



## IN THE GAUHATI HIGH COURT

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

### Criminal Appeal (J) No. 65 of 2020

Jiten Gogoi,  
S/o Late Jugen Gogoi,  
R/o Cheng Chup Chariali,  
P.S. – Sadiya,  
Dist. – Tinsukia, Assam.

.....Appellant

*-Versus-*

The State of Assam, represented by Public  
Prosecutor, Assam.

.....Respondent

### **Advocates:**

Appellant

:Mr. M. Dutta, Amicus Curiae.

Respondent

:Ms. B. Bhuyan, Senior Advocate & Additional  
Public Prosecutor, Assam;  
Ms. M. Chakraborty, Advocate.

Date of Judgment and Order: 04.06.2024.

**BEFORE**  
**HONOURABLE MR. JUSTICE MANISH CHOUDHURY**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**JUDGMENT & ORDER**

[M. Choudhury, J.]

This criminal appeal from Jail is directed against a Judgment and Order dated 23.09.2019 passed by the learned Sessions Judge, Tinsukia in Sessions Case no. 17[CH] of 2018. By the Judgment and Order dated 23.09.2019, the accused-appellant has been convicted for the offence of murder under Section 300 of the Indian Penal Code ['IPC', for short] and he has been sentenced under Section 302, IPC to undergo imprisonment for life and to pay a fine of Rs. 50,000/- only, in default of payment of fine, to undergo further rigorous imprisonment for one year. It has been directed to the District Legal Services Authority, Tinsukia to pay compensation of Rs. 1,00,000/- to Bharati Gogoi, who lost her husband due to the commission of the murder by the accused-appellant.

2. The case, Sessions Case no. 17[CH] of 2018 arose out of Chang Chup Chariali Police Station Case no. 20/2017 and corresponding G.R. Case no. 113/2017. The First Information Report ['FIR', for short] was lodged by the informant, Bharati Gogoi [P.W.1] on 14.10.2017 before the Officer In-Charge, Chang Chup Chariali Police Station in respect of an incident alleged to have occurred at around 07-45 p.m. on 13.10.2017. On receipt of the FIR, the Officer In-Charge, Chang Chup Chariali Police Station registered the same as Chang Chup Chariali Police Station Case no. 20/2017 on 14.10.2017 for the offences under Section 302, IPC and Section 326, IPC and took up investigation of the case by himself.

3. In the FIR, the informant - P.W.1 had *inter alia* stated that at around 07-45 p.m. on 13.10.2017, a co-villager, Jiten Gogoi, that is, the accused raised hue and cry near the entrance gate of the house of the informant. At that time, the husband of informant, Tutu Gogoi asked the accused not to do so. But Tutu Gogoi was inflicted severe injuries by the accused by stabbing him on his person with a dagger. The informant further alleged that the accused had also inflicted a stab injury with the dagger on the right hand of her son, Bikudhar Gogoi [P.W.4]. Both the injured persons were, thereafter, shifted to a health facility at Chapakhowa for treatment on 13.10.2017 itself. But at around 01-00 a.m., Tutu Gogoi passed away while undergoing treatment. The informant further stated that at the time of lodging the FIR, her son, Bikudhar Gogoi [P.W.4] was undergoing treatment at the hospital.
4. In the course of investigation, the Investigating Officer ['I.O.', for short] of the case, P.W.13 by visiting the Place of Occurrence ['P.O.', for short] prepared a Sketch Map of the P.O. [Ext.5]. He also recorded the statements of a number of witnesses under Section 161, Code of Criminal Procedure ['CrPC' or 'the Code', for short]. He seized a dagger vide Seizure List, M.R. No. 08/2017 on 14.10.2017 in presence of witnesses. The inquest on the deadbody of the deceased was conducted at Chapakhowa Civil Hospital on 14.10.2017 by the Executive Magistrate & Election Officer, Sadiya and after inquest, the findings were recorded in an Inquest Report [Ext.2]. The post-mortem examination on the deadbody of the deceased was performed at Chapakhowa FRU on 14.10.2017. After completion of the investigation into the case, Chang Chup Chariali Police Station Case no. 20/2017 [corresponding G.R. Case no. 113/2017], the I.O. [P.W.13] submitted a charge sheet under Section 173[2], CrPC vide Charge-Sheet no. 12/2017 on 30.11.2017 finding a *prima-facie* case established against the accused for the offences under Section 302, IPC and Section 326, IPC. On submission of the charge sheet, the Sub-Divisional Judicial Magistrate, Chapakhowa after securing appearance of the accused, before him, furnished copies to him as per the provisions of Section 207, CrPC on 12.01.2018. Finding the

offence under Section 302, IPC exclusively triable by the Court of Sessions, the learned Sub-Divisional Judicial Magistrate, Chapakhowa committed the case records of G.R. Case no. 113/2017 to the Court of Sessions, Tinsukia by an Order of Commitment dated 12.01.2018, after notifying the Public Prosecutor. On receipt of the case records of G.R. Case no. 113/2017, the Court of Sessions, Tinsukia ['the trial court', for short] registered the same as Sessions case no. 17[CH] of 2018.

5. Upon appearance of the accused and after hearing the learned Public Prosecutor and the learned counsel for the defence, the learned trial court framed charges for the offences under Section 302, IPC and Section 326, IPC against the accused. When the charges were read over and explained to the accused, the accused pleaded not guilty and claimed to be tried.
6. During the course of the trial, the prosecution side examined thirteen numbers of witnesses and exhibited six numbers of documents along with one material exhibit in order to bring home the charges against the accused. After closure of the prosecution evidence, the accused was examined under Section 313, CrPC by bringing to his notice the incriminating materials found in the evidence against him. The plea of the accused was total denial. After hearing the arguments of learned counsel for both the parties and appreciation of the evidence/materials on record, the learned trial court by the impugned Judgment and Order dated 23.09.2019 has convicted the accused for the offence of murder and sentenced him in the manner, indicated above. There is, however, no conviction recorded for the offence under Section 326, IPC.
7. We have heard Mr. M. Dutta, learned Amicus Curiae for the accused-appellant and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor for the respondent State.

8. Mr. Dutta, learned Amicus Curiae appearing for the accused-appellant has submitted that though there seemed to be four eye-witnesses, such eye-witnesses accounts' could not have been accepted in toto for the reason that the entire incident had occurred in the evening hours. As there was darkness at the time of the alleged incident, the identification of the accused as the assailant appeared doubtful. Moreover, there were inconsistencies in the evidence of the prosecution witnesses as the prosecution witnesses indicated different time as regards occurrence of the incident. Out of the four eye-witnesses, three of them – P.W.1, P.W.4 and P.W.9 - were close relatives being the wife and two sons of the deceased. From the prosecution evidence, it has emerged that the so called eye-witnesses were at a distance from the actual place of incident. As there is doubt on the aforesaid vital aspects, the accused is entitled to the benefit of doubt. Raising such contentions, Mr. Dutta has contended the impugned Judgment and Order of conviction and sentence is not sustainable in law.
9. Ms. Bhuyan, learned Additional Public Prosecutor has, on the other hand, contended that all the non-official prosecution witnesses were from the same locality/village. Being residents of the same locality/village for long, the eye-witnesses knew the accused well since a long time. From the prosecution evidence, it has further emerged that the accused entered into an altercation with the deceased prior to his murderous assault on the deceased. It was not only through physical identification of the accused by which the accused was identified, he was also identified by the eye-witnesses from his shouting. Moreover, rural-folk generally mention approximate time and the prosecution witnesses stated about approximate time of occurrence of the incident. It has been further contended that the accused came to the P.O. armed with a dagger, meaning thereby, the assault was premeditated. Considering the nature and number of injuries sustained by the deceased, as emerged from the Inquest Report [Ext.2] and the Post-Mortem Examination Report [Ext.4], corroborated by the testimonies of the eye-witnesses and the other witnesses, the assault was intended and intended only to cause murder. In

such view of the matter, the impugned Judgment and Order of conviction and sentence passed by the learned trial court does not suffer any kind of infirmity. In order to support such submissions, Ms. Bhuyan has referred to the decisions of Hon'ble Supreme Court of India in *Dalbir Singh vs. State of Haryana*, reported in [2008] 11 SCC 425; *Pundappa Yankappa Pujari vs. State of Karnataka*, reported in [2014] 12 SCC 372; and *Sahabuddin and Another vs. State of Assam*, reported in [2012] 13 SCC 213.

10. We have given due consideration to the submissions of learned counsel for the parties and have also perused the evidence/materials on record including the testimonies of the prosecution witnesses and the documentary evidence, led during the trial and available in the case records of Sessions case no. 17[CH] of 2018, in original. We have also considered the decisions cited by the learned counsel for the parties in support of their submissions.
11. As mentioned above, the prosecution side examined thirteen numbers of witnesses including the Autopsy Doctor [P.W.12] and the I.O. [P.W.13]. P.W.1 was the wife of the deceased whereas P.W.4 and P.W.9 were the sons of the deceased. The prosecution witnesses - P.W.2, P.W.3, P.W.5, P.W.6, P.W.7, P.W.8 and P.W.10 – are co-villagers of the accused and the deceased, being inhabitants of Village - Adarsha Ahom Gaon. P.W.11 was the Secretary of the local Village Defence Party [VDP].
12. P.W.1, Bharati Gogoi was the informant and the wife of the deceased. In her testimony, P.W.1 deposed to the effect that the occurrence took place at about 07-00 p.m. on 13.10.2017 [26<sup>th</sup> day of *Ahīn*]. She and her husband along with their three sons and her 11 years old granddaughter from her daughter's side were in their house. At that time, the accused appeared at the entrance area of their house and started shouting and hurling abuses at her husband. Then, the husband of the informant going out of the house, went near the accused in order to pacify the accused and persuade him to

leave the place. But, the accused whipped out a dagger and stabbed her husband on his chest first. Thereafter, the accused continued to stab her husband with the dagger on different parts of his body like neck, head, etc. On witnessing the assault, P.W.1 shouted for help. On hearing her alarm, her son, P.W.4 came out of the house and reached the P.O. When her son, P.W.4 tried to restrain the accused, he was also attacked by the accused with the dagger and as a result, P.W.4 sustained a serious cut injury on his right hand as the dagger pierced through his hand. Thereafter, the accused ran away from the P.O. P.W.1 testified that she had seen the entire incident taking place in front of her eyes. Thereafter, Tutu Gogoi was brought inside the house. But after leaving the P.O., the accused and his elder brother, Biren Gogoi started to pelt stones at her house. P.W.1 stated that because of such pelting they were unable to go out of the house. However, P.W.4 somehow managed to go out of the house through the back door and informed to his brother-in-law, Sanu Bharolua [not a witness] about the incident. Then Sanu Bharolua along with P.W.4 went to inform the Village Defence Party [VDP]. Thereafter, the VDP personnel along with the Police Personnel came to her house. A vehicle was arranged in order to take the injured, Tutu Gogoi to the hospital at Chapakhowa. When Tutu Gogoi was taken to Chapakhowa Civil Hospital, the Doctors there declared Tutu Gogoi to be dead. The wound sustained by P.W.4 were dressed by the Doctor. P.W.1 deposed that it was on the following day, that is, on 14.10.2017, the FIR [Ext.-1] was lodged by her. P.W.1 further stated that an Executive Magistrate conducted inquest on the deadbody of Tutu Gogoi and in the Inquest Report [Ext.-2], she gave her signature [Ext.-2(1)]. P.W.1 further identified a dagger [Mat. Ext.-1] and stated that the dagger was the one by which the accused had stabbed her husband on his chest, neck, etc.

- 12.1. During her cross-examination, P.W.1 stated that the entrance area of her compound where the occurrence took place, was situated at a distance at about 50 meters from their house. At that time, the passage was lit by street light. P.W.1 further stated that there was no separate light at the entrance

gate. Both sides of the passage to their house from the main road were covered by tall grasses and there was a bamboo grove on the right side of the P.O. P.W.1 further stated that on the day of occurrence, there was no fog though it was winter season. There was darkness at that time. P.W. 1 further stated that the house of Harendra Lahan [P.W.2] was situated by the side of her house and there was an empty space between the house of P.W.2 and the accused and in that place, one Kumud Gogoi used to keep some logs. P.W.1 clarified that her husband, Tutu Gogoi was not involved in any business with P.W.2 and the accused. P.W.1 denied a suggestion that she did not state before the Police that in front of her eyes, the accused took out a dagger and stabbed her husband on his chest. P.W.1 stated that on the date of occurrence, her husband had consumed liquor.

13. The three prosecution witnesses – P.W.4, P.W.6 and P.W.9 – also narrated about the incident.
14. P.W.4, Bikudhar Gogoi deposed to the effect that the occurrence took place at around 06-00/07-00 p.m. on 13.10.2017. He testified that at that point of time, he was studying inside the house. He heard the accused shouting at someone in front of their house. As he [P.W.4] was preparing for his examination, his father - Tutu Gogoi told the accused not to make noise. Immediately thereafter, he heard his father screaming and telling that he was being attacked and then his mother, P.W.1 went out of the house on hearing the screaming of her husband, Tutu Gogoi. Then, his mother, P.W.1 shouted to him [P.W.4] to come out of the house. In response, P.W.4 came out of his house and saw the accused lying on the ground. His father was over the accused and the accused was stabbing his father from below with a dagger. When he [P.W.4] tried to rescue his father, the accused also attacked him with the dagger and the dagger hit his right hand. Thereafter, the accused ran away along from the place with his wife who was also with the accused at that point of time. As his father was shouting in pain, his mother [P.W.1] brought him inside the house. After sometime, the accused

and his elder brother started pelting stones at their house. Then he went out of the house through the back door to inform about the incident to his brother-in-law, Sanu Bharolua and they both returned home with the VDP personnel. Thereafter, a vehicle was arranged and his father was taken to the hospital at Chapakhowa but before reaching the hospital, his father succumbed to his injuries. P.W. 4 further stated that his father sustained multiple stab wounds on his person in areas like chest, stomach, head etc. P.W.4 stated that he also took treatment for his injury at Chapakhowa Civil Hospital.

- 14.1. When P.W.4 was cross-examined as regards the presence of light, P.W.4 stated that there was no light at the P.O. on the date of incident and the passage used to remain dark at night. When he was asked, P.W.4 stated that he did not remember whether he stated before the Police that he saw the accused lying on the ground below his father and from below, the accused was stabbing his father; and that the wife of the accused had hit him with a bamboo. He denied the suggestions that they had attacked the accused and beat him at the time of occurrence; and that the accused did not cause the piercing injury on his right hand. No contradiction was, however, brought on record by defence by confronting the I.O. [P.W.13] with any previous statement of P.W.4 recorded by the I.O. [P.W.13].
15. P.W.6, Girin Baruah deposed that he knew the informant, the deceased and their son, P.W.4. On the incident, P.W.6 deposed that the incident occurred at around 07-30 p.m. on 13.10.2017. At that time, he was in his house. He heard the sound of a quarrel that was taking place in the house of the informant. Going there, he saw the deceased and the accused wrestling on the ground. P.W.6 stated that he saw both the persons were blood stained. He saw the presence of the informant, P.W.1 and her son, P.W.4 at the place of occurrence. P.W.6 further stated that at that point of time, the accused attacked P.W.4 with a knife for which he sustained an injury on one of his hands. Thereafter, P.W.1 and P.W. 4 took Tutu Gogoi inside their

house. The accused ran away from the P.O. Thereafter, he saw the accused throwing stones and shooting arrows from a bow at the house of the deceased. He further stated that an ambulance was called to take Tutu Gogoi and his son, P.W.4 to hospital. When the Police personnel came to the P.O. on the following day, one blood stained dagger was recovered from the jungle near the P.O. and the same was seized vide a Seizure List [Ext.-3] wherein he gave signature as Ext.-3[1]. P.W.6 also identified the seized dagger when it was produced before him as Mat. Ext.-1.

- 15.1. During cross-examination, P.W.6 stated that P.W.4 sustained the injury in his right hand. He further deposed that Mat. Ext.-1 shown to him in the court did not contain any blood stain. As regards the time of occurrence, P.W.6 stated that the incident took place when it was dark. He stated that the faces of the persons could not be recognized without use of torchlight. He denied the other suggestions put to him by the defence.
16. P.W.9, Jibon Gogoi was another son of the deceased and he knew the accused as well. Narrating about the incident, P.W.9 stated that the incident occurred at around 06-30/07-00 p.m. on 13.10.2017 when he was doing his studies. P.W.9 stated that at that time, the accused by standing on the road in front of their house, was shouting. As he was doing his studies for examination, his father went out of the house to tell the accused to go away from the P.O. Then, he saw the accused dealing several blows at different parts of his father's body with a dagger. He saw his father collapsing on the ground. Then his mother, P.W.1 and his brother, P.W.4 went out of the house to bring his father back inside the house. P.W.4 tried to interfere in between the deceased and the accused P.W.9 testified that his brother, P.W.4 was also assaulted by the accused with the dagger which pierced through his [P.W.4's] right hand. Thereafter, the accused and his elder brother, Biren Gogoi pelted stones at their house. P.W.9 also stated that he went out of the house through the back door and went to the house of his brother-in-law, Sanu Bharolua. His brother-in-law along with his elder

brother, P.W.4 went to inform the matter to the VDP personnel. Thereafter, he along with his sister returned home. P.W.9 stated that his father was taken to the hospital in a vehicle after sometime and in the hospital, his father was declared dead. As regards the P.O., P.W.9 stated that there were bamboo groves on both sides of the passage connecting their house and the main road. P.W.9 stated that the entire area was dark and without torchlight, it was difficult to identify persons. P.W.9 further stated that at the relevant time, it was cold and foggy.

17. From the testimonies of P.W.1, P.W.4, P.W.6 and P.W.9, it has been established that the incident had occurred on 13.10.2017, that is, 26<sup>th</sup> day of *Ahin* and the P.O. was near the entrance gate of the house of the deceased. There was a passage from the entrance gate to the house of the deceased. The family members of the deceased, that is, his wife [P.W.1] and his two sons [P.W.4 & P.W.9] were present in the house at the relevant point of time. None of the prosecution witnesses - P.W.1, P.W.4, P.W.6 and P.W.9 – were confronted by the accused as regards their testimonies that the accused by appearing at the entrance gate of the house of the deceased, started shouting and hurling abuses at the deceased. P.W.1, P.W.6 and P.W.9 had unanimously testified that P.W.4 had sustained an injury on his hand in the incident involving his father and the accused. The fact that the witness, P.W.4 sustained an injury on his hand go to show that he was present at the time of the incident and had seen the occurrence by himself. Ordinarily, testimony of an injured witness receives greater weightage because he is a victim himself and there would be no occasion for him to implicate falsely and not to implicate the real culprit. The defence did not even put any suggestion to these prosecution witnesses that at the time of the occurrence, the accused was not armed with a dagger. The defence also did not confront these prosecution witnesses with any kind of suggestion as regards the claim that after leaving of the P.O., the accused and his elder brother pelted stones at the house of the deceased. Thus, the testimonies of

these prosecution witnesses who deposed as eye-witnesses, had remained unchallenged on those points.

18. In the backdrop of above evidence/materials available in the record, the testimonies of the other prosecution witnesses can be evaluated.
19. P.W.2, Harendra Lahan deposed to the effect that the incident occurred in the month of *Ahin* and four days prior to the month of *Kati*. P.W.2 deposed that at around 05-00/06-00 p.m. on that day, he was going to the matrimonial house of his daughter. On the way, he met the accused who was then holding a dagger in his hands. When P.W.3 was shown Mat. Ext.-1 in the court, he testified the dagger as the one which he saw in the hands of the accused on the date of the incident. P.W.2 stated that when he came out from his daughter's house he saw the accused and his elder brother, Biren Gogoi pelting stones at the house of Tutu Gogoi. P.W.2 stated that he heard that the accused had not only stabbed the deceased but also stabbed the son of the deceased, P.W.4 with a dagger. P.W.2 further stated that at about 10-00 a.m. on the next day, that is, on 14.10.2017, the Police visited the P.O. and a dagger was recovered from the grass near the P.O. P.W.2 further stated that in the Seizure List [Ext.-3] whereby Mat. Ext.-3, dagger was seized, he gave his thumb impression. In cross-examination, P.W.2 stated that the dagger of the kind which was recovered from the P.O., was readily available. P.W.2 also stated that he had seen the injury on the hand of the son of the deceased.
20. P.W.2 had corroborated the version of the eye-witnesses by saying that he saw the accused and his elder brother pelting stones at the house of the deceased. He also added weight to the testimonies of the eye-witnesses on the point that the accused was armed with a dagger on the relevant day. P.W.2 also corroborated the version of P.W.6 as regards recovery and seizure of a dagger [Mat. Ext.-1] by a Seizure List [Ext.-3] on the day

following the date of the incident. The defence had not elicited anything on the said aspects from this witness [P.W.2] to discredit his version.

21. P.W.3 was a post-occurrence witness. He stated that the incident took place at about 06-30 p.m. when he was in his house. He was informed that the accused had committed the murder of Tutu Gogoi. On receipt of the information, he immediately went to the house of Tutu Gogoi. Going there, he found Tutu Gogoi lying on the floor of his house. P.W.3 stated that he was told that it was the accused who had stabbed Tutu Gogoi. P.W.3 stated that he saw stab wounds on the chest, stomach and neck of Tutu Gogoi and an injury on the hand of P.W.4 as the dagger went through his hand. The Police personnel came to the P.O. in his presence and recovered a dagger from a place near the P.O. and he identified the same as Mat. Ext.-1 in the court. In cross-examination, P.W.3 admitted that he did not state before the Police that he had noticed Tutu Gogoi lying on the floor of his house and was told that it was the accused who had stabbed him.
22. P.W.5 stated that the incident took place on 26<sup>th</sup> day of Ahin. P.W.5 deposed to the effect that during the daytime on the date of the incident he met the accused. On being met, the accused showed him a dagger and told him that he was going to do something with it. At around 07-30 p.m. on the relevant day when he was passing by the house of Tutu Gogoi, he heard shouting and screaming of Tutu Gogoi that the accused had stabbed him. Then, P.W.5 entered into the compound of Tutu Gogoi and saw Tutu Gogoi lying on the floor of the house with stab injuries on his neck, back, chest, etc. P.W.5 further stated that when he was in the compound of the deceased, the Police personnel arrived at the P.O. and Tutu Gogoi and Bikudhar Gogoi [P.W.4] were taken to the hospital at Chapakhowa. But, Tutu Gogoi before reaching the hospital, succumbed to his injuries. In cross-examination, P.W.5 stated that the day when the incident had occurred, was cold and foggy. As regards the P.O., P.W.5 stated that when he was travelling by the road, there was no electric light in the road.

23. P.W.7, Juli Gogoi Bharluwa was the daughter of the deceased. P.W.7 stated that the incident took place in the evening hours of 26<sup>th</sup> day of Ahin. She was informed by her brother, Jibon Gogoi [P.W.3] that her father, Tutu Gogoi was stabbed by the accused. Then, she went to her parental house. On reaching there, she saw that her father had sustained several cut injuries on his forehead and other parts of the body. She saw that her brother, Bikudhar Gogoi [P.W.4] had also sustained a piercing injury on his right hand. She was told by P.W.4 that the injury was caused by the accused. She stated about the shifting of her father and her brother [P.W.4] to the hospital by the Police personnel. P.W.7 was confronted with a part of her statement recorded under Section 161, CrPC by the defence and the P.W.7 denied the suggestion that she made such statement before the Police. No contradiction was, however, brought on record by defence by confronting the I.O. [P.W.13] with any previous statement of P.W.7 recorded by the I.O. [P.W.13].
24. P.W.8 stated that the occurrence took place at around 06-30/07-00 p.m. on the 26<sup>th</sup> day of Ahin. On hearing alarm raised by P.W.1, Bharati Gogoi, he went to the house of Tutu Gogoi. Going there, he saw Tutu Gogoi lying in an injured condition with stab injuries on his head, chest, etc. He had heard that the accused had caused the injuries to the deceased and Bikudhar Gogoi [P.W.4]. As he was requested by P.W.1 to inform the VDP and the Police, the VDP was accordingly informed by him. Then, the VDP personnel had informed the Police over phone. Sometime after Police personnel reached the P.O. P.W.8 further stated that as a witness, he put his signature as Ext.-2[2] in the Inquest Report [Ext.-2]. During cross-examination, P.W.8 affirmed that he stated in the same manner before the Police, as he stated in the court in evidence-in-chief.
25. Like many of the prosecution witnesses, P.W.10, Madhab Gogoi also stated that the incident took place on the 26<sup>th</sup> day of Ahin. The testimony of

P.W.10 is, however, not much significance as his evidence is in the nature of hearsay.

26. P.W.11, Bijoy Borah was the Secretary of the local VDP. P.W.11 corroborated the version of P.W.4 that after the occurrence, P.W.4 and Sanu Bharalua came to his house to inform that the accused had assaulted Tutu Gogoi. As P.W.11 was requested by P.W.4 and his brother-in-law, he informed the Police over phone and after one hour, Police personnel came to village. Then he led the Police personnel to the house of P.W.1. Going there, he saw that Tutu Gogoi was lying on the ground with a punctured wound on the right side of his chest and a wound on his forehead. Since Tutu Gogoi was alive at that time, he was taken to the hospital at Chapakhowa by a vehicle. He was told, later on, that Tutu Gogoi died in the hospital. In cross-examination, P.W.11 deposed that his house was situated at a distance of about two kilometers from the house of the deceased. P.W.11 further stated that the entrance to the house of the deceased had bamboo groves on both sides and the area was dark and without a torchlight, things were not visible.
27. On a comprehensive evaluation of the prosecution evidence, it has emerged that the testimonies of the prosecution witnesses – P.W.1, P.W.4, P.W.6 & P.W.9 – are amply corroborated by the other prosecution witnesses in that the incident had occurred in the evening hours of 13.10.2017, that is, 26<sup>th</sup> day of Ahin. All the prosecution witnesses had testified to the effect that Tutu Gogoi sustained a number of injuries on his person like head, chest, etc. The prosecution witnesses – P.W.2, P.W.3, P.W.6 & P.W.9 – had all deposed that they were present when the alleged weapon of assault, that is, a dagger was recovered by the Police personnel from near the P.O. and was seized vide Seizure List [Ext.-3]. P.W.2, P.W.3 and P.W.6 were witnesses to the Seizure List [Ext.-3]. P.W.3 and P.W.7 corroborated the already credible version of the eye-witnesses that P.W.4 sustained an injury in the incident. When these prosecution witnesses were shown the dagger, at the time of their depositions in the court, they identified the dagger as the one which

was recovered by the Police from near the P.O. vide the Seizure List [Ext.-3]. The only suggestion put to one of these prosecution witnesses by the defence was to the effect that the kind of dagger which was seized by the Police vide the Seizure List [Ext.-3] was a dagger which was otherwise commonly available.

28. After going through the testimonies of above-mentioned prosecution witnesses, more particularly, the cross-examination, it is found that the defence has not been able to elicit anything material either in the form of contradiction or in the form of omission to discredit their evidence on any material points. The prosecution has been able to lead cogent and credible evidence to the effect that during the incident, the accused had assaulted the deceased by a dagger and in the process, the accused had stabbed on the person of the deceased on several times. The said fact has been corroborated by the other prosecution witnesses who had reached the P.O. immediately after the incident.
29. P.W.12, Dr. Robin Ch. Doley, was the Autopsy doctor. He was serving as the Deputy Superintendent, Chaphakowa FRU on 14.10.2017. On that day, P.W.12 performed the post-mortem examination on the dead body of Tutu Gogoi. After examining the dead body of Tutu Gogoi, P.W.12 in the Post-Mortem Examination [PME] Report , exhibited as Ext.-4, recorded the following :-

**I - External Appearance**

1. Condition of subject :- Medium built fresh body rigor stout emaciated, mortis present. decomposed, etc.
2. Wounds, Position, :- Multiple penetrating wounds. Character Rt. Side scalp. Rt. Upper neck, Rt. Front chest, Rt. Shoulder, Lt. Shoulder, Lt.

ankle jt. one inch breath.

## II - Cranium and Spinal Canal

1. Scalp, Skull, Vertebrae :- Scalp - Lacerated penetrating wound. Rt. temporal area.  
Skull - Fracture of temporal bone by sharp knife.
2. Membrane :- Ruptured the penetrating wound side.
3. Brain and Spinal Cord :- Grey matter Destruction observed at the p/wound side.  
Spinal cord - NAD.

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

## III - Thorax

1. Walls ribs and cartilages :- Wall - Penetration at Rt. front chest.  
Ribs - NAD.  
Cartilages - NAD.
2. Pleurae :- Ruptured at ppey.  
\* \* \* \* \*
8. Vessels :- Severed at different levels.  
\* \* \* \* \*

## V - Muscles, Bones and Joints

1. Injury :- Multiple injuries scald, right u neck, Rt. front chest, Rt. shoulder, Lt. shoulder.
2. Disease or deformity :- Deep penetrating injuries cutting skin, muscles, vessel

*and nerves.*

3. *Fracture* :- *Scalp fracture over Rt. temporal area.*

4. *Dislocation* :- *Dislocation- NIL.*

**More Detailed Description of Injury or Disease**

*Multiple site deep penetrating wounds of breadth one inch size at*

- 1) Rt. upper scalp [T. area], penetrating scalp & temporal bone & grey matter.*
- 2) Rt. upper neck penetrating skin, muscles, pleura, Rt. apex of Rt. Lungs.*
- 3) Rt. upper front chest- penetrating skin, muscles, pleurae & Rt. Lungs.*
- 4) Rt. shoulder, penetrating skin, muscles, deep vessels & nerves.*
- 5) Lt. shoulder, penetrating skin, muscles & vessels.*

P.W.12 had opined that the death was caused due to heavy blood loss from severed deep vessels and direct injury of grey matter [penetrating temporal bone].

30. From the PME Report [Ext.-4], it is evident that there were multiple penetrating wounds on several parts of the person of the deceased, that is, the right upper scalp, right upper neck, right front chest, right shoulder and left shoulder. The vessels were severed at different levels, the pleurae were ruptured and the temporal bone of the skull was fractured. From the PME Report [Ext.-4] and from the opinion of the Autopsy Doctor [P.W.12], it is demonstrated that the injuries inflicted on the deceased were done with the intention of causing such bodily injuries to the deceased which were sufficient in ordinary course of nature to cause the death.

31. The Hon'ble Supreme Court of India in *State of Andhra Pradesh vs. Rayavarapu Punnayya and Another*, reported in [1976] 4 SCC 382, has explained about the manner to decide the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case. It has been observed that the question is to be considered 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 of the Penal Code. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the operation of Section 300 of the 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 of the Penal Code. 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 of the Penal Code, depending, respectively, on whether the second or the third clause of Section 299 of the Penal Code is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300 of the Penal Code, the offence would still be 'culpable homicide not amounting to murder', punishable under the first part of Section 304 of the Penal Code.
32. The Hon'ble Supreme Court of India in *Virsa Singh vs. State of Punjab*, reported in AIR 1958 SC 465, has explained the meaning and scope of Clause *thirdly* in the following manner :-

*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. 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.*

33. Therefore, according to the rule laid down in the case of *Virsa Singh*, 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 still be 'murder'. In this connection, it is also apposite to refer to illustration [c] appended to Section 300, IPC, which reads as under :-

*[c] A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.*

34. Having regard to the nature of bodily injuries intended upon the deceased, as emerged from the PME Report [Ext.-4], we are of the considered view that the death of the deceased clearly comes within the scope and ambit of Clause *thirdly* of Section 300, IPC which is punishable under Section 302, IPC.
35. From the eye-witnesses' accounts, it has clearly emerged that the accused before he started shouting at the entrance area of the house of the

deceased, was already armed with a dagger, which was seized from a place near the P.O. vide a Seizure List [Ext.-3] on 14.10.2017 in presence of witnesses. The factum of seizure of the dagger in presence of witnesses was not seriously disputed by the defence during the cross-examination of the prosecution witnesses, in whose presence the dagger was seized. As per the Seizure List [Ext.-3], the dagger was a 15 inches long dagger fitted to a handle made of cane. The iron portion was about 10 inches long while the handle portion was about 5 inches long.

36. It has neither emerged from the evidence/materials on record nor it is the case of the defence that there was any grave and sudden provocation from the end of the deceased. At the relevant time, the accused appeared at the entrance area of the house of the deceased and starting shouting hurling abuses at the deceased. From the fact that the accused was already armed with a dagger which he had used as the weapon of assault, it cannot be inferred that there was no premeditation on the part of the accused. From the fact that the deceased had sustained a number of penetrating wounds on various vital parts of the body, it is difficult to reach a view that the accused had no intention to cause such injuries which were sufficient to cause death or had not taken any undue advantage of the situation or had not acted in a cruel manner. At the time of the incident, the deceased was unarmed and he reached the P.O. in response to the situation created by the accused at the entrance area of his house, to pacify him and to ask him to leave the place. Thus, we are of the unhesitant view that the case does not come within any of the exceptions of Section 300, IPC, meaning thereby, the offence committed by the accused is murder.
37. A submission is made on behalf of the accused-appellant to the effect that at the time of the incident there was darkness and there were inconsistencies in the testimonies of the prosecution witnesses as regards the exact time of occurrence of the incident. Learned Amicus Curiae has drawn attention to the testimonies of the prosecution witnesses to submit that while the

informant [P.W.1] stated that the time of the occurrence was at about 07-00 p.m., her son – Bikudhar Gogoi [P.W.4] stated that the occurrence took place at about 06-00/07-00 p.m. The other son of the informant, Jibon Gogoi [P.W.9] stated that the occurrence took place at about 06-30/07-00 p.m. Likewise, some of the prosecution witnesses mentioned the time of the occurrence either before or after 07-00 p.m. *plus/minus* one hour. On the other hand, the learned Additional Public prosecutor has submitted that the occurrence took place in a village area and the people in the rural area generally suggest approximate time. But, there were no inconsistencies in the testimonies of the vital witnesses on material points. In such view of the matter, a minor variation as regards the time of occurrence cannot be a ground to disbelieve the testimonies of the prosecution witnesses, which were otherwise consistent and credible throughout.

38. In *Sahabuddin* [supra], it was contended that the testimonies of the witnesses could not be relied upon as they mentioned different time of occurrence of the incident. It has been observed in such context that it is a plausible fact that there could be some variations in the statements of witnesses with respect to a particular incident. Every variation or immaterial contradiction cannot provide advantage to the accused as it is a settled principle of law that while appreciating the evidence, the court must examine the evidence in its entirety upon reading the statement of a witness as a whole, and if the court finds the statement to be truthful and worthy of credence, then every variation or discrepancy particularly which is immaterial and does not affect the root of the case of the prosecution would be of no consequences. In *Pundappa Yankappa Pujari* [supra], the Hon'ble Supreme Court has observed that certain discrepancies in mentioning the time of the incident cannot be a ground to disbelieve the statements of the witnesses if the difference is about one hour, as the villagers generally suggest approximate time. In the present case, the prosecution witnesses did not mention the time of occurrence in exactitude but they mentioned the approximate time of occurrence. The variation of time, from the above

discussion, is found to be not of much significance as the variation of time was hardly about one hour.

39. Another contention is raised by the learned Amicus Curiae with regard to the identification of the assailant as the prosecution witnesses – P.W.1, P.W.4, P.W.6 and P.W.9 – had deposed that it was dark when the incident had occurred. As per P.W.1, the place of occurrence was lit by street light and there was no fog at the time when the incident took place though it was a winter season. But P.W.4 stated that at night, the passage from the entrance gate to the house of the deceased used to remain dark and there was no electric light at the P.O. As per version of P.W.6, it was dark when the incident took place and at that time, persons at the passage could not be recognized without the use of a torchlight. P.W. 9 had also deposed in similar manner like P.W.6.
40. A claim of a witness that he had identified the assailant during the commission of an assault has to be examined by the court with reference to the circumstances of a particular case. The prosecution witnesses – P.W.1 and P.W.4 – who were the first ones to reach the P.O., had testified to the effect that they came to know that the accused was at their entrance gate from the shouting of and hurling of abuses by the accused at the deceased and in response to such conduct of the accused, the deceased went near the accused to pacify him. Both P.W.1 and P.W.4 were categorical in testifying that they became aware about the presence of the accused at their gate from the shouting of the accused only as the accused was found shouting and hurling abuses at their entrance gate. As like the said two prosecution witnesses, P.W.6 and P.W.9 were also well acquainted with the voice of the accused with the accused as the accused was their close neighbour for a long period of time.
41. Thus, it is incomprehensible to accept that it would not be possible for these prosecution witnesses to recognize the voice of the accused and to identify

the accused even in darkness, who was shouting and hurling abuses at the accused from a nearby place, in absence of any other kind of disturbances like heavy traffic on the road which is a village road or playing of loudspeaker, etc. creating noise in the close vicinity. Thus, we find that the contention after consideration, is only to be discarded.

42. It is not in dispute that the accused, the deceased and all the prosecution witnesses were inhabitants of the same village and were/are residing together since a number of years. It has clearly emerged that each one is well acquainted with the other. Identification of a person in darkness, in some cases, may not be difficult if a person is well acquainted to the other for long years, from the manner of speech and voice. It is not a case of the defence that night was not a moonless night. We may refer to the observation made by the Hon'ble Supreme Court of India in *Ram Gulam Chaudhary and Others vs. State of Bihar*, reported in [2001] 8 SCC 311, where a contention was raised as regards identification of the accused at night where the occurrence took place in a rural area. Therein it is observed that the visual capacity of urban people who are acclimatized to bright lights or lamps is not the standard to be applied to villagers whose optical potency is attuned to country-made lamps. The visibility of villagers is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such light. As the assailants were from the same village and were known to the witnesses, it is possible for the witnesses to identify the assailants in lesser light also. In the present case, though there are some inconsistencies as regards presence of light or sufficiency of light at the P.O., the same is not material in presence of uncontested position that the accused was known to all the prosecution witnesses since a long period of time and they were well acquainted with his speech and voice.
43. The evidence of the eye-witnesses had also found corroboration from the testimonies of P.W.2 and P.W.5 as well. P.W.2 had testified that when at about 05-00/06-00 p.m. he was going to the matrimonial house of his

daughter, he came across the accused on the road and he found the accused holding a dagger in his hands. In his testimony before the court, P.W.2 identified the dagger exhibited as Mat. Ext.-1, as the one which the accused was holding on the date of occurrence, as seen by him. P.W.2 was not even confronted on that aspect during his cross-examination. P.W.5 had testified to the effect that during the daytime on the day of occurrence, he met the accused and the accused showing him a dagger, told him that he was going to do something with it. P.W.5 was also not confronted by the defence on the said aspect when he was cross-examined.

44. The testimonies of these two prosecution witnesses as regards the fact that the accused was armed with a dagger prior to occurrence of the incident of assault and his statement before the P.W.5 that he would do something with the dagger are significant from the standpoint of the principle contained in Section 6 of the Evidence Act, 1872. The essence of the doctrine of *res gestae* included in Section 6 of the Evidence Act is that if a fact which, though not in issue, is connected with the fact in issue so as to form part of the same transaction then it becomes relevant by itself whether it occurred at a same time and place or at different times and places. A conduct of the accused in and around the time of the incident may become admissible under Section 6 of the Evidence Act, though not in issue, if it is so connected with the fact in issue.
45. A submission is made on behalf of the accused that they be closely related to the deceased, fall in the category of interested witnesses. As the three eye witnesses – P.W.1, P.W.4 and P.W.9 - were the inmates of the house and they were the wife and two sons of the deceased respectively, their presence at the time and near the P.O. is quite natural. The doubt raised by the learned Amicus Curiae that the conviction of the accused is primarily based on the testimonies of closely related and interested witnesses is misplaced. It has been settled by a long line of decisions that 'related' is not always equivalent to 'interested'. A witness is called 'interested' only when he or she derives some benefit from the result of a litigation. A witness who is a

natural one and is the only possible eye-witness in the circumstances of a case cannot be said to be 'interested'.

46. In this context, the following observations made in the case of *State of Rajasthan vs. Smti. Kalki and another*, reported in [1981] 2 SCC 752, are relevant :-

7. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: [1] she was a 'highly interested' witness because she 'is the wife of the deceased', and [2] there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.

- 46.1. Similarly, in *Mohd. Rojali and others vs. State of Assam, Ministry of Home Affairs through Secretary*, reported in [2019] 19 SCC 567, the Hon'ble Supreme Court has observed as under :-

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the

*victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab, 1954 SCR 145, wherein this Court observed:*

*26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person.*

47. In the case in hand, the eye-witnesses – P.W.1, P.W.4 & P.W.9 – being the wife and two sons of the deceased, though related, cannot be categorized as interested witnesses simplicitor. Moreover, P.W.4 is an injured witness. The testimonies of these eye-witnesses are found to be consistent and reliable throughout. Therefore, the contention advanced on behalf of the accused that the testimonies of these eye-witnesses are to be disbelieved because they were close relatives of the deceased and hence, interested witnesses is not to be accepted. One more reason for not accepting such contention is that their testimonies are corroborated on material particulars by the testimonies of the other prosecution witnesses including P.W.2, P.W.5 and P.W.6.
48. In view of the discussions made and for the reasons mentioned therein, we are of unhesitant view that there is no reason, not to speak of good and sufficient reason, to depart from the view taken by the learned trial court on the finding of guilt of the accused for the charge of murder. We, therefore,

affirm that the offence committed by the accused-appellant was murder, as defined in Section 300 of the Penal Code and the same is punishable under Section 302 of the Penal Code. On further examination, we find that the act of the accused-appellant which resulted into the death of the deceased does not fall within any of the exceptions mentioned in Section 300 of the Penal Code. Resultantly, the Judgment and Order of conviction and sentence passed by the learned trial court does not require any interference and is, therefore, affirmed. As a consequence, the instant criminal appeal being devoid of merit, fails.

49. Notwithstanding the direction made by the learned trial court as regards the payment of compensation of Rs. 1,00,000/- to the victim wife of the deceased, it is observed that the jurisdictional District Legal Services Authority, on an application made, is to consider about awarding compensation to the victim, that is, the wife of the deceased as per the extant Victim Compensation Scheme, framed under Section 357-A of the Code.
50. Before parting with, we wish to place our appreciation on record as regards the services rendered by Mr. M. Dutta, 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.
51. The Registry to send back the case records of the learned trial court forthwith.

**JUDGE**

**JUDGE**

**Comparing Assistant**