

GAHC010142372023



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

Case No. : Crl.A./241/2023

HIMANTA NATH @ SIMANTA NATH AND ANR.
S/O LATE BHOB RAM NATH,
VILL.- GOHORAGURI GAON, HATIGHULI, P.S.- GAURISAGAR, DIST.-
SIVASAGAR, ASSAM.

2: HEMO SAIKIA
S/O LATE PATHAK SAIKIA
R/O NO. 2 KOLIORY GAON
P.S.- GAURISAGAR
DIST.- SIVASAGAR
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE P.P., ASSAM.

2:TULUMONI SAIKIA
W/O LATE BABU SAIKIA
VILL.- NO. 2 KOLIORY GAON
P.S.- GAURISAGAR
DIST.- SIVASAGAR
ASSAM
PIN- 785664

Advocate for the appellants	: Mr. S. Borthakur;
Advocate for the respondents	: Mr. B. Sarma, for respondent No.1; Mr. K. Thakur, for respondent No. 2.
Date of hearing	: 14.05.2024
Date of judgment	: 17.07.2024

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT & ORDER (CAV)

Heard Mr. S. Borthakur, learned counsel for the appellant and Mr. B. Sarma, learned Addl. P.P. for the State respondent No.1 and Mr. K. Thakur, learned counsel for the respondent No.2.

2. This appeal, under section 374 of the Code of Criminal Procedure, is directed against the judgment and order dated 25.04.2023, passed by the learned Addl. Sessions Judge, Sivasagar, in Sessions Case No. 36(S-S) of 2012. It is to be noted here that vide impugned judgment and order, the learned trial court had convicted the appellants, namely, Himanta Nath @ Simanta Nath and Shri Hema Saikia, along with another accused, namely, Munukon Baishya, who is not the appellant, under section 304(I) IPC and sentenced them to suffer Rigorous Imprisonment (R.I.) for a period of 10(ten) years and also to pay a fine of Rs.1000/-, (Rupees One Thousand) only, in default of the fine amount, RI for another 6(six) months. Further, the learned trial court had convicted the two appellants, under section 201 IPC and sentenced them to suffer RI for 3(three) years and also to pay a fine of Rs.500/- (Rupees Five Hundred) only, and in default thereof, to suffer Rigorous Imprisonment for another 3(three) months. Further the learned trial court had directed that the sentences, so passed against the appellants, shall run concurrently.

3. The background facts, leading to filing of the present appeal is briefly

stated as under :-

“Shri Babu Saikia, since deceased was an inhabitant of No.2 Koliyori Gaon. On 20.10.2010, at about 7.00 p.m. he (Babu Saikia) went out from his house for fishing. But, he did not return home on that night. On the next day, his family members, on being searched found the dead body of Babu Saikia in the paddy field of Koliyari Gaon. Then the wife of Babu Saikia, namely, Smti. Tutumoni Saikia had lodged one FIR with the Officer-in-Charge(O/C) Gaurisagar Police Station stating *inter-alia* amongst others that she strongly suspects involvement of accused persons, namely, Sri Hema Saikia, Sri Munukan Baishya, Sri Himanta Nath, Jibon Saikia and others, in killing of her husband Babu Saikia, as they had come to her house and threatened to kill her husband.

On receipt of the aforesaid FIR, the O/C Gaurisagar P.S. had registered a case, being Gaurisagar P.S. Case No. 87/2010, under Sections 302/201/34 IPC and endorsed S.I. Apurva Kumar Dutta to carry out the investigation. The I.O. then visited the place of occurrence, examined the witnesses, and held inquest on the dead body of the deceased and collected the Inquest Report and sent the dead body for post-mortem examination, and thereafter, collected the report. He also seized one ‘*Naga Dao*’ the weapon of offence, from the house of appellant Hema Saikia, on being lead and shown by accused Munukan Baishya, preparing seizure list, in presence of witnesses. He also arrested the accused/appellants and forwarded them to the court and also the confessional statement of one of the

accused, namely, Munukan Baishya, recorded by Magistrate. Then on completion of investigation the I.O. submitted charge sheet under Sections 302/201/34 IPC against the accused persons, namely, Sri Hema Saikia, Sri Munukan Baishya, Sri Himanta Nath, before the court of learned Judicial Magistrate 1st Class, Sivasagar, having found sufficient materials against them.

Thereafter, the learned Judicial Magistrate 1st Class, Sivasagar, having complied with the provision of Section 207 Cr.P.C. had committed the case to the court of learned Sessions Judge, Sivasagar, having found the case triable exclusively by the Court of Sessions. The learned Sessions Judge, Sivasagar, then made over the case to the court of learned Addl. Sessions Judge, Sivasagar for disposal.

On appearance of the accused/appellants before the Court of learned Addl. Sessions Judge, Sivasagar, the learned Addl. Sessions Judge, after hearing learned Advocates of both sides, had framed following charges against the present appellants and against accused Munukan Baishya:-

(i) That, you on 20.10.2010, at about 7.00 p.m. at No. 2 Koliyari Gaon, under Gaurisagar police station, in furtherance of common intention, committed murder by intentionally or knowingly causing the death of Babu Saikia (deceased) and thereby committed an offence punishable u/s 302/34 of IPC.

(ii) That, you, on the same day, time and place, in furtherance of common intention knowing that

the offence of murder of Bubu Saikia has been committed and thereafter, attempted to cause disappearance of the evidence and thereby committed an offence punishable u/s 201/34 of IPC.

Thereafter, on being read and explained over the charges to them, they had pleaded not guilty and claimed to be tried.

During trial, the prosecution side had examined as many as 14 witnesses. After closing the prosecution evidence, the learned trial court had examined the accused/appellants under Section 313 Cr.P.C. The accused/appellants had also examined 3 witnesses in their defence. Thereafter, hearing arguments of learned Advocates of both sides the learned trial court had found that instead of charge under Section 302 IPC, a charge under Section 304(I) IPC stand established and accordingly, convicted and sentenced them as aforesaid.”

4. Being highly aggrieved, the appellant has preferred the present appeal and contended to allow the same by setting aside the impugned judgment and order of conviction, on the following grounds:-

(I) That, the impugned judgment and order dated 25/04/2023, is apparently illegal being against the letters, intents and objects of the provisions of Section 304(I)/201/34 IPC;

(II) That, the learned trial court had passed the impugned judgment mechanically and without addressing himself to the points raised and the precedents cited in the case, and thereby, arrived at an erroneous finding;

(III) That, the learned trial court had failed to apply its judicial mind over the matter and also failed to follow the guiding principles required to be followed to promote justice and also the mandatory requirement have been given a complete go bye;

(IV) That, in the trial court had, purely on the basis of the evidence of P.W-1 and P.W-2 and P.W.3, all of whom are interested witness, and in absence of the independent witnesses, held the appellants guilty and such a finding, on the basis of evidences of interested witness, is absolutely perverse;

(V) That, there was material contradiction in evidence of the informant/PW 1 with that of the FIR in respect of the time of recovery of the dead body and such contradiction was overlooked by the learned trial court in arriving at the finding of guilt of the appellants;

(VI) That, there was another material contradiction in evidences of the informant/PW 1 and P.W.2, in respect of the place and time of recovery of dead body and about lodging of the time of FIR;

(VII) That, there was another contradiction in evidences between the complainant/PW 1 and P.W. 3 in respect of recovery of the dead body and pushing him into a nearby pond by appellant Himanta @ Simanta Nath. But, the sketch map does not indicate presence of a pond.

(VIII) That, the Material Ext 1, i.e. the 'Dao' which was seized by the I.O. was not sent for forensic examination and the learned trial court had failed to consider the said aspects;

(IX) That, the informant had not intimated the police about the

incident that took place in her house on 19/10/2010, where the appellants came to her house and threatened to kill her husband;

(X) That, from the evidence of P.W.7 and also from statement of under Section 164 Cr.P.C. (Ext.-5) it appears that appellant Himanta @ Simanta Nath was with him while he was preparing food in the camp house and then he heard that someone crying as 'Marile' 'Marile' from some distance which clearly indicates that said appellant was never present at the place of occurrence, but, this aspect was not taken into account by the learned trial court;

(XI) That, there was a confessional statement made by accused Munukan Baishya, where he specifically stated that he had killed Babu Saikia and in the statement he had never mentioned about presence of any one of the present appellants and confessional statement not having implicated the appellant the learned trial court ought not to have hold the appellant guilty;

(XII) That, the prosecution side had failed to prove its case beyond reasonable doubt and the impugned judgment is based on preponderance of probability;

(XIII) That, there being no direct evidence against the appellants and that the circumstantial evidence also being overwhelmingly in favour of the appellants, the learned trial court ought to have given them the benefit of doubt;

5. Mr. Borthakur, the learned counsel for the appellants, besides reiterating the aforementioned ground, has mainly emphasised upon the contradictions in the version of the prosecution witnesses. According to him, said

contradiction are on material point and goes to the root of the case, but, the learned trial court had overlooked the same. Mr. Borthakur also submits that the learned trial court had accepted the confessional statement of the accused/convict Munukon Baishya and convicted the appellants' inspite of non implication of the appellants with the charge by Munukan Baishya. Referring to a decision of Hon'ble Supreme Court in **Palvinder Kaur vs. State of Punjab**, reported in **(1952) 2 SCC 177**, Mr. Borthakur submits that the confession and admission, these must be accepted as a whole or rejected as a whole. Referring to another case law in **Aizaz and Others vs. State of Uttar Pradesh** reported in **(2008) 12 SCC 198**, Mr. Borthakur submits that the appellants cannot be held guilty by invoking Section 34 IPC also as three defence witnesses, so examined by the accused/appellants have established that they were not present at the place of occurrence and the plea of alibi thereby stands established. Under these facts and circumstances, Mr. Borthakur has contended to set aside the impugned judgment and order and to acquit the appellants.

6. Per contra, Mr. B. Sharma, the learned counsel for the state respondent has supported the impugned judgment and order of conviction. Referring to the evidence of P.W.3, Mr. Sharma submits that there are clear and cogent evidence of P.W.3 to show involvement of the present appellants with the offence charged. Mr. Sharma further submits that the learned trial court had rightly discarded the evidence adduced by three defence witnesses, as admittedly, D.W.1 and 2 had left the place of occurrence prior to the occurrence. Referring to a decision of Hon'ble Supreme Court in **R. Shaji vs. State of kerela**, reported in **(2013) 14 SCC 266**, Mr. Sharma

submits that in view of Section 157 of Evidence Act, statement recorded under Section 164 Cr.P.C. cannot be read as a substantive piece of evidence and the same can be used for the purpose of corroboration only. Mr. Sharma also submits that the prosecution side has succeeded in bringing home the charges against the appellants beyond all reasonable doubt and therefore, it is contended to dismiss the appeal.

7. On the other hand Mr. Thakur, learned counsel for the respondent No.2 has subscribed the submission of Mr. Sharma, the learned Addl. P.P.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition and documents placed on record and also gone through the record of the learned trial court and perused the case laws, referred by Mr. Borthakur the learned counsel for the appellant, and Mr. Sharma, the learned Addl. P.P.

9. The evidence of P.W.1 and the FIR, Exhibit-1, reveals that the occurrence took place on 20.10.2010, at No.2 Koliyari village, at night hours. The evidence of P.W.1 also reveals that her husband Babu Saikia went for fishing at about 7 pm on that night and he did not returned and on the next day afternoon, his dead body was found at paddy field of Koliyari village, near the embankment, on 21.10.2010. P.W.3, who accompanied the deceased for fishing also corroborated the evidence of P.W.1 about the date, time and place of occurrence. P.W.2 Shri Debojit Saikia and other prosecution witnesses also corroborated the date time and place of occurrence. Thus, it appears that the occurrence took place on 20.10.2010, at No.2 Koliyari village, at night hours. Be it noted here that the appellant/accused side had not disputed the date, time and place of occurrence.

10. It also appears from the evidence on the record that in the occurrence on the night of 20.10.2010, at No.2 Koliyari village, Babu Saikia, the husband of respondent No.2 (informant) suffered demise. It is not in dispute that the death of Babu Saikia is not natural death on account of any disease. Now, what left to be seen is whether the death of Babu Saikia is accidental, suicidal or homicidal in nature. In this regard, the evidence of the Doctor, who had conducted autopsy on the dead body of the deceased, is relevant.

11. The prosecution side has examined the Doctor Pradip Kumar Saikia as P.W.8. His evidence reveals that on 22.10.2010, he was working at Sivasagar Civil Hospital as Sr. M & H.O. On that day at about 2.00 p.m., on police requisition, he had conducted autopsy on the dead body of Babu Saikia of Koliyari Gaon, under Gaurisagar P.S., in connection with Gaurisagar P.S. Case No. 87/2010, under Sections 302/201/34 of IPC, and found the following:-

I. External Appearance:-

(1) Condition of the subject stout, emaciated, decomposed etc.

Rigor mortis present. Stout.

(2) Wounds, position and character:-

- (i) Multiple abrasion present over the right upper limb, size 2.3 cm. about no.- 4 multiple abrasion present over the anterior and posterior aspect of both forearms.
- (ii) Deep cut 2 nos. (Anterior aspect) forearm (L) 7.5 cm X 1.5 cm just 7.5 cm above the left rig joint. No bone injury, margin sharp, clotted blood present. And
- (iii) Cut injury sharp. Left lower thigh just above

the knee joint. Size 2" X 0.5" (5 cm x 1.25 cm) margin sharp. Clotted blood present.

3. Bruise, position, size and Nature:- Nil;

4. Mark of ligature on neck dissection etc.:- Nil;

II. CRANIUM AND SPINAL CANAL:-

(a) Scalp, skull, vertebrae:- Healthy

(b) Membrane :- Healthy

(c) Brain and spinal cord :- Healthy

III. THORAX:-

(a) Wall ribs and cartilages:- sharp cut at forth rib deep. Margin sharp extending upto lung tissue(right). Lung cavity is full of clotted blood.

(b) Pleure :- Congested

(c) Larynx and Trachea :- Healthy;

(d) Right lung :- Deep penetrating injury of right lung through the lung tissue, size 4 cm X 5 cm. Clotted blood present. Level 3" intercostals space. Interior chest wall. Outer injury 7.5 cm X 2 cm. Margin sharp.

(e) Left Lung :- Normal;

(f) Pericardium :- Pale;

(g) Heart :- Both side empty;

(h) Vessels :- Healthy;

IV. ABDOMEN:-

(a) Walls :- Healthy

(b) Peritonium :- Healthy;

- (c) Mouth, Pharynx, Oesophagus :- All are healthy;
- (d) Stomach and its contents :- Food materials present;
 - (e) Small intestine and its contents :- Semi digested food materials present. Distended with gas.
 - (f) Large intestine and its contents:-- Stool materials present.
 - (g) Liver:- Healthy;
 - (h) Spleen:- Healthy;
 - (i) Kidney :- Healthy;
 - (j) Bladder:- Empty;
 - (k) Organ of generation, extema and internal :- Healthy;

V. MUSCLES, BONES AND JOINTS:-

- (a) Injury :- Nil;
- (b) Disease and deformity :- Nil;
- (c) Fracture:- Nil;
- (d) Dislocation :- Absent;

MORE DETAILED DESCRIPTION OF INJURY OR DISEASE:- As described in the different headings;

OPINION:- In his opinion the person died of cardio- respiratory failure following injury to the right lung and it is ante- mortem in nature.

He confirmed the P.M. Report, Exhibit 6, and his signature thereon. Notably, P.W. 8 is not cross-examined.

12. The evidence of P.W. 1, 2, 5, reveals that the I.O., during investigation, had hold inquest on the dead body of the deceased and prepared the Inquest

Report- Exhibit-2 and took their signatures over the same. It also appears that though the prosecution side had examined the I.O. as P.W.14, yet, it had failed to exhibit and confirm the Inquest Report through him. Notwithstanding, a perusal of the Exhibit-2 indicates that the I.O. had found one mark of injury (blow) measuring 4", over right chest, another mark of injury (blow) over left elbow and another dao blow over the left knee and also found mark of injury over his private part. Thus, Exhibit-2 also corroborated the medical evidence in respect of the injuries sustained by the deceased Babu Saikia.

13. Thus, it appears from the evidence of P.W. 8 and from his report- Exhibit-6 and also from the Inquest Report-Exhibit-2 that deceased Babu Saikia died of cardio- respiratory failure following injury to the right lung and the same were ante- mortem in nature. Notably, P.W.8 had not found any disease or deformity in the dead body. Thus, it appears that the death of deceased Babu Saikia is neither accidental, nor suicidal, but, homicidal in nature. Now, it is to be seen who had caused the injuries suffered by him which were the immediate cause of his death.

14. It is to be noted here that though the prosecution side has examined as many as 14 witnesses, including the M.O. and I.O., yet, there is only one eye witness to the occurrence. He is P.W. 3, Shri Nelo Gogoi, who had gone with deceased Babu Saikia for fishing, on 20.10.2010, at about 7 pm. Except P.W.3 none other witnesses had seen the accused/appellants assaulting the deceased Babu Saikia. So P.W.3 is the star witness of the prosecution.

15. The evidence of P.W.3 reveals that the deceased Babu Saikia is his

brother in law and informant Tutumoni Saikia is his sister in law and he is acquainted with the accused persons. His evidence also reveals that on 20.10.2010, he went to the house of his father in law, Shri Bhadreswar Saikia, and he reached his house at about 4.00 p.m. His evidence also reveals that at about 7.00 p.m., on being asked by his brother in law Babu Saikia, he accompanied him towards the embankment of Mitong river and on their way they met Hema Saikia, who enquired from him about the time of arrival in the house of his father in law. While he was talking with Hema Saikia then Hema Saikia enquired from him who the other person was. Then he told him that he was Babu Saikia, who happened to be his nephew. At that time, accused Munukon Baishya was present at a distance. Then Hema Saikia asked Munukon Baishya to attack Babu Saikia by saying cut and assault him (*yak maar, kaat*). Then he tried to obstruct accused Munukon Baishya, but, he inflicted a blow with a "Dao" above his abdomen. His evidence also reveals that Simanta Nath @ Himanta caught hold of him and then Munukon Baishya chased Babu Saikia towards the embankment.

16. His evidence also reveals that then Hema Saikia caught hold of him and confined him in a house near the embankment. Then about an hour after Munukon Baishya entered inside the said house, where he was kept confined, with a "Dao" in his one hand and then Munukon had inflicted a blow with his fist on his forehead. Then the accused persons compelled him to utter slokes of Bhagawat and also forced him to do some dramatic performance. His evidence also reveals that accused Hema Saikia and Munukon Baishya left the said house at about 2.30 a.m. and at that time the other accused, namely, Simanta Nath @ Hemanta Nath was guarding him. He then asked Simanta

Nath @ Hemanta Nath to allow him to go. But, he did not allow him to go and when he insisted and came out from the house, then accused Simanta Nath pushed him to a nearby pond. As soon as he came out from the pond, Simanta Nath made a phone call to Hema Saikia and informed about him. Then Hema Saikia told him to let him go and accordingly, he came to the house of his father in law and informed about the incident to Tutumoni.

17. His evidence also reveals that in the morning, they searched for Babu Saikia, but they could not trace him out. Thereafter, Tutumoni had reported the matter to police at Gaurisagar PS. Then in the afternoon, the dead body of Babu Saikia was found lying in the paddy field and he had noticed several stab injuries on the dead body. After sometime, police arrived at there and took the dead body away for post mortem examination. His evidence also reveals that during investigation police got his statement, Ext. 4, recorded in the Court. A perusal of Exhibit-4, the statement of P.W.3, recorded under Section 164 Cr.P.C., reveals that the same also corroborated the evidence in material particulars.

18. The accused/appellants had cross-examined this witness, but, failed to elicit anything tangible to discredit his evidence. He denied the suggestion, that he had not stated before the I.O. what he has deposed before the court. However, the accused/appellants confirmed from the I.O. (P.W. 14) that P.W. 3 did not state before him that "Simanta Nath caught him and Munukan Baishya chased Babu Saikia towards the embankment." P.W.14 also confirmed that P.W.3 had stated to him that Hema Saikia asked him to utter slokes of Bhagawat. He also confirmed that P.W.3 did not state before him that at about 2.30 a.m. Hema Saikia and Munukon Baishya left the house and

Simanta Nath was guarding him, that Simanta Nath @ Hemanta Nath did not allow him to go inspite of repeated request and that when he insisted and came out from the house, then accused Simanta Nath pushed him to a nearby pond and that Hema Saikia told him to let him go, and accordingly, he came to house of his father-in-law and informed about the incident to Tutumoni.

19. Thus, to some extent, the omissions in the versions of P.W. 3, before the I.O. stands proved. But, these omissions, so brought on record and proved, appears to be not on material point so as to spell inveracity to the version of P.W.3. There was no dispute that at that time, accused Munukon Baishya was present at a distance at the place of occurrence and then Hema Saikia asked Munukon Baishya to attack Babu Saikia by saying cut and assault him (*yak maar, kaat*). It was also not in dispute that when he (P.W.3) tried to obstruct accused Munukon Baishya, then he inflicted a blow with a "Dao" above his abdomen and that then Hema Saikia caught hold of him and confined him in a house near the embankment. It was also not in dispute that then about an hour after Munukon Baishya entered inside the said house, where he was kept confined, with a "Dao" in his one hand and he then inflicted a blow with his fist on his forehead. Then the accused persons compelled him to utter slokes of Bhagawat. Thus, the omissions, so brought on record and proved, to the considered opinion of this court, are not contradictions and the same failed spell inveracity to the evidence of P.W.3. In holding so, this court derived authority from a decision of Hon'ble Supreme Court in **Ashok Debbarma v. State of Tripura**, reported in **(2014) 4 SCC 747**, wherein in para No. 22 it has been held as under:-

“22. The mere fact that the appellant was not named in the statement made before the police under Section 161 CrPC and, due to this omission, the evidence of PW 10 and PW 13 tendered in the court is unreliable, cannot be sustained. Statements made to the police during investigation were not substantive piece of evidence and the statements recorded under Section 161 CrPC can be used only for the purpose of contradiction and not for corroboration. In our view, if the evidence tendered by the witness in the witness box is creditworthy and reliable, that evidence cannot be rejected merely because a particular statement made by the witness before the court does not find a place in the statement recorded under Section 161 CrPC. The police officer recorded statements of witnesses in an incident where 15 persons lost their lives, 23 houses were set ablaze and large numbers of persons were injured. PW 10 lost his real brother and PW 13 lost his daughter as well as his wife and in such a time of grief, they would not be in a normal state of mind to recollect who all were the miscreants and their names. The witnesses may be knowing the persons by face, not their names. Therefore, the mere fact that they had not named the accused persons in Section 161 statement, at that time, that would not be a reason for discarding the oral evidence if their evidence is found to be reliable and creditworthy.”

20. Therefore, the evidence of P.W.3 cannot be discarded on account of this omission. Having appreciated, analysed and assessed his evidence on the touchstone of its probabilities, its intrinsic worth and animus of the witness, I find the evidence of P.W.3 worth believing. His evidence finds corroboration from the evidence of P.W.1, Smti. Tutumoni Saikia also. She is the wife of the deceased and informant of this case, who lodged the FIR, Exhibit-1.

21. Her evidence reveals that on 20.10.2010, her husband went to check the fishing net along with her brother-in-law Nilakanta Gogoi. Then on 21.10.2010, at about 01:00 am, Nilakanta Gogoi returned home and informed her that the accused persons confined him inside a house and killed her husband Babu Saikia by chasing and inflicting stab injury. Then on 21.10.2010, in the morning she along with her brother Debajit Saikia found the dead body of her husband below the embankment in the paddy field. She had noticed cut injuries on the whole body of her husband. Then she had lodged the FIR with Gaurisagar P.S. Thereafter, police went to the place of occurrence and brought the dead body. Her evidence also reveals that the accused persons had quarrel with her husband in connection with some land dispute and on 19.10.2010, accused Munukan Baishya, Hema Saikia, Semanta Nath and Jibon Saikia came to her house and stated that they would kill her husband by cutting him into pieces.

22. The FIR Exhibit-1 also lends corroboration to her evidence in material particulars. Nothing tangible could be elicited in cross-examination of this witness. She had denied the suggestion that she had not stated before the police what she had deposed before the court. The accused/appellants however, through the P.W.14 proved that she had not stated before him that *“Nilakanta had told her that the accused persons confined him inside the house and killed her husband Babu Saikia by chasing and inflicting stab injury, that the accused persons had quarrel with her husband in connection with land dispute, that on 19.10.2010 only Jibon Saikia and Munukan came to her house and threatened to kill her husband by cutting into pieces.”*

But, as discussed in foregoing para, this appears to be an omission and it has

no bearing upon the veracity of her version. I find no ground to disbelieve her version.

23. PW 2, Shri Debajit Saikia is the elder brother of the deceased and brother-in-law of the informant. His evidence reveals that on 20.10.2010, his brother Babu Saikia went to check the fishing net along with Nilakanta Gogoi at about 7.00 p.m. At that time he was present at his home. Then he went to the Namghar and remained there till 1.00 a.m. on 21.10.2010. On 21.10.2010 about 8.00 am, he along with his sister-in-law Tutmoni Saikai Gogoi went in search of his brother. When they could not find him out, they went to the police station and informed the matter. On their returning home, one neighbour, namely, Bitul Bora informed them that he had seen the dead body of his brother in the paddy field. Immediately, they went there and found the dead body lying in the paddy field with injury marks on the body. Then after sometime police arrived at there and brought the dead body. His evidence also reveals that Hema Saikia is his distant relative and prior to this incident, on 19.10.2010, the accused persons, Hema Saikia, Jibon and Munukon came to their house and had threatened them with a "dao" in connection with some land dispute.

24. Thus, this witness also lends corroboration to the version of P.W.3 and P.W.1 in material particulars. In fact this witness is not at all cross-examined by the accused/appellant. He may be the brother of the deceased and as such he is interested in the outcome of the case, but this is not a ground to disbelieve his otherwise clear and cogent evidence.

25. P.W. 4, Shri Lukumoni Duwarah is the scribe of the FIR, Ext.1. His

evidence reveals that as per version of the informant he had authored the FIR. He confirmed his signature, Ext.1 (2) over the same as the scribe.

26. P.W. 5 Atul Gogoi deposed that he went to the house of Babu Saikia when his dead body was brought and he came to know from the villagers that a quarrel had taken place in between Babu Saikia and the accused persons and as a result of that quarrel Babu Saikia was killed. The prosecution side has declared this witness hostile and brought on record the statement given by him before the I.O. But, unfortunately, the prosecution side has failed to get the same confirmed from the I.O. at the time of his examination. Be that as it may, the evidence of this witness would not help the prosecution any more, in as much as he had heard about the quarrel from the villagers, but, could not state from whom he heard about the same.

27. The evidence of PW- 6, Shri Pranab Duwarah reveals that on 21.10.2010, at about 12.00 O'clock at noon, he went to meet his father, who was pasturing buffalo near the embankment and returning from there he saw the body of Babu Saikia lying in the field. He did not go near the body, but, immediately informed the matter to the mother of Babu Saikia, namely, Punyalata Saikia. His evidence also reveals that when police arrived at there and brought the dead body, then he noticed stab injury on the dead body.

28. The evidence of PW 7, Shri Pankaj Bora reveals that on 20.10.2010, he was working as helper of Simanta Nath, who was working as mason in the house of Hemo Saikia. Then Hemo Saikia asked them to have lunch. Then at night he along with Simanta Nath went to have meal in a nearby house. At that time, he heard shouting of someone as "katile ----- katile". Then he went

to the house of Hema Saikia and slept there. On the next day morning he along with Simanta Nath again started working in the house of Hema Saikia. The prosecution side has declared this witness hostile and cross-examined him and brought on record the statement given by him before the I.O. But, unfortunately, the prosecution side has failed to get the same confirmed from the I.O. at the time of his examination. However, the evidence of this witness would not help the prosecution any more, in as much as he deposed nothing about the incident except, however, that he heard shouting as "katile.....katile".

29. PW 9, Shri Pabitra Kr. Nath is the Gaonbura of No. 2 Koliori Gaon. His evidence reveals that on 21.10.2010, at about 3.00 p.m. one villager informed him that a dead body was found in the paddy field, near the embankment. Then immediately, he went to the place and saw the dead body of Babu Saikia lying on the ground with cut injuries on his body. It is elicited in his cross-examination that he does not have any personal knowledge about the incident.

30. PW 10, Shri Manik Gogoi is the father of the infromant. His evidence reveals that on 21.10.2010, while he was in the Namghar, one villager informed him that he has been called to his daughter, Tutumoni's house. Then at about 11.00 a.m., he went to the house of his daughter Tutumoni Saikia. After reaching there he came to know that his son-in-law, Babu Saikia was killed. After sometime, police arrived at there. His evidence also reveals that the accused Munukon was present with the police personal. Then he was informed by police that one "Dao", has to be recovered from the house of Hema Saikia and for that purpose, he has to accompany them. Accordingly,

he along with Ranjit Aranadhara (P.W.11) and Jitul Dutta (P.W.12) accompanied police to the house of Hemo Saikia. They went to the house of Hema Saikia. Then police persons, along with Munukon Baishya went inside the house of Hema Saikia and brought out a "Dao". Police showed the "Dao" and seized the same preparing seizure list, Ext. 7 and took their signatures over the same as witness. He confirmed the Dao, M. Ext. 1 in the court.

31. P.W. 11, Shri Ranjit Aranadhara and P.W.12, Shri Jitul Dutta are also the witness of seizure of the Dao, also corroborated the evidence of P.W.10 in material particulars. They also confirmed the seizure list, Ext. 7, and their respective signatures over the same as witness and also confirmed the Dao, M. Ext. 1 in the court. Nothing tangible could be elicited in their cross-examination, except, however, that he was standing outside while police went inside the house of Hema Saikia along with Munukon Baishya.

32. The evidence of PW 10, Shri Manik Gogoi, P.W. 11, Shri Ranjit Aranadhara and P.W.12, Shri Jitul Dutta also finds corroboration from the evidence of the I.O., Shri Ajoy Kr. Dutta (P.W.14), in respect of recovery of the weapon of offence from the house of accused Hema Saikia, at the instance of accused Munukon Baishya. His evidence also reveals that he found accused Munukon Baishya, Hema Saikia and Simanta Nath in their respective houses and brought them to police station on 22.10.2010, for interrogation. Then accused Munukon Baishya stated before him that he had killed Bubu Saikia with a "*Naga Dao*" and that he had kept the Naga Dao in the house of Hema Saikia and that he can show the Dao, to police. Thereafter, accused Munukon Baishya led police to the house of Hema Saikia and took out a Dao from inside the house of Hema Saikia and told that it was the Dao, with which he

had killed Bubu Saikia. Then in presence of witnesses, he had seized the Dao, preparing seizure list, Ext.7 and he confirmed the M.Ext.1, the seized Dao. His evidence also reveals that when Munukon Baishya entered into the house of Hema Saikia and brought out the Dao, he was waiting outside. Nothing tangible could be elicited in cross-examination of this witness also. His evidence that the Mat. Ext.1 was recovered from the house of accused Hema Saikia at the instance of accused Munukon Baishya remained un- challenged in cross-examination.

33. The evidence of the P.W.14 also reveals that while forwarding the arrested accused persons to the Court, he made a prayer for recording the confessional statement of accused Munukon Baishya. Thereafter, P.W.13, Smti Audri Bhattacharya had recorded the confessional statement, Ext.-10, of accused Munukon Baishya in the court. Her evidence reveals that on 25.10.2010, accused Munukon Baishya was produced before her for recording his confessional statement. She then explained that he is not bound to make any confessional statement and if he does so it may be used as evidence against him and given him reflection time and directed him to produced before her on 26.10.2010, at about 1 P.M. Accordingly, on 26.10.2010, accused Munukon Baishya was produced before her for recording confessional statement. Again he was explained that he is not bound to make any confession and if he does so, it may be used as evidence against him. The accused then volunteered to make confession and then she had recorded the same, Ext.10 and after recording the confessional statement the accused was sent back to jail hazot. It is elicited in cross-examination that before recording confession on 26.10.2010 he was not given fresh time for reflection. She

denied the suggestion that she had not recorded the confession in accordance with law.

34. It is to be noted here that while the incriminating circumstance of recovery of Dao, Mat.Ext.1, from the house of accused Hema Saikia was put to accused Munukon Baishya, in his examination under Section 313 Cr.P.C. he had admitted the same in no uncertain terms. Further, he had admitted having made confessional statement, Ext.10, before the Magistrate. However, he stated that his maternal uncle, Hema Saikia has asked him to say that.

35. I have carefully gone through the Ext.10 and find that the learned Magistrate had given sufficient time for reflection. Accused Munukon Baishya was produced before the Magistrate on 25.10.2010, for recording his confessional statement. The learned Magistrate then explained that he is not bound to make any confessional statement and that if he does so, it may be used as evidence against him. The learned Magistrate then gave him time for reflection and sent him to jail and directed him to produce before her on 26.10.2010, at about 1 P.M. Thereafter, on 26.10.2010, the accused was produced before her for recording the confessional statement. Then again he was explained that he is not bound to make any confession and that if he does so, it may be used as evidence against him. The accused then voluntarily made confession, Ext.10 is the said confession and after recording the confessional statement the accused was sent back to jail. After recording the confession the learned Magistrate has appended a certificate in compliance of Rule 23 of the High Court Rules and relevant provision of law. She had also taken the signature of the accused Munukan Baishya over the statement.

36. The confessional statement read as under:-

"On the day of occurrence, at about 8.00 p.m. Babu and Kon lora (brother-in-law) came to my firm house (*khuti*). They called me away from my house and told me that during day time I talked with them harshly. He then started altercation with me. He had brought a "dao" with him. He administered a "dao" blow to me. I could save myself from the blow. He gave me a punch. Then his brother-in-law chased towards me. But, he went away. After leaving of the place by his brother-in-law, I brought a "dao" from my firm house (*Khuti*) and gave a blow to Babu. The blow strike his person, he then fled away. Later on, I came to know that he suffered demise."

37. It is well settled that if a confession is not retracted during the trial and is acknowledged by the accused in a statement under Section 313 Cr.P.C. then can be considered reliable, especially when corroborated by other evidence. If the accused does not challenge the confession's veracity or the circumstances of its recording, the court may accept it as admissible evidence. But, as submitted by Mr. Sharma, the learned Addl. P.P., in view of Section 157 of Evidence Act, statement recorded under Section 164 Cr.P.C. cannot be read as a substantive piece of evidence and the same can be used for the purpose of corroboration only. The case law - **R. Shaji (supra)** so referred by Mr. Sharma, also supported his submission. Same is the position in respect of confessional statement also.

38. In the case in hand, a cursory perusal of the Ext.10 indicates that the accused made the confession voluntarily implicating him with the charges. And it fulfils all the requirements of a valid confession. It suffers from no

procedural irregularity. It also appears that sufficient time for reflection was given. And as such I find no ground to disbelieve the same. Though the accused, in his statement under Section 313 Cr.P.C. stated that he made such statement as asked by his maternal uncle, yet, the same cannot render it inadmissible as there was no element of threat or coercion there. He never retracted the same and not whispered any word about the correctness of the same. Thus, the confessional statement of accused Munukan Baishya also lends corroboration to the evidence of P.W.3, P.W.1, 2 and P.W.10, 11, and 12.

39. Thus, from the evidence of P.W.3, P.W.1, 2 and P.W.10, 11, and 12 and the factum of recovery of the weapon of offence, i.e. Mat. Ext.1, from the house of accused/appellant Hema Saikia at the instance of accused Munukan Baishya, the seizure list, Ext. 7, and the confessional statement-Ext.10, as discussed above, it can be safely concluded that it was none other than accused Munukan Baishya, who had administered the blows to the deceased Babu Saikia, by means of Mat. Exhibit. 1, which is the cause of death of the deceased.

40. Now, what left to be seen is whether it comes under any of the exceptions mentioned in the Section 300 IPC. The P.M. Report, Ext. 6 indicates that the deceased suffered following injuries:-

- (i) Multiple abrasion present over the right upper limb, size 2.3 cm. about no.- 4 multiple abrasion present over the anterior and posterior aspect of both forearms.
- (ii) Deep cut 2 nos. (Anterior aspect) forearm (L) 7.5 cm X 1.5

cm just 7.5 cm above the left rib joint. No bone injury, margin sharp, clotted blood present. And

(iii) Sharp cut injury over left lower thigh just above the knee joint. Size 2" X 0.5" (5 cm x 1.25 cm) margin sharp. Clotted blood present.

(iv) Sharp cut at forth rib deep. Margin sharp extending up to lung tissue (right). Lung cavity is full of clotted blood.

(v) Deep penetrating injury of right lung through the lung tissue, size 4 cm X 5 cm. Clotted blood present. Level 3" intercostals space. Interior chest wall. Outer injury 7.5 cm X 2 cm. Margin sharp;

41. It also appears that some of these injuries were on vital part of the body. And on such count it can safely be concluded that it is culpable homicide amounting to murder as provided in clause thirdly to Section 300 IPC, as it fulfils following requirements:-

1. The act causing death is done with the intention of causing bodily injury to any person.

2. The intended bodily injury is sufficient in the ordinary course of nature to cause death

42. But, the learned trial court had convicted the accused/appellants under Section 304(I) IPC. The learned trial court had dealt with this aspect in para No.62 of the impugned judgment as under:-

“63. It is found in the confessional statement of the accused Munukon Baishya, recorded u/s 164 Cr.P.C., that the occurrence was a result of previous enmity, of which, the prosecution too pleaded and proved that the

occurrence of causing murder of Babu Saikia by the accused persons took place due to previous enmity. We know that previous enmity is a double edged weapon. Therefore, we can't ignore the fact as stated by the accused Munukon Baishya in his confessional statement that Babu Saikia first assaulted him. In that view of the matter, and also for the reason that the attack was without any premeditation and sudden, we are of the considered view that the case attracts the provisions of section 304(I) of IPC instead of 302 IPC.”

43. The reason for convicting the accused/appellants under Section 304(I) IPC by the learned trial court is examined in the light of established principles of law. The confessional statement of accused Munukan Baishya reveals that on the day of occurrence, at about 8.00 p.m. Babu (since deceased) and Kon lora (brother-in-law) came to his firm house (*khuti*). And then they called him away from his house and told him that during day time, he talked with them harshly. Then Babu Saikia, who had brought a "dao" with him, started altercation with him and he administered a "dao" blow to him, but, somehow he could manage to escape. Then he gave him a punch. Then his brother-in-law chased towards him. But, he went away. After leaving of the place by the brother-in-law, of Babu Saikia he brought a "dao" from his firm house (*Khuti*) and gave a blow to Babu. The blow strike his person, he then fled away. Later on, he came to know that he suffered demise.

44. Thus, it becomes apparent that it was Babu Saikia, since deceased, who had quarrelled with the accused Munukan Baishya at his firm house and assaulted him first by a dao and thereafter he administered a punch to Munukon Baishya. Thus, it appears that there was not only sudden fight, but

also provocation on the part of the deceased Babu Saikia. However, it appears that accused Munukan Baishya had acted in a cruel manner and the post mortem report, Ext. 6, is the testament of the same. And as such, it would not come under the exception No.4 of Section 300 IPC. But, it appears that on account of the altercation started by deceased Babu Saikia by calling Munukan Baishya outside his house and administering a blow to Munukan Baishya with dao which he had brought with him, and thereafter administering a punch to him, to the considered opinion of this court amounts to provocation and on such count it would come under exception No. 1 of Section 300 IPC. And as such, this court is of the view that the learned trial court had not committed any impropriety in holding that this is a clear case under Section 304(I) IPC.

45. It has already been held that the injuries sustained by the deceased Babu Saikia, were caused by the accused Munukan Baishya. Now, what left to be seen is whether the present accused/appellants can be held guilty of the charge under Section 304(I) IPC.

46. In this regard the evidence of P.W.3 is relevant. His evidence established it beyond all reasonable doubt about the presence of accused/appellants at the place of occurrence at the relevant point of time. His evidence reveals that it was accused/appellant Hema Saikia, who had asked Munukan Baishya to attack Babu Saikia by saying "*Iyak maar kaat*". His evidence also reveals that while he tried to obstruct accused Munukan Baishya, then he caused hurt over his abdomen with a Dao and Semanta Nath @ Hemanta caught hold of him and the Munukan Baishya chased Babu Saikia towards embankment. His evidence also reveals that then Hema Saikia caught hold of him and kept him

confined in a house near embankment. Then after about one hour Munukon entered into the said house with a dao and administered one fist blow over his forehead. Thereafter, Hema Saikia and Munukan Baishya left the said house at about 2.30 am. At that time Semanta was guarding him and he let him go off when Hema Saikia asked him to let him go.

47. The evidence of P.W.1 and P.W.2 also indicates that on 19.10.2010, accused Hema Saikia, Munukan Baishya, Semanta Nath and Jibon Saikia went to their house and told that they would kill her husband (Babu Saikia) and cut him into pieces. Further, it appears from the evidence of P.W. 1 and 2 that there was land dispute between the deceased and the accused persons and they had quarrel with Babu Saikia. Further, it appears that accused Hema Saikia is the own maternal uncle of Munukan Baishya.

48. The evidence of P.W.10, 11, 12 and 14 reveals that the weapon of offence (Mat.Ext.1) was recovered from the house of accused/appellant Hema Saikia on being lead and shown by accused/Munukon Baishya. All these circumstances, specially the pre-crime and post-crime conduct of the accused/appellants, goes to show that though the present accused/appellants had not administered the blows sustained by the deceased Babu Saikia, that caused his death, yet, they have shared common intention with accused Munukan Baishya, who had administered the blow to Babu Saikia and caused his death. Thus, the basic ingredients of the charge under Section 34 IPC are clearly established against the present accused/appellants beyond all reasonable doubt. The death of Babu Saikia is a concerted effort of all the accused persons and there was prior meeting of mind and planning between them. And they have meticulously executed the same.

49. It also appears that though the accused/appellants had not taken any plea of alibi in their statement under Section 313 Cr.P.C., yet, accused/appellant Hema Saikia had examined two witnesses, namely, Sri Pradip Gogoi and Sri Paresh Deka as D.W.1 and 2 respectively, and accused/appellant Semanta @ Himanta Nath had examined one witness, namely Rupanjali Nath as D.W.3, and taken the plea of alibi and denied being involved in the offence.

50. It is to be mentioned here that the plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. This plea will succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed. Now, it is to be seen how far the accused/appellant had succeeded in establishing the plea of alibi.

51. I have carefully gone through the evidence of D.W.1, D.W.2 and 3 carefully. The evidence of D.W.1 and 2 reveals that Hema Saikia had the business of fish and he has taken "Mitong Bil" on lease from the government. Every year, before starting of fishing in the said Bil, Hema Saikia performs some rituals. In the year 2014 also, he had performed the said ritual in the same manner in a house near the said Mitong Bil. In that ceremony, at about, 5.30/6.00 p.m. 6/7 persons, including Biren Dutta, Paresh Deka, Sepidhar Gogoi and many other including some women were present. Accused Hema Saikia was present with his family in the said ceremony. In the said ceremony one Nila Gogoi had done "Bhagawat Path". At the end of the ceremony "bhuj bhat" was offered to the persons present there. On completion of the said

programme at about 11.30 p.m. he and other persons came back from the said place. Till then accused Hema Saikia was present in the said programme. Then on the next day evening, police went to their village and police recovered dead body of the Babu Saikia from a paddy field of their village. Their evidence also reveals that Nila Gogoi is the brother-in-law of deceased Babu Saikia. They have no idea as to how Babu Saikia died.

52. Though, nothing tangible could be elicited in cross-examination of these two witnesses by the prosecution, yet, the evidence of Nelo Gogoi, whom the prosecution side had examined as P.W.3, outweighed their evidence. Besides, no such plea of alibi was taken and even not a single suggestion was put to P.W.3 during his cross-examination that he did 'Bhagawat Path' in the ritual allegedly performed by accused/appellant Hema Saikia. He had also never taken such a plea in the examination under Section 313 Cr.P.C. Even for the sake of argument if it is accepted that Hema Saikia had performed the said ritual in a house near "Mitong Bil" yet, the sketch map (Ext. 11) indicates that said place is in the same village i.e. No.2 Koliery Gaon. It is not far away from the place of occurrence from the camp house of Hema Saikia near Mitong Bil. That being so it cannot be said that accused/appellant Hema Saikia could not remain present at the place of occurrence. As stated herein above, the plea of alibi will succeed only if it is shown that the accused was far away at the relevant time that he could not be present at the place, where the crime was committed. (**See Dudh Nath Pandey v. State of U.P., reported in (1981) 2 SCC 166**). Therefore, this court is of the view that the plea of alibi, so taken by accused/appellant Hema Saikia, failed. I have considered the submission of Mr. Borthakur in this regard and I find that there is no

substance in the same. I have also gone through the case law - **Aizaz and Others** (supra) and I find that the ratio laid down in the same would not come into his aid any more.

53. Now, turning to the plea of alibi of accused/appellant Semanta Nath @ Himata, I find from the record that he had examined his wife, Smti. Rupanjali Nath as D.W.3. Her evidence reveals that by profession her husband is a Mason and at the relevant time, and prior to the occurrence, he was working at Koliyori gaon. Usually he return home from his work at about 7/7.30 p.m. Even if the evidence of this witness is accepted in its face value, yet, the same does not clearly indicates when accused/appellant returned to his home situated in the village Gohoraguri, at a distance of 3 km from Koliery village, on the date of occurrence. She even could not state the date of occurrence also. Moreover, the evidence of P.W.3 outweighed the evidence of this witness which clearly shows the presence of accused/appellant Shri Simanta Nath at the place of occurrence. Thus, the plea of alibi, so taken by accused/appellant Semanta Nath @ Himata failed.

54. I have considered the submission of Mr. Borthakur, the learned counsel for the accused/appellants, in respect of acceptance of confessional statement of the accused as a whole or rejection of the same as a whole and also gone through the decision of Hon'ble Supreme Court in **Palvinder Kaur(supra)**. In the said case it has been held that the confession and admission, these must be accepted as a whole or rejected as a whole. But, it is nobody's case that the learned trial court had partly accepted the confessional statement of accused Munukon Baishya and partly rejected the same. It is fact that in his

confessional statement accused Munukan Baishya had not implicated any person except, however, himself for causing death of the deceased Babu Saikia. But, this does not mean that except him none else were involved in the same. Over and above, even if he made such a confessional statement implicating others, the same could not have been used against other co-accused in view of the well settled proposition of law in this regard. Section 30 of the Indian Evidence Act, 1872, clarifies that the confession of one accused is not considered as substantive evidence against a co-accused. Instead, it allows the court to consider such a confession along with other evidence in the case.

55. The end result of aforesaid discussion is that the prosecution side had succeeded in establishing the charge under Sections 304(I)/34 IPC against the accused/appellants beyond all reasonable doubt and that the learned trial court had rightly convicted them under the said sections of law. I find no substantial and compelling reason to interfere with the finding of learned trial court in this regard.

56. Now, turning to the conviction of the accused appellants under Section 201 IPC, it appears from the impugned judgment that the learned trial court had discussed this aspect in para No.64 of the judgment as under:-

“64. It is clear from the record that the convicted persons, after commission of the offence, had concealed the dead body of Babu Saikia in the paddy field and washed off the blood stained "dao" used in the offence and kept it in the house of Hema Saikia which was later on discovered by police on being produced by the accused

Munukon Baishya. This clearly shows that the accused persons caused disappearance of evidence of offence to screen the offender. We find to attract the provisions of section 201 of IPC.”

57. The Section 201 IPC read as under:-

201. Causing disappearance of evidence of offence, or giving false information to screen offender.—

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.— shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.— and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment, — and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part

of the longest term of the imprisonment provided for the offence, or with fine, or with both.

58. Thus, a bare perusal of the section indicates that it comprises of following ingredients:-

1. An offence has been committed.
2. The accused knew or had reason to believe that such offence has been committed.
3. The accused caused disappearance of the evidence thereof.
4. The accused gave false information in respect thereof.
5. The accused knew or had reason to believe the same to be false.

59. But, nowhere from the evidence discussed herein above it becomes apparent that the present accused/appellant had caused disappearance of evidence. There is no iota of evidence that after commission of the offence the present accused/appellants had concealed the dead body of the deceased at the paddy field. Washing off the dao and keeping the same in the house of Hema Saikia is purely attributable to accused Munukan Baishya not to the present accused/appellants. That being so, the finding so recorded by the learned trial court, holding the present accused/appellants guilty under Section 201 IPC is not based on materials on record, but, on surmise and conjecture. On that count, the finding of guilt of accused/appellants, under Section 201 IPC cannot sustain and accordingly, the same stands set aside.

60. The learned trial court, having convicted the accused/appellants under Sections 304(I)/34 IPC, had sentenced them to suffer Rigorous Imprisonment for a period of 10(ten) years and also to pay a fine of Rs.1000/-, in default of

the fine, RI for another 6(six) months, and also directed to set off the previous detention period, as per the provisions of Section 428 Cr.P.C. Having drawn up a balance sheet of aggravating as well as mitigating factors available on the record, I find that the sentence so handed down is proportionate to nature and gravity of the crime. On such count, the sentence, so handed down warrants no interference of this court.

61. The learned trial court, keeping in view the materials on record, is of the opinion that it is a fit case to award compensation to the victim under the provision of Section 357A Cr.P.C. and thereafter, directed to send a copy of this judgment to the District Legal Services Authority, Sivsagar to determine the quantum of compensation to be awarded to the victim. We endorsed the view, so taken by the learned trial court and we hope and trust that the District Legal Services Authority, Sivasagar will do the needful in this regard.

62. In the result, this appeal is **partly allowed**. While setting aside the conviction and sentence of the accused/appellants under Section 201 IPC, their conviction and sentence under Section 304(I) IPC stands affirmed. Send down the record of the learned trial court with a copy of this judgment and order. The parties have to bear their own cost.

JUDGE

Comparing Assistant