

GAHC010094132018



2024:GAU-AS:7977

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

CRIMINAL APPEAL [I] NO. 51/2018

Sri Mohendra Lahon

.....Appellant

-VERSUS-

The State of Assam and another

.....Respondents

Advocates :

Appellant	:	Mr. B. Prasad, Amicus Curiae
Respondent	:	Ms. B. Bhuyan, Senior Counsel & Additional Public Prosecutor, Assam Ms. M. Chakraborty, Advocate
Date of Hearing, Judgment & Order	:	30.07.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

JUDGMENT & ORDER [ORAL]

[M. Choudhury, J]

Assail is made in this criminal appeal preferred from Jail under Section 383, Code of Criminal Procedure, 1973 ['CrPC' and/or 'the Code', for short] to a Judgment and Order dated 05.02.2018 passed by the Court of learned Sessions Judge, Sivasagar

[‘the trial court’, for short] in Sessions Case no. 37 [S-S] of 2015, which arose out of Haloating Police Station Case no. 145/2014 and corresponding G.R. Case no. 1885/2014. In the trial of Sessions Case no. 37 [S-S] of 2015, the accused-appellant faced a charge of uxoricide and at the end of the trial, the learned trial court finding the accused-appellant guilty of committing the offence of murder under Section 300, Indian Penal Code [IPC], has sentenced him under Section 302, IPC to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,000/-, in default of payment of fine, to undergo simple imprisonment for another month.

2. The investigation into the case, Haloating Police Station Case no. 145/2014 was launched pursuant to institution of a First Information Report [FIR] by one Sailen Lahon as the informant before the Officer In-Charge, Haloating Police Station on 08.09.2014. In the FIR, the informant had inter alia stated that at around 10-00 p.m. on 07.09.2014, his younger brother, Mahendra Lahon, that is, the accused had an altercation with his wife, Rebati Lahon over some family matters. In the process, the accused hit his wife on head a number of times with a wrench [steel colour] resulting in grievous injuries on the person of his wife. The informant had stated that Rebati Lahon was immediately taken to the Hospital at Amguri by a 108 Ambulance with the assistance of Police for providing treatment there. As the condition of Rebati Lahon was found serious, she was, later on, transferred to a Hospital in Jorhat as per the advice of the doctors. However, Rebati Lahon succumbed to her injuries at around 04-00 a.m. on the following day.
3. On receipt of the FIR, the Officer In-Charge, Haloating Police Station registered the same as Haloating Police Station Case no. 145/2014 for the offence under Section 302, IPC on 08.09.2014 and entrusted the investigation of the case to one Rabindra Hazarika [P.W.8], a Sub-Inspector of Police attached to Haloating Police Station.
4. It has emerged from the materials on record that prior to lodgment of the FIR in respect of the incident, there was a general diary entry viz. Haloating Police Station General Diary Entry no. 140 dated 07.09.2014, which was registered on the basis of a telephonic information received from one Prabhat Gogoi, Sarkari Gaonburah at 10-15 p.m. on 07.09.2014. Pursuant to registration of the General Diary Entry no. 140, the Officer In-Charge, Haloating Police Station had directed Rabindra Hazarika [P.W.8] to go to the place of occurrence to take necessary steps. It was on the basis

of the said direction, Rabindra Hazarika, the I.O. [P.W.8] had visited the place of occurrence [P.O.], that is, the house of the accused and the deceased at around 10-20 p.m. on 07.09.2014. At the P.O., the I.O. [P.W.8] found that the accused was already kept detained there. Finding the accused so detained at the P.O., the I.O. [P.W.8] took the accused into custody. One iron rod with bloodstains on it was found at the P.O. and the same was also seized by the I.O. by preparing a Seizure List. After the accused was taken into custody, he [the accused] was taken to Amguri Hospital for providing treatment. As in the meantime, the injured person, Rebati Lahon was taken to Amguri Civil Hospital for providing treatment, the I.O. visited the injured there. As the condition of the injured, Rebati Lahon was found serious and she was not in a position to speak, she was referred to the Jorhat Medical College & Hospital [JMC&H]. After providing preliminary treatment to the accused, the I.O. brought him to Haloating Police Station. The injured, Rebati Lahon who was being treated in the JMC&H, breathed her last in the meantime there. On receiving the news of death of Rebati Lahon at around 05-15 a.m. on 08.09.2014, the I.O. proceeded to the P.O. for confirming the fact of death of Rebati Lahon. At the P.O., he prepared a Sketch Map of the P.O. and recorded statements of a number of witnesses there. In the meantime, the inquest on the deadbody of the deceased was conducted by the Police personnel from Jorhat Police Station. After the inquest proceeding, the post-mortem examination on the deadbody of the deceased was performed at the JMC&H on 08.09.2014. During the course of investigation, the I.O. sent the seized iron rod and a portion of blood mixed soil to the Directorate of Forensic Science [DFS], Assam for serological examination. After collecting the Post-Mortem Examination [PME] Report and the Report of serological examination, the I.O. [P.W.8] submitted a charge sheet under Section 173[2], CrPC vide Charge Sheet no. 11 of 2015 on 30.01.2015 finding a prima facie case well established against the accused for the offence under Section 302, IPC.

5. On submission of the Charge Sheet, the Court of learned Additional Chief Judicial Magistrate, Sivasagar secured the appearance of the accused from jail custody on 17.03.2015. Upon such appearance, the accused was furnished with the copies in compliance of the procedure laid down in Section 207, CrPC. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the Court of learned Additional Chief Judicial Magistrate, Sivasagar by an Order of Commitment dated 17.03.2015 committed the case records of G.R. Case no. 1885/2014 to the Court of

Sessions, Sivasagar. The Jail Superintendent, Sivasagar District was directed to produce the accused before the Court of Sessions, Sivasagar on 31.03.2015 and the learned Public Prosecutor was accordingly notified.

6. On receipt of the case records of G.R. Case no. 1885 of 2014, pursuant to the Order of Commitment dated 17.03.2015, the Court of Sessions, Sivasagar [the trial court] registered the same as Sessions Case no. 37 [S-S] of 2015. After securing the appearance of the accused before it; and hearing the Public Prosecutor and learned Defence Counsel; and upon perusal of the materials available on record, the learned Court of Sessions had initially, on 02.05.2015, framed the following charge against the accused :-

That you on 07.09.2014, at about 10-00 p.m. you have committed murder by causing the death of Smti. Rebati Lahon and thereby committed an offence punishable under Section 302 of the Indian Penal Code [IPC] and within my cognizance.

7. When the particulars of the charge were read over and explained to the accused, the accused abjured guilt and claimed to be tried. After closure of the evidence from the prosecution side; and examination of the accused under Section 313, CrPC; the learned trial court, on 30.01.2018, altered the charge as under :-

That on 07.09.2014, at about 10-00 p.m., you have physically assaulted your wife Smti. Rebati Lahon with an iron pipe on her head and on 08.09.2014, at morning hours said Rebati Lahon succumbed to her injuries during treatment at Jorhat Medical College & Hospital and thereby you have committed the offence of murder by intentionally or knowingly causing the death of Rebati Lahon and thereby committed the offence punishable under Section 302, IPC and within the cognizance of this Court and I thereby direct that you be tried by this Court for the said charge under Section 302, IPC.

8. After the charge was reframed, the learned trial court explained and read over the charge to the accused afresh. The accused pleaded not guilty to the charge. When the learned Trial Court asked both the sides as to whether they would re-examine the prosecution witnesses, who were already examined and discharged, subsequent

to alteration of the charge, the parties expressed their disinclination to re-examine those prosecution witnesses again. After closure of evidence from the prosecution side, the accused was examined under Section 313, CrPC for his explanation as regards the incriminating materials appearing from the prosecution evidence against him. The plea of the accused was that of denial. The accused did not adduce any defence evidence in his support. Thereafter, the learned trial court after hearing the submissions of the learned counsel for the parties; and on evaluation of the evidence/materials on record; the learned trial court proceeded to deliver the Judgment and Order on 05.02.2018, as mentioned hereinabove.

9. During the course of the trial, the prosecution side in order to bring home the charge, examined eight nos. of prosecution witnesses and they were :— [i] P.W.1 – Sailen Lahon; [ii] P.W.2 – Purobi Lahon; [iii] P.W.3 – Chenimai Lahon; [iv] P.W.4 – Ananda Lahon; [v] P.W.5 – Prabhat Gogoi; [vi] P.W.6 – Dr. Nitu Kumar Gogoi; [vii] P.W.7 – Badrul Islam Laskar; and [viii] P.W.8 – Rabindra Hazarika. The prosecution also exhibited 11 [eleven] nos. of documents viz. [i] Ext.-1 – FIR dated 08.09.2014; [ii] Ext.-2 – Seizure List, M.R. no. 48/2014 dated 07.09.2014; [iii] Ext.-3 – the Statement of P.W.2 recorded under Section 164, CrPC; [iv] Ext.-4 – the Statement of P.W.3 recorded under Section 164, CrPC; [v] Ext.-5 – the Statement of P.W.4 recorded under Section 164, CrPC; [vi] Ext.-6 – Inquest Report; [vii] Ext.-7 – Post-Mortem Examination [PME] Report; [viii] Ext.-8 – Sketch Map of the P.O.; [ix] Ext.-9 – FSL Report; [x] Ext.-10 – Charge Sheet no. 11/2015 dated 30.01.2015; [xi] Ext.-11 – General Diary Entry Book; [xii] Ext.-11[i] – General Diary Entry no. 140 dated 07.09.2014; and [xiii] Ext.-11[ii] – True certified copy of General Diary Entry no. 140 dated 07.09.2014. The prosecution side also exhibited one iron rod as Mat. Ext.-1.
10. We have heard Mr. B. Prasad, learned Amicus Curiae for the accused-appellant and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor assisted by Ms. M. Chakraborty, learned counsel for the respondent State.
11. Mr. Prasad, learned Amicus Curiae appearing for the accused-appellant has opened his argument by submitting that the case is not a one of direct evidence but one which is based on circumstantial evidence. He has submitted that none of the prosecution witnesses had witnessed any assault on the deceased by the accused. He has further contended that the result of the serological test had not provided any

link connecting the accused with the alleged homicidal death of his wife. It is his contention that the prosecution side has failed to establish all the circumstances by credible evidence to complete the chain of circumstances to prove unerringly that it was only the accused who was the perpetrator of the alleged crime and none else. Thus, the Judgment and Order of conviction and sentence needs to be interfered with. Mr. Prasad has contended that in view of failure on the part of the prosecution to establish a number of circumstances in the chain, the accused was not cast with an obligation to provide an explanation to the other incriminating circumstances. Mr. Prasad has referred to the decision in **Parubhai vs. State of Maharashtra**, reported in [2021] 18 SCC 353, in support of his such submissions.

12. Au Contraire, Ms. Bhuyan, learned Additional Public Prosecutor appearing for the State has submitted that in the case in hand, the prosecution has been able to prove all the incriminating circumstances by credible evidence to complete the chain of circumstances, contrary to the claim made by the defence. Ms. Bhuyan has contended that all the circumstances which were possible to be established by the prosecution, had been duly established and in such fact situation, the onus shifted to the accused to provide a plausible explanation under Section 106, Evidence Act. In absence of any plausible explanation on the part of the accused, the same had provided an additional link adding weight to the prosecution case. The presence of the accused at the place of occurrence holding an iron pipe in his hands, with his wife in a moribund state at the doorstep of his house is a clear pointer to the fact that it was the accused only and no one else, who was the assailant. Ms. Bhuyan has further contended that the injury was on a vital part, that is, the head and the medical evidence has substantiated that the crime was one of murder, as defined under Section 300, IPC. Submitting so, the learned State counsel has contended that the Judgment and Order of conviction and sentence passed against the accused needs no interference and the appeal being bereft of any merits, deserves to be dismissed. Reliance has been placed by Ms. Bhuyan in the decisions of **Balvir Singh vs. State of Uttarakhand**, reported in [2023] 12 SCR 518; and **Anees vs. the State of Government of NCT**, reported in 2024 [6] SCR 164; wherein the principle enshrined in Section 106, Evidence Act have been explained.
13. We have given due consideration to the rival submissions of the learned counsel for the parties. We have also gone through the evidence/materials on record including

the testimonies of the prosecution witnesses and the documentary evidence laid before the learned trial court by the prosecution in the course of the trial, which available in the case records of Sessions Case no. 37 [S-S] of 2015, in original.

14. Before evaluation of the ocular testimonies as regards the incident, we, at first, turn to the medical evidence. The medical evidence are in the forms of the testimony of the Autopsy Doctor [P.W.6] and the Post-Mortem Examination [PME] Report [Ext.-7].

14.1. P.W.6, Dr. Nitu Kumar Gogoi was, on 08.09.2014, serving as an Assistant Professor, Department of Forensic Medicine, Jorhat Medical College & Hospital. In his testimony, P.W.6 deposed to the effect that at around 12-00 p.m. on 08.09.2014, he performed post-mortem examination on the deadbody of Rebati Lahon in connection with Jorhat Medical College & Hospital P.P. G.D. Entry no. 120 dated 08.09.2014, after the deadbody was identified by UBC/775 Bidhan Bhowmik and Ananda Lahon [P.W.4], the father-in-law of the deceased. P.W.6 stated that on examination of the deadbody, he recorded his findings as under :-

1. External appearance :

A female deadbody of average built of swarthy complexion, wearing a red blouse and Mekhela Chadar. Surgical bandage over the head and right hand. Wearing garments stained with blood at places. Body cold on touch. Rigor mortis present.

2. Injuries :

- [1] Lacerated injury of size 7 cm x 2 cm x scalp deep over the vertex of head. Underneath depressed fracture of parietal bones present. Adjacent areas are contused.
- [ii] Abraded contusion of size 5 cm x 2 cm over right forearm inner aspect.

N.B.- Above mentioned injuries contains adherent blood clots which resist washing by running tap water.

3. Cranium and spinal canal :

Scalp - As described. Skull - As described. Vertebrae - healthy.

Membrane - congested, sub-dural haemorrhage present over both the cerebral hemisphere. Brain - congested.
Spinal cord - not examined.

4. Thorax :- Walls, ribs and cartilages – healthy. Pleurae – healthy. Larynx and Trachea – healthy. Lung – both lungs healthy. Pericardium – healthy, empty. Vessels – healthy.

5. Abdomen :-

Walls – healthy. Peritoneum – healthy.

Mouth, pharynx, oesophagus – healthy.

Stomach and its contents – healthy, contains fluidy matter without any specific order.

Small intestine and its contents – healthy, contains fluidy matter.

Large intestine and its contents – healthy, contains gases and foecal matter. Liver – healthy. Spleen – healthy. Kidney – both kidneys healthy.

Bladder – empty, healthy.

Organs of generation [external & internal] – Externally – healthy.

Internally – healthy, uterus healthy, empty.

6. Muscles, bones and joints :

Injury – As described. Disease or deformity – Not detected.

Fracture – As described. Dislocation – As described.

- 14.2. P.W.6 testified that after the autopsy, in his opinion, he recorded that the cause of death of the deceased was due to coma, as a result of the head injury. He found that all the injuries were ante-mortem and the injuries were caused by blunt weapon. The death was found homicidal in nature. He further recorded that the approximate time since death was 4 to 8 hours. He exhibited the PME Report as Ext.-7 with his signature therein as Ext.- 7[1]. He also identified the counter signature of Dr. K.C. Das, MD, Professor & Head of the Department, Department of Forensic Medicine, Jorhat Medical College & Hospital & Police Surgeon, Jorhat in the PME Report [Ext.- 7]. When the iron pipe, Mat. Ext.-1 was shown to P.W.6, he stated that the injuries sustained by the deceased could be caused by Mat Ext.-1. P.W.6 had categorically stated that the injury no. 1 was a fatal injury which was sufficient to cause death of a

person in ordinary course of nature. In cross-examination, P.W.6 stated that as he was not asked to examine the blood group of the deceased, he did not mention the blood group of the deceased in the PME Report [Ext.-7].

- 14.3. In the PME Report exhibited as Ext.-7, it is mentioned that the post-mortem examination on the deadbody of the deceased was performed at 12-30 p.m. on 08.09.2014. The findings and opinion recorded in the PME Report [Ext.-7] had received concurrence from Dr. K.C. Das, M.D., Professor & Head of the Department, Department of Forensic Medicine, Jorhat Medical College & Hospital & Police Surgeon, Jorhat with his endorsement to that effect.
15. The inquest proceeding on the deadbody of the deceased was conducted at around 08-30 a.m. on 08.09.2014 in the Jorhat Medical College & Hospital by one Samiran Borah, Executive Magistrate & Circle Officer, Jorhat [East] in presence of a number of witnesses including Ananda Lahon [P.W.4] in reference to JMC&H P.P. General Diary Entry no. 120 dated 08.09.2014. As per the Inquest Report [Ext.-6] which was exhibited by P.W.4 and the I.O. [P.W.8], there were injuries on the head and right hand of the deceased.
16. From the testimonies of the Autopsy Doctor, P.W.6 and the Post-Mortem Examination [PME] Report [Ext.-7], it is established that the deceased sustained a number of injuries including one lacerated injury of size 7 cm x 2 cm x scalp deep over the vertex of head. Underneath the injury, there were depressed fractures of parietal bones and its adjacent areas were found contused. As per the medical evidence, all the injuries were ante-mortem in nature and were caused by blunt weapon. According to the medical evidence, the injury no. 1 sustained by the deceased on her head was sufficient to cause death in the ordinary course of nature. The above findings were not contested in any manner by the defence during the course of the trial. That the deceased had sustained an injury on her head is also corroborated by the findings recorded in the Inquest Report [Ext.-6]. On evaluation of this evidence, the only conclusion that can be reached is that the deceased succumbed to death due to the injuries sustained on her head and the effects resulting therefrom. The said injuries were opined to be caused by a blunt weapon. When the iron pipe, Mat. Ext.-1, seized during the course of investigation, was

shown to P.W.6, he stated that the injuries sustained by the deceased could be caused by Mat. Ext.-1.

17. Among the prosecution witnesses, P.W.1, P.W.2, P.W.3 and P.W.4 are close relations of the accused and the deceased. P.W.1 is the informant. He is an elder brother of the accused and a brother-in-law of the deceased whereas P.W.2 is the wife of P.W.1. P.W.3 is the mother of the accused and the mother-in-law of the deceased whereas P.W.4 is the father of the accused and the father-in-law of the deceased. P.W.5 is the Sarkai Gaonburah and P.W.7 is a next-door neighbour. It has emerged from the evidence/materials on record and is not disputed by the defence in any manner that there were two separate houses in the same compound. In one of the said two houses, the accused and the deceased used to reside. In the other house within the same compound, P.W.1, P.W.2, P.W.3 and P.W.4 used to reside as a joint family. The house of P.W.7 is in close vicinity to the houses of the accused and the deceased and the houses of P.W.1, P.W.2, P.W.3 and P.W.4, as it is evident from the Sketch Map of the P.O. [Ext.-8].
18. P.W.1, Sainen Lahon in his evidence-in-chief, stated that the incident occurred one year earlier. He deposed to the effect that on the date of the occurrence while he was in his house, he had heard commotion in the house of the accused and the deceased. When he came out of his house hearing the commotion, he saw Rebati Lahon lying at the doorstep of the house of the accused. P.W.1 also saw the accused there with an iron like rod in his hand. By the time he reached the place of occurrence, his father, Ananda Lahon [P.W.4] also reached there. On flashing the torchlight, they found the accused holding the iron rod and noticed bleeding injuries on the person of Rebati Lahon. Thereafter, 108 Ambulance service was called for to take Rebati Lahon to the Hospital at Amguri. P.W.1 stated that Rebati Lahon in injured condition was taken to the Hospital at Amguri at first and thereafter, to the Jorhat Medical College & Hospital where Rebati Lahon breathed her last at around 06-00 a.m. P.W.1 further stated that it was the VDP Secretary, who telephonically informed at the Police Station regarding the incident. Accordingly, Police personnel arrived at the place of occurrence and arrested the accused. P.W.1 exhibited the Seizure List, M.R. no. 48/2018 [Ext.-2], whereby the iron rod was seized with his signature therein as Ext.-2[1]. P.W.1 also identified the iron rod seized vide Ext.-2 as Mat. Ext.-1. Stating that he lodged the FIR, P.W.1 exhibited the FIR as Ext.-1 with

his signature therein as Ext.-1[1]. P.W.1 also identified the signature of the scribe of the FIR as Ext.-1[2]. P.W.1 further stated that the iron rod was seized by Police on being shown by the accused. In cross-examination, P.W.1 admitted that he did not witness how the incident took place. P.W.1 further stated that the seizure of Mat. Ext.-1, iron rod was made by Police from the house of the accused and not from the hands of the accused. P.W.1 denied all the suggestions put to him by the defence.

19. P.W.2, Purabi Lahon like P.W.1, deposed to the effect that she was at her home during the night on 07.09.2014 when she heard a commotion in the house of the accused, which is adjacent to their house. Hearing heard the commotion when she came out, she saw Rebati Lahon lying injured with bleeding injuries on her head in the courtyard of the house of the accused and the accused with an iron rod in his hand. P.W.2 further stated that the Police personnel arrived at the place of occurrence and arrested the accused. Though Rebati Lahon was taken to Jorhat Medical College & Hospital for treatment, she breathed her last there. P.W.2 further stated that the rod was seized by Police by the Seizure List, Ext.-2 wherein she gave her signature as Ext.-2[3]. P.W.3 also identified the iron pipe, Mat. Ext.-1. P.W.3 also stated that she gave her statement earlier before the Court and she exhibited such statement as Ext.-3 with her signatures. In cross-examination, P.W.2 like P.W.1, admitted that she did not witness how the occurrence took place. P.W.2 also stated that at the time of occurrence, it was dark. P.W.2 denied all the suggestions given to her by the defence.
20. In her evidence-in-chief, P.W.3, Chenimai Lahon testified that at around 10-30 p.m. on the night about two years earlier, she, her husband [P.W.4], her son [P.W.1] and her daughter-in-law [P.W.2] were sleeping in their house. Then, they heard a cry 'Oi Morilu' [I am dying] from the house of the accused and hearing the cry they came out of the house and saw Rebati Lahon lying injured with an injury on her head outside the house of the accused with the accused standing nearby with an iron rod in his hand. Then, P.W.1 and P.W.4 caught hold of the accused and tied him up. The villagers also gathered the place of occurrence. When Rebati Lahon was taken to Jorhat Medical College & Hospital, she expired there at around 02-30 a.m. P.W.3 further stated that Police personnel came to the P.O. and examined her. Police also seized the iron rod found in the hand of the accused by a Seizure List, Ext.-2 wherein she gave her signature as Ext.-2[4]. P.W.3 also identified the iron rod seized by the

Seizure List [Ext.-2] as Mat. Ext.-1. P.W.3 also stated that she gave her statement earlier before the Court and exhibited the statement as Ext.-4 with her signatures therein. In cross-examination, P.W.3 stated that she did not see the accused assaulting his wife. P.W.3 also stated that it was from five years earlier the accused started living separately from them. P.W.3 claimed ignorance as to whether the accused had committed the incident with the iron rod, Mat. Ext.-1.

21. P.W.4, Ananda Lahon testified that it was about five years since when the accused started living in a separate house, adjacent to their house. On the incident, P.W.4 deposed to the effect that on that night about two years ago, at around 10-30 p.m. they – he, his wife [P.W.3] and his son [P.W.1] – were sleeping in their house. Then they heard a cry 'Moriluoo' [I am dying]. They immediately came out of the house and saw Rebati Lahon lying injured outside the house of the accused. P.W.4 further stated that the accused made an attempt to run from the place of occurrence and he [P.W.8] chased him. Then, the accused again came to the place of occurrence and assaulted Rebati Lahon with an iron rod. P.W.4 further stated that when he tried to prevent the accused from assaulting Rebati Lahon, he was also threatened. P.W.4 further stated that thereafter, he and his son [P.W.1] caught hold of the accused and tied him up. P.W.4 stated that the injured was taken to the Jorhat Medical College & Hospital by a vehicle but at around 02-30 a.m., Rebati Lahon expired. P.W.4 also stated that he gave his statement earlier in the Court and exhibited such statement as Ext.-5 with signatures therein. The iron rod, Mat. Ext.-1 was identified by him during his testimony. P.W.4 stated that in the Inquest Report, Ext.-6, he gave his signature. During cross-examination, a number of suggestions were given to P.W.4, but all those suggestions were denied by him. The defence did not, however, confront P.W.4 with his previous statement in order to bring out any contradiction or omission by putting such statement subsequently before the I.O., who was examined as P.W.8. When P.W.4 stated that it was he who handed over the seized iron rod to Police, it was found to be objected by the defence. P.W.4 further stated that the accused started living separately after a quarrel with him. It was elicited from P.W.4 by the defence that he did not like the accused due the quarrelsome nature of the accused. P.W.4 had, however, categorically denied that he adduced false evidence against the accused because he disliked the accused.

22. From the testimonies of the above prosecution witnesses, it has been established that on the night of the incident, the prosecution witnesses – P.W.1, P.W.2, P.W.3 and P.W.4 – were in their house together. When they were in their house, they heard a commotion from the house of the accused and the deceased. Both P.W.3 and P.W.4 testified that the cry was to the effect that 'I am dying'. All these prosecution witnesses – P.W.1, P.W.2, P.W.3 and P.W.4 – had testified that they reached the place of occurrence immediately after hearing the cry. It needs a mention, at the cost of repetition, that the house of the accused and the deceased was adjacent to their house and within the same compound. The said fact is evident also from the Sketch Map of the P.O. [Ext.-8] and is not disputed by the defence. It has also been established from the testimonies of P.W.1, P.W.2, P.W.3 and P.W.4 that at the place of occurrence they found Rebati Lahon lying at the doorstep of the house of the accused in an injured condition and they found that the accused was also standing beside the injured with an iron like rod in his hand. The testimonies of these prosecution witnesses on the above points were not confronted and not disputed by the defence in any manner when they were cross-examined.
23. The learned Amicus Curiae has raised a contention to the effect that the description of alleged weapon of assault was given differently by the different witnesses. He submitted that in the FIR, Ext.-1, it was mentioned as a wrench [steel colour]. In the charge framed against the accused, it was mentioned as an iron pipe. P.W.1 stated the same as an iron rod. According to P.W.3 & P.W.4, it was an iron rod. As per the Seizure List, one meter handle [steel color] of 2 feet length was seized. Notwithstanding the different manners the alleged weapon of assault had been described, we find from the testimonies of the prosecution witnesses, P.W.1, P.W.2, P.W.3 and P.W.4 that in their testimonies, they were consistent on the point that the Mat. Ext.-1 – be it a meter handle or an iron rod, as they described differently, is one and the same. The learned trial court did not discredit the testimonies on the said point on the premise that it did not create any dent to the core of the prosecution case and, in our view, rightly so.
24. P.W.5, Prabhat Gogoi, who is the Sarkari Gaonburah, testified to the effect that on the date of the incident, which was about two years earlier, he at around 07-30 p.m./08-00 p.m., proceeded to the house of the deceased on hearing commotion from there. As his house was adjacent to the house of the accused, going there, he

saw Rebati Lahon lying in an injured condition with bleeding injuries on her head in the courtyard of the house of the accused. P.W.7, who is also a next door neighbour, testified that at around 08-00/08-30 p.m. on 07.09.2014, he hearing hue and cry at the residence of the accused, went there and saw the wife of the accused, Rebati Lahon lying in an injured condition with bleeding injuries in the courtyard of the house of the accused. P.W.5 further stated that he in his capacity as Sarkari Gaonburah [Village Headman] informed the matter at the Police Station and his [P.W.5] such testimony received corroboration from Haluating Police Station General Diary Entry no. 140 dated 07.09.2014 [Ext.-11(i)] and the testimony of the I.O. [P.W.8] who testified that it was after being informed by the Gaonburah, Police proceeded to the P.O. on 07.09.2014.

25. The fact that accused was kept tied in the courtyard and he was arrested by Police after their arrival at the P.O. is found mentioned in the testimony of P.W.5. P.W.5 was also a witness to the Seizure List, Ext.-2, whereby the iron rod was seized. P.W.5 also identified the iron rod, Mat. Ext.-1 seized by the Seizure List, Ext.-2. The testimonies of the two witnesses, P.W.5 and P.W.7 are not inconsistent in any manner and had lent corroboration to the testimonies of P.W.1, P.W.2, P.W.3 and P.W.4. The prosecution witnesses, P.W.1, P.W.2, P.W.3 and P.W.4 had emphatically asserted that the accused and the deceased being husband and wife, used to reside together in a separate adjacent house. When the accused was examined under Section 313, CrPC, he admitted that he and his wife, the deceased used to live in a separate house near to the house wherein P.W.1, P.W.2, P.W.3 and P.W.4 used to live. The prosecution witnesses, P.W.1, P.W.2, P.W.3 and P.W.4 in their testimonies, did not mention about presence of any other person at the P.O., other than the accused with the iron rod in hand.
26. On appreciation of the above evidence/materials on record, as discussed above, we find that the prosecution has been able to prove the fact that the accused and the deceased, who were the husband and wife, used to live in a separate house, adjacent to the house wherein the prosecution witnesses - P.W.1, P.W.2, P.W.3 and P.W.4 - used to reside within the same compound. When the prosecution witnesses, P.W.1, P.W.2, P.W.3 and P.W.4 reached the place of occurrence after hearing cry from the house of the accused and the deceased almost instantaneously, the accused was found wielding the iron rod [Mat. Ext.-1] in his hand with his wife lying

on the doorstep of his house in a moribund state near him with bleeding injuries on her head. It has been further established from the evidence of these prosecution witnesses that the iron rod [Mat. Ext.-1], which was in the hand of the accused at that time, was one which was seized by the I.O. by the Seizure List [Ext.-2] from the P.O. on 07.09.2014 in reference to Haluating Police Station General Diary Entry no. 140 dated 07.09.2014 in presence of witnesses. The Autopsy Doctor, P.W.6 deposed to the effect that the injuries, more particularly, the injury no. 1, that is, lacerated injury of size 7 cm x 2 cm x scalp deep over the vertex of head could be caused by the iron rod, Mat. Ext.-1. As per the results of the serological test, exhibited as Ext.-9, the iron rod contained bloodstains. It is found recorded in the Seizure List [Ext.-2] whereby the iron rod was seized that when it was seized it had bloodstains on it. In view of such overwhelming evidence, we find that the learned Additional Public Prosecutor is right in her contention that the prosecution has been able to prove all the necessary circumstances, which in the facts and circumstances obtaining in the case, were possible on the part of the prosecution to prove, by evidence of conclusive nature. It is true that the I.O. ought to have made efforts to find out whether the blood group of the deceased matched with the blood group of the bloodstains found on the iron rod, as the matching of blood group would have been an additional circumstance in the chain. But failure to do so was a defect in the investigation which did not enure any benefit to the accused, when the circumstances already established are conclusive in nature. As a result, the onus shifted to the accused to provide a plausible explanation, at least by the preponderance of probabilities, to discharge the onus which had fallen on him.

27. The offence of culpable homicide is defined in Section 299 of the Indian Penal Code [IPC]. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Culpable homicide is the genus and the offence of murder its species, meaning thereby, all murders are culpable homicides but all culpable homicides are not murders. The offence of murder is defined in Section 300, IPC, which reads as under :-

300. Murder -

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception I - When culpable homicide is not murder-Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :--

First - That the provocations not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly - That the provocations not given by anything done in the lawful exercise of the right of private defence.

Explanation - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2 - Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such

right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3 - Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation - It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 - Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

28. The Hon'ble Supreme Court in **Thangaiya vs. State of Tamil Nadu**, reported in [2005] 9 SCC 650, has pointed out the distinction between the above two sections, that is, Section 299 and Section 300 of the Penal Code in the following manner :-

9. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of

the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

10. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300.....

29. In **State of Andhra Pradesh vs. Rayavarapu Punnayya and another**, reported in [1976] 4 SCC 382, the Hon'ble Supreme Court has dilated on the aspect as to how a case of homicidal death is to be proceeded with to determine whether the homicidal death was one of culpable homicide amounting to murder or the homicidal death was culpable homicide not amounting to murder, after noticing the distinction between the provisions of Section 299 and Section 300 of the IPC.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to 'culpable homicide' as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Sec. 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal

Code.

30. In **Virsa Singh vs. State of Punjab**, AIR 1958 SC 465, which has attained the status of locus classicus, the Hon'ble Supreme Court through Vivian Bose, J., has explained the meaning and scope of Clause Thirdly of Section 300, IPC and the said decision has been followed in a number of later decisions. One of them is **Abdul Waheed Khan @ Waheed and others vs. State of Andhra Pradesh**, reported in [2002] 7 SCC 175, which also considered the decision in **Rayavarapu Punnayya** [supra]. For ready reference, the relevant excerpts from **Abdul Waheed Khan** are quoted hereinbelow :-

11. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of IPC culpable homicide is the genus and 'murder', its specie. All 'murder' is 'culpable homicide' but not vice versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

* * * * *

15. For cases to fall within clause [3], it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. **Rajwant Singh vs. State of Kerala**, AIR 1966 SC 1874, is an apt illustration of this point.

16. In **Virsa Singh vs. State of Punjab** [AIR 1958 SC 465] Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause [3]. It was observed that the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly'. First, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These

are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

17. The ingredients of clause 'thirdly' of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows : [AIR p. 467, para 12]

12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly';

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

18. The learned Judge explained the third ingredient in the following words [at p. 468] : [AIR para 16]

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither

here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

19. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case [AIR 1958 SC 465] for the applicability of clause 'thirdly' is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. [a] that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and [b] that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted.

20. Thus, according to the rule laid down in Virsa Singh case [AIR 1958 SC 465] even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration [c] appended to Section 300 clearly brings out this point.

31. We find that the decision in **Parubhai** [supra], referred to by the learned Amicus Curiae, is not of any assistance to the case of the accused as the facts and circumstances obtaining in **Parubhai** [supra] case are different from the facts and circumstances obtaining in the case in hand. In **Parubhai** [supra], the appellant was charged with the offence of killing the first wife of her husband. The facts, in brief, were that at about 02-30 a.m. to 03-00 a.m. in the night intervening 02.08.2006/03.08.2006, an incident of fire occurred and the house in which the appellant and the family members were residing was engulfed in flames. The appellant managed to come out of the house unscathed while the first wife of her husband and her daughter rushed out of the house with burn injuries while the son of the first wife got burned to death inside the house. It was in such backdrop, the Hon'ble Supreme Court has observed that if in the middle of the night, for whatever reason there was fire and if the appellant had woken up and noticed the fire a little

earlier, the natural conduct was to run out of the house instead of going into the house which was burning to check on the other inmates. It takes a person a lot of courage or be overdriven with compassion to get back into the house to save somebody else and not doing so may be considered as morally wrong for not coming to the aid of fellow human being in distress, but, it cannot be a circumstance to hold a person guilty of a crime which is as serious as murder, unless the other circumstances in the chain point to the accused so as to lead to an irresistible conclusion of being guilty. The first wife of the husband of the appellant who came out alive and lived for a day did not blame or suspect anybody including the appellant. On analysis of the evidence on record, the Hon'ble Court found no overt act or indulgence on the part of the appellant. It was in such facts and circumstances, the decision in **Parubhai** [supra] was rendered.

32. It has been prescribed in Section 101 of the Evidence Act that whoever deserves any court to give a judgment as to any legal or liability dependent on the existence of facts which he asserts, he must prove that those facts exists. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Therefore, the burden is always on the prosecution to bring the guilt of the accused beyond reasonable doubts. Section 106 of the Evidence Act is an exception to Section 101. Section 106 of the Evidence Act comes into application in those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer a proper explanation about the existence of the said facts, the Court can always draw an appropriate inference.
33. In **Trimukh Maroti Kirkan vs. State of Maharashtra**, reported in [2006] 10 SCC 681, the Hon'ble Supreme Court while considering a case of homicidal death in the confines of a house, has observed that the law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. It has been observed therein that where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of the crime they were seen together or

the offence takes place in a dwelling house where a husband also normally resided it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstances which indicates that he is responsible for the commission of the crime. In *Balbir Singh [supra]* and *Anees [supra]*, the Hon'ble Supreme Court has considered a prima facie case in the context of Section 106 of the Evidence Act. It has been held that Section 106 of the Evidence act would apply to cases where the prosecution can be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding death.

34. In Hon'ble Supreme Court in **State of West Bengal vs. Mir Mohammad Omar and others**, reported in [2000] 8 SCC 382, has observed as under :-

31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.

35. In **Deunandan Mishra vs. the State of Bihar**, reported in AIR 1955 SC 801, the Hon'ble Supreme Court has observed as under :-

9. ... It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case where the various links have been satisfactorily made up and the circumstances point to the accused as the probable assailant, with

reasonable definiteness and in proximity to the accused as regards time and situation, and he offers no explanation, which, if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain.

36. Reverting back to the facts of the case, we have already discussed about the facts established by the prosecution by leading cogent and credible evidence. As the accused was found in the company of his wife who was in a seriously injured condition in close proximity of time from the assault which was found to be a fatal assault, the accused clearly owed an explanation as regards the circumstance in which his wife sustained such fatal assault. From the nature of suggestions made to the prosecution witnesses, we find that apart from not providing any explanation anywhere including at the stage of his examination under Section 313, CrPC, the accused did not raise any kind of defence plea so as to the displace the presumption that he was not the assailant.
37. In the backdrop of such evidence/materials on record, we are of the considered view that the accused, in this case, owed an explanation from his end explaining the situation as to how his wife was found in an injured condition with injuries on her person at the doorstep of his house with him near his wife with an iron rod in his hand in the night. There is no evidence regarding presence of any other person that night in the house, where only the accused and the deceased used to reside. The accused was found to have offered no explanation.
38. In absence of any explanation, not to speak of plausible explanation, the only inference that can be drawn is that it was the accused alone who with the object of assault, Mat. Ext.-1 inflicted the injuries on the person of the deceased, as reported in the PME Report [Ext.-7], and amongst the injuries sustained by the deceased, the accused struck one blow at a vital part of the deceased, the head. There is no evidence to bring the case in hand within one of the exceptions to Section 300, IPC. In the face of above proved circumstances, it is apt to refer to the following observations made in **Jagrup Singh vs. State of Haryana**, reported in [1981] 3 SCC 616, which are made following the ratio laid down in **Virsa Singh vs. State of**

Punjab, AIR 1958 SC 465, which explained the applicability of clause thirdly of Section 300, IPC :-

6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause 1stly or clause 3rdly. The nature of intention must be gathered from the kind of weapon used, the part the body hit, the amount of force employed and the circumstances attendant upon the death.

39. In the case in hand, the object of assault was an iron rod. There were injuries on the person of the deceased including one injury on the head, that is, over the vertex of the head. There were fractures of the parietal bones underneath. Sub-dural haemorrhage occurred over both the cerebral hemispheres. The medical evidence was to the effect that the injury on the head was sufficient to cause death of a person in ordinary course of nature and the death was a homicidal one. Thus, the death of the deceased attracted all the ingredients of the offence of murder, defined in Section 300, IPC and punishable under Section 302, IPC, with no evidence available to attract any of the exceptions provided in Section 300, IPC.
40. In the light of the discussion made above and the reasons assigned in, we find no reason to interfere with the findings reached by the learned trial court in its Judgment and Order dated 05.02.2018. As the accused is found to be guilty of the offence of uxoricide, we affirming the Judgment and Order of conviction and sentence by the learned trial court, hold that there is no merit in the present criminal appeal. Consequently, the criminal appeal is dismissed.
41. Before parting with, we wish to place our appreciation on record as regards the services rendered by Mr. B. Prasad, learned Amicus Curiae appearing for the

accused-appellant and direct the Registry to make available to him just remuneration as per the notified fee structure applicable to the Amicus Curiae.

42. The Registry to send back the case records of the learned trial court forthwith.

JUDGE

JUDGE

Comparing Assistant