

GAHC010150662019



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

Case No. : Crl.A./296/2019

SRI LAKSHMAN CHAUHAN
S/O- UJA CHAUHAN,
ADDRESS- VILLAGE SANKAR BASTI, P.S.- KHERONI, DIST- KARBI
ANGLONG, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP, ASSAM.

2:SMTI. SWARASATI CHAUHAN
W/O- LATE SEWJIEE CHAUHAN
ADDRESS- VILLAGE- LAMSAKHA
KHERONI
P.S.- KHERONI
DIST- KARBI ANGLONG
ASSAM

Advocate for the Petitioner : MR. R BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

Date of hearing : 10.05.2024

Date of judgment : 17.05.2024

JUDGMENT & ORDER (CAV)

(Suman Shyam, J)

Heard Mr. D. K. Bhattacharyya, learned counsel appearing for the sole appellant. We have also heard Ms. S. Jahan, learned Additional Public Prosecutor, Assam appearing for the State.

2. This Criminal Appeal is directed against the judgment and order dated 21.12.2018 passed by the learned Sessions Judge, Karbi Anglong, Dipur in Sessions Case No.32/1998 convicting the present appellant and one Ram Naresh Chauhan (since deceased) for committing offences under Sections 447/302/323/34 of the Indian Penal Code (IPC) and sentencing each of them to undergo rigorous imprisonment for life for committing the offence under Section 302 IPC and to pay a fine of Rs.5000/-, in default to suffer simple imprisonment for six months; to undergo rigorous imprisonment for six months for committing the offence under Section 447 IPC and also to suffer simple imprisonment for three months for committing the offence under Section 323 IPC. The conviction of both the accused persons was with the assistance of Section 34 of the IPC.

3. The prosecution case, as unfolded from the materials on record, is to the effect that on 30.07.1995, Smti. Saraswati Devi (PW-1) i.e. the wife of the deceased, had lodged an ejahar before the Officer-in-Charge, Kheroni Police Station informing that on the previous night, at around 8:00 P.M., the co-villagers, viz., 1) Prem Chauhan, son of Ram Naresh Chauhan, 2) Nandaji Chauhan, son of Ram Naresh Chauhan, 3) Lakhan Chauhan, son of Oza Chauhan, 4) Rakho, son of Oza Chauhan

and 5) Ram Naresh Chauhan, (father's name not known), had killed her husband Shivji Chauhan by hacking him on his neck with a 'dao' while he was sitting in the courtyard.

4. On receipt of the ejahar, Kheroni P.S. Case No.50/1995 was registered under Sections 302/34 IPC and the matter was taken up by the police for investigation. On completion of investigation, Police submitted charge-sheet in connection with Kheroni P.S. Case No.50/1995 against five accused persons i.e. Lakshman Chauhan, Nandaji Chauhan, Ram Naresh Chauhan, Prem Chauhan and Rakho Chauhan under Sections 147/148/149/302/326/447 of the IPC. It appears from the materials on record that accused Rakho Chauhan was shown as an absconder.

5. On receipt of summons accused Nandaji Chauhan, Ram Naresh Chauhan, Prem Chauhan and Lakshman Chauhan had appeared before the Court. The learned Sessions Judge, Karbi Anglong, Diphu had framed charge against the accused persons for committing the offences under Sections 147/148/149/447/302/326 of the IPC. Since the accused persons had pleaded not guilty, hence, the matter went up for trial.

6. It further appears from the materials on record that during the stage of trial accused Nandaji Chauhan had expired. Since accused Prem Chauhan was declared as an absconder, hence, trial proceeded against the present appellants viz., Sri Lakshman Chauhan and Ram Naresh Chauhan.

7. The prosecution case was based on direct evidence of as many as 5 eye witnesses viz., PW-1, PW-7, PW-8, PW-10 and PW-12. In order to bring home the

charge the prosecution side had examined 12 witnesses in total, including the doctor (PW-5) who had conducted the post mortem examination on the dead body of the deceased as well as the Investigating Officer (PW-6), who had submitted charge-sheet. However, the Investigating Officer (I.O.), who had conducted investigation has not been examined as a prosecution witness. After going through the materials available on record, the learned trial Court had found the two accused persons, named herein above, who were subjected to trial, as guilty of the offences charged and sentenced each of them in the manner indicated herein above.

8. It has been brought to our notice that during the pendency of appeal being Criminal Appeal(J) No.48/2019, preferred by co-accused Ram Naresh Chauhan against the judgment and order dated 21.12.2018 passed by the learned Sessions Judge, Karbi Anglong, Diphu in Sessions Case No.32/2018, the appellant had expired, as a result of which, the appeal has abated.

9. The learned counsel for the appellant has assailed the impugned judgment and order primarily on two counts. Firstly, there are material contradictions/discrepancies in the testimonies of the eye-witnesses raising a serious doubt on the veracity of the prosecution story. Secondly, the prosecution, having failed to exhibit the original of the post-mortem report, there is a serious lacunae in the prosecution case.

10. In order to bring home the above submissions, Mr. D. K. Bhattacharyya, learned counsel appearing for the appellant has taken us through the evidence of the prosecution witnesses to contend that there is complete inconsistency in the

version of the eye-witnesses and therefore, their testimonies ought not to have been relied upon by the learned court below to convict the appellant. On such count, Mr. Bhattacharyya has argued that the prosecution has failed to establish the charge brought against the appellant beyond reasonable doubt. On the point of exhibiting the carbon copy of the post-mortem report as Ext-3, Mr. Bhattacharyya has argued that although the Ext-3 bears the original signature of the Joint Director of Health Services, yet, the report itself being a carbon copy, the same was inadmissible in the eyes of law nor can it be said that the contents thereof were proved in accordance with law. As such, submits Mr. Bhattacharyya, the post-mortem report (Ext-3) ought to have been discarded by the learned Court below. The learned counsel for the appellant has, however, submitted that there is no plea of *alibi* taken by his client nor has the defence side led any evidence to that effect.

11. Ms. S. Jahan, learned Addl. P.P., Assam, on the other hand, has argued that there is no material contradiction in the testimonies of the eye-witnesses inasmuch as the prosecution story has been fully established from the evidence on record. According to Ms. Jahan, minor discrepancies in testimony of eye-witnesses is bound to occur but the same ought to be ignored by the court if such discrepancies do not go into the root of the matter. By relying upon a decision of the Supreme Court rendered in the case of **Shahaja @ Shahajan Ismail Mohd. Shaikh Vs. State of Maharashtra** reported in **2023 (122) ACC 934**, the learned Addl. P.P. has argued that there is no straight jacket formula for appreciation of ocular evidence and the court would have to examine the ocular evidence by adopting a pragmatic approach. On the point of objection raised by the appellant's counsel with regard to Ext-3 i.e.

carbon copy of the post-mortem report, the learned Addl. P.P. has invited our attention to Explanation 2 of Section 62 of the Evidence Act to argue that Ext-3 would be admissible in evidence.

12. We have considered the arguments made at the Bar and have also gone through the materials available on record. Since the prosecution case is primarily based on the evidence of PWs-1, 7, 8, 10 and 12, who have been examined as eye-witnesses to the occurrence, it would be necessary for this Court to analyse the evidence adduced by those witnesses so as to examine as to whether the charge-sheet brought under Section 302 of the IPC was fully established.

13. PW-1 Smti Saraswati Devi is the wife of the deceased and the informant in this case. She has deposed that on the day of the occurrence, her husband had gone to Lanka for collecting some money. While returning back, the accused persons viz., Premasagar and Nandji had assaulted her husband. She was informed by her husband that Nandji and Premasagar had assaulted him and injured him seriously. After coming home, her husband had asked her for drinking water. When she went inside for getting water, the four accused persons standing on the dock, came to her house. She came out with the water and then saw that the accused persons had assaulted her husband with a dao on his neck and then and there, her husband died. They had also tried to lift the dead body but she raised a hue and cry and Premasagar had cut her hand (left) with the dao. This witness had deposed that the incident took place at about 8:00 p.m. in the night. Basti people came to her house and the accused persons left. She had stated that the accused persons had killed her husband in the

courtyard of her house. She had filed ejahar in the Kheroni Police Station which is Ext-1. In her cross-examination PW-1 had remained firm in her testimony. This witness had further stated that when she came back, she saw Premsagar was catching and beating her husband and Lakshman was striking on the neck by a 'dao'. She was shouting but nobody turned up at that time. When local people came to their house, the accused persons had left the place of occurrence.

14. PW-7 Kalawati Devi has been examined by the prosecution as another eye-witness to the occurrence. She is the niece of the informant and lived in the neighbourhood. This witness has deposed that in the evening', at about 7:00 p.m. the accused persons, numbering five, came to the house of Shivji and assaulted him with a dao. They were involved in fighting earlier also. Lakshman had held Shivji and accused Prem had assaulted him with a 'dao'. According to PW-7, the accused persons had also assaulted her husband (PW-10) and mother-in-law (PW-8). Shivji succumbed to his injuries. In her cross-examination PW-7 has stated that at the time of the incident she was inside her house and there was enmity between the accused and the deceased persons. At the time of the incident, Shivji was alone.

15. PW-8 Smti. Sudhari alias Ramawati Devi is the mother of PW-10 and mother-in-law of PW-7. She has deposed that it was around 7:00 P.M. in the evening. At that time, accused persons came to the house of Shivji and assaulted him with a dao. Shivji made hullah for help. On hearing the same she had asked her son Chotelal to go there and look into the matter and she had also followed him. Her son Chotelal went to the place of occurrence with a lathi but his lathi was cut into pieces with a

dao by the accused persons. PW-8 has further deposed that Lakshman had held Shivji tight and Prem had assaulted him with a dao. She had seen the incident herself on the spot. Her son Chotelal was also assaulted by the accused persons. Shivji succumbed to his injuries on the spot. She had also received injury on her nose due to the assault. Her mother told her to bring any vehicle and she shouted for help but nobody came out to help. During her cross-examination this witness had reneged and stated that during the time of the incident, she had asked her son to go to the place of occurrence and she had also accompanied him. The incident took place inside the house. She had seen the place of occurrence.

16. PW-10 Chotelal Chauhan is the son of PW-8. He has deposed that the occurrence took place at around 7-8 p.m. At the time of the occurrence he was at home. On that day Shivji went to Hawaipur Bazar. At about 8 p.m. while he was taking his meal he heard a quarrel between the accused persons and Shivji on the road. He came outside and saw that Prem Chauhan attacked Shivji with a dao and Lalji Chauhan, Ram Naresh Chauhan and Lakshman Chauhan attacked him with lathi. Shivji had received injury on his neck and fell down on the ground. After the incident, the accused persons fled away from the place of occurrence. He had seen the accused persons at the place of occurrence. Saraswati Devi i.e. the wife of Shivji Chauhan had also received injuries on her hand during the quarrel. The testimony of this witness could not be shaken during his cross-examination.

17. PW-11 Dudhnath Choudhury did not witness the incident. However, he had witnessed the quarrel that took place before the incident. PW-11 has deposed that at

about 10/15 years back, one day, he was at home. At about 6:00 p.m. he had heard Shivji Chauhan shouting from outside saying that he was being assaulted. Hearing the cry he came out from the house and saw that the accused persons were following Shivji Chauhan and attacked him. Shivji Chauhan took shelter behind his house. Accused Nandaji Chauhan and Prem Chauhan had pushed Shivji and he fell down. These two accused persons tried to assault Shivji with lathi but this witness had caught them and told them not to quarrel in his presence. He had thus separated them and left the place. Next morning he had gone to Mailoo for marketing and on his return he had come to know that Shivji Chauhan had been murdered.

18. Smti. Begani Chauhan i.e. the mother of the deceased was examined as PW-12. This was another witness who claims to have seen the occurrence. PW-12 has stated that on the day of the occurrence at about 7:00 P.M. her son Shivji Chauhan, who had gone to Lanka Market, had returned home. At that time she, along with her daughter-in-law Saraswati Devi and her grandson i.e. son of Shivji Chauhan, were at home. She was holding her grandson on the lap. Her son Shivji Chauhan hurriedly entered the house and asked for some drinking water. He had stated that the accused persons had chased and assaulted him near the house of Dudhnath Choudhury (PW-11). Dudhnath Choudhury had intervened in the matter and separated them. Suddenly all the accused persons had entered the house with dao, lathi. They gheraoed her son and started assaulting him with the dao, lathi etc. Her daughter-in-law Saraswati Devi (PW-1) ran to intervene and tried to save her husband Shivji but the accused persons had assaulted her too. This witness had deposed that accused Prem caused cut injury on her hand with the dao. All the accused persons

had assaulted her son Shivji. Accused Lakshman Chauhan and Prem Chauhan mercilessly cut his neck. In her cross-examination PW-12 has stated that at the time of the incident, it was not too dark so as not to identify all the accused persons. She could identify all of them. However, nobody helped them at night as people were afraid of the accused persons. Police asked her about the incident. She had almost lost her sense after the incident as her son was cut in front of her.

19. PW-2 Bikram Pandey Pujari had not seen the incident but had seen the dead body of the deceased; PW-3 Harinath Pd. Chauhan was declared as a hostile witness; PW-4 Smti. Laljhari Chauhan had deposed that she did not know who had killed the deceased; PW-9 Krishna Chauhan had deposed that he had seen the dead body after the incident had occurred. None of the aforesaid witnesses are eye-witnesses to the occurrence and therefore, their evidence is not of much significance in this case.

20. PW-5 Dr. Haward Sangma had conducted the post-mortem examination on the dead body of the deceased Shivji Chauhan and submitted post mortem report. The doctor had proved the (Ext-3) post mortem report by identifying his signature therein. As per the deposition of PW-5 following injuries were seen in the dead body of the deceased :-

“ Incised wound clear cut size- length- 4”, width- 1 1/2 “. Incised wound upto the trachea detaching it. Let vessel of left side of the neck region detached. Incised wound horizontal in nature in front of trachea behind back of the neck. Great vessels of the neck completely detached by the clear incised wound,

tracheal soft tissues were separated. Clotted blood around the incised wound."

PW-5 has opined that the death of the deceased occurred due to massive haemorrhage leading to shock and cardio-respiratory failure. This witness had further deposed that the Joint Director of Health Services had agreed to his report and put his signature which he has been able to identify.

21. As has been mentioned herein above, the Investigating Officer, who had conducted investigation in connection with Kheroni P.S. Case No.50/95, has not been examined as a witness by the prosecution side. However, Mr. Ali Ahmed, who had submitted the charge sheet after completion of investigation had been examined as PW-6. This witness has deposed about the usual facts pertaining to the submission of the charge-sheet and has confirmed that accused Rakho Chauhan was an absconder. PW-6 has proved the charge-sheet by identifying his signature.

22. Taking note of the evidence available on record, the learned trial court has found the two accused persons viz., the present appellant and Ram Naresh Chauhan guilty of the offences committed under Sections 447/302/323/34 IPC and sentenced them in the manner indicated herein above. It appears that the learned trial Court had relied upon the testimonies of PWs-1, 7,8, 9, 10 and 12 to arrive at the conclusion as regards the involvement of the accused persons in the incident.

23. The learned counsel for the appellant has made an attempt to assail the impugned judgment and order dated 21.12.2018 primarily by pointing out at the inconsistencies/contradictions of the testimonies of the aforesaid witnesses. In the

decision of the Supreme Court in the case of **Shahaja @ Shahajan Ismail Mohd. Shaikh** (supra) as relied upon by the learned Addl. P.P., Assam, the Hon'ble Supreme Court has laid down certain guidelines and principles as to the manner in which, ocular evidence is to be appreciated by the Court. For the sake of ready reference, the observations made in paragraph 27 are reproduced herein below :-

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

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

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

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only

when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

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

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

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

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

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

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

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

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

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

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

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096 : AIR 1983 SC 753, Leela Ram v. State of Haryana, AIR 1999 SC 3717, and Tahsildar Singh v. State of UP, AIR 1959 SC 1012]"

24. As noted above, the prosecution has examined as many as five witnesses i.e. PWs-1, 7, 8, 10 and 12 as eye-witnesses to the occurrence. It is not the case of the

appellant that these witnesses had not seen the occurrence nor is there any such suggestion made to these witnesses during their cross-examination. The learned counsel for the appellant has also fairly submitted that he is not questioning the observation of the learned trial court that PWs-1, 7, 8, 10 and 12 were the eye-witnesses to the occurrence. However, the appellant's counsel has sought to impeach the credibility of these witnesses by urging inconsistencies in their testimonies primarily on two counts. Firstly, the eye witnesses have given different versions as to the accused person who had actually hacked the deceased with a dao. Secondly, there is material inconsistency on the testimony of the eye-witnesses as regard the presence of the villagers in the place of occurrence soon after the incident.

25. On a minute examination of the testimonies of PWs-1, 7, 8, 10 and 12, we find that as per the version of PW-1, accused Prem was holding the deceased and accused Lakshman was striking him on the neck with the dao. PW-10 had, however, stated that it was accused Prem who had struck the deceased with a dao. PWs-7 and 8 have both stated that Lakshman had held the deceased tight and accused Prem had assaulted him. From a conjoint reading of the testimonies of PWs-1, 7, 8 and 10 it might appear on the face of the record that there are some inconsistencies in the version given by these witnesses. However, the alleged discrepancies in the testimonies of these witnesses on the above count, in our view, would stand resolved from the evidence of PW-12, another eye-witness to the occurrence, who has stated that it was both Lakshman and Prem who had cut the neck of her son.

26. It is to be noted herein that there is no cross-examination of PW-12 on the

aforesaid deposition. Therefore, her evidence on the above point has remained un-rebutted. As such, from a conjoint reading of the evidence of the five eye-witnesses what can be seen is that both the accused viz., Lakshman and Prem were involved in assaulting the deceased with a dao by holding him tight and it is possible that PW-1 had witnessed Lakshman striking the deceased on the neck whereas, PWs-7, 8 and 10 had witnessed accused Prem striking the deceased with the dao.

27. This matter can be viewed from another perspective. There is no dispute about the fact that both the accused persons were present in the place of occurrence. The evidence of the eye-witnesses clearly goes to indicate that both the accused persons Prem Chauhan and Lakshman Chauhan were involved in a scuffle with the deceased prior to the occurrence. Therefore, both these accused persons had a common intent and hence, will be equally guilty for committing the offence under Section 302 of the IPC regardless of which of the two had actually struck the blow on the neck of the deceased.

28. Coming to the plea of inconsistency regarding the presence of villagers in the place of occurrence, here also, we find that the PW-1 had stated that although she was shouting for help after the incident, the local people did not come to their house. PW-7 has also confirmed that on the night of the incident nobody from the village came to the place of occurrence. It was only on the next morning that the villagers had come. PW-8 has also stated that although she had shouted for help, nobody from the village had come out for help. PW-12 has also deposed that although they had made a hullah, nobody had come for help and the dead body was lying in the

place of occurrence for the whole night. It was only on the next morning that the Gaonburah and other persons from the village came to their house. The testimony of PW-12 finds corroboration from the evidence of PW-10 who has also stated that the police had visited the place of occurrence on the next morning. Therefore, it is evident from the evidence on record that soon after the incident although a hue and cry was raised by the family members of the victim, yet, out of fear of the accused persons, none of the villagers came to the place of occurrence on the night of the incident. The villagers came there only in the next morning and it was at that time when the police had also visited the place of occurrence.

29. Although PW-1 in her cross-examination has stated that when the local people came to their house the accused persons had left the place of occurrence, in the said statement, she had, in all probability, referred to PWs-7, 8 and 10 who had reached the place of occurrence at the time of the incident. Therefore, such statement of PW-1 cannot be considered as suffering from any material inconsistency going into the root of the matter so as to raise a serious doubt on the veracity of the prosecution story.

30. It would be pertinent to note herein that the PW-1 i.e. the informant in this case and the wife of the deceased as well as the PW-8 i.e. the mother of the victim were both present at the place of occurrence which is their home. Both of them are natural witnesses to the occurrence. Moreover, the injury report of PW-1 is available on record which also goes to prove that she is an injured eye-witness to the occurrence. The testimony of PW-1 finds due corroboration from the evidence of PW-

8. Therefore, we are of the opinion that if the evidence of PWs-1 and 8 are read in conjunction, that by itself would be sufficient to establish the charge brought against the appellant under Section 302 of the IPC. Viewed from that angle, even assuming that there is some variance in the testimonies of PWs-7, 10 and 12, that, in our opinion, can be regarded as minor discrepancies and therefore, the same shall not have any material bearing in the prosecution case.

31. In the case of **Shahaja @ Shahajan Ismail Mohd. Shaikh** (supra) the Supreme Court has observed that some discrepancies in the testimonies of the eye-witnesses are possible but it is only when such discrepancies in the evidence of the witnesses are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. Having regard to the facts and circumstances of the case as well as the evidence on record, we are of the view that there is no material inconsistency in the testimony of the eye-witnesses warranting this Court to discard their evidence. Rather, the evidence adduced by the five eye-witnesses, when appreciated in the light of other evidence available on record, more particularly the testimony of PW-5, leaves no room for doubt that the deceased had died a homicidal death due to the cut injury suffered by him on his neck by a sharp weapon and it was none other than the accused persons who are responsible for causing such injury upon the deceased.

32. Coming to the next objection of the appellant regarding the carbon copy of the post-mortem report having been produced/exhibited by the prosecution, there can be no doubt about the fact that the carbon copy of the post-mortem report

cannot be treated as the primary evidence of the content of the original. This we say so in view of Explanation-2 to Section 62 of the Evidence Act which is reproduced herein below for ready reference :-

“Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.”

33. In the present case, the prosecution had exhibited the carbon copy of the post-mortem report. However, what would be significant to note herein is that the carbon copy did contain the signature of the Joint Director of Health Services in original, thus, establishing the authenticity of the document.

34. In so far as the contents of the post-mortem report are concerned, the doctor viz., PW-5 has himself deposed as regards the nature of injuries suffered by the deceased leading to his death and such testimony of the PW-5 has not been assailed by the defence side. Not only that, no objection was raised by the defence side when Ext-3 post-mortem report was introduced by the prosecution side in evidence. Therefore, the objection raised by the appellant's counsel regarding production of carbon copy of the post-mortem report, in our view, would not have any bearing in the outcome of this appeal.

35. For the reasons stated herein above, we do not find any justifiable ground to interfere with the judgment and order dated 21.12.2018 passed by the learned

Sessions Judge, Karbi Anglong, Diphu in Sessions Case No.32/1998 convicting the appellant for committing the murder of deceased Shivji Chauhan. The appeal is, therefore, held to be devoid of any merit and the same is accordingly dismissed.

Send back the LCR.

JUDGE

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant