

GAHC010261592022



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

Case No. : Cri.A. 350/2022

1. Sri Nipen Baruah @ Nripen Baruah
S/o Late Someswar Baruah,
R/o Village – Rongkhelang,
Diphu, District-Karbi Anglong,
Pin-782462, Assam.

.....Appellant.

Versus

1. The State of Assam,
Represented by the Public Prosecutor,
Gauhati High Court, Guwahati,
2. Sri Prahlad Kemprai,
S/o Late R Kemprai,
R/o Shivbari, Near Joysingh Doloi Auditorium,
P.O & P.S. Diphu, Pin-782460,
District-Karbi Anglong, Assam.

.....Opposite Parties.

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MRS. JUSTICE MITALI THAKURIA

For the appellants : Mr. N.B.P. Singha,
Ms. D. Boruah. ...Advocates

For the opposite parties : Mr. S. Jahan Addl. P.P.

Date of hearing : 09.10.2023

Date of Judgment : 13.10.2023

JUDGMENT AND ORDER (CAV)

(Michael Zothankhuma, J)

1. Heard Mr. N.B.P. Singha, learned counsel for the appellant. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State.

2. This appeal has been filed against the impugned judgment dated 30.11.2022 passed by the learned District & Sessions Judge at Diphu, Karbi Anglong in Sessions Case No.327/2017 (new)/ Sessions Case No.33/2010 (old), by which the appellant has been convicted under Sections 302/201 IPC. The appellant was sentenced to undergo life imprisonment under Section 302 IPC with a fine of Rs.10,000/-, in default rigorous imprisonment for 1 (one) year. He

was also sentenced to undergo rigorous imprisonment for 7 (seven) years with a fine of Rs.10,000/-, in default rigorous imprisonment for 1 (one) year under Section 201 IPC. The sentences were to run concurrently.

3. The prosecution case in brief is that an FIR dated 22.08.2004 was submitted by the Prosecution Witness No.12 (PW-12), who is the uncle of the deceased boy of 5 years 5 months. The FIR is to the effect that on receiving the news that his nephew Chanakya Baruah had gone missing, an extensive search were made. PW-12 later came to know that his brother-in-law (appellant) recovered the body of his nephew Chanakya Baruah from the septic tank, located in the campus of the Government quarters where the appellant (father of the deceased) lived. PW-12 in his FIR also stated that PW-1, who worked in the house of the appellant as a domestic help had stated that the appellant had committed the murder and that the appellant had also confessed to killing his son. In pursuant to the FIR dated 22.08.2004, Diphu P.S. Case No.116/2004 under Section 302/201 IPC was registered.

4. After investigation of the case was completed, the Investigating Officer (IO) submitted his charge-sheet on 05.05.2018, on finding a *prima facie* case under Sections 302/201 IPC against the appellant. The learned Trial Court framed charges under Section 302 IPC on 05.05.2018 and added Section 201 IPC on 16.09.2022. The learned Trial Court thereafter examined 12 (twelve) Prosecution Witnesses and after examination of the appellant under Section 313 Cr.P.C, the learned Trial Court came to a finding that the appellant had been guilty in murdering his child and had hidden the body, to cause disappearance of the evidence. Consequently, the learned Trial Court convicted the appellant

under Sections 302/201 IPC and sentenced him as indicated in the earlier paragraphs.

5. The learned counsel for the appellant submits that the appellant had been convicted solely on the basis of his confessional statement made under Section 164 Cr.P.C, without the Magistrate having followed all the procedural requirements prior to recording the statement under Section 164 Cr.P.C. He submits that due to the confessional statement of the appellant having been recorded without following the mandatory requirements provided in Section 164 Cr.P.C, the defect in the recorded confessional statement of the appellant would be fatal to the admissibility of the said document and accordingly, the same cannot be used as evidence against the appellant. He submits that there is no evidence adduced before the learned Trial Court by any of the Prosecution Witnesses against the appellant, though the statement made by PW-1 to the Police under Section 161 Cr.P.C is to the effect that the appellant had slapped the boy and pushed him due to which the boy got hurt and became senseless, besides the appellant having picked up the boy and thrown him in the septic tank, the same being a statement made to the police, it is not admissible as evidence. In any event, even assuming the statement made by PW-1 to the Police was true, the said fact does not prove that the appellant had any intention to kill his own son.

6. The learned counsel for the appellant submits that prior to recording the appellant's statement under Section 164 Cr.P.C, only 3 (three) hours' time had given to the appellant for reflection. He further submits that no certificate had been made by the Judicial Officer at the bottom of the appellant's confessional

statement, in terms of Section 164(4) Cr.P.C. He further submits that prior to recording the confessional statement of the appellant, it was the duty of the Judicial Officer to give an assurance to the appellant that he would not be sent to police custody, even if he did not give his confessional statement. However, no such assurance was given. The learned counsel further submits that the confessional statement of the appellant was retracted during his examination under Section 313 Cr.P.C.

7. The learned counsel for the appellant further submits that the evidence on record does not show that any case under Sections 302/201 IPC has been made out. At best the case would come under Section 304A IPC. He accordingly prays that the impugned judgment should be set aside.

8. Ms. S. Jahan, learned Additional Public Prosecutor, on the other hand submits that as a conviction can be based on the basis of a confessional statement made by an accused, in terms of the judgment of the Supreme Court in the case of ***K.I. Pavunny vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin***, reported in ***(1997) 3 SCC 721***, there is no infirmity with the conviction of the appellant, though Section 302 IPC may not be attracted in the present case. She submits that the body was recovered on being shown by the appellant as to where the body was hidden. She further submits that though it may not be a case of Section 302 IPC on a careful appraisal of the evidence, the case could come under Section 323 IPC.

9. Ms. S. Jahan, learned Additional Public Prosecutor further submits that

during the year the confessional statement of the appellant was recorded, i.e. in the year 2004, justice was being delivered in Diphu District of Assam by Executive Magistrates and not by Judicial Magistrates. As such, the procedural requirements laid down in Section 164 Cr.P.C was not required to be followed strictly, as the Cr.PC was applicable in spirit only at that time in Diphu.

10. We have heard the learned counsels for the parties.

11. From a perusal of the evidence recorded by the learned Trial Court and after perusing the impugned judgment passed by the learned Trial Court, we find that the conviction of the appellant by the learned Trial Court under Section 302 IPC has been made, on the ground that the appellant had made a confessional statement under Section 164 Cr.P.C., coupled with the fact that the dead body of the boy had been concealed in the septic tank by the appellant.

12. The confessional statement of the appellant under Section 164 Cr.P.C. is to the effect that on 21.08.2004, he brought his son home from school at around 11 a.m. As his son was pestering him for a pencil box, he pushed his son in anger and in the process, his son's head hit the steps. Blood came out and the son became senseless. As the appellant became very frightened and did not know what to do, he threw the body of his son in the septic tank. He did not tell anyone about it. Everyone started searching for the boy. As he felt guilty, he took out the body from the tank and confessed before the people of his colony that he had killed his son, though he did not mean to kill him. It was an accident and he did not know why he threw his son's body in the septic tank.

The statement made by the appellant under Section 164 Cr.P.C as recorded by the Magistrate is reproduced herein as follows:

“Chanakya was my son about six years old. On 21/08/04, I brought him from school at 11 A.M. He was pestering me for a pencil box. I pushed him in anger & his head touched the steps. Blood came out & he became senseless I became very frightened & did not know what to do. In fear of being caught & its consequences, I threw the body of my son in the latrine tank. I did not tell anyone about it.

Everyone went searching for the boy. I felt guilty & restless. Later I myself took out the body from the tank. I then confessed before all the people of my colony that I killed my son.

Actually I did not mean to kill him. Who will kill one's own son. It was an accident. I became mad then. I don't know why I later threw him in the latrine tank. I have nothing to say.”

13. PW-1, who was around 12 years at the time of incident gave his evidence 14 years later, when he was 26 years old. He stated that he knew the appellant and the deceased and that at the time of incident, he was in his aunt's house, which is situated besides the house of the appellant. On the day of the incident, the dead body of the deceased was recovered from the septic tank of the appellant's house. On hearing a commotion raised by people, he went to the house of the appellant and saw the dead body of the deceased. He further stated that he knew nothing about the incident. In his cross-examination, PW-1 stated that he was not a witness to who had killed the deceased.

14. It is interesting to note that in the statement made by PW-1 in to the Police under Section 161 Cr.P.C, PW-1 stated that the deceased was pestering his father for a pencil box. On 23.08.2004, he again troubled his father for a

pencil box. The father (appellant) thereafter slapped his son and pushed him near the steps. The boy got hurt and became senseless. The father sprinkled water on the face of the boy and when the boy did not wake up, the father got scared. He picked up the body of the boy and threw the same into the septic tank and closed the septic tank. PW-1 stated that he watched it all from the window. When the appellant saw him watching, he told him not to tell anyone and warned him that he would send him "up there" if PW-1 told anything about it. At that time, the mother of the boy was in the office. When the mother came home, both went out in search for the boy. PW-1 stated that he did not say anything as he was scared. Then the police took him to the Police Station and beat him. Thereafter he stated whatever he saw and knew.

As can be seen from the above, the statement of PW-1 under Section 161 Cr.P.C is different from his testimony given before the learned Trial Court, though similar to the confessional statement made by the appellant under Section 164 Cr.P.C. In any event, in view of Sections 24 & 25 of the Evidence Act, the statement of PW-1 made under Section 161 Cr.P.C is not admissible in evidence. Even assuming that the same could have been considered, we do not find any element of intention or motive on the part of the appellant for killing his son, so as to attract Section 302 IPC.

15. The evidence of PW-2 is to the effect that he knew the appellant and the deceased and that he had heard that a dead body had been recovered from the house of the appellant.

16. The evidence of PW-3 is to the effect that when he heard that the son of

the appellant was missing, he made a search for him. Later on, in the evening, he learnt that the dead body of the deceased had been recovered from the septic tank of the appellant. He also heard that the appellant had confessed his guilt in the Police Station. He also stated that he put his signature as a witness in the document at the Police Station, where the confessional statement of the appellant was recorded. He identified the confessional statement as Ext.1 and his signature as Ext.1(1).

17. The evidence of PW-4 is to the effect that the wife of the appellant worked in the same Department as himself. He also heard that the son of the appellant had gone missing. He was later informed that the dead body of the boy had been recovered from the septic tank.

18. The evidences of PWs -5 & 6 are to the effect that on hearing a commotion, they went to the place of occurrence and saw the dead body of the deceased lying in the courtyard of the appellant.

19. The evidence of PW-7 is to the effect that he heard that the deceased had died and that he knew nothing further. He also stated that he saw the dead body of the deceased.

20. There is no PW-8. The evidence of PW-9 is to the effect that he knew the informant and the appellant. He heard from people that the dead body of one boy had been recovered from the back of the appellant's residence and he saw the dead body of the boy, who was about 5 or 6 years of age.

21. The evidence of PW-10 is to the effect that on the day of occurrence at about 12:00 noon, the appellant had brought his son home from school and thereafter the son went missing. At that time, he was at Diphu and somebody informed him over telephone about the same. Immediately he went in search of the deceased, who was his nephew. As the deceased could not be found, PW-10 informed the Manja Police Station. He returned to Diphu and at around 7:30 p.m. somebody informed him over telephone that his nephew's dead body had been recovered from the septic tank of the appellant.

PW-10, in his cross-examination, stated that the appellant was his brother-in-law as the appellant had married his elder sister.

22. There are 2 (two) PW-11, one is Dr. Narendra Nath Rajkhowa and the other is S.I. Sankar Banerjee (retired). The evidence of PW-11 Dr. Narendra Nath Rajkhowa is to the effect that he conducted the Post Mortem of the deceased on 22.08.2004, while posted as Diphu Civil Hospital as Medical & Health Officer-I. The examination of the deceased revealed the following:-

“I-EXTRANAL APPERANCE

1. Condition of subject stout emaciated, decomposed, etc.

A boy of about 6 years wearing shirt pant examined on 22/08/04 at Diphu Hospital Morgue. He is having injury mark over skull left side with depressed fracture over parietal region. Bleeding (clotted) present in the left ear and from nose. Heamatoma with swelling left side of the skull.

2. Wounds, Position, Character:

3. Bruise Position size and nature:

4. Mark of ligature on neck dissection, etc.:

II-CRANUM AND SPINAL CANAL

1. Scalp, skull, vertebrae : Swelling of left side of the scalp With (...illegible...) depressed in nature.
2. Membrane : Intact.
3. Brain and spinal cord : Haemorrhage present below the brain matter.

Note: The spinal canal need not be examined unless any indications of disease or injury exist.

III-THORAX

1. Walls ribs and cartilages : NAD.
2. Pleurae : NAD.
3. Larynx and trachea : NAD.
4. Right lung : Congested.
5. Left lung : Congested.
6. Pericardium : Congested.
7. Heart : Chamber empty.
8. Vessels : Empty.

IV - ABDOMEN

1. Walls : NAD.
2. Peritoneum : NAD.
3. Mouth, pharynx, oesophagus : NAD.
4. Stomach and its contents : Empty
5. Small intestine and its contents : Empty
6. Large intestine and its contents : Fecal matter
7. Liver : NAD.
8. Spleen : NAD.
9. Kidneys : NAD.
10. Bladder : Empty.
11. Organs of generation external and internal: No fecal matter.

V-MUSCLES, BONES AND JOINTS

1.

Injury

: Injury of left side of the skull over the parietal bone. Fracture of skull Lt. parietal bone.

Fracture is depressed in nature.

2. *Disease or deformity*

:

3. *Fracture*

:

5. *Dislocation*

:

MORE DETAILED DESCRIPTION OF INJURY OR DISEASE

Injury of the scalp and skull over the left side of the victim with depressed fracture of the parietal bone. Swelling of scalp with hematoma found.

No other external injury seen over the body."

In his opinion, PW-11 Dr. Narendra Nath Rajkhowa stated that the death was due to subdural hemorrhage following fracture of the skull.

23. The evidence of PW-11 S.I. Sankar Banerjee is to the effect that on 22.08.2004, he was posted at Manja Police Outpost as In-charge. PW-12 filed an FIR, which was received on 22.08.2004 at 8:00 p.m., vide Manja O.P. GDE No.367 dated 21.05.2004. The same was forwarded to the Officer-in-Charge, Diphu Police Station for registering the case and that he took up the investigation of the case. Thereafter, Diphu Police Case No. 116/2004 under Section 302/201 IPC was registered on 23.08.2004 at 9:00 a.m. The FIR was with regard to the missing deceased boy and the fact that the appellant had recovered the dead body of the boy from the septic tank. Thereafter PW-1 (S.I.

of Police) went to the appellant's house and took the dead body to Diphu Civil Hospital. Inquest on the dead body was done and he came to know that PW-1 was working in the house of the appellant as a daily worker and that PW-1 had seen the entire incident.

PW-11 (S.I. of Police) further stated on interrogation, PW-1 stated that he saw the appellant pouring water on the head of the deceased. But when the deceased did not regain senses, the appellant opened the cover of the septic tank and threw the body of the deceased into the septic tank. Then the appellant closed the cover of the septic tank. Thereafter, PW-11 requested the Court to record the statement of PW-1, which was done and the same was exhibited as Exbt.-P5. Then the PW-11 (S.I. of Police) recorded the extra judicial confession of the appellant in the Police Station in presence of the witnesses. Thereafter, the appellant was forwarded to the Court, wherein his confessional statement under Section 164 Cr.P.C was recorded. As the appellant had confessed his guilt, PW-11 (S.I. of Police) filed charge-sheeted on 29.10.2004 under Section 302/201 IPC.

Though PW-11 (S.I. of Police) has stated in his evidence that the Court had recorded the statement of the witness Binod Mirdha, which was exhibited as Exbt-P5, the same is not correct, as a perusal of Exbt.P5 shows that the same is a statement made to the Police under Section 161 Cr.P.C. and is not a statement under Section 164 Cr.P.C, made before a Magistrate. As such the evidence of PW-11 (S.I. of Police) that the witness Sri Binod Mirdha @ Bindu Mirdha (PW-1) that he had made a statement before the Court is a false statement made by the IO.

24. The evidence of PW-12 is to the effect that he was posted in the Office of the Deputy Commissioner, Karbi Anglong, Diphu on 23.08.2004 as a Magistrate First Class. The appellant was produced before him and after cautioning the appellant that he was not bound to give his confessional statement and that it could be used as evidence against him, three hours reflection time was given to the appellant, by keeping him in the custody of his office peon. Thereafter, the appellant was cautioned that PW-12 was not a Police Officer, but a Magistrate and as the appellant agreed to give his confessional statement, the same was recorded as follows:

"My son Chanakya i.e. victim was pestering me for a pencil box. In anger I pushed him and his head touched the steps. Blood came out and he became senseless. I became very frightened and did not know what to do. In fear of being caught and its consequences, I threw the body of my son in the latrine tank. I did not tell anyone about it. Everyone went searching for the boy. I felt guilty and restless. Later I myself took out the body from the tank. I then confessed before all the people of gay colony that I killed my son. Actually, I did not mean to kill him, who kill one's own son. It was an accident. I became mad then I do not know why I later threw him in the latrine tank."

25. The appellant was thereafter examined under Section 313 Cr.PC on two occasions, once on 31.08.2022 and the other on 23.11.2022. The examination of the appellant under Section 313 Cr.P.C. dated 31.08.2022 is to the effect that he had confessed his guilt in the Police Station (Thana) as he had been assaulted by the Police. However, he did not kill his son. To all other questions put to him, the appellant answered with a stoic "I do not know". With regard to the question that he had confessed to the killing of his son to the people in the colony and that he had actually not meant to kill his son, but was an accident and that he had thrown the body of his son in the latrine tank, the appellant answered that as he was tortured by the Police, he had told the above story to

the Magistrate in fear. The appellant also stated that he brought his son home from school and kept him in his house. Thereafter he went out with his auto-rickshaw. He also made the following statements in his examination under Section 313 Cr.P.C. held on 23.11.2022 as follows:-

“40. Q. Do you have anything to say in your defence?”

Answer: I did not kill my son. It is true that I brought my son Chanakya Baruah from the School on the day of the incident at around 12:30 P.M and after keeping him at my home, I asked Binud Mirda who came to my home from the house of my neighbour to look after my son. Then I went out with my auto rickshaw to nearby Tiniali. At around 02:30 P.M/03:00 P.M, I was asked by one constable not to move from Tiniali. At evening, I was called to the Manja Police Station and asked me to be seated there. At around 09:00 P.M, one Police named Benerjee which I came to know his name later on assaulted me and alleged me that I had killed my son. But I did not kill my son. After that under compulsion I had to confess that I had killed my son. I do not know who killed my son. I am an innocent person.”

The above being said, the appellant retracted his confessional statement made under Section 164 Cr.P.C. in his examination under Section 313 Cr.P.C.

26. As can be seen from the evidence adduced by the learned Trial Court, there is nothing to show that the appellant had murdered his son, though he might have caused the death of his son unintentionally. The only thing connecting the appellant with the death of his son is his confessional statement made under Section 164 Cr.P.C, which shows that the deceased son had been pestering the appellant for a pencil box and out anger, the appellant had pushed his son. The same resulted in the boy falling down and hitting his head on the steps. There is nothing in the confessional statement to show that the appellant had any intention to kill his son or that he had used any motive for the same.

The Doctor's evidence indicates that there was injury on the left side of the victim's scalp/skull with depressed fracture of the parietal bone and that in the opinion of the Doctor, death was due to some dural haemorrhage due to fractural scalp.

27. One of the issues to be decided is whether the retracted confessional statement of the appellant can be the basis for convicting the appellant under Section 302 IPC. Secondly, whether the ingredients under Section 302 IPC was present, for the learned Trial Court to come to a finding that the appellant had committed murder.

28. In the case of ***K.I. Pavunny vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin***, reported in ***(1997) 3 SCC 721***, the Supreme Court has held that there was no prohibition under the Evidence Act to rely upon the retracted confession, to prove the prosecution case or to make the same the basis for conviction of the accused. However, practice and prudence required the Court to examine the evidence adduced by the prosecution, to find out whether there were any other facts and circumstances to corroborate the retracted confession. It further held that it was not necessary that there should be corroboration from independent evidence adduced by the prosecution, to corroborate each detail contained in the confessional statement. The Court is required to examine whether the confessional statement is voluntary, in other words, whether it was not obtained by threat, duress or promise. If the Court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the Court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could

be relied upon to base it's conviction. However, prudence and practice requires the Court to seek assurance, by getting corroboration from other evidence adduced by the prosecution. The issue to be decided in ***K.I. Pavunny (supra)*** was as to whether the confessional statement made to a Custom Officer under Section 108 of the Customs Act, though retracted at a later stage, was admissible in evidence and could form the basis for conviction.

29. In the present case, the confessional statement relied upon by the learned Trial Court has been made under Section 164 Cr.P.C. and not under Section 108 of the Customs Act.

30. In the case of ***Parmananda Pecu Vs. State of Assam***, reported in ***(2004) 7 SCC 779***, the Supreme Court has held that a retracted confessional may form the basis of a conviction, if the Court is satisfied that it was true and was voluntarily made, but it has been held that a Court shall not base a conviction on such a confession without corroboration. Similar is the judgment of the 4 Judges Bench of the Supreme Court in the case of ***Pyare Lal Bhargava Vs. State of Rajasthan***, reported in ***1963 Supl.1 SCR 689***.

31. In the case of ***Dhanabal & Others Vs. State of Tamil Nadu***, reported in ***(1980) 2 SCC 84***, the Supreme Court has held that if a witness does not resign from his statement under Section 164 Cr.P.C. while deposing during trial, then that statement under Section 164 Cr.P.C can be used for corroboration.

32. In the case of ***Parmananda Pecu (supra)***, the Supreme Court has held

that before acting on a conviction made in terms of Section 164 Cr.P.C, the Court must be satisfied that the procedural requirements laid down in Sub-Section 2 to 4 are complied with.

33. A perusal of the confessional statement made by the appellant shows that the memorandum that has to be placed at the foot of the recorded confessional statement, provided in Section 164 (4) Cr.P.C. has not been complied with.

34. In the case of ***Murugan Vs. State***, reported in ***2006 CRI.L.J.1085***, the Division Bench of the Madras High Court has held that in the absence of the mandatory requirement of Section 164(4) Cr.P.C, the document recording the confessional statement falls short of being a judicial confession.

35. In the case of ***Chandran Vs. The State of Madras***, reported in ***AIR 1978 SC 1574***, the Supreme Court has held that the defect regarding the absence of the appendage that has to be put at the foot of the confessional statement, certifying that the recording Magistrate believes the confession was voluntarily made, would be fatal to the admissibility and use of the confession against the accused at the trial.

36. We have also noticed that the appellant was not assured by the Court that in the event of refusal to make a confessional statement, he would not be given to Police custody again, prior to his confessional statement being recorded under Section 164 Cr.P.C. In this respect, the Division Bench of this Court, in the case of ***Abdul Subhan Vs. State of Assam***, reported in ***2022(4) GLT 679***,

has held that in the absence of any assurance, it cannot be concluded that the appellant was free from fear of being sent to the custody of the Police again and the said evidence and the manner in which the confession was recorded, did not inspire confidence to believe that the confessional statement was freely voluntary and without any influence or threat. Accordingly, this Court, in ***Abdul Subhan (supra)*** did not find it safe to rely on such a confessional statement.

The judgment of this Court in ***Abdul Subhan (supra)*** has also been relied upon by another Division Bench of this Court, in the case of ***Smt. Dipanjali Borgohain & 2 Others Vs. State of Assam, Crl.A.No. 311/2019.***

37. On considering the judgments mentioned above, with regard to whether the procedure requirements laid down in Section 164 Cr.P.C have been satisfied, we are constrained to give our opinion in the negative. Further, the appellant has retracted his confessional statement during his examination under Section 131 Cr.P.C, wherein he had also stated that he had been beaten up by the Police. We have also noticed that the appellant's alleged confessional statement was recorded in the Police Station on 23.08.2004 and before the Magistrate under Section 164 Cr.P.C. on the same date, i.e., 23.08.2004. The confession before the Police cannot be said to be a confession and would have to be considered as a statement made to the Police under Section 161 Cr.P.C. Further, the above events show that the appellant was taken from Police custody to the Magistrate on the same day. As such, we are not at all convinced that the confession of the appellant under Section 164 Cr.P.C. was voluntarily made.

38. Keeping aside the above observations and findings, assuming the

appellant's confessional statement under Section 164 Cr.P.C. to be voluntary, let us now look at the contents of the confessional statement made by the appellant. The same does not in any manner indicate that the appellant was having any intention or motive to kill his son, even if we believe that his actions had caused the death of his son.

39. On a careful perusal of the confessional statement of the appellant, we are more inclined to view the death of the victim boy as a tragic accident caused due to the rash and negligent act on the part of the appellant. Accordingly, we find that the appellant is guilty of causing the death of his son due to rash and negligent act in pushing a young boy, which resulted in the young boy falling down and hitting his head against the steps. As such, we are of the view that Section 302 IPC is not attracted to the facts of this case and that Section 304A IPC is attracted to the facts of the case. Accordingly, we are of the view that the charge should be altered against the appellant from Section 302 IPC to Section 304A IPC. We accordingly alter the charge and convict the appellant under Section 304A IPC and sentence him to undergo S.I for a period of 1 (one) year with a fine of Rs. 10,000/-, in default to undergo S.I for a further period of 1 (one) month.

40. With regard to his conviction under Section 201 IPC, we do not find any ground to interfere with his conviction under Section 201 IPC. However, the sentence awarded under Section 201 IPC is modified, to the extent that the appellant will undergo S.I for a period of 1 (one) year with a fine of Rs. 10,000/-, i/d S.I for a further period of 1 (one) year under Section 201 IPC. The sentences shall run concurrently. Consequently, the impugned Judgment dated

30.11.2022 passed by the Court of the Sessions Judge, Karbi Anglong, Diphu in Sessions Case No. 327/2017 (new)/Sessions Case No. 33/2010 (old) and the sentence awarded is set aside and modified to the extent indicated above.

41. The appeal is accordingly disposed of.

42. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant