

GAHC010278082019



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

Case No. : CRL.A(J)/99/2019

BEDILAL CHAUHAN
S/O. LT. KAMAL CHAUHAN, R/O. DARIA BASTI, P.S. RAHA, DIST. NAGAON,
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. NURUL HASAN, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

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

JUDGMENT

Date : 21-12-2023

[Kardak Ete,]

Heard Mr. N. Hasan, learned Amicus Curiae. Also heard Ms. S. Jahan,
learned Additional Public Prosecutor, Assam.

2. This criminal appeal is preferred against the judgment and order dated

21.05.2019 passed by the learned Additional Sessions Judge, Fast Track Court, Hojai, in Sessions Case No. 32/2018 whereby, the appellant has been convicted under Sections 302/201, IPC 1860 for committing the murder of Sebaklal Chauhan and sentenced to undergo rigorous imprisonment for life and a fine of Rs.10,000/- (Rupees Ten Thousand Only) under Section 302 IPC, 1860 and in default of payment of fine to undergo simple imprisonment for 3 (three) months and rigorous imprisonment for 3 (three) years with a fine of Rs.5,000/- (Rupees Five Thousand only) under 201, IPC and in default to undergo simple imprisonment for 3 (three) months. The sentences to run concurrently.

3. The prosecution case, in brief, is that an ejahar was lodged by one Sri Bharatlal Chauhan alleging that on 30.04.2018 at around 9 a.m. his brother Bedilal Chauhan forcefully took away his six years old boy namely, Sebaklal Chauhan from his courtyard from jhulna while he was sleeping. The accused took his minor son near to his vegetable garden of his house and assaulted him on his head with a spade and caused him death and then he fled away from the place of occurrence.

4. On receipt of ejahar, an FIR was registered being Hojai P.S. Case NO.296/2018 under Section 302/201, IPC against the accused appellant.

5. After the completion of the investigation charge-sheet was filed against the accused appellant. Learned Magistrate committed the case to the Court of the learned Additional Sessions Judge, Fast Track Court, Hojai. The charges were framed against the accused appellant under Section 302/201 IPC and the content of the charge was read over and explained to the accused/appellant to which he pleaded not guilty and claimed to be tried.

6. During the course of trial, Prosecution has examined 8 (eight) witnesses. Statement of the accused under 313, Cr.PC was also recorded. Accused appellant has declined to adduce any evidence in his defence.

7. Upon consideration of evidence on record the learned trial court concluded that the prosecution has proved that the accused appellant has committed murder of the victim Sevaklal Chauhan beyond reasonable doubt and also caused disappearance of the evidence and held the accused appellant guilty of offences under sections 301/201, IPC and convicted and sentenced the accused appellant as aforesaid.

8. Mr. N. Hasan, learned Amicus Curie, submits that the case of the prosecution is based solely on ocular evidence. Out of the 8 PWs, 4 (four) of them i.e. PW-1 to PW 4, claimed to be the eye witnesses to the occurrence who were the family members of the deceased child. PW-5 is the Doctor who conducted the post mortem examination, PW-6 and PW-7 are the seizure witnesses and PW-8 is the Investigating Officer. Although in the present case, 4 (four) prosecution witnesses have claimed to be the eye witnesses, yet there are material contradictions in their evidence with regard to the place of occurrence and also their presence at the place of occurrence.

9. Mr. Hasan, learned Amicus Curie further submits that PW-1, the informant, claimed to have seen the occurrence with his own eyes when he rushed to his house. PW-2 who claimed the PW-1 to be his elder brother in his evidence, deposed that he heard hue and cry from the house of Sri Bharat Lal Chauhan (PW-1) regarding taking away of his son forcefully by the accused/appellant. When he came out after hearing the sound of screaming, then he witnessed the

occurrence from his own eyes.

10. Mr. N. Hasan, learned Amicus Curie, submits that PW-3, the younger sister of the informant (PW-1) claimed that the act of assaulting the deceased child by the accused appellant was witnessed by her and further when she along with her sister-in-law and mother tried to resist the accused appellant, he also assaulted them. She further deposed that she was also taken to hospital for treatment. During cross-examination, the PW-3 admitted that at the time of occurrence, PW-1 who is the father of the victim was not present at the place of occurrence. She further stated in her cross examination that when the PW-1 came to the place of occurrence at that time the accused appellant was not present. She further admitted that at the time of occurrence, the PW-2 was also not there and when PW-2 came, the accused appellant almost left the place of occurrence. Hence, the evidence of the PW-3 casts serious doubt about the presence of the PW-1 and PW-2 at the place of occurrence itself.

11. Mr. N. Hasan, learned Amicus Curie, submits that PW-4 who is the mother of the informant (PW-1) as well as accused appellant deposed that on the day of occurrence, the accused appellant came to their house and took the victim child forcefully after assaulting her daughter Subhadra Chauhan (PW-3). As per PW-4, the accused appellant brought the victim child to his house and cut him with a spade. PW-4 admitted in her cross examination that at that point of time she was staying with Bharat Lal Chauhan. She further admitted that earlier she filed a case against the accused appellant in the P.S. and since then she had been living separately. PW- 4 further admitted in her cross examination that the accused appellant took the victim child from their house while he was sleeping at verandah and thereafter, the accused appellant assaulted the victim child in

his house near verandah and caused injury on his head. It was further admitted by PW-4 that at the time she was in her house in front of her door and was watching the occurrence. She further admitted in her cross examination that at that time, her daughter Subhadra (P-3) was also there and she was also watching the occurrence. According to learned amicus curie, thus, it can be seen that none of the PWs- 1, 2 & 3 said that the accused appellant took the victim child from the house of the informant to the house of the accused appellant and thereafter assaulted him with a spade except the PW-4. However, it can be seen from the Rough Sketch Map of the place of occurrence (Exhibit-7) that in between the house of the informant and the accused appellant, there is a vegetable garden which is shown as the place of occurrence by the Investigating Officer in his Rough Sketch Map (Exhibit 7). Hence, there is serious discrepancy with regard to the place of occurrence as none of the PWs said that the occurrence took place in the vegetable garden as shown by the Investigating Officer in the Rough Sketch Map.

12. Mr. N. Hasan, learned Amicus Curie, submits that the spade which was alleged to have been used by the accused appellant while committing the alleged offence, was recovered and seized as per leading to discovery by the accused appellant on the next day of occurrence i.e. on 01.05.2018 at around 9.15 am in the morning vide Seizure List being MR No.63 (Exhibit-4). In the said seizure list, in column-3 pertaining to description of seizure, it is mentioned that said seized spade contained suspected to be human blood. Further as per PW-6, the seizure witness, at the time of recovery of the spade, it was smeared with blood. However, the Investigating Officer(PW-8) admitted in his evidence that the said spade was sent for FSL examination but as per FSL Report, no human blood was found on the seized spade. However, the said FSL Report was not

exhibited by the prosecution during trial. Further, the Investigating Officer also collected the injury report of the PW-3 who claimed to have sustained injury on being assaulted by the accused appellant at the time of occurrence but the same has not been exhibited by the prosecution leading to serious doubt as to whether the said PW-3 sustained any injury at all. Further, the PW-6 in his cross-examination said that after the occurrence, he went to the house of the informant and came to know that the incident occurred at the house of Bharat Lal Chauhan (PW-1). He heard that the accused appellant had killed the victim by hanging in a guava tree and the said fact was told to him by Bharat Lal Chauhan, the father of the victim (PW-1).

13. Mr. N. Hasan, learned Amicus Curie, further submits that another important line of argument would be non-examination of any independent witness. The entire incident has been alleged to have occurred at around 9 a.m. in the morning hours in the broad day light and admittedly there was hue and cry at the time of occurrence, yet not a single independent witness has come forward to support the prosecution case. All the eye witnesses i.e. PW-1 to PW-4 are family members and relatives of the deceased and as such interested witnesses. There are material contradictions with regard to presence of the eye witnesses and the place of occurrence. Therefore, he submits that the said PWs.1—4 are not worthy of credibility and reliance and hence their evidence may kindly be discarded. Moreover, it is well settled principle of law that the more serious the offence, the stricter the degree of proof required.

14. It is the further submission of Mr. N. Hasan, learned Amicus Curie that admittedly, there was property dispute between the informant and the accused appellant and also the PW-4, who is mother of the accused appellant, and

earlier filed a case against him. Hence, animosity and enmity cannot be ruled out in the instant case. Further, it is also admitted fact, that the victim child after being assaulted by the accused appellant with a spade, was taken by the PW-1 and PW-2 to the Police Station first and then to hospital. He has submitted that under normal circumstances, a seriously injured child victim of 6 years old having suffered 2 deep cut injury on left and right side of head would have been taken to hospital first so that his life could be saved rather than Police Station as an ordinary prudent person would have done. However, that has not been done in the present case. Such conduct on the part of the PW-1 and 2 is doubtful and surprising. Therefore, it is submitted that in the present case, the prosecution has not come up with the true story and the accused appellant at least deserves the benefit of doubt.

15. In support of his submissions, learned amicus curie has placed reliance of the judgments of the Hon'ble Supreme Court.

a). **Raghunath vs. State of Haryana and Another**, reported in (2003) 1 SCC 398

b). **State of Punjab vs. Sucha Singh and Others**, reported in (2003) 3 SCC 153.

c). **Shanker vs. State of Madhya Pradesh**, reported in (2018) 15 SCC 725.

d). **Ramsewak and Others vs. State of M.P.** reported in (2004) 11 SCC 25,

16. Ms. S. Jahan, learned Additional Public Prosecutor submits that the prosecution story in the instant case is that the appellant Sri Bedilal Chauhan following a quarrel, killed the 6 years old son of his brother by hitting him on his head with a spade. The evidences appearing are as follows:-

i) The case rests on ocular evidences and it is not the case of a single eye witness but of 4 number of eye witnesses whose statements are consistent with each other and they are PW-1, 2, 3 and 4.

ii) PW-1 the father of the deceased deposed that he was informed at his work place by his another son when the victim was taken away by the appellant and that he rushed home and saw the incident of appellant assaulting his son with a spade on his head. He further stated that he with PW-2 took the victim to the police station.

iii) PW-2, who is an immediate neighbor, corroborated the statement of PW-1 to the effect that upon hearing hue and cry, when he came out, he saw the appellant with a spade and the victim on the ground and further stated that at that juncture, PW-1 reached the place of occurrence who told the appellant to leave his son but the appellant hit the victim twice on his head.

iv) PW-4, the mother of PW-1, was also an eye witness and stated that she was at home when the appellant took away the victim forcibly and that she and her daughter resisted to which, her daughter was assaulted by the appellant and further that the appellant killed the victim with the spade and that she saw the incident standing in the front of the door of her house.

v) PW-4 also stated that PW-1 had also reached the place of occurrence before the incident and that the appellant assaulted the victim in front of PW-1.

vi) PW-3, the sister of PW-1, was also an eye witness. She was at home at the time of occurrence and she resisted when the appellant took the victim from his house and further stated that she was assaulted too.

vii) PW-3 however in her cross-examination said that PW-1 and 2 reached the place of occurrence late and that PW-1 reached at a time when appellant had already left and PW-2 had reached when appellant had almost left the place. Learned Addl. PP submits that one eye witness not speaking about the other eye witness would not be fatal in all cases. It is possible that during the course of gruesome incident of homicide, one may not see who else have also witnessed the incident. More so, in the instant case, PW-3 was assaulted and she might be receiving some first aid for which she could not see that her brother was also present at some corner and was witnessing the incident.

viii) The doctor who conducted autopsy on the body of the deceased and examined as PW-5 found two deep cut injuries on both the left and the right side of the head which is corroborated by the statement of PW-2 who said the appellant hit the victim twice on his head.

ix) Motive is writ large in the facts of the case inasmuch as the appellant went to take signature of his brother, PW-1 on a Sale deed, which PW-1 refused and as such the appellant threatened that he would commit some offence if PW-1 does not sign the papers. The appellant shortly thereafter committed the offence. The appellant went to PW-2, asking to be present when he sells his land to which PW-2 said that he should actually take permission from his mother as she was the sole owner. Further the appellant too admitted in his examination under Section 313 Cr.P.C. that he had dispute with his brother over landed property.

17. She has submitted that there was no delay in lodging the ejahar as raised by the appellant because immediately after the occurrence, the informant along

with the victim reached the police station and informed, in pursuance to which a GD Entry was entered into. The place of occurrence is in the front of both the appellant as well as informant house as would be manifest from the Sketch Map which lends support to the versions of eye witnesses.

18. To fortify her submissions, the learned Additional Public Prosecutor has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Shahaja @ Shahajan Ismail Mohd. Shaikh Vs. State of Maharashtra** reported in **Manu/SC/0892/2022** wherein the Hon'ble Supreme Court had culled out the board principles in gauging the statements of eye witness.

“27.The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."

19. We have considered the submissions advanced by the learned counsel for the parties. To appreciate, we would refer to the deposition of the prosecution

witnesses:

20. PW1, Bharat Lal Chauhan, is the informant and the victim/deceased Sevak Lal was his son. Accused Bedi Lal Chauhan is his own brother. He had deposed elaborately that the occurrence took place on 30.04.2018 at about 9 am and he was at work place nearby his village. The accused went to meet him at his work place and asked him to put his signature in a sale deed. He told him that he will put his signature after having brief discussion about the share of land with other brothers. At that moment, the accused threatened him if he does not put his signature within 9 am then he will commit some offence. A moment later, the accused Bedi Lal Chauhan came back home and caught hold of his son who was sleeping in a Jhulna by hanging in the verandah. At that time, one of his son informed him that the accused took away his son Sevak Lal forcefully. When the accused was taking away the victim then his wife and his sister tried to restrain him but the accused assaulted them. After getting that information, he immediately rushed to his house and saw that the accused was holding his son and asked him that whether he would put his signature or not. While he refused to do so without having discussion, then the accused assaulted his son with a spade on his head in front of him. Soon after the occurrence, he along with Sugrim took his son to Hojai P.S. but he died. On the same day, he lodged the FIR against the accused. Police conducted inquest over the dead body of his son in presence of him. He also put his signature in the inquest. Ext 1 is the FIR and Ext 1(1) is his signature. Ext 2 is the inquest report and Ext 2(1) is his signature. In the cross, he deposed that they are two brothers and two sisters. One of his sisters is married and he and his accused brothers stay separately by constructing separate house. There is a dispute in respect of landed properties. His mother used to stay with the accused but at the relevant time she was

staying with him.

21. PW-2, Sugrim Chauhan, had stated that he knows the informant, accused as well as the victim deceased Sevak Lal. The occurrence took place on 30.04.2018 at about 9 am on the day in the morning, accused came to his house and told him that, he is going to sale his land and he requested him to be present at the time of selling the land. In that context, he suggested him to sell the land by obtaining signature of his mother as he was the actual owner. At that time, the accused Bedi Lal Chauhan was in drunken condition but he was in his control and thereafter, he left from his house. At about 9 am, he was taking his meal and he heard hue and cry in the house of Bharat Lal Chauhan regarding taking of his son forcefully by the accused person. After finishing his meal, he came out and saw the accused person was with a spade and the victim was lying on the ground in front of him. At that time, he said his elder brother Bharat Lal Chauhan was coming and telling him to leave the victim and he did not listen and then, the accused assaulted with the spade to the victim in front of him on his head two times. Thereafter, the accused person was coming towards to Bharat Lal Chauhan/informant to attack him. Later on, the accused person fled away from the P.O with the spade. Subsequently, the victim was taken to P.S. by the informant and then to hospital where the victim declared as dead. He saw injury marks on the head of the victim. Police conducted inquest over the dead body in presence of him where he put his signature as witness. Ext 2 is the inquest report and Ext 2(2) is his signature. In the cross, he deposed that, there was a dispute between the informant and accused person in respect of landed property.

22. PW-3, Subhadra Kumari, one of the sisters of appellant and informant, had

deposed that the informant Bharat Lal Chauhan and the accused Bedi Lal Chauhan are her elder brothers. The occurrence took place about 4/5 months ago at about 9 am. On the day of occurrence, her accused brother Bedi Lal Chauhan came to their house and asked about her another brother Bharat Lal Chauhan. Then she replied that he is at his working place. Then the accused took her nephew Sevak Lal and left the house. They informed her brother Bharat Lal to come home and then the accused killed the victim Sevak Lal with a spade. When the victim was taken by the accused person, at that time she along with her sister-in-law and her mother objected and tried to resist him but the accused assaulted them. Thereafter, the accused kept the victim child on the ground by pressing him with leg on his head and then assaulted him with spade on his head and she witnessed the occurrence. The victim child died on the way to hospital. She was also taken to hospital for treatment. In the cross, she deposed that at the time of occurrence, the father of the victim Bharat Lal was not present at the P.O. but he came after 10/15 minutes of the occurrence. When the father of the victim came to P.O. at that time, the accused was not present there. At the time of occurrence, Sugrim Chauhan was not present there. He was taking food in his house and after hearing "halla", he came out. When he came, the accused has almost left the P.O. At the time of occurrence, the accused was not in drunken condition. The distance between their house and the accused person is about 50 feet away.

We find some discrepancies in her cross examination with regard to the presence of PW-1 and 2 at the time of occurrence. However, the fact of assault by accused to the victim has not been dislodged.

23. PW-4, Smt. Jyoti Devi, the mother of the informant and the accused

appellant, had deposed that informant Bharat Lal Chauhan is her son. Accused Bedi Lal Chauhan is also her son. The occurrence took place about 6 months ago at about 9 a.m. in the morning. On the day of occurrence, while her son Bharat Lal Chauhan was working nearby house, then the accused Bedi Lal Chauhan went there and met him and asked him to put his signature to sale a plot of land. Thereafter, the accused came to their house and took the victim child with him forcefully after assaulting her daughter Subhadra Chauhan. The accused brought the victim child to his house and thereafter cut him with a spade. After the occurrence, the accused took his bicycle and fled away from the place of occurrence. She was also requesting him not to kill the victim child but he did not listen to her. The accused threatened her to face dire consequence if she does not put her signature in the sale deed. In the cross, she categorically state that on the day of occurrence, the accused was also chasing her to assault but she ran away. When PW-1 reached the place of occurrence, the accused killed the victim child. When his son Bharat was coming to the place of occurrence than before him the victim child was killed. Bharat Lal was working about ½ K.M away from the place of occurrence at the time of occurrence. The accused took the victim child from their house while he was sleeping at verandah and thereafter, the accused assaulted the victim child in his house near verandah and caused injury on his head. At that time she was in her house in front of the door and she and her daughter Subhadra witnessed the occurrence.

24. PW-5, Dr. Latibur Rahman, had stated that on 30.04.2018, he did post mortem examination on the dead body of one Sevak Lal Chauhan aged about 6 years made body. During examination he found deep cut injury on left side of head size 4X3 cm and a deep cut injury on the right side of head. In his opinion,

the cause of death was due to shock and hemorrhage as a result of injury described. Exhibit 3 is the Post-Mortem Report and Exhibit 3(1) is his signature. In the cross, nothing has been dislodged to negate his evidence in chief.

25. PW 6, Ramayan Gowala, had deposed that the occurrence took place about 4 months ago at the house of informant. There is a dispute in respect of land between the informant and accused. On the relevant day of occurrence, he heard about the occurrence that the accused Bedi Lal Chauhan after killing the victim child with a spade and tried to flee away. After getting that information, he along with police started searching him but they came to know that the accused Bedi Lal Chauhan gone towards Amtola and thereafter, he went to Kurkut Bosi Salbagan. In the meanwhile, some of their nephews tried to catch him but again he fled away and eventually the accused was apprehended from Jamuhandal village while he was drinking. The spade was recovered as per version of accused person and leading to discovery. The said spade was smeared with blood. The said spade was TATA brand. The said spade was seized in presence of him. Ext 4 is the seizure list and Ext 4(1) is his signature. In the cross, he deposed that on the next day morning at about 6 a.m., police recovered the spade. Police recorded his statement on the next day of occurrence at P.S. and he put his signature in the Ext 4(1) at P.S. the accused was in drunken condition when we apprehended him from Januhandal village. He has not heard that, prior to the occurrence, he was in drunken condition. After the occurrence, he went to the house of informant and came to know about the occurrence. He went to the place of occurrence after 3/4 hours at around 10 a.m. and he put his signature in a written paper. Suresh Chauhan has also signed the Ext 4 at Police Station in presence of him. PW-7, Chote Lal Chauhan stated in his evidence that he knows the informant as well as the

victim/deceased Sewal Lal. He also knows the accused Bedi Las Chauhan. The occurrence took place about 2 months ago. On the relevant day of occurrence, he was at NRC office and he heard about the occurrence from villagers that the accused Bedi Lal Chauhan killed a child. He is a hearsay witness.

26. PW 8, S.I. Badan Ch. Bora, the Investigating Officer who had deposed that on 30.04.2018 at about 10:10a.m., one Sri Bharat Lal Chauhan came to Hojai P.S. and informed that, his minor son Sevak Lal Chauhan has been assaulted by his brother Bedi Lal Chauhan on his head and caused grievous injury. Accordingly, the O/C Hojai P.S. made G.D. Entry vide Hojai P.S. GD. Entry No.103 dated 30.04.2018 and directed him to take necessary steps and sent the injured child to Hojai FRU. He took the victim to hospital but Doctor declared him dead. Thereafter, he prepared to conduct the inquest and the inquest was done by Executive Magistrate, Hojai. He recorded the statement of inquest witness namely Sugrim Chauhan and Bharat Lal Chauhan. Thereafter, he sent the dead body to Nagaon B.P.C.H to conduct P.M over the dead body. He also sent another victim Miss Subhadra Chauhan the sister of the informant for medical examination. On that day at about 1 p.m, he visited the place of occurrence and found that the accused Bedi Lal Chauhan was detained by local public while he tried to flee away and hence he took him in his custody. He drew the rough sketch map and recorded the witness available at place of occurrence, namely Rita Devi, Subhadra Chauhan, Jyoti Devi Umesh Chauhan and Rajendra Chauhan. After examining the eye witness it was found that the accused Bedi Lal Chauhan assaulted the son of informant with a spade by taking the child from verandah where the child was sleeping at "jhulna". On the same day at about 4 p.m. Bharat Lal Chauhan the father of the deceased lodged an FIR at Hojai P.S. which was registered as Hojai P.S. Case No.296/18 and O/C

Hojai P.S endorsed him to investigate the same. After receiving the FIR he recorded the statement of Bharat Lal Chauhan. He also recorded the statement of accused Bedi Lal Chauhan. In this statement accused confessed that he had killed the child with spade. He also confessed that there was a dispute regarding sharing of their landed property between the informant and accused. He was ready to show the spade where he kept it. On 01.05.2018, at about 8:40 a.m. he again went to the place of occurrence along with accused to recover the spade which was used in the alleged offence. On his leading, he recovered the spade near from L.P. School, Hojai. Accordingly, in presence of the witness he seized the spade. After medical examination of the accused Bedi Lal Chauhan he forwarded the accused to Court for judicial custody. He sent the seized spade for FSL examination. Subsequently, he collected the medical report of the injury of Subhadra Chauhan and also collected the P.M. report of the deceased. He collected the FSL report from Guwahati and filed the charge-sheet against the accused Bedi Lal Chauhan u/s 302/201 IPC. Ext 5 is the charge-sheet submitted by him and Ext 5(1) is his signature. Ext 6 is the rough sketch map of discovery of the seized spade and Ext 6(1) is his signature. Ext 7 is the rough sketch map of the place of occurrence and Ext 7(1) is his signature. Ext. 4 is the seizure list of spade and Ext 4(2) is his signature and Ext 4(3) is the signature of the accused Bedi Lal Chauhan in the seizure list. Ext 8 is the extract copy of Hojai P.S. G.D. Entry No.103 dated 30.04.2018. Ext 1 is the FIR, Ext 1(2) is the endorsement note of the O/C Hojai P.S. and Ext.1(3) is the signature of O/C Hojai P.S. Khiteswar Bonia which he could recognize it. Ext 9 is the C.D. Ext. 9(1) is the confessional statement of accused Bedi Lal Chauhan, Ext. 9(2) is his signature. In the cross, he deposed that the informant Bharat Lal Chauhan had reached Hojai P.S. on 30.04.2018 at around 10:00 a.m. but he filed ejahar i.e.

Ext 1 at 4 p.m. As per Ext 1 the time of occurrence is 9 a.m. In Ext 1 there a column No.8 to give reason for the delay in lodging the complaint. There is no mentioning of any confession made by the accused before him in the charge-sheet i.e. Ext 5. As per Ext 6 near the place from where the weapon was recovered there was house of one Samir Gupta. He recovered the spade from an open place in front of L.P. school and it was accessible to public round the clock. There is no mentioning of the blood stain cloth seized from the body of the deceased in his seizure list i.e. Ext 4. As per FSL report no human blood found on the seized spade. While he recorded the alleged confessional statement of the accused i.e. Ext 9(1), the accused was in police custody.

27. On careful appreciation of the evidences of above evidences, although appears minor discrepancy in the deposition, we find no major or materials discrepancies which would make the prosecution case fatal.

28. On detail analysis of evidence on record, it transpires that the accused appellant wanted to sale his share of his landed property and in this regard, he wanted to obtain the signatures of other co-sharers. On the day of occurrence, while the informant, Bharat Lal Chauhan, PW-1, was working nearby house, the accused appellant went there to meet him and asked him to put his signature in the sale deed. When the informant told that he has to discuss the matter with other co-sharers then the accused appellant got infuriated and expressed his intention that if he does not put his signature then he will commit some offence. After returning, he directly went to the house of informant and forcefully took the victim minor child Sevak Lal Chauhan aged about 6 years from verandah where the victim child was sleeping in a jhulna. When the accused was taking away the victim child then, the sister of the informant Subhadra Chauhan, PW-

3, and his mother, PW-4, have tried to restrain him but the accused assaulted Subhadra Chauhan, PW-3, and caused her injuries. The accused appellant brought the victim child to his house and hereafter, assaulted him with a spade on his head. After the occurrence, the accused took his bicycle and fled away from the place of occurrence. This fact is thoroughly corroborated by the ocular witnesses, PWs-1, 2, 3 and 4. PW-1 had clearly stated in his evidence that after getting the information, he rushed back to his house and saw that the accused was holding his son and asked him, whether he would put his signature or not. While he refused to do so without having discussion, then the accused assaulted his son with a spade on his head in front of him. Soon after the occurrence, he along with one Sugrim, PW-2, took his son to Hojai P.S. but he died. PW-2 stated that on the relevant day at about 9 A.M he was taking his meal and he heard suddenly hue and cry in the house of Bharat Lal Chauhan regarding taking away of his son forcefully by the accused person. After finishing his meal, he came out and saw the accused was with a spade and the victim was lying on the ground in front of him. At that time, he said his elder brother Bharat Lal Chauhan was coming and told to leave the victim boy but he did not listen and then, the accused assaulted with the spade to the victim in front of him on his head two times. Corroborating another ocular witness, PW-3 revealed that when the victim was taken by the accused person, at that time, she along with her sister-in-law and her mother objected and tried to restrain him but the accused assaulted them too. Thereafter, the accused kept the victim child on the ground by pressing him with leg on his head and then assaulted him with a spade on his head. PW-4, mother of the accused and informant stated in her evidence that the accused took the victim child from their house while he was sleeping at verandah and thereafter, the accused assaulted the victim child in his house

near verandah and caused injury on his head. At that time she was in her house in front of the door and witness the occurrence. The aforementioned testimonies have not been shaken at all and thus, it inspires confidence of this Court. Their evidences are found wholly reliable and trustworthy in absence of impeachment.

29. The medical testimonies, PW-5, Dr Latibur Rahman, had stated in his evidence that on Post mortem examination on the dead body of one Sevak Lal Chauhan aged about 6 years male body he found a deep cut injury on left side of head measuring 4x3 cm. and a deep cut injury on the right side of head. He opined that the cause of death was due to shock and haemorrhage as a result of injury described. We find no discrepancy to discard the medical testimony.

30. With regard to seizure, testimony of the Investigating Officer clearly reveals that on being led by the accused person he recovered the spade which was used in commission of offence. The seizure witness PW-6 & PW-7 corroborated it by exhibiting their signatures in Ext. -4. Thus, from the corroborated testimonies on the proven facts and circumstances that we are of the opinion that it is none other but the accused appellant Bedi Lal Chauhan on 30.04.2018 at about 9.00 am has assaulted with a spade on the head of victim, Sevak Lal Chauhan and caused him grievous cut injuries which led to death of the victim.

31. In the case of **Raghunath (supra)** the Hon'ble Supreme Court has observed that "It is now well settled principle of law that if two views are possible, the one in favour of the accused and other adversely against it, the view favouring the accused must be accepted".

In the present case, we find no two views, thus, question of view favouring the accused appellant does not arise.

32.In the case of **Sucha Singh (Supra)** the Hon'ble Supreme Court has observed that "when the basic foundation of the prosecution case crumbled down, the motive becomes inconsequential. At the same time, animosity is a double-edged sword. It could be a ground for false implication, it could also be a ground for assault".

In the instant case, in view of the facts and circumstance as discussed above, animosity clearly a ground for assault of the victim which led to his death.

33. In the case of **Shanker (Supra)** Hon'ble Supreme Court has observed that "Before going to award conviction against an accused for the offence under section 302 IPC the Court should be mindful of the fact that there should be no room to suspect the evidence of key prosecution witnesses based on whose evidence the conviction is being awarded. As a general rule, while appreciating evidence in a criminal case, the court should bear in mind that it is not the quantity, but the quality of the evidence that is material. It is the duty of the Court to consider the trustworthiness of the witness and the evidence adduced on record and to assess the same in a prudent manner whether the same inspires confidence so as to accept and act upon, before convicting an accused."

34. The Hon'ble Supreme Court in the case of **Ramsewak (Supra)** has observed as under:-

"The learned counsel for the State of M.P., however, contended that

what was stated in the said part of the evidence of PW-1, was referable to the inquest report and not the FIR. We have examined the original which is in Hindi and the translation is admittedly correct. A reading of this part of the evidence shows that this witness was speaking about 2 reports. The first report which he refers to must be in regard to the inquest in regard to which he says that he does not remember if the Police took his signatures after the spot inspection. The latter part of the evidence certainly refers to his complaint which he in specific terms states was written on the spot only. Even assuming that there is some doubt as to the interpretation of this part of his evidence since the same is not clarified by the prosecution by way of re-examination, the benefit of doubt should go to the defence which has in specific terms taken a stand that the FIR came into being only after the dead body was recovered. We also notice that there is considerable doubt in regard to the place of incident also. From the medical evidence we notice that the deceased suffered 3 major incised wounds leading to the severance of the blood vessels and amputation of his hand near the wrist and the body in question was lying at the spot till the Police came which was nearly 4 to 5 hours later but still the investigating agency was unable to find any blood on the spot. Of course, the prosecution has given an explanation that after the incident in question it had rained but even then it is difficult to believe even traces of blood could not have been found on the soil inspite of the rain. The absence of any such material also supports the prosecution case that the incident in question might not have happened at the place of incident. In the background of these deficiencies in the prosecution case, we think the trial court was justified in coming to the conclusion that the prosecution has not established its case hence the trial court was justified in acquitting all the accused persons. Consequently, we are of the opinion that the High Court was not justified in taking a contrary view.”

35. In the present case, the accused appellant Bedi Lal Chauhan had intentionally by assaulting the victim with a spade caused death of victim which undoubtedly amounts to murder under section 302 of IPC, 1860. The act of the accused does not fall within the ambit of the exception under IPC. We also find that the accused has caused disappearance of the evidence which attracts the provision of Section 201, IPC 1860 against the accused appellant as the accused

after commission of offence, took his bicycle along with the spade and kept it in a concealed manner. The said spade which was used by the accused in commission of murder of victim child, could be recovered only after being led by the accused appellant.

36. In view of the above conspectus of the case and evidence on record and on careful analysis of the testimonies, we hold that the prosecution could prove the offence under section 302/201 of IPC, 1860 against the accused appellant Bedi Lal Chauhan beyond reasonable doubt.

37. From the analysis of the evidence on record, particularly the testimony of PW.1, PW.2, PW.3 and PW.4, we are of the view that the evidence of these witnesses clearly show that they are ocular witnesses who are credible, reliable and trustworthy. Thus, the conviction of the accused/appellant by the learned Trial Court, based on the testimony of PW.1, PW.2, PW.3 and PW.4, which are corroborated by other evidence warrants no interference. We have therefore, no hesitation in coming to the conclusion that the evidence laid by the prosecution establishes the charges brought against the accused/appellant beyond reasonable doubt. Therefore, the learned trial Court had rightly convicted the accused/appellant.

38. Consequently, the conviction and sentence of the accused/ appellant Bedilal Chauhan, vide impugned judgment and order dated 21.05.2019, passed by the learned Additional Sessions Judge, Fast Track Court at Hojai in Sessions Case No.32/2018, is affirmed.

39. Criminal Appeal stands dismissed accordingly.

40. We appreciate the able assistance rendered by the learned counsel for the parties.

The LCR be sent back.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant