she came to know regarding pregnancy of the victim from PW.2 Junu Moran and that the PW.3 also did not state before him that she came to know the side from which the victim became pregnant.

He stated that the PW.4 Archana Moran did not state before him that after the arrest of the accused Munindra Kumar, her elder brother Diganta Moran met with the accused and on being asked, the accused replied her brother that he killed Anuradha.

He also stated that he did not mention in the case diary the distance between Jokaichuk Gaon under Baghjan Police Station and Goria khati Gaon under Tengakhat Police Station and that at the time of recording of statements of the witnesses, none stated before him that they saw the accused Munindra Kumar and the victim Anuradha Moran living together at Goria Khati Gaon under Tengakhat Police Station.

He denied that he did not record the statements of PW.6 Jayanta Sonowal, PW.7 Jadav Sonowal, PW.8 Rajesh Moran, PW.9 Hanot Sonowal and PW.10 Moni Kanta Kumar.

He stated that in the case diary he did not mention the name of the police personnel those accompanied him to Goria Khati Gaon in search of the accused Munindra Kumar and that he did not made any of the police personnel those accompanied him to the said place of occurrence as a witness of the case. He stated that in the case diary, he did not mention that he met the co-accused Sunil Proja and witness Rajesh Mura on 11.07.2011 and when he asked, Sunil Proja told him that he resided with the accused Munindra Kumar since two months prior to 11.07.2011. He also stated that he did not mention in the case diary the date from when the witness Rajesh Mura resided with the accused Munindra Kumar though he had a separate house at Goria Khati village.

He denied that when he enquired said Sunil Proja and Rajesh Mura did not state before him that the accused Munindra Kumar killed the victim and thereafter, threw her dead body in the river Burhi Dihing.

He stated that he apprehended the accused Munindra Kumar at Doomdooma ASTC Bus Stand on 11.07.2011 and denied the fact that he did not apprehend the

accused Munindra Kumar at Doomdoo ASTC Bus Stand on 11.07.2011. He also denied that during interrogation the accused Munindra Kumar did not confess before him that he committed murder of Anuradha Moran and thereafter, threw her dead body to river Burhi Dihing.

He stated that there was no signature of PW.8 Rajesh Mura on the Exhibit-8, i.e., in the statement of said PW.8 and that the Exhibit-4(1) and Exhibit-4(2) were not signed before him by PW.8 Rejesh Mura. PW.11 could not say whether the Exhibit-4(1) and Exhibit-4(2) were the signatures of PW.8 Rajesh Mura.

He denied that the accused did not show him the place, where he committed murder of Anuradha and thereafter, threw her dead body into the river Burhi Dihing.

He stated that in Exhibit-5, Index "C" indicates the place that was surrounded by jungles and there was no residences situated in and around the place of occurrence and that he arrested the Co-accused Sunil Proja at the place of occurrence on 11.07.2011. He denied the fact that the accused Munindra Kumar did not confess about the said crime committed by him at the place of occurrence and that he did not search to recover the dead body of the victim at Gorla Khati village.

He stated that he did not get any information regarding recovery of the dead body of the victim after filing of the Charge Sheet and he denied that he did not investigate the case as per provision of law and submitted the Charge Sheet without proper investigation.

**29.** In the case in hand neither the victim was found nor her dead body could be recovered. From the evidence led by the prosecution we have noticed that none of the witnesses examined by the prosecution saw the victim with the accused Munindra Kumar, but they only suspected that the accused had taken away the victim Anuradha Moran as she was allegedly made pregnant by him and as there was a love affair between them. We found that there was no such clear evidence that the accused appellant had abducted or taken away the victim.

**30.** Though in his Section 164 CrPC statement made before the Magistrate on 12.07.2011 (Exhibit-4) the PW.8 Rajesh Mura stated that the accused Munindra was his neighbour and Sunil Proja was Munindra's domestic help and he knew them since they were his neighbours. He stated that on 28.06.2011 (Tuesday) accused called him and told him that they had to go to the other side of Dihing river and he accompanied him and one Sunil Proja on the boat, but on reaching the other bank of the said river the accused told him that there was a dead body, he got

scared and left the place and then Munindra with Sunil Proja lifted the dead, put it in a boat and then threw it into the said river, Munindra threatened him and then three of them returned home by the said boat and when police brought him and asked he narrated the said incident to the police. But said PW.8 in his evidence-in-chief stated that police took him to Police Station and they told him that he was involved in a murder of a girl along with other accused persons namely, Munindra Kumar and Sunil Proja and also told him that after committing the said crime, the dead body of the girl was thrown in the river Burhi Dihing. PW.8 deposed that later, he came to know that the accused Munindra Kumar committed murder of that girl and at that stage said PW.8 was declared hostile.

**31.** In his said Section 164 CrPC statement before Magistrate however the said PW.8 did not state whether the dead body was of a male or a female or whether it was of the victim girl. Said PW.8 also stated that the accused was his neighbour but he did not state that he saw the victim with the accused.

**32.** From the evidence of PWs. 5, 6, 7, 8, 9 and 10 we have seen that the accused was in custody of police on the bank of river Burhi Dihing at Gorla Khata and during such custody of police the said accused made confession. As per the provisions of Section 25 and 26 of the Evidence Act such confessional statement made by the accused have no substantive and evidentiary value.

**33.** The Hon'ble Supreme Court has settled that — *At the trial on a charge of murder, the mere fact that the body has not been found is no ground to acquit the accused. But in a case like that strongest possible proof of murder must be insisted upon (Ramchandra -Vs- State, AIR 1957 SC 381).*

**34.** In the case of *Sharad Birdhichand Sard -Vs- State of Maharashtra*, reported in (1984) 4 SCC 116,, the Hon'ble Apex Court have held that — Circumstances from which the conclusion of guilt is to be drawn should be fully established, that the facts established should be consistent only with the hypothesis of the guilt of the accused and that the chain of evidence should not leave any reasonable ground for conclusion consistent with the innocence of the accused.

**35.** We have also seen that the prosecution relying on the statements made under Section 161 CrPC by the witness during investigation of the case tried to establish its case and it is well

settled that those statements cannot be considered as substantive piece of evidence and those can be considered only for the purpose of contradiction, and not for corroboration.

**36.** Consider entire aspect of the matter we found that the prosecution failed to complete the link of the chain of circumstantial evidence and thereby failed to establish the guilt of the accused beyond the reasonable doubt.

**37.** Accordingly, the impugned judgment of conviction and sentence dated 11.03.2016 passed by the learned Additional Sessions Judge-1 (FTC), Tinsukia in Sessions Case No. 240 (T) of 2014, arising out of Baghjan Police Station Case No. 03/2011, (corresponding to G R Case No. 866/2011) whereby the accused appellant Munindra Kumar was convicted and sentenced under Sections 364/302/109/201/34 of the IPC is set aside and quashed.

**38.** Consequently, this appeal is allowed and the accused appellant Munindra Kumar is set at liberty. Bail bond(s) stands discharged.

**39.** Registry shall return the relevant records of Sessions Case No. 240 (T) of 2014 to the Court of learned Additional Sessions Judge-1 (FTC), Tinsukia along with a copy of this order. No order as to the cost.

**JUDGE**

**JUDGE**

**Comparing Assistant**