

GAHC010138002020



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

Case No. : CRL.A(J)/68/2020

TEMBRA BRAHMA
KOKRAJHAR, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : DR. B N GOGOI, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE THE CHIEF JUSTICE (ACTING)
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 21-12-2023

Heard Dr. B.N. Gogoi, learned Amicus Curiae. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam.

2. This appeal is preferred by appellant Sri Tembra Brahma, from Jail, assailing the judgment and order dated 03.12.2019 passed by the learned Sessions Judge, Kokrajhar in Sessions Case No.40/2018 whereby the appellant has been convicted under section 302, IPC,

1860 and sentenced to undergo Rigorous Imprisonment for life and a fine of Rs.3,000/- (Rupees three thousands) only and in default of payment of fine to undergo imprisonment for a period of 6 (six) months.

3. The prosecution case, in brief, is that an ejahar was lodged by one Manik Brahma, the village headman alleging that on 01.01.2018 at around 6.30/7.30 P.M. the accused Tembra Brahma axed to death his wife Lohasi Brahma near the gate of St. Francisco Xavier School, Dotma. It is also stated that the daughter of deceased mother saw the entire incident.

4. On receipt of the said ejahar, an FIR was registered being the Dotma Police Station Case No.3/2018, under Section 302 of the Indian Penal Code, 1860. On completion of investigation, the I.O has filed the charge sheet against the accused appellant under section 302, IPC vide dated 31.01.2028.

5. Learned Chief Judicial Magistrate, Kokrajhar, has committed the case to the learned Court of Sessions, Kokrajhar for trial. The charge-sheet has been framed against the accused/appellant under section 302, IPC and then read over and explained to the accused appellant to which he pleads guilty and claimed to be tried.

6. During the course of the trial, the prosecution has examined 7 (seven) witnesses including the informant, medical officer and investigating officer. The accused appellant has not adduced any evidence. On completion of the prosecution evidence, the statement under section 313 Cr.P.C. was recorded to which the accused/ appellant has confess his guilt. After conclusion of the trial, the learned trial court on consideration of the evidence on record particularly PW-3, concluded that case under section 302 IPC is well established against the accused, Sri Tembra Brahma and accordingly convicted the accused/appellant under section 302, IPC and sentenced him to undergo Rigorous Imprisonment for life and a fine of Rs.3,000/- (Rupees three thousands) only and in default of payment of fine, to undergo imprisonment for another period of 6 (six) months.

7. Dr. B.N. Gogoi, learned Amicus Curiae, after referring to the deposition of the prosecution witnesses, submits which are as follows:

(i) PW-1: Sri Manik Brahma (The informant): According to PW-1 he deposed that the incident took place on 01.01.2018 in the New Year Day. The FIR was written in

the Police Station he did not read the FIR by himself, but it was read over to him. He did not state before the Police that he saw the accused along with the axe. The accused was at his own house and not at the place of occurrence at the time of the date of the occurrence. He was not an eye witness in the case. He was called by the co-villagers at the time when occurrence took place.

(ii) PW-2: Sri Kalendra Brahma (The co-Villager): PW-2 had deposed that at the time of incident he was at his own house and he was not an eye witness to the incident. He was seizure witness of exhibit 2 of the case. At the time of occurrence, it was dark and it was 6.00 PM. The PW-2 met the accused person, when he was in a drunken condition. He did not know as to whether the appellant had any mental problem but once heard that appellant jumped from the first floor of ABSU office at Dotma. In the cross-examination, he stated that similar kind of axe was available in the house of the village community.

(iii) PW-3: Smti. Swarang Basumatary (Daughter): In her cross-examination had stated that she has visited the mission school to call some persons, but, no one could be seen as there was a very big wall and teachers, hostel etc., were very far from the gate of the mission school. She has also stated that if someone stays inside the boundary of the school, one cannot hear the voice from the road. She further stated that it was dark at the time of occurrence. There were about four to five shops near the place of occurrence, however, the statements of four to five shops near the place of occurrence was missing at the time of deposition before the Court. She has also stated that the accused appellant used to tie the cow for grazing near to her husband's house and thereafter bring back the cow from the grazing field. On the day of the occurrence, the accused appellant went to bring back the cow from the grazing field which was 1 KM away from his home. She had stated that her father use to take alcohol and on the day of incident he was on drunken condition and due to overdose of alcohol he could not control himself. She has also stated that she and her deceased mother do not love her father because of his habit of taking alcohol. In the suggestion, PW-3 has stated that the accused appellant (her father) had killed her mother as he was in drunken condition while bringing back the cow from the grazing field.

