

GAHC010117302019



**THE GAUHATI HIGH COURT AT GUWAHATI**  
**(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)**

**PRINCIPAL SEAT AT GUWAHATI**

**CRIMINAL APPEAL No. 50(J)/2019**

ANIL KUJUR S/O. SRI WARISH KUJUR,  
R/O. MOINAJULI, P.S. RANGAPARA,  
DIST. SONITPUR, ASSAM.

.....APPELLANT

VERSUS  
THE STATE OF ASSAM  
REP. BY PP, ASSAM.

....RESPONDENT.

**Advocate for the Petitioner :** MS. DEBASHREE SAIKIA, AMICUS CURIAE

**Advocate for the Respondent :** PP, ASSAM

**AND**

**CRIMINAL APPEAL NO. 51 (J)/2019**

WARISH KUJUR  
S/O. LT. KARCHEL KUJUR  
R/O. MOINAJULI  
P.S. RANGAPARA  
DIST. SONITPUR, ASSAM.

.....APPELLANT

VERSUS

THE STATE OF ASSAM  
REP. BY PP  
ASSAM.

.....RESPONDENT

Advocate for appellant: MS. R D MOZUMDAR, AMICUS CURIAE  
Advocate for the respondent: MS S JAHAN, ADDL. P.P.

**BEFORE**  
**HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR**  
**HON'BLE MRS. JUSTICE MALASRI NANDI**

Date of hearing : 20.04.2023

Date of judgment : 19.06.2023

**JUDGEMENT AND ORDER (CAV)**

***(Malasri Nandi, J.)***

Heard Ms D Saikia, learned *Amicus Curiae* appearing on behalf of the accused appellant in Criminal Appeal 50 (J) of 2019 and Ms R D Mozumdar, learned *Amicus Curiae* appearing on behalf of the accused/ appellant in Criminal Appeal No. 51 (J) of 2019. Also heard Ms S Jahan, learned Additional Public Prosecutor for the State of Assam.

2. Both the appeals are directed against the Judgment and Order dated 28.01.2019,

passed by the learned Additional Sessions Judge (FTC), Sonitpur, Tezpur, in connection with Sessions Case No. 215/2011, whereby both the accused appellants were convicted under Sections 302/34 IPC and sentenced them to undergo Rigorous Imprisonment for Life and to pay a fine of Rs. 5,000/- (Rupees Five Thousand) each, and in default of payment of fine, further Rigorous Imprisonment for 3 (three) months each.

3. The case of the prosecution in brief is that the informant Monoj Baruah, Welfare Officer of Dhulapadung Tea Estate, lodged an FIR on 15.08.2011, before the Officer-In-Charge, Rangapara Police Station, stating inter alia that on 14.08.2011, at about 09:30 pm, one Marshal Kujur, resident of Line No. 15, Moinajuli Division of Dhulapadung Tea Estate was assaulted by his father Waris Kujur and elder brother Anil Kujur at his residence following a quarrel, as a result of which, Marshal Kujur sustained grievous injuries on his person. Though the injured was taken to Rangapara Hospital for treatment, but the doctors declared him brought dead.

4. On receipt of the ejahar, a case was registered by the Officer-in-Charge, Rangapara Police Station vide Rangapara PS Case No. 184/2011, under Sections 302/34 IPC and investigation was initiated. During investigation, the Investigating Officer visited the place of occurrence, recorded the statements of witnesses and seized one bamboo stick from the house of the accused. Inquest was conducted on the dead body of the deceased and the dead body of the deceased was forwarded to Kanaklata Civil Hospital for Post-Mortem Examination.

5. During investigation, the accused persons were arrested and sent to jail. After completion of investigation, charge sheet was submitted against the accused appellants

under Sections 302/34 IPC, before the Court of learned SDJM, Sonitpur, Tezpur. As the offence under Section 302 IPC is exclusively triable by the Court of Sessions, the case was committed accordingly.

6. During trial, both the accused appellants remained in jail and charge was framed under Sections 302/34 IPC, which was read over and explained to the appellants, to which they pleaded not guilty and claimed to be tried.

7. To substantiate the case of the prosecution, 8 (eight) witnesses were examined. On the other hand, the accused appellants did not adduce any evidence in support of their case. After completion of trial, the statement of the accused appellants were recorded under Section 313 CrPC and the incriminating evidence adduced by the witnesses were put before them, to which they denied the same and pleaded their innocence. After hearing the arguments of learned counsel for both the parties, the accused appellants were convicted as aforesaid. Hence, both the accused appellants have preferred the appeals.

8. It was urged on behalf of the appellants that the two eye-witnesses, i.e. PW-5 and PW-8, were declared hostile as they did not support the prosecution case. The other witnesses examined by the prosecution were not present when the incident occurred. PW-5 and PW-8 were the star witnesses as they had seen the incident. However, as they had resiled from their earlier statements, the conviction passed by the learned trial Court cannot be sustainable in law.

9. It is also submitted on behalf of the appellants that as per the Medical Report, the deceased sustained fatal injury on his head, and according to the Medical Officer, the cause of

death was due to head injury, but it is not possible to cause one injury by two persons on the head of the deceased. Hence, prosecution has failed to ascertain the fact as to who is the perpetrator of the crime, causing death of the deceased.

10. Another contention raised during the arguments is that if this Court is not convinced on the submissions of the learned *Amicus Curiae*, alternatively, their argument is that as it appears from the evidence on record that prior to the incident a quarrel took place between the deceased and the appellants, which transpires that there was no premeditation or intention on the part of the appellants to commit murder of the deceased. Under such backdrop, the conviction under Section 302 IPC be converted to Section 304 Part-II IPC. In support of their submissions, learned *Amicus Curiae* have relied on the following case-laws:-

**1) AIR 1968 SC 728; (*Baul –vs, State of Utar Pradesh*)**

**2) AIR 1993 SC 302 (*Ramaotar vs. State of Madhya Pradesh*)**

**3) 1994 AIR (SC) 34; (*Joseph –vs- State of Kerala*)**

**3) (2000) 9 SCC 1; (*Camilo Vaz vs- State of Goa*)**

11. Per contra, learned Additional Public Prosecutor has argued that it is true that both the eye-witnesses were declared hostile as they did not support the prosecution case, but the evidence of hostile witnesses cannot be discarded in toto and the relevant parts thereof which are admissible in law can be used by the prosecution or the defence.

12. It is also the submission of learned Additional Public Prosecutor that two witnesses were declared hostile, but the evidence of the Medical Officer and other witnesses as well as

the facts and circumstances of the case have led the prosecution to come to the conclusion that both the appellants are the perpetrators of the crime and they have been rightly convicted by the trial Court. However, the learned Additional Public Prosecutor has fairly submitted that as it appears from the evidence of the witnesses that prior to the incident, a quarrel took place between the deceased and the accused appellants, under such scenario, there is a scope to consider the prayer of conversion from Section 302 IPC to Section 304 Part- I or Section 304 Part-II IPC..

13. We have considered the submissions of learned counsel for the parties. We have also perused the record, judgment of the learned trial Court and the evidence of witnesses.

14. To consider the submissions of learned counsel for the parties, we have to ponder over the evidence of the witnesses.

15. PW-1 is the Medical Officer, Dr. Bijay Pal Das. He deposed in his evidence that on 15.08.2011, he was at Kanaklata Civil Hospital, Tezpur. On that day he performed Post-Mortem examination on the dead body of the deceased on police requisition and on examination he found the following:-

*“A male dead body with dark complexion lying in supine position. Eyes are open and mouth closed. After removal of all cloth blood seen in forehead and occipital region. Abrasion seen in left chest and in the abdomen. Abrasion also seen in right hand arm and also right side of the neck of the back. Bruise are seen over the back. There is no ligature mark seen around the neck.*

*There is a haematoma in the occipital region with fracture in the occipital bone.*

*Also there is a fracture on cervical vertebrae starting from 2<sup>nd</sup> to 5<sup>th</sup> number.*

*Haemorrhage seen in the membrane. Haemorrhage also seen in the brain and spinal cord.*

*Other organs are healthy.*

*Injuries described above are ante-mortem in nature.*

The doctor opined that the cause of death was due to head injury as a result of blunt trauma over occipital region and that head injury is sufficient to cause the death of deceased Marshal Kujur.

16. In his cross-examination, PW-1 replied that he did not mention in his Post-Mortem Report that the hemorrhage seen in the membrane, brain and spinal cord, whether it was internal or external. Abrasion and laceration as he has mentioned in his Post-Mortem Report were not grievous. Fracture in cervical and occipital region were grievous in nature. PW-1 also stated that such types of injuries may be cured, if the patient gets better treatment.

17. PW-2 is informant, Monoj Baruah. From his deposition, it reveals that occurrence took place on 14.08.2011 and on that day at about 09:30 pm, one pharmacist of their Tea Estate, Muzamil Sikdar, informed him over phone that one man has been murdered. He informed Police of Rangapara Police Station and went to the place of occurrence and also Police came to the spot. When he reached the place of occurrence, he found that the dead body of Marshal Kujur was brought from inside his house. On being asked, he came to know that Marshal Kujur was killed by both the accused persons. Marshal was taken to Rangapara

Hospital and the doctor declared him brought dead. Thereafter, he lodged the FIR vide Exhibit-2.

18. In his cross-examination, PW-2 replied that he did not mention in the FIR that he came to know about the incident from Muzamil. He did not know wherefrom the Police brought the bamboo-stick, which was seized later on.

19. PW-3 and PW-4 are the neighbours of the deceased Marshal Kujur. From their deposition, it reveals that the incident took place on 14.08.2011. They had seen lots of people gathered in the house of Marshal Kujur. Since someone call them, they went to Marshal Kujur's house and found Marshal lying dead on the bed. They did not know who killed Marshall. Later on when Police seized a lathi, PW-3 put his signature, vide Exhibit- 4 (2).These witnesses were also declared hostile as they declined to support their statements allegedly made against the accused persons before the Investigating Officer.

20. PW-5 is Anjali Kujur, who is the wife of the accused appellant Waris Kujur and mother of another appellant, Anil Kujur and deceased Marshal Kujur. According to her, on 14<sup>th</sup> August, 2011, at about 09:00 pm, deceased Marshal Kujur came home after getting drunk. At that time, she was at home, having her dinner. After having her meal, she came out and saw that Marshall was lying dead. A big wooden post was found lying near his body. She did not know how Marshal died. This witness was also declared hostile as the witness has prevaricated from her statement made before the Investigating Officer.

21. PW-6 is the videographer, who was asked by the Investigating Officer to come to the spot to do a videography of the murder case. Apparently, he did not know anything about the

incident. However, he submitted a CD disc to the Investigating Officer, after doing the videography of the subsequent event.

22. The wife of the deceased was examined in the case as PW-8, Smt Anjali Kujur. From her deposition, it discloses that though she stated before the Investigating Officer and the Magistrate that on the date of incident, in the evening while her husband Marshal Kujur was taking his meal, her father-in-law Waris Kujur and brother-in-law made an altercation with her husband. She and her mother-in-law were present nearby. The accused persons had attacked her husband with lathi and a wooden piece causing injury on the head and chest of her husband and ultimately, he died.

23. But this witness while deposing before the Court had resiled from her earlier statement and stated that she was sleeping in her house and hearing hullah, she came out and found her husband lying in the courtyard. He was in drunken state and he died in the courtyard. She became senseless. She did not notice any injury on the body of her deceased husband. She did not know as to how her husband died.

24. PW-7 is the Investigating Officer, Hrishikesh Dowerah. He deposed in his evidence that on 15.08.2022, he was working as Sub-Inspector of Police at Rangapara Police Station. On that day, the Officer-In-Charge received an ejahar from one Monoj Baruah, Welfare Officer of Dhulapadung Tea Estate and entrusted him with the investigation. Accordingly, he went to the place of occurrence, drew the sketch map, vide Exhibit-7 and found the accused persons at their home. He brought them as well as the witnesses from the neighbourhood to the Police Station for interrogation. He went to the house of the deceased, Marshall but he was already taken to the hospital. He went to the hospital and came to know that the doctor

declared him dead. The inquest on the dead body of the deceased was conducted and the inquest report was prepared vide Exhibit -5. Thereafter, he sent the body of the deceased for Post-Mortem Examination. He examined the witnesses and recorded their statements.

25. This witness also stated that when he again visited the place of occurrence, the accused Waris Kujur stated that he had killed the deceased by assaulting him with a lathi and showed him the said lathi and on being shown by the accused, he seized the said lathi, vide Exhibit-3. He brought the deceased's wife Anjali Kujur to the Court for recording her statement by the learned Magistrate under Section 164 CrPC. He arrested both the accused appellants and forwarded them to the Court. Having found materials against the accused persons, he submitted charge sheet against them for the offence under Section 302 IPC, vide Exhibit-8.

26. Though PW-8, Anjali Kujur was declared hostile by declining her statement recorded by the Investigating Officer, but she has admitted that her statement was recorded by the Magistrate, vide Exhibit-7.

27. We have gone through the statement of PW-8 Anjali Kujur, recorded by the learned Magistrate under Section 164 CrPC, wherein she had stated before the Magistrate that she got married to Marshal prior to 6 (six) months of the incident. On 14.08.2011, at about 06:00 pm, while her husband was taking his meal in the courtyard, her father-in-law Waris Kujur and brother-in-law Anil Kujur, started to quarrel with him regarding damaging of some saplings by the cow. At that time, she and her mother-in-law were present. At that moment, her father-in-law and brother-in-law attacked her husband with wooden post, causing grievous injuries on his head and chest, as a result of which, he died on the spot. Blood was

oozing out from his mouth, nose and chest. Later on, her neighbour Biru Karmakar informed Police and Police came to the spot. Though her husband was taken to the hospital, but he died.

28. The first question which comes for consideration is:- what is the evidentiary value of the hostile witness and whether a person can be convicted on the evidence of the hostile witness!

29. Now, the second question for consideration is with regard to the admissibility of the evidence adduced by the hostile witnesses, in the case of ***Gura Singh Vrs. State of Rajasthan, (2001) 2 SCC 205***, the Hon'ble Apex Court has stated that-

*"The terms "hostile", "adverse" or "unfavourable" witnesses are alien to the [Indian Evidence Act](#). The terms "hostile witness", "adverse witness", "unfavourable witness", "unwilling witness" are all terms of English Law. The Apex Court observed that it is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration. The evidence remains admissible in the trial and there is no legal bar to base the conviction upon the testimony of such witness."*

30. The Hon'ble Apex Court has also considered the evidentiary value of hostile witness in ***Bhagwan Singh v. State of Haryana, AIR 1976 SC 202***, ***Rabinder Kumar Dey v. State of Orissa, AIR 1977 SC 170*** and held that the evidence of a witness, who was declared hostile, is not wholly effaced from the record and that part of the evidence, which is otherwise acceptable, can be acted upon. [In Sayed Akbar v. State of Karnataka](#), AIR 1979 SC

1848 the Hon'ble Apex Court held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examine him. The evidence of such witness cannot be treated as effaced and washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof. The same view has also taken in the case of Khujji @ [\*Surendra Tiwari v. State of M.P.\*](#), AIR 1991 SC 1853.

31. In the case of ***Bhajju alias [\*Karan Singh v. State of Madhya Pradesh\*](#), (2012) 4 SCC 327*** the Hon'ble Apex Court held as follows:

*"35. Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the appellant-accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under [\*Section 161\*](#) Cr.P.C., the prosecutor, with the permission of the court, can pray to the court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness insofar as it supports the case of the prosecution.*

*36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of*

*the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. [Section 154](#) of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party.*

*37. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled canon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgment of the apex Court in the following cases: (a) *Koli Lakhmanbhai Chanabhai v. State of Gujarat*, (b) [Prithi v. State of Haryana](#), (c) [Manu Sharma v. State \(NCT of Delhi\)](#) and (d) [Ramkrushna v. State of Maharashtra](#)."*

32. In ***State of U.P. v. Ramesh Prasad Misra***; (1996) 10 SCC 360, the Hon'ble Apex Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in ***Balu Sonba Shinde v. State of Maharashtra***; (2002) 7 SCC 543, ***Gagan Kanojia v. State of Punjab***; (2006)

**13 SCC 516, *Radha Mohan Singh v. State of U.P.*' (2006) 2 SCC 450, *Sarvesh Narain Shukla v. Daroga Singh*; (2007) 13 SCC 360 and *Subbu Singh v. State of Delhi*; (2009) 6 SCC 462.**

33. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

34. In the instant case, the two material witnesses, PW-5, mother of the deceased, and PW-8, wife of the deceased turned hostile. Their evidence have been taken into consideration by the trial Court strictly in accordance with law. Some omissions, improvements in the evidence of witnesses have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature. It is pertinent to mention here that though PW-8 has been declared hostile, but she has admitted in her evidence that her statement was recorded by the Magistrate, vide Exhibit-7, which transpires that whatever she has stated before the Magistrate, can be taken into consideration relating to the offence committed by the accused appellant.

35. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, this court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the root of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being

cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.

36. Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab; (2015) 3 SCC 220** had already dealt with a situation where a witness after rendering testimony in line with the prosecution's version, completely abandoned it, in view of the long adjournments given permitting an act of manoeuvring. While taking note of such situations occurring with regularity, it expressed its anguish and observed that:-

*"It is necessary, though painful, to note that PW 7 was examined-in- chief on 30-9-1999 and was cross-examined on 25-5- 2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined."*

37. In the case in hand, charge was framed under Section 302/34 IPC. From the medical report of the deceased, it appears that he sustained multiple injuries on his person. Abrasion

on his left chest and abdomen Abrasion was also seen on the right arm and also to right side of the neck of the back. Bruises are also seen over the back. There is a haematoma in occipital region with fracture in the occipital bone. From the PM Report, it reveals that the cause of death was due to head injury, which was fatal. However, the deceased sustained some other injuries on his person, i.e., abrasion and laceration which transpires that he was attacked and assaulted by more than one person.

38. Coming to the point of conversion of offence from Section 302 IPC to Section 304 Part-I or Section 304 Part-II IPC. According to the learned counsel for the appellants, prior to the incident an altercation occurred between the deceased and the appellants and at that time, he was drunk. As such, the offence under Section 302 IPC is not attracted in this case. However, they have committed the offence under Section 304 Part-II IPC.

39. In the case of **Arjun Vs. State of Maharashtra**; reported in **2012 Cr.L.R. (SC) 506**, the Hon'ble Supreme Court held as follows:

*"17. Considering the background facts as well as the fact that there was no premeditation and the act was committed in a heat of passion and that the appellant had not taken any undue advantage or acted in a cruel manner and that there was a fight between the parties, we are of the view that this case falls under the fourth exception to [Section 300](#) IPC and hence it is just and proper to alter the conviction from [Section 302](#) IPC to [Section 304](#) Part-I [IPC](#) and we do so."*

40. The Hon'ble Supreme Court in the case of **Dilip Kumar Mondal & Anr. Vs. State of West Bengal**, reported in **2015 (2) SCC (Cri.) 318** held as follows: -

*"24. In order to invoke Exception 4 to [Section 300](#) Indian Penal Code, it must be further shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The Appellants are said to have inflicted injuries with henso and dau. By a perusal of Ext. P6 post-mortem certificate, it is seen that the deceased sustained one incised injury on the back which has caused injury to scapula and spinal cord and another incised wound over the back just below the right scapula causing injury to the right lung and pleura. Insofar as the injuries caused to Ranjit Debnath and Santosh Debnath, there is no sufficient evidence as to the alleged injuries caused to them. As far as PW-10- Nikhil Debnath is concerned, he was discharged from the hospital after giving first aid treatment indicating thereby that the injury was not grievous. Considering the injuries, in our view, it cannot be said that the accused have taken undue advantage of the situation. The incident was not premeditated and the scuffle between the parties led to the causing of injuries to the deceased Nripen Debnath and considering the circumstances of the case, in our view, the offence would fall Under [Section 300](#) Indian Penal Code Exception 4 and the conviction of the Appellants is to be modified and altered Under [Section 304](#) Part I IPC."*

41. In the case of **Arjun & Anr. Vs. State of Chhattishgarh; (2017) 3 SCC 247**, the Hon'ble Supreme Court held as follows:

*"22. The accused, as per the version of PW-6 and eye witness account of other witnesses, had weapons in their hands, but the sequence of events that have been narrated by the witnesses only show that the weapons were used during altercation in a sudden fight and there was no pre- meditation. Injuries as reflected in the post-*

*mortem report also suggest that appellants have not taken undue advantage or acted in a cruel manner. Therefore, in the fact situation, Exception (4) under [Section 300](#) IPC is attracted. The incident took place in a sudden fight as such the appellants are entitled to the benefit under [Section 300](#) exception (4) [IPC](#)."*

42. When and if there is intent and knowledge, then the same would be a case of [Section 304](#) Part I IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of [Section 304](#) Part II IPC. In the instant case, injuries/incised wound caused on the head of the deceased i.e. the occipital region, which is a vital part of the body and the injuries indicate that the appellants had intention and knowledge to cause the injuries and thus it would be a case falling under [Section 304](#) Part I IPC. The conviction of the appellants under [Section 302](#) read with [Section 34](#) IPC is modified under [Section 304](#) Part I IPC.

43. According to the learned counsel for the appellants, the appellants have served more than 11 years in jail hazot. We have gone through the LCR, which reveals that the case was committed to the Court of Sessions on 05.11.2011. Hence, it transpires that the appellants are in jail hazot for more than 11 years. Taking into account the facts and circumstances in which the offence has been committed, for the modified conviction under [Section 304](#) Part I IPC, the sentence is modified to that of the period already undergone.

44. In the result, conviction of the appellant under Section 302 IPC, read with Section 34 IPC is modified as conviction under Section 304 Part- I IPC and the sentence is reduced to the period already undergone.

45. Both the appeals are partly allowed. The conviction under Section 302 IPC is set aside. The accused appellants be released forthwith, if not wanted in any other case.

46. The Criminal Appeals accordingly, stand disposed of.

47. Before parting with the record, this Court extends the appreciation to the services rendered by Ms D Saikia, learned *Amicus Curiae* in Criminal Appeal 50 (J) of 2019 and Ms R D Mozumdar, learned *Amicus Curiae* in Criminal Appeal No. 51 (J) of 2019, and recommend that the Registry may make arrangement for payment of necessary remuneration to both the learned *Amicus Curiae* as per the existing norms.

48. Send down the LCR.

**JUDGE**

**JUDGE**

**Comparing Assistant**