

GAHC010212092019



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

Case No. :

Crl.A. (J) 75/2019

Sri Matiram Munda @ Matkam Munda
S/O. Lt. Sankar Munda,
Vill. Koilajan, P.S. Bakalia,
Dist. Karbi Anglong, Assam.

.....Appellant

Versus

1. The State of Assam
Rep. by Public Prosecutor, Assam.
2. Sri Ramesh Munda
S/O- Matkam Munda
Vill.- Kuluding Ps- Bakalia
District-Karbi Anglong Assam

.....Respondents

BEFORE

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the appellant : Mr. Rakesh Sarma, Amicus Curiae.

For the respondent : Ms. Bornali Bhuyan,
Additional Public Prosecutor, Assam.

Date of judgment : 30-08-2023

JUDGMENT AND ORDER (CAV)

(*Mridul Kumar Kalita, J*)

1. Heard Mr. Rakesh Sarma, learned *Amicus Curiae* representing the appellant. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor.

2. This Criminal Appeal (J) has been registered under Section 374(2) of the Code Of Criminal Procedure, 1973, on filing of an appeal petition by the appellant, Shri Matiram Munda @ Matkam Munda, through the Superintendent, District Jail, Diphu impugning the Judgment dated 13.03.2019 passed by the learned Sessions Judge, Karbi-Anglong, Diphu in Sessions Case No. 54/2010 (*corresponding to G.R. Case No. 201/2009 and Bakalia Police Station Case No. 35/2009*), whereby the present appellant was convicted under Section 302 of the Indian Penal Code and was sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs. 2,000/- and in default of payment of fine to undergo further Simple Imprisonment for 2(two) months.

3. The learned Sessions Judge, Karbi-Anglong, Diphu, in the impugned Judgment, has come to the finding of the guilt of the present appellant on the basis of circumstantial evidence as well as on the basis that the appellant has failed to discharge his burden under Section 106 of the Indian Evidence Act, 1872. Whereas, the main contention of learned *Amicus Curiae* is that the prosecution side has failed to establish the guilt of the appellant beyond all reasonable doubt and that the circumstances established by the evidence, during trial, does not lead only to the hypothesis of guilt of the present appellant.

4. The facts relevant for adjudication of this appeal, in brief, are as follows:-

i. That on 23.04.2009, one Shri Ranjit Munda lodged an FIR before the Officer-in-Charge of Bakalia Police Station, *inter-alia*, alleging that on the previous day, i.e. on 22.04.2009, at about 8:00 P.M., his daughter (Simti Munda) was murdered by his son-in-law Matkam Munda by assaulting her with a bamboo. It is also stated in the FIR that on 23.04.2009, at about 5:00 A.M., when Shri Jabka Munda, who is the uncle of the accused Matkam Munda called his neighbour Shri Man Munda and narrated to him the whole incident after showing the dead body of the daughter of the first informant, some persons from that village came and informed to the first informant about the same and after going to that place the first informant saw the dead body of his daughter.

ii. On receipt of the said FIR, the Officer-in-Charge

of Bakalia Police Station registered Bakalia P.S. Case No. 35/2009 under Section 302 of the Indian Penal Code and started the investigation. Ultimately, on completion of the investigation, the Investigating Officer laid the charge-sheet under Section 302 of the Indian Penal Code against the present appellant.

iii. It is pertinent to mention that at the time of the lodging of the FIR, the first informant also took the present appellant along with him to the Police Station and the present appellant was arrested on 23.04.2009 and he faced the trial remaining in custody.

iv. After considering the materials available on record as well as after hearing both the sides, learned Sessions Judge, Karbi-Anglong, Diphu framed charge under Section 302 of the Indian Penal Code against the present appellant. When the said charge was read over and explained to the present appellant, he pleaded not guilty and claimed to be tried.

v. During trial, the prosecution side examined 8(eight) prosecution witnesses and exhibited 8(eight) numbers of documents which were marked as Exhibit-1 to Exhibit-8.

vi. The present appellant was examined under Section 313 of the Code of Criminal Procedure, 1973, during which he pleaded his innocence and he denied the incriminating evidence of prosecution witnesses against him. The relevant portion of the statement given by the appellant is discussed in paragraph number

14 of this judgement. The appellant declined to adduce any evidence in defence.

vii. Ultimately, by Judgment, which is impugned in this appeal, the learned Sessions Judge, Karbi-Anglong, Diphu convicted the present appellant and sentenced him in the manner as already stated in paragraph no. 2 herein above.

5. Before considering the rival submissions of learned counsel for both sides, let us go through the evidence of prosecution witnesses available on record.

6. PW-1, Shri Ranjit Munda, who is the first informant of this case, has deposed that the accused (*present appellant*) married his daughter (*Simti Munda*) about 25/26 years ago and on the date of incident his grandson, Ramesh Munda came to his house and informed him that his father Matkam Munda @ Matiram killed his mother with a piece of bamboo. Thereafter, he left that place. PW-1 has further stated that again at about 10 A.M. Ramesh Munda came to his house and told him that the dead body of his mother was brought to the *thana* (Police Station) and on getting the said information he went to the *thana*. Thereafter, he lodged the FIR which was written by one person of Bokuliaghat and he had put his thumb impression thereon.

During cross-examination PW-1 has deposed that his grandson had stated to him that he was not present in the house at the time when his mother was killed.

7. PW-2, Monu Munda, who is also not an eyewitness to the incident, has deposed that at the time of occurrence he was at his sugarcane field and one

Shri Jarka Munda, uncle of the appellant Matkam Munda, called him to come to the house of the appellant informing him that the appellant has killed his wife with a bamboo. He has also stated that Jarka Munda also told him that Matkam Munda went to the bazaar and while he returned home, he did not find his wife and thereafter, he searched for his wife and on getting her he killed her with a piece of bamboo. He has further stated that thereafter he along with Jarka Munda, Ramesh Munda and Ranjit Munda went to the Police Station.

During cross examination PW-2 has deposed that he was informed about the incident by Jarka Munda whose house is situated about 1 Km from his house.

8. PW-3, Arjun Munda, who is also not an eyewitness to the incident has deposed that on the date of incident he came to the house of appellant and found dead body of the deceased lying on the bed and on request of the villagers, the son and uncle of the appellant, he along with some others took the appellant to the Police Station and handed him over to the police.

During cross-examination he has deposed that he has not seen the occurrence himself and he came to know from the villagers that appellant assaulted the deceased.

9. PW-4, Shri Ramesh Munda, who is the son of the present appellant as well as the deceased, has deposed that on the day of the incident, he was at Howraghat and his uncle informed him over telephone that his father has killed his mother with a piece of bamboo. He has further deposed that after coming to home, he found dead body of his mother was lying on the bed with injuries on back and hand. Thereafter, police came there and sent the dead body of his

mother to the hospital for post-mortem examination. He has also deposed that police also seized one bamboo *lathi* and prepared one seizure-list. He has also stated that he found his father (present appellant) in the house who disclosed to him that he (his father) had assaulted his mother with a bamboo lathi and as a result of which she died.

During cross-examination, he has deposed that he had not seen the occurrence and he only came to know about the fact that the appellant has assaulted the deceased from the villagers.

10. PW-5, Dr. Borsing Rongpi, who had conducted the post-mortem examination of the deceased, has deposed that on 24.03.2009 he was attached to Diphu Civil Hospital as Senior Medical & Health Officer and on that day he conducted the post-mortem examination of one Simti Munda in connection with Bakalia P.S. Case No. 35/2009 under Section 302 of the Indian Penal Code and on examination he found the following:

“The PM examination is done of one female dead body with Rigor Mortis present, eyes and mouth closed. One lacerated wound 1” X 1/2” wide is present on the left elbow with mild swelling and ecchymosis surrounding. One small bruise is present on the left leg above the knee. Mild ecchymosis is seen on the lower part of left chest. In the Peritoneum liquid blood present on the left side of peritoneum in and below spleen area.”

DETAIL DESCRIPTION:

“Laceration and Bruises is present on the left side of the limbs. Mild ecchymosis on the lower part of left chest. Liquid blood present on the left side of the peritoneum in and below the skin

area. The spleen is enlarged and soft with laceration and clot liquid blood present. The findings are ante-mortem in nature.

In the opinion of PW-5, the cause of death was due to shock and haemorrhage following splenic rupture and hemoperitoneum.”

PW-5 has exhibited the post-mortem examination report as Exhibit-2.

During cross-examination PW-5 has stated that the death of the deceased took place about 4/5 hours prior to the time of the conduct of the post-mortem examination.

11. PW-6, Shri Selai Munda, who is also not an eye witness, has deposed that he came to know about the incident only on the following day of the incident. On that day, he went to the place of occurrence when inquest was conducted over the dead body by the Magistrate and he signed on the inquest report as a witness. He also heard from the villagers that the appellant had killed the deceased after a quarrel had taken place between them.

During cross-examination he has deposed that he does not know as to why quarrel took place between the appellant and the deceased.

12. PW-7, Shri Hemanta Prasad Rajkumar, who was working as a Sub-Divisional Officer (Sadar), Diphu, Karbi-Anglong has deposed that on 24.04.2009, the appellant Matkam Munda was produced before him in connection with Bakalia P.S. Case No. 35/2009, under arrest, with a prayer for recording his confessional statement. He has deposed that the prayer was allowed and he recorded the confessional statement of the appellant.

PW-7 has further deposed that the appellant was cautioned that he was not bound to give confessional statement, and if he does so, it would be used

against him as evidence. He has further stated that considering the nature of case the appellant was given 3(three) hours time for reflection and during reflection time he was kept in his chamber. He has exhibited the order dated 24.04.2009 as Exhibit-3. He has further stated that after expiry of the 3(three) hours time the appellant was again produced before him at about 3:30 P.M. He again cautioned the appellant that he was not bound to give confessional statement and if he does so, it would be used against him as evidence. In spite of the aforesaid caution, the appellant intended to give confessional statement voluntarily. Thereafter, on the same day, PW-7 recorded the confessional statement of the appellant. He exhibited the confessional statement of the appellant as Exhibit-4. PW-7 also deposed that the appellant has confessed before him that he hit his wife with a bamboo stick as a result of which she died.

During cross-examination PW-7 has stated that the appellant stated to him that he along with his wife used to quarrel after taking liquor (*haria*). He has also deposed that the accused stated before him that he intended to give confessional statement voluntarily.

13. PW-8, who is the Investigating Officer of this case, has deposed that on 23.04.2009, he was serving as Officer-in-Charge of Bakalia Police Station and on that day, one Ranjit Munda lodged an FIR, *inter-alia*, stating that, on 22.03.2009 at about 8:00 P.M., his daughter who lived at Koilajan was murdered by his son-in-law Matkam Munda by assaulting her with a bamboo. PW-8 has also deposed that when the first informant came to the Police Station, he also brought Matkam Munda (present appellant) along with him. He has also deposed that he interrogated the appellant in the Police Station and later on, when the Magistrate arrived from Diphu for holding inquest on the dead body, he (PW-8)

accompanied him (Magistrate) to the place of occurrence and seized a bamboo stick in presence of the witnesses.

PW-8 has also deposed that he interrogated the witnesses at the place of occurrence itself and the appellant confessed before him to have killed his wife. Later on, confessional statement of the accused was recorded and after completion of the investigation, PW-8 submitted the Charge-Sheet No. 12/2009 dated 30.05.2009 against the present appellant under Section 302 of the Indian Penal Code. The said charge-sheet has been exhibited as Exhibit-8.

During cross-examination, PW-8 has deposed that when he went to the place of occurrence the son of the appellant was also present at that place. He has also deposed that the bamboo stick which was seized by him was produced by the son of the appellant from inside the house. He has also stated that he did not send the bamboo stick for finger print test.

14. During his examination under Section 313 of the Code of Criminal Procedure, 1973, the appellant retracted his confession which was made by him during the course of investigation. Though he had admitted that he was produced on 24.04.2009 before PW-7, under arrest, for recording his confessional statement and he was given 3(three) hours reflection time during which he was kept in the Chamber of the Magistrate. He has stated in his answer to question No. 9 put to him by the learned Sessions Judge, Karbi-Anglong, during his examination under Section 313 of the Code of Criminal Procedure, 1973, that he did not give any confessional statement and he only put his thumb impression on some papers before the Magistrate. He has also stated that at the time of occurrence, he was in his residence and the deceased sustained injuries by falling down after taking excessive alcohol and as a result of which she died. He has also stated that he has been falsely implicated in this

case.

15. Mr. R. Sarma, learned *Amicus Curiae* has submitted that learned Trial Court has correctly not relied upon the confessional statement of the present appellant as the appellant was produced before the Magistrate from police custody where he was kept for about 14(fourteen) hours and he was, given only 3(three) hours time for reflection which was not adequate to reflect upon before taking a major decision as to whether to make a confessional statement or not. It is also submitted that there is no evidence on record to show that the Magistrate who recorded the confessional statement made any enquiry to find out whether the confessional statement has been made voluntarily by the present appellant or not.

16. Learned *Amicus Curiae* has also submitted that the statement of PW-4 Shri Ramesh Munda, who had stated that his father had disclosed to him that he had assaulted his mother with a bamboo is also hit by Section 26 of the Indian Evidence Act as from the testimony of PW-8, who is the Investigating Officer of this case, it becomes clear that when the appellant confessed to have assaulted his wife, he (Investigating Officer) was also present at the place of occurrence. Thus, according to learned *Amicus Curiae* this extra judicial confessional statement before PW-4 by the appellant has to be regarded as a statement made in custody of police. It is also stated that the confession of the appellant before the Investigating Officer in the police station is hit by Section 25 of the Indian Evidence Act and therefore, may not be taken into consideration. Further, learned *Amicus Curiae* has also submitted that the confessional statement which is exhibited as Exhibit-A, may not be regarded as confession of guilt by the present appellant as he has stated that when his wife came home she was drunk having consumed country liquor (*haria*) and after that both the appellant

and his wife had altercation and verbal duals.

17. Learned *Amicus Curiae* has also submitted that the appellant had only stated in his confessional statement that on 22.04.2009, during altercation with his wife and when she did not listen to him, he took one bamboo stick and beat her up and she fell down and when he wanted to pick her up and put her inside the house she ran away and only half an hour after that he heard her noise asking for water. He also went again to look out for her to the back side of their house and after half an hour he heard her noise asking for water. Thereafter, he took her again and gave her water and brought her back home. Learned *Amicus Curiae* has submitted that even if it is assumed, for argument sake, that the present appellant had beaten up his wife, there is no evidence on record as to what happened to her when she was out of her house after being beaten up by the appellant and under such circumstances, it is submitted that the appellant may not be held liable for the death of his wife.

18. Learned *Amicus Curiae* has also submitted that the present appellant was produced before the learned Magistrate after his arrest, on 24.04.2009. On the same day, the prayer for recording his confessional statement was made which was accepted and on 24.04.2009 itself at 12:30 P.M., he was produced for recording his confessional statement. It is submitted that though 3(three) hours reflection period was allowed to the present appellant, however, during this time he was kept in charge of a peon and an armed police constable, hence, he was not out of the influence of the police during the period given to him for reflection and therefore his confessional statement is not voluntarily made and is inadmissible. In support of his submission, learned *Amicus Curiae* has relied upon the decision of Hon'ble Supreme Court of India in "**Rabindra Kumar Pal @ Dara Singh Vs. Republic of India**", reported in **(2011) 2 SCC 490**,

wherein Hon'ble Supreme Court of India by laying down the principles with regard to recording of confessional statement under Section 164 of the Code of Criminal Procedure, 1973 has observed that during the time of reflection, the accused should be completely out of police influence and the judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him. Learned *Amicus Curiae* submitted that in the instant case as the appellant was kept in custody of armed police constable during the period of reflection, his confession given before the Judicial Magistrate, which is exhibited as Exhibit-4, may not be treated as voluntary and thus learned trial Court has correctly refused to rely on the said confessional statement.

19. Learned *Amicus Curiae* has also submitted that on perusal of the post-mortem report, it appears that the cause of death of the deceased (*Simti Munda*) was due to shock and haemorrhage following splenic rupture and Haemo-peritonuim and when the spleen is enlarged and swollen, its rupture may be caused by even falling on hard substance and the appellant has stated in his testimony that after consuming liquor she fell down on ground, hence, it is submitted that the injuries caused to the deceased which caused her death were caused by her falling down on ground. In support of his submission, learned Amicus Curiae has relied upon ruling of High Court of Rajasthan in "**State Vs. Goru & Ors.**" reported in <http://indiankanoon.org/doc/450424/>, wherein it was observed that "*on account of its situation, rupture of a normal spleen is very rare unless caused by considerable crushing and grinding force, such as the passing of a carriage or motor car over the body, or by a crush in a railway accident, or by a fall from a*

very great height; in such cases it is usually associated with injuries to other solid organs and to the ribs overlying the spleen."

20. Learned *Amicus Curiae* has also submitted that the prosecution side has failed to prove as to what weapon was used for commission of offence as the so-called weapon of offence i.e., bamboo was seized on being produced by PW-4 Ramesh Munda only, however, there is no evidence on record to show that PW-4 had seen the seized bamboo being used for commission of the alleged offence or that the said bamboo was shown to him by the appellant himself.

21. Learned *Amicus Curiae* has submitted that as in the instant case the appellant has explained the fact which was specially within his knowledge as to what had happened when he was with his wife in his house on the day of incidence by stating that his wife after consuming liquor had fell down and sustained injuries. Learned *Amicus Curiae* has also submitted that as the confessional statement of the appellant may not be regarded as a voluntary confession, and as there is no eye witness to the alleged offence, the entire prosecution case is based on circumstantial evidence and according to learned *Amicus Curiae* there are missing links in the circumstances relied upon by the prosecution side and it does not form a complete chain of evidence, so as not to leave any reasonable ground for a conclusion there from, consistent with the innocence of the present appellant. Learned *Amicus Curiae* has also submitted that under the circumstances of the present case, two views are possible, including one pointing towards the innocence of the present appellant and under such circumstances, benefit of reasonable doubt has to be given to the present appellant. In support of his contention, learned *Amicus Curiae* has relied upon a ruling of Hon'ble Supreme Court of India in "**Lal Mandi Vs. State of West Bengal**" reported in (1995) 3 SCC 603. The learned *Amicus Curiae*

has thus, prayed for setting aside the impugned judgment of conviction of the present appellant.

22. On the other hand, Ms. B. Bhuyan, learned Additional Public Prosecutor has submitted that though the learned trial Court has not relied upon the confessional statement of the appellant, however, in the appellate stage, this Court can re-appreciate the evidence on record and may also consider the confessional statement made by the appellant before the Magistrate for coming to the finding of the guilt of the present appellant. She has submitted that the appellant was given 3(three) hours reflection period which under the facts and circumstances of the case is sufficient period for reflection. She has relied upon a ruling of the Hon'ble Supreme Court of India in "***Devi Singh Vs. State of Rajasthan***" reported in "***(2005) 10 SCC 453***", wherein Hon'ble Supreme Court of India considered a reflection time of two hours to be sufficient time for reflection before making a confessional statement. Learned Additional Public Prosecutor has also relied upon a ruling of Hon'ble Supreme Court of India in "***Shankaria Vs. State of Rajasthan***" reported in "***(1978) 3 SCC 435***" wherein it was held by the Apex Court that how much time for reflection should be allowed to an accused person before recording his confession, is a question which depends on the circumstances of each case and learned Additional Public Prosecutor has submitted that in the instant case under the facts and circumstances of the case three hours reflection period granted to the appellant is sufficient time for reflection before his confessional statement was recorded and hence, his confessional statement may not be regarded as tainted and may be relied upon to come to the finding of guilt of the present appellant.

23. Learned Additional Public Prosecutor has also relied upon another ruling of Hon'ble Supreme Court of India in "***Kadraka Sitana Vs. State***" reported in

"1975 SCC OnLine Ori 111" wherein it was observed that there is no universal rule as to the extent of time to be allowed, for cool reflection, to the accused persons desirous of making confession.

24. Learned Additional Public Prosecutor has also fairly submitted that the appellant has confessed that he had beaten up his wife with a *lathi*, after she consumed country liquor (*haria*), as a result of which she fell down, he may not have the intention to kill his wife. However, she has also submitted that as the spleen of deceased has been found ruptured, there is every possibility that the said injury was caused due to assault by the appellant and as the Post-Mortem Report of the deceased shows that one of the cause of death of the deceased was splenic rupture, hence, the appellant may be held liable under Section 304 (Part II) of the Indian Penal Code. In support of her submission she has also relied upon the ruling of High Court of Rajasthan in **"State Vs. Goru & Ors."** (*Supra*) wherein it was observed that a normal spleen may sometimes be ruptured by blow from a blunt weapon.

25. We have considered the rival submissions made by learned *Amicus Curiae* as well as learned Additional Public Prosecutor and have also gone through the evidence available on record meticulously.

26. If we go through the evidence of PW-5 as well as Exhibit-2, which is the post-mortem examination report of the deceased Simti Munda, it appears that the cause of death of Simti Munda was found to be due to shock and haemorrhage following splenic rupture and hemoperitoneum (*a type of internal bleeding in which blood gathers in peritoneal cavity*). It is also found that the spleen of the deceased was found to be enlarged and soft. It is seen from the observations made in **"State Vs. Goru & Ors."** (*Supra*) that an enlarged spleen becomes softened and brittle and hence, it is liable to rupture from a fall

or from violence of a very slight degree. Now, we have to see as to whether the deceased suffered injuries on her spleen due to fall by herself or as a result of assault with a *lathi* by the present appellant.

27. In the instant case there is no eye witness who has seen the incident of assault on the deceased by the appellant. Learned Sessions Judge, Karbi-Anglong, Diphu has convicted the present appellant mainly on the ground that though the appellant was present in his house along with his wife when she died, however, he failed to discharge the burden, under Section 106 of the Indian Evidence Act, 1872, of proving as to what had happened which caused death of his wife when his wife was with him in his house.

28. As regards confessional statement of the appellant, which is exhibited as Exhibit-4, is concerned, it appears that the present appellant was arrested on 23.04.2009 and he was produced before PW-7 (Sub-Divisional Officer, Sadar, Diphu, Karbi-Anglong), on 24.04.2009, under arrest, and his statement was recorded after affording him only 3(three) hours of reflection period. Learned Sessions Judge has declined to rely on the said confessional statement on the ground of inadequate time for reflection which was afforded to the present appellant. Though, Hon'ble Apex Court in "***Shankaria Vs. State of Rajasthan***" (*Supra*) as well as in "***Kardraka Sitana Vs. State***" (*Supra*) has observed that there is no universal rule as to the extent of time which has to be allowed for reflection to an accused before he makes his confessional statement and it depends upon the facts and circumstances of each case, however, it is also important that while considering such a period of reflection which should be afforded to the accused before his confessional statement is recorded, the Magistrate has to ascertain as to whether the time afforded to the accused for reflection is sufficient, under the circumstances of the case, to relieve the

accused out of any influence of police or any other extraneous influence to which he could have been subjected to while he was in police custody.

29. Though, learned *Amicus Curie* has submitted that even during the period of reflection the appellant was kept in charge of an armed police constable, however, we do not find any evidence on record to suggest that fact. In the instant case, the appellant is an illiterate person (*he had only put his thumb impression on Exhibit-5, i.e., the confessional statement*) and he was in police custody for 14 (fourteen) hours before he was brought for recording his confessional statement. Under the facts and circumstances of the present case when the appellant appears to have spent considerable time in police custody before he was brought for recording his confessional statement, he should have been afforded reflection time which was at least equal to, if not greater than, the time which he had spent in the police custody, hence we are also of the considered opinion that affording only 3(three) hours of reflection period to the appellant before recording his confessional statement does not appear to be adequate time for ensuring that he is relieved of any extraneous influence and his statement is voluntarily made. Therefore, we do not find any error in learned Sessions Judge not relying on the confessional statement due to inadequacy of reflection period afforded to the present appellant.

30. Moreover, it appears that even during the period of reflection, the present appellant was kept in charge of a peon and an armed police constable, hence, as a police personnel was present before the appellant even during the period of reflection, it cannot be said that during that period the appellant was completely out of influence of police and under such circumstances, his confession may not be regarded as a voluntarily made confession. Hence, for this reason also, Exhibit-3 (confessional statement of the appellant) becomes

tainted and it is not safe to be relied upon.

31. Though, even if we exclude the tainted confessional statement of the present appellant (Exhibit-3) from consideration, what however, still remains is his extra judicial confession before his own son, i.e. PW-4 (Ramesh Munda). We have seen herein before that PW-4 has stated that he found his father in his house who disclosed him that he (his father) had assaulted his mother (deceased Simti Munda) with a bamboo *lathi* and as a result of which she died. This testimony of PW-4 had remained intact and could not be demolished during cross-examination of PW-4.

32. Regarding the contention of learned *Amicus Curiae* that even the extra judicial confession of the appellant before his son (i.e., PW-4) is hit by Section 26 of the Indian Evidence Act, as the said confession was made when the appellant was in police custody, it appears that this contention of learned *Amicus Curiae* is not based on evidence on record. The evidence on record suggest otherwise. From the testimony of PW-4, it appears that when he came to his house and saw the dead body of his mother, and when his father confessed before him, police was not there, it only came there later on and sent the dead body of his mother for post-mortem examination. Hence, it appears that his father (present appellant) confessed to him prior to police coming to their house. It also appears from the testimony of PW-8 (Investigating Officer) that the police came to the place of occurrence only after lodging of FIR by PW-1, whereas PW-4 came to his house prior to lodging of FIR before police came there. It is to be remembered that PW-1, at the time of lodging the FIR took the present appellant along with him to the police station, thereafter, the present appellant was again brought to the place of occurrence by the police and was interrogated at the place of occurrence when the appellant again confessed his

guilt. This confession before PW-8, at the place of occurrence, by the appellant was when he was again brought to the place of occurrence after lodging of FIR and it is hit by Section 25 of the Indian Evidence Act. However, the confession by the present appellant before his own son (PW-4), prior to arrival of police, appears to be made, at the first instance, in his own house much before he was taken to the police station. As the extra judicial confession was made by the present appellant was before his own son (PW-4), there appears to be no extraneous influence and it was made much before police came into the picture, hence, same appears to be true narration of facts by the present appellant to his own son (PW-4).

33. What appears from the testimony of PW-4 is that he was told by his father (the present appellant) that he assaulted his wife with a bamboo. Though, he has also stated that as a result of such an assault his wife died, however, from Exhibit-2 (post-mortem report) we have seen that the deceased died due to splenic rupture and hemoperitoneum and her spleen was enlarged. Moreover, only laceration and bruises were found on limbs and mild ecchymosis was seen on the lower part of left chest of the deceased, and no other external injury has been found on the deceased on her head or any vital part which is externally visible, hence, it appears that even if we accept that the appellant had assaulted the deceased with a *lathi*, he had no intention to cause death of his wife. It also appears that the explanation given by the appellant, during his examination under Section 313 of the Code of Criminal Procedure, 1973, for death of his wife that she died by falling after consumption of country liquor does not appear to be whole truth in view of the confession made by him before his son (PW-4). What had actually happened when the present appellant and his wife were inside his residence is specifically within the knowledge of the present

appellant and he was under obligation to prove those facts, however, it appears that the present appellant has not fully disclosed those facts during his examination under Section 313 of the Code of Criminal Procedure, 1973. In Exhibit-4, confessional statement of the appellant, which we have already discarded for reasons stated herein before, the appellant had stated that he used to quarrel with his wife after taking country liquor which was not stated by the appellant during his examination under Section 313 of the Code of Criminal Procedure, 1973. However, considering the facts and circumstances of this case and the evidence on record in its entirety, it may not be wrong to presume that on the date of incident also the assault by the present appellant on his wife was preceded by quarrel between the present appellant and his wife and upon such quarrel, the present appellant hit his wife with a bamboo stick and she fell down as a result of the same and in the process her enlarged spleen suffered injuries and got ruptured causing her death. Hence, in the considered opinion of this Court, the act of present appellant would fall under exception 4 to Section 300 of the Indian Penal Code and as the appellant did not intend to kill his wife, however, the knowledge that his act of assault by *lathi* may likely to cause death of his wife may be ascribed to him and thus, he is liable to be convicted under Section 304 Part II of the Indian Penal Code instead of Section 302 of the Indian Penal Code.

34. In view of above discussion, we partially allow this appeal and alter the conviction of present appellant from Section 302 of the Indian Penal Code to one under Section 304 Part II of the Indian Penal Code and accordingly, modify his sentence from life imprisonment to a sentence of rigorous imprisonment to ten years and to pay a fine of Rs. 2,000/- and in default of payment of fine to undergo further simple imprisonment of two months. If in the meanwhile, the

appellant has served out, the modified sentence imposed on him by this judgment, he shall be released forthwith if he is not required to be detained in connection with any other case.

35. This appeal is accordingly, disposed of.

36. Registry to send back the case record of the Sessions Case No 54 of 2010 along with all connected files with a copy of this judgement to the court of learned Sessions Judge, Karbi Anglong, Diphu. Registry to also send a copy of this judgement to the Superintendent , District Jail , Diphu for information to the appellant.

JUDGE

JUDGE

Comparing Assistant