(iv) Dr. B. N. Gogoi, learned Amicus Curiae by referring to the deposition of PW-5: Dr. Vivek Pandey (Medical Officer) submits that the medical officer must established the identity of the deceased and he must record the means of identification. Positive identification is absolutely necessary. The dead body should be identified by at least one relative or accompanying person and the police official present and signatures should be obtained on the post-mortem original report to this effect before starting the autopsy he should note the time of the arrival of the body at the morgue, the date and hour of the post-mortem examination and the name of the place where it was held. In the instant case, the medical officer failed to mention the identification of the deceased person, the body was not identified by either of the relative or by any police personnel. Further, there was no mention that the body was examined for the post-mortem and there was no police report from which the case of the particular police station of post mortem/autopsy was performed. He submits that from the statements of the PWs, it clearly indicates that the time given and the incident was in between 6.30 to 7.30 PM and the information was received at 10.00 PM. During this gap period, there was no any other witness from St. Francis School or any shopkeepers who were said to be eye witness at the time of incident. He further submits that the material exhibits were not been send to the FSL. PW-7 did not register GD entry for investigation of the case and he did not send the accused person for recording confessional statement before the Magistrate. Therefore, Dr. Gogoi, learned Amicus curiae submits that this is a fit case wherein, this Hon'ble Court may interfere with the judgment and order, dated 03.12.2019 passed by the learned Sessions Judge, Kokrajhar and further be pleased to lessen the quantum of punishment by altering to under Section 304 Part-II of the IPC, 1860.

8. In support of his submissions Dr. B.N. Gogoi, the learned Amicus Currie, has relied on the following case laws:-

(1) On Section 300 Exception 4 of the Indian Penal Code :-

Sridhar Bhuyan Vs State of Orissa, reported in **(2004) 11 SCC 395**: wherein the Ho'nble Supreme Court has observed which is reproduced herein below:-

“7. For bringing in operation of Exception 4 to [Section 300 IPC](#), it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

8. The Fourth Exception of [Section 300, IPC](#) covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to [Section 300, IPC](#) is not defined in the [IPC](#). It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage’.

(2) On the Sole Witness :-

Chitpal Munda -vs- State of Assam reported in **2013 (5) GLT 427**, wherein this Court has observed, which is reproduced herein below:-

“12. In the instant case, the accused appellant was not found in the house. The only statement on the basis of which the conviction is sought to be sustained is that part of the version of the PW-1 that when she had left for the rehearsal, the accused appellant was with the deceased but on return, he was not found along with him. On the other hand, the deceased was found lying on a pool of blood. The question is as to whether that by itself will establish the chain of events required to establish the offence punishable under Section 302 IPC.

13. In the instant case, the prosecution failed to prove the circumstances against the accused appellant and the chain of events leading to the offence. We are of the considered opinion that it will be totally unsafe to hold the accused appellant guilty of the offence under Section 302 IPC, merely on the basis of the evidence that although he was with the deceased when the PW-1 was left for the rehearsal but on return he was not found along with the deceased.”

(3) On circumstantial evidence/extra judicial confession and motive :-

(i) Subramaya -vs- State of Karnataka reported in **AIR 2022 SC 5110**, wherein the Hon'ble Supreme Court has observed, which is reproduced herein below:-

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘maybe’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and “must be or should be proved” as was held by this Court in [Shivaji Sahabrao Bobade v. State of Maharashtra](#) [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047] Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

48. In an Essay on the Principles of Circumstantial Evidence by William Wills by T. and J.W. Johnson and Co. 1872, it has been explained as under:

"In matters of direct testimony, if credence be given to the relators, the act of hearing and the act of belief, though really not so, seem to be contemporaneous. But the case is very different when we have to determine upon circumstantial evidence, the judgment in respect of which is essentially inferential. There is no apparent necessary connection between the facts and the inference; the facts may be true, and the inference erroneous, and it is only by comparison with the results of observation in similar or analogous circumstances, that we acquire confidence in the accuracy of our conclusions. ? The term PRESUMPTIVE is frequently used as synonymous with CIRCUMSTANTIAL EVIDENCE; but it is not so used with strict accuracy, The word "presumption," ex vi termini, imports an inference from facts; and the adjunct "presumptive," as applied to evidentiary facts, implies the certainty of some relation between the facts and the inference. Circumstances generally, but not necessarily, lead to particular inferences; for the facts may be indisputable, and yet their relation to the principal fact may be only apparent, and not real; and even when the connection is real, the deduction may be erroneous. Circumstantial and presumptive evidence differ, therefore, as genus and species.

The force and effect of circumstantial evidence depend upon its incompatibility with, and incapability of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove; the mode of argument resembling the method of demonstration by the reductio ad absurdum."

49. Thus, in view of the above, the Court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

53. An extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to

whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

54. Extra judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. It is considered to be a weak piece of evidence as it can be easily procured whenever direct evidence is not available. In order to accept extra judicial confession, it must be voluntary and must inspire confidence. If the court is satisfied that the extra judicial confession is voluntary, it can be acted upon to base the conviction.

56. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence.

Extra judicial confession of accused need not in all cases be corroborated. In *Madan Gopal Kakkad v. Naval Dubey and Another*, (1992) 3 SCC 204, this Court after referring to *Piara Singh and Others v. State of Punjab*, (1977) 4 SCC 452, held that the law does not require that the evidence of an extra judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated. 57. The sum and substance of the aforesaid is that an extra judicial confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution.

Where an extra judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance like the case in hand. The Courts generally look for an independent reliable corroboration before placing any reliance upon an extra judicial confession.

58. This Court in *Kashmira Singh v. The State of Madhya Pradesh* reported in AIR 1952 SC 159, had observed as under:

“The confession of an accused person is not evidence in the ordinary sense of the term as defined in [Section 3](#). It cannot be made the foundation of a conviction and can only be used in support of other evidence. The proper way is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is

not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept. [para 8, 10]”

9. Ms. B. Bhuyan, learned Additional Public Prosecutor, submits that in the instant case, the most crucial witness to the prosecution is PW-3 namely Swrang Basumatary who is the daughter of the victim as well as the accused person. P-3 is the eyewitness to the occurrence and she has categorically deposed before the Court that on the day of occurrence at around 4:00 P.M., deceased came to her husband's house. After 2/3 minutes of her arrival the accused came to their residence with an axe. The accused scolded the deceased and questioned her why she has come to the residence of PW-3 and pushed her and then forcibly took her on the road. PW-3 has deposed that her father (the accused) brought her mother to the road and was assaulting her. Although PW3 resisted, the accused person did not listen to her and hence out of fear she tried to call another person of the village and at that time her daughter was also with her. PW-3 went to call other villagers but did not meet anyone near to the place of occurrence and when she returned back, she saw her mother was lying on the side of the road in pool of blood and her father was standing near to her mother with an axe in his hand. There after the accused person went to his house along with the blood stained axe in his hand and he locked himself inside the house. There after some other persons also came near the deceased and PW-3 saw that the deceased sustained injury on the lower side of the neck of right side. The mother of PW-3 was already died and the villagers informed the matter to the police.

10. Ms Bhuyan, learned Addl. PP, submits that PW-1 is the informant and is another witness before whom extra judicial confession was made by accused person in 313 statement. The accused person admitted his guilt. He has taken another plea that he did not want to kill his wife. There was tussle between them and suddenly the blow of the axe falls on the neck of his wife and as a result of which she sustained injury. The said plea taken by the accused person in 313 statement cannot be accepted in as much as if the blow of the axe fall on the neck of his wife due to tussle between them. The victim would not have received multiple number of injuries on her neck, as in the Post Mortem report it has been stated that multiple

incised wound and three major lacerated wound is seen in (R) side of neck cutting the major arteries and vein varying from 10 x 3 x 1 cm with trachea exposed 3 x 1 x 0.5 cm just above and below it. One lacerated wound also found in (R) leg approx 3 x 1 x 0.5 cm. No ligature mark is found round the neck. In the inquest report also the Executive Magistrate found injury mark visible near right side of the neck. The IO who did the investigation seized the axe while arresting the accused person from his. The accused person had intention to kill the deceased as while coming to the place of occurrence he came with an axe in his hand and deceased was given multiple blow on the vital part of her body as a result of which she died on the spot. Therefore, considering the materials on record it is respectfully submitted that Hon'ble Court will upheld the conviction dated 03/12/2019 passed by Learned Sessions Judge, Kokrajhar in Sessions Case No.40/18.

11. The alternative submission of the Learned Addl. PP is that after considering the materials on record if this Hon'ble Court comes to a conclusion that the case of the accused falls under general exception as envisaged under section 300 of IPC, the accused appellant may be convicted under section 304 part I of PIC, 1860 as the accused person had knowledge and intention to kill the deceased which could be gathered from the circumstances that the accused person came to the place of occurrence with an axe on his hand before the altercation takes place.

12. Ms. B. Bhuyan, learned Additional Public Prosecutor in support of her submissions had placed reliance on the following judgments of the Hon'ble Supreme Court.

(i) **Singapagu Anjaiah vs. State of Andhra Pradesh**, reported in **(2010) 9 SCC 799**, wherein the Hon'ble Supreme Court has observed which is reproduced as follow;-

“16. In our opinion, as nobody can enter into the mind of the accused, its intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crow bar as the weapon of offence. He has further chosen a vital part of the body i.e. head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly lead to one and the only conclusion that the appellant intended to cause death of the deceased.

17. Now referring to the decision of this Court in the case of Gurmail Singh (Supra), the same is clearly distinguishable. In the said case, on fact, it was found that the accused did not intend to cause the injury which in fact was found to have been caused and in the said background, it was held that the accused did not intend to cause death, which is not the situation here.

18. In the case of Jagtar Singh (Supra), the incident was preceded by a sudden and chance quarrel and in that background, the Court held the allegation proved to be under [Section 304](#) Part II of the IPC.

19. In the case of Gurmukh Singh (Supra), the injury found on the deceased was only depression of skull bone and the occurrence had taken place in the spur of the moment. In the background of the aforesaid facts, infliction of single lathi blow was not found enough to infer the intention of the accused to cause death of the deceased. Here, as pointed out above, the three important factors enumerated above, clearly lead to the conclusion that appellant intended to cause death.

(ii) **Veer Singh and others vs. State of Uttar Pradesh**, reported in **(2014) 2 SCC 255**, wherein the Hon'ble Supreme Court has observed which is reproduced herein below :-

“Legal system has laid emphasis on value, weight and quality of evidence rather than on quantity multiplicity or plurality of witnesses. It is not the number of witnesses but -quality of their evidence which is important as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence as has been provided under [Section 134](#) of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable”.

13. We have considered the rival submissions of the learned counsel for the parties and examined the material available on record.

14. PW-3, the daughter of the deceased is the most important witness of the prosecution case. In the FIR it is alleged that the accused appellant Tembra Brahma committed murder of his wife by giving several blows on her neck with an axe and the entire incident had happened in front of his daughter who was present at the place of occurrence. PW-3 had deposed that on the day of the incident at about 4 P.M. her mother/deceased came to her

house and after 2/3 minutes of her arrival, the accused/her father also came to her residence with an axe in his hand. He scolded her mother as to why she came to her house, pushed her and forcibly dragged her on the road. She tried to resist her father/accused but he did not listen to her and out of fear she tried to call the other persons or villagers but she did not meet any one near to the place of occurrence and she immediately returned back to the place of occurrence when she saw her mother was lying on the side of the road and the accused was standing near to her with the blood stained axe. Out of fear she could not go near to her mother and thereafter the accused/her father went to his own house carrying blood stained axe in his hand and locked himself inside the room. After sometime, some other villagers came to the place of occurrence and then she observed the severe cut injuries on the right side of the neck of her mother.

15. PW-1, the informant, had deposed that he heard that the accused committed murder of his wife by inflicting injuries with an axe and after committing murder he came to his house carrying axe in his hand. In cross he stated that many villagers gathered and enquired the matter and then the accused confessed that he committed murder of his wife. PW-1 had stated that he rushed to the house of the accused when he got information about the incident and he lodged the FIR.

16. PW-2 had deposed that at the time of incident he was in his own house when the informant/Gaonbura informed him that the accused Tembra Brahma killed his wife near to the mission road. He was also working as second village headman during that period and he immediately rushed to the place of occurrence and saw the dead body of the deceased Lohasi. He immediately informed the informant over telephone and immediately rushed to the house of the accused. The matter was discussed among the villagers and then the police was informed who accordingly arrived and took the dead body for P.M. and also took the accused to their custody. He also put his signature in the seizure list when police seized the axe from the accused.

17. The medical evidence shows that, as per the post mortem report and evidence of

doctor, the wife of the accused died due to shock and excessive blood loss and cut of major arteries and vein in the right side of the neck and it is also opined that the injuries are ante mortem in nature. In cross evidence, the medical officer has opined that one may die or may sustain such nature of injuries if someone falls on sharp object with high input but, in that case also there cannot be multiple injuries of a person. As per the post mortem report there were multiple incised wound and three major lacerated wound in the right side of the neck, cutting major arteries and vein and trachea was also exposed of 3 X 1 X 0.1cm just above and below wound. Further one lacerated wound was also found on the right leg. So, from the P. M. report as well as from the evidence of doctor it is seen that the death of the deceased was homicidal in nature.

18. PW-4 had deposed that he heard that the accused committed murder of his wife with an axe and he also saw the dead body of the wife of the accused. PW-6 also heard about the incident that the accused killed his wife but he did not see the dead body of the deceased nor he was present at the time of recovery of the dead body of the deceased. PW-7, the I.O. had deposed that on 01.01.18 at about 10 P.M. he received an FIR from one Manik Brahma alleging that the accused Tembra Brahma committed murder of his wife with an axe and the dead body is lying near St. Francis Xavier School, Dotma and he immediately rushed to the place of occurrence. The dead body was accordingly recovered and it was brought to P.S. Inquest was done on the next day morning through the Magistrate and the body was sent for P.M. During investigation the accused was arrested from his own house and weapon axe was also seized in presence of the witnesses. On completion of investigation he filed the charge-sheet against the accused.

19. On scrutiny of the testimonies of the prosecution witnesses, it transpires that except PW-3, daughter of the accused and deceased, no other witnesses were present at the time of incident. However, all the witnesses have stated that the accused killed his wife by inflicting injuries on her neck with an axe. PW-1 and PW-2 also deposed that the accused confessed before the villagers that he committed murder of his wife and there is no rebuttal to this part of evidence of PWs. It is also seen from the evidence of the prosecution witnesses that after committing murder of his wife accused went to his own house carrying the weapon- axe in his hand where from the police also seized the axe in presence of the witnesses.

20. As noted above PW-3, who was present at the time of incident, has not seen when the accused inflicted injuries on the neck of her mother with an axe as she was running towards mission school to inform the matter to other persons but while she was returning to the place of occurrence she saw her mother was lying on the ground with severe cut injuries on her neck and her father/accused was standing near to her mother with blood stained axe in his hand. Out of fear she could go near to her mother but after gathering of some people she came near to her mother and saw that there is deep cut injuries on the lower side of the neck in the right side and this ocular evidence in respect of injuries fully support the medical evidence of doctor. Thus, the entire circumstance of the case pointed towards the accused appellant. Though PW-3 could not be present at the exact time with her mother when her father gave blows on her mother with the axe but she saw the entire incident and the circumstance narrated by her is sufficient to complete the chain.

21. The settled principles of law of circumstantial evidence are that the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. The circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of that accused.

22. In the present case, we find that the evidence of PW-3 is sufficient to complete the chain for conviction of the accused as she had stated that the accused came to her residence carrying the axe with him, scolded her mother dragged her toward road and when she returned back as she did not find anyone for help she saw that her mother was lying on the ground in a pool of blood and her father (accused) was standing near to her with the blood stained axe in his hand. Therefore, the sole testimony of PW-3 is sufficient which fulfills the ingredient of circumstantial evidence and her evidence also inspires confidence of this Court to prove guilt of the accused.

23. The testimonies of the PW-1 and PW-2 shows that when the villagers gathered in the house of the accused and enquired the matter the accused confessed before all the villagers that he committed murder of his wife and the evidence of the witnesses who alleged that the

accused had committed murder of his wife are found trustworthy and believable. Entire circumstances of the case support the prosecution case. It is trite that conviction can be based on extra-judicial confession without corroboration if it inspires confidence.

24. The Hon'ble Supreme Court has held that it is true that the court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that court should not accept the evidence, if not the actual words, but the substances were given. It is for the court having regard to the credibility of the witness before whom the confession is made and it is satisfied that confession was voluntarily, conviction can be founded on such evidence.

25. It has also held that law does not require that the evidence of an extra-judicial confession should in all cases, be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated. In present case the accused pleaded guilty while recording his statement and stated that he committed assault to his wife though his intention was to not kill his wife.

26. We find from the evidence of the doctor that during the post mortem examination he found multiple incised wound and three major lacerated wound in the right side of the neck cutting major arteries and vein and trachea was also exposed for which the deceased died. One lacerated wound was also found in the right leg of the deceased. If the accused did not had any intention to kill his wife he would have given one blow with the axe out of anger but, as per medical report there are several blows which caused multiple incised wound and he gave blows on her neck with high input which have exposed trachea of the deceased with cut of major arteries and vein on the right side of the neck.

27. Evidences reveal that accused gave several blows on the neck as well as leg of the deceased by an axe. Inflicting several injuries with an axe on the neck of the deceased itself sufficient to establish that the accused had the knowledge that such injury likely to cause death of a person to whom harm is caused. It is settled that proof of motive is never indispensable for conviction. When the facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof for motive does not break the link in the chain of

circumstances connecting the accused with the crime nor militate against the prosecution case.

28. We concur that the evidence of the witnesses in respect of assaulting and committing murder of the deceased by the accused remains unshaken and there is nothing to disbelieve the prosecution witnesses particularly the PW-3, the daughter of the deceased and accused in whose presence the entire incident had taken place. We find that the testimonies are reliable and trustworthy.

29. To invoke Exception 4 to section 300, four requirements must be satisfied, namely (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this Exception provided he has not acted cruelly.

30. To make out an offence punishable under Section 304 Part II of the IPC, 1860, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew that such act of his is likely to cause death.

31. In the present case, as noted above, the accused appellant gave several blows to the deceased by an Axe. Though, he may not have acted on sudden and unpremeditated and in the fit of anger, however, testimony reveals that he has taken undue advantage in a cruel and unusual manner in inflicting the deceased by several blows by an Axe.

32. From the analysis of the evidence on record in its entirety and law laid down by the Hon'ble Supreme Court, we are of the view that the prosecution has been able to establish the guilt of the accused appellant.

33. On the careful examination and scrutiny of the testimony of PWs-1, 2, 5 and 7 and in the light of law laid down as referred to above, we are of the view that evidences of these

witnesses unerringly pointed guilt towards the accused appellant which corroborates the evidence of PW-3. The evidences are credible, reliable and trustworthy. We have; therefore, no incertitude in holding that prosecution has been able to establish the charge brought against the accused appellant. Thus, we are of the considered opinion that the case of the accused appellant does not fall under general exception as envisaged under section 300 of IPC, 1860, as the accused appellant had knowledge and intention to kill the deceased which could be gathered from the circumstances that the accused person came to the place of occurrence with an axe on his hand before the altercation takes place and acted cruelly and in unusual manner.

34. Consequently, conviction and sentence of the accused appellant by the learned Sessions Judge, Kokrajhar in Sessions Case No.40/2018 vide the Judgment dated 03.12.2019 is affirmed.

35. Accordingly, criminal appeal stands dismissed.

36. We extend our appreciation to the learned counsel for the parties for their able assistance.

LCR be sent down.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant