

GAHC010277942019



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

CRIMINAL APPEAL [J] NO. 88/2019

Sri Uttam Dibra

.....Appellant

-VERSUS-

The State of Assam and another

.....Respondents

Advocates :

Appellant	:	Mr. N. Hasan, Amicus Curiae
Respondent	:	Ms. B. Bhuyan, Senior Counsel & Additional Public Prosecutor, Assam Ms. R. Das, Advocate
Date of Hearing, Judgment & Order	:	23.07.2024

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

JUDGMENT & ORDER

[M. Choudhury, J]

The present criminal appeal from Jail is preferred taking exception to a Judgment dated 09.05.2019 and an Order on sentence dated 09.05.2019 passed by the Court of learned Sessions Judge, Karbi Anglong, Diphu in Sessions Case no. 08/2011,

arising out of G.R. Case no. 94/2010 and Kheroni Police Station Case no. 54/2010. In the Judgment dated 09.05.2019, the accused-appellant has been held guilty of the offence under Section 300, Indian Penal Code [IPC]. By the Order on sentence dated 10.05.2019, the accused-appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/-, in default of payment of fine, to undergo simple imprisonment for 1 [one] year.

2. As per the prosecution case, one Pradip Kumar Dibra as the informant lodged a First Information Report [FIR] before the In-Charge, Mailoo Police Out Post on 13.09.2010 whereby the informant had alleged that at around 11-00 a.m. on that day, that is, on 13.09.2010, the accused committed murder of his mother, Thaiphrangdi Dibra, aged about 60 [sixty] years, at a place near a bamboo grove behind their house and in a sugarcane plantation of Gobin Daulagophu. The informant had alleged that his mother was killed by the accused by hacking with a *dao* and leaving the deadbody in the sugarcane plantation, the accused fled away from the scene. However, the villagers apprehended the accused later and kept him detained.

3. On receipt of the FIR [Ext.-1], the In-Charge, Mailoo Police Out Post, at 12-30 p.m., registered the same as Mailoo Police Out Post General Diary Entry no. 214 dated 13.09.2010 and forwarded the FIR to the Officer In-Charge, Kheroni Police Station for registering the same under proper sections of law. On receipt of the FIR, the Officer In-Charge, Kheroni Police Station registered the same as Kheroni Police Station Case no. 54/2010 under Section 302, IPC. After receipt of the FIR, the In-Charge, Mailoo Police Out Post [P.W.10] proceeded to investigate the case and recorded statements of a number of witnesses under Section 164[1], CrPC. The inquest on the deadbody of the deceased was conducted by him in the house of the informant-P.W.1 on 13.09.2010 in presence of witnesses including the informant-P.W.1, and prepared an Inquest Report [Ext.-3]. The deadbody was thereafter, forwarded to Diphu Civil Hospital for post-mortem examination. The post-mortem examination was performed at Diphu Civil Hospital on 14.09.2010 and the Autopsy Doctor, P.W.5 prepared a Post-Mortem Examination [PME] Report [Ext.-4] recording his findings therein. As the accused was apprehended immediately after the incident by the villagers, the Investigating Officer [I.O.] [P.W.10] of the case took him into custody on the date of the incident itself.

4. It is also the case of the prosecution that the alleged weapon of assault, a *dao* was recovered by a Seizure List, M.R. no. 32/2010 [Ext.-2] at 04-00 p.m. on 13.09.2010. According to the prosecution, the confessional statement of the accused was recorded under Section 164, CrPC before the learned Magistrate, 1st Class, Hamren on 21.09.2010. In the meantime, the I.O. [P.W.10] also prepared a Sketch Map [Ext.-7] of the place of occurrence [P.O.]. The I.O., P.W.10 after conducting investigation to a certain extent, handed over the case diary and the remaining part of the investigation was completed by his successor In-Charge, Mailoo Police Out Post, P.W.-9. The subsequent I.O., P.W.-9 after collecting the PME Report on 30.10.2010 and finding that the investigation had already been completed, submitted a charge sheet under Section 173[2], CrPC vide Charge Sheet no. 54/2010 on 31.12.2010 finding a prima facie case against the accused to stand the trial for the offence under Section 302, IPC.

5. On receipt of the Charge Sheet, the Assistant to the Deputy Commissioner & the Magistrate, 1st Class, Hamren secured the production of the accused from Jail custody on 21.04.2011. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the Assistant to the Deputy Commissioner & the Magistrate, 1st Class, Hamren committed the case records of G.R. Case no. 94/2010 to the Court of the Deputy Commissioner, Diphu following the provisions of Section 209, CrPC read with Rule 16 of the Administration of Justice and Police in Sivsagar, Nowgong & Mikir Hills Tracts, 1937. At that point of time, it was the Deputy Commissioner in the district of Karbi Anglong, who used to discharge the functions of the District & Sessions Judge. By the Order of Commitment dated 21.04.2011, the learned Public Prosecutor was notified and the Officer In-Charge, Hamren Police Station was directed to produce the accused before the learned Deputy Commissioner, Diphu for the purpose of standing in the trial.

6. It may be mentioned that till that time, the Judiciary was not separated from the Executive in the Karbi Anglong district of Assam. It was by a Notification no. N.J.D.J.[E] 260/2010/24 dated 21.09.2012 and on the recommendation of the Gauhati High Court, the Governor of Assam established the following courts in the Karbi Anglong district of Assam, for trial of Civil and Criminal cases within their respective local limits with effect from the date of taking over charge by the Presiding Officers of these Courts :- [1] Court of District & Sessions Judge; [2] Court of Civil

Judge [Senior Division]; [3] Court of Munsiff; [4] Court of Chief Judicial Magistrate; [5] Court of Additional Chief Judicial Magistrate; [6] Court of Sub-Divisional Judicial Magistrate; [7] Court of Judicial Magistrate, First Class; and [8] Court of Judicial Magistrate, Second Class. Another Notification was issued by the State Government, on the recommendation of the Gauhati High Court, whereby, all suits, cases, appeal, application, proceeding or other business relating to both Civil and Criminal Justice pending on that date before the Deputy Commissioner, Karbi Anglong or Assistants to the Deputy Commissioner stood transferred to the competent Civil and Criminal Courts of appropriate jurisdictions which had been established by the Notification dated 21.09.2012. In the case in hand, the evidence of the prosecution witnesses, P.W.1 to P.W.4 were recorded by the Court of learned Deputy Commissioner, Karbi Anglong. Subsequent to the Notification of transfer, the case records of G.R. Case no. 94/2010 stood transferred to the Court of Sessions Judge, Karbi Anglong at Diphu. After such transfer, the testimonies of the remaining witnesses were recorded by the Court of Sessions.

7. During the course of trial, the prosecution side examined a total 10 [ten] nos. of witnesses – [i] P.W.1 – Pradip Kumar Dibra; [ii] P.W.2 – Lalita Hasam; [iii] P.W.3 – Deb Charan Johori; [iv] P.W.4 – Sadhan Kemphrai; [v] P.W.5 – Dr. Denthong Teron; [vi] P.W.6 – Sahita Dibra; [vii] P.W.7 – Anadaji Dungdung Langthasa; [viii] P.W.8 – Amrit Hasam; [ix] P.W.9 – Shamsul Ali; and [x] P.W.10 – Kanakeswar Kalita. In addition, the prosecution side exhibited the following documentary evidence viz. [i] Ext.-1 – FIR; [ii] Ext.-2 – Seizure List; [iii] Ext.-3 – Inquest Report; [iv] Ext.-4 – Post-Mortem Examination [PME] Report; [v] Ext.-6 – Statement of the accused; [vi] Ext.-7 – Sketch Map of the P.O. The prosecution side also exhibited a *dao*, as Material Exhibit no. 1. After closure of evidence from the prosecution side, the accused was examined under Section 313, CrPC by putting before him the incriminating materials appearing in the prosecution evidence against him. The plea of the accused was denial. When the accused was asked whether he would adduce evidence in his defence, the accused declined to adduce any evidence. After hearing the learned counsel for the parties and after appreciation of the evidence/materials on record, the learned Court of Sessions [‘the trial court’, for short] passed the Judgment and the Order on sentence, mentioned above, convicting the accused under Section 300, IPC and thereby, sentencing him under Section 302, IPC in the manner, mentioned above.

8. We have heard Mr. N. Hasan, learned Amicus Curiae appearing for the accused-appellant; and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor assisted by Ms. R. Das, learned counsel for the respondent, State of Assam.
9. Mr. Hasan, learned Amicus Curiae appearing for the accused-appellant has submitted that the prosecution witnesses – P.W.1, P.W.6 and P.W.7 – adduced their evidence as eye-witnesses. As the prosecution witnesses, P.W.1 and P.W.6 were related to the deceased, they were interested witnesses and their evidence are required to be strictly scrutinised. It is his further submission that the prosecution witness, P.W.7 besides being a related witness, appeared to be a chance witness. Mr. Hasan has submitted that the alleged confessional statement recorded under Section 164, CrPC was not exhibited and as such, the prosecution side cannot draw any support from it. He has further contended that neither the alleged extra-judicial confession extracted out of the accused nor the fact of discovery of the alleged weapon of assault, *dao* would be admissible in evidence as they are in clear violation of the prescriptions laid down in Section 24 and Section 27 respectively of the Evidence Act, 1872. As the evidence led by the prosecution have failed to prove the case beyond all reasonable doubts, the accused is clearly entitled to the benefit of doubt, more particularly, in the absence of any motive on his part to cause the death of the deceased, who was incidentally his aunt [Barma].
10. Ms. Bhuyan, learned Senior Counsel & Additional Public Prosecutor appearing for the State has submitted that the eye-witness accounts of the prosecution witnesses – P.W.1, P.W.6 and P.W.7 – were credible and trustworthy and their testimonies were not discredited in any manner whatsoever to weaken the case of the prosecution. Ms. Bhuyan has further contended that testimonies of these eye-witnesses had received sufficient corroboration from the other prosecution witnesses. It is contended that even it is assumed that the alleged extra-judicial confession of the accused and the alleged factum of discovery are not as per law then also the remaining evidence/materials, led by the prosecution, are sufficient to bring home the charge of murder against the accused. It is, thus, contended that the Judgment and Order of conviction and sentence passed against the accused needs no interference.

11. We have given due consideration of the submissions advanced by the learned counsel for the parties. We have gone through the testimonies of the witnesses and also perused the other evidence/materials brought on record and available in the case records of Sessions Case no. 08/2011, in original.
12. It has emerged from the evidence/material on record that the informant, the deceased and the accused are related. The accused is a cousin brother of the informant, meaning thereby, the deceased was an aunt [Barma] of the accused. It has further emerged that the houses of the informant and the accused were adjacent to each other. It is not in dispute that P.W.3 was the Government Gaonburah of the Village – Majiahadi of which the informant and the accused were inhabitants. The prosecution witnesses – P.W.2, P.W.4, P.W.6, P.W.7 and P.W.8 – were inhabitants of the same village and are, thus, co-villagers of the informant, the deceased and the accused. Being so situated, the informant, the deceased and the accused were known to these prosecution witnesses from earlier and there is no dispute as regards their identities.
13. As the prosecution has claimed that the case is mainly based on direct ocular evidence of the prosecution witnesses, P.W.1, P.W.6 and P.W.7, it appears proper to refer to their testimonies, at first, along with P.W.2, a co-villager.
14. P.W.1 deposed to the effect that his mother, that is, the deceased, about 60 [sixty] years of age on the date of the incident, used to reside with him in the same house. On the incident, P.W.1 stated that at around 11-00 a.m. on 13.09.2010, his mother went out of the house to collect soil for plastering of walls. At that time, he and his sister were present in the house. It was after half an hour, he heard the cry of his mother from the sugarcane cultivation site of one Gobin Daulagophu [not a witness]. Hearing the cry of his mother, they went towards that site and going there, he saw the accused cutting his mother. When they reached the place of occurrence, the accused fled away from the place leaving his mother with cut injuries on her neck, brain, etc. Blood was oozing out of those injuries. Then, he brought his mother to his house on a *thela* [hand cart]. P.W.1 deposed that at the place of occurrence, he did not see presence of any other person at that time. The Government Gaonburah, P.W.3 and the other persons came to his house when he brought his mother to his house. He further deposed that in the meantime, the villagers caught hold of the

accused and kept him detained inside the compound of his house by tying him with rope.

- 14.1. P.W.1 further deposed that the accused confessed that he had cut his mother by a *dao* and the *dao* was kept near a termite nest [hafaloo]. Thereafter, P.W.1 along with P.W.2 went to Mailoo Police Out Post and filed the written FIR there. He exhibited the FIR as Ext.-1 and his signature therein as Ext.-1[1]. He stated that the Police had recorded his statement and thereafter, came to his house after half an hour. The Police also made enquiry with the accused and the accused showed the *dao*, which was hidden by him. P.W.1 stated that he also went with the Police personnel, P.W.2 and others to the place wherefrom the Police seized the *dao* by preparing a Seizure List [Ext.-2]. P.W.1 proved his signature in the Seizure List as Ext.-2[1] and identified the seized *dao* as Mat. Ext.-1. P.W.1 stated that he was present during the inquest proceeding and accompanied the deadbody when it was forwarded to Diphu Civil Hospital for post-mortem examination. After post-mortem examination, the deadbody of his mother was brought back to his house and thereafter, last rites were done. He further stated that there was no prior dispute with the accused and he did not know the reason behind the killing. In cross-examination, P.W.1 reiterated that the occurrence took place near the sugarcane cultivation, which was at a near distance from his house. He stated that he saw the accused when he ran away after doing the crime and also the *dao*.

15. P.W.6 was another witness, who claimed to have witnessed the incident. P.W.6 is a younger sister of the informant-P.W.1 and the deceased was her mother. As regards the incident, P.W.6 deposed to the effect that the incident had occurred at around 10-00 a.m. on 13.09.2010. At that time, she was in her house. Like P.W.1, P.W.6 stated that the deceased had gone to the backside of their house for digging soil for the house. When she heard shouting, she came out of the house and went towards the place of occurrence. Going to the place of occurrence, she saw the accused assaulting the deceased with a *dao*. P.W.6 further stated that seeing the incident, she lost her senses. It was after two days, she regained her full senses. During cross-examination, P.W.6 stated that from her house, the agriculture field was not viewable.

16. P.W.2, Lalita Hasam, who was a co-villager, deposed to the effect that at the time and date of the incident, she went to cultivation field with the deceased, Thaiphangdi Dibra to catch fishes. At that time, P.W.6 shouting '*Maa Maa*' ['Mother, Mother'] came near her and P.W.6 then enquired from P.W.2 about her mother. P.W.2 then told P.W.6 that she [P.W.2] did not see Thaiphangdi Dibra. Thereafter, P.W.6 went towards the sugarcane cultivation/jungle. Going there, P.W.6 saw her mother and screamed - '*Ma Marise*' [My mother is dead]. On hearing the screamings of P.W.6, she [P.W.2] and other villagers went to the place of occurrence. P.W.2 also deposed about the fact of apprehending the accused; and about keeping of the accused detained in the house of the informant by tying him with rope.
17. P.W.7, a co-villager was another witness, who testified to have seen the incident of assault on the deceased by the accused. P.W.7 deposed that the informant was his cousin. As regards the incident, P.W.7 deposed to the effect that the incident took place at around 10-00 a.m. on the date of the incident. At that time, he was going to a shop to purchase manure. He stated that the place of occurrence was backside of his house. P.W.7 stated that when he was going to the shop, he saw the accused assaulting his aunt, Thaiphangdi Dibra with a *dao*. Seeing the incident, P.W.7 started screaming and on hearing his screamings, villagers came to the place of occurrence. The accused was thereafter, apprehended. The matter was also informed by the informant-P.W.1 to Police at Mailoo Police Out Post. In cross-examination, P.W.7 stated that seeing the occurrence, he started shouting. He was able to see the incident as he was going to the shop to buy manure through a shortcut road which was from the backside of his house. He stated that there was no kind of enmity between his family and the family of the accused. He further stated that when villagers came to the place of occurrence, the accused fled away. However, the villagers managed to apprehend him in a place near an agricultural field. P.W.7 further stated that he did not obstruct the accused from assaulting his aunt as the accused was, at that point of time, armed with a *dao*.
18. The other prosecution witnesses, in their testimonies, stated that they did not witness the incident of assault on the deceased.
19. P.W.3, who was the Government Gaonburah of the village, deposed about the relationship between the informant, the deceased and the accused. He corroborated

the other prosecution witnesses as regards the time and date of the incident by stating that the incident took place at around 11-30 a.m. on 13.09.2010. He stated that he was informed by villagers that the deceased had been killed and her deadbody was seen lying in the sugarcane field of Gobiram Daulaguphu. He then accompanied the villagers to the sugarcane field and on the way, he noticed some blood stains and marks of dragging on the ground towards the sugarcane field. When they went ahead, they saw the deadbody of the deceased in a pool of blood in the sugarcane field of Gobiram Daulaguphu. The deadbody of the deceased had cut marks injuries on her head, cheek and neck. Thereafter, the deadbody was brought back to her house. At that time, a co-villager, Amrit Hasam [P.W.8] came and told the villagers that he saw the accused coming out from the bamboo plantation of one Deboraj Johori [not a witness], which was near to the sugarcane field of Gobiram Daulaguphu. Receiving such information from P.W.8, the villagers went to the house of the accused and found him inside his house with blood stains in his leg. Then, the villagers brought the accused out of his house and manhandled him.

- 19.1. P.W.3 deposed to the effect that the accused confessed that he had killed Thaiphangdi Dibra with a *dao* and concealed the *dao* in the jungle. Police personnel arrived at the house of the informant after receiving the information from the informant-P.W.1. After arrival of the Police personnel, all proceeded to the bamboo plantation area of Deboraj Johori and recovered the *dao* from the jungle near to the bamboo plantation area, on being led by the accused. As he accompanied the Police personnel and the villagers, the Police after seizure of the *dao* in his presence, prepared a Seizure List, Ext.-2 and took his signature in the Seizure List [Ext.-2], whereby, the alleged weapon of assault, the *dao* was seized. P.W.3 also identified the seized *dao* as Mat. Ext.-1 before the Court. P.W.3 also stated that he was witness to the inquest proceeding and gave his signature in the Inquest Report [Ext.-3] as Ext.-3[3]. The Police personnel thereafter, took the accused to the Police Station. In cross-examination, P.W.3 stated that he did not witness the incident of assault. P.W.3 stated that P.W.8 told him that he saw the accused coming out from the bamboo plantation of Deboraj Johori.
20. Corroborating the version given by P.W.3, P.W.4, Amrit Hasam deposed that at around 10-00/11-00 a.m. on the date of the incident, when he was going by the road, he saw the accused running with a *dao* in hand from the opposite direction.

P.W.8 stated that on seeing him, the accused threw the *dao* in the jungle beside the road. At that time, P.W.8 noticed blood stains on the face and also on the wearing apparels of the accused. He saw the accused near the house of the deceased. Suspecting that the accused had killed the deceased, he went to the house of the deceased and saw her deadbody at a place near sugarcane plantation. He noticed cut injuries on the head and various parts of the deadbody. When P.W.8 was cross-examined, he stated that though he saw the accused running with the *dao* in hand but he did not witness the incident of the accused hacking the deceased.

21. P.W.9, Samsul Ali and P.W.10, Kanakeswar Kalita were the Investigating Officers [I.O.s] of the case. It was PW 10, who investigated into the case at first and P.W.9, who was the subsequent In-Charge, Mailoo Police Out Post, completed the remaining part of the investigation by submitting the Charge Sheet [Ext.-5] on 31.12.2010.

21.1. In his testimony, P.W.10 stated that on the date of the incident, that is, on 13.09.2010, P.W.3, Deb Charan Johori, the Government Gaonburah informed to the Mailoo Police Out Post over telephone that a case of assault had taken place in the village. On receipt of the information, P.W.10 went to the place of occurrence along with his staff. Reaching there, he found that the villagers had kept the accused tied and he [P.W.10] rescued and brought the accused to the Police Station. P.W.10 stated that during interrogation in the Police Station, the accused informed him that he had kept concealed a *dao* in the jungle by which he had committed the crime. P.W.10 stated that the statement given by the accused was recorded by him and he exhibited such statement as Ext.-6 with his signature therein as Ext.-6[1]. P.W.10 stated that after the accused made the statement at around 11-00 a.m. on 13.09.2010, he along with his staff and the accused proceeded from the Police Station to the area where the accused had kept the *dao* concealed. Before reaching the said place, he took the Headman of the village and other four/five villagers with them and as led by the accused, the team proceeded towards that part of the jungle where the accused kept the *dao* concealed. Thereafter, on being shown by the accused, he seized the *dao* from the jungle in presence of the witnesses. P.W.10 exhibited the Seizure List as Ext.-2 with his signature therein as Ext.-2[3]. He stated about the recording of statements of witnesses; drawing up a Sketch Map of the place of occurrence; examining the accused medically; and sending of the deadbody for post-mortem examination [Ext.-7]; and forwarding the accused to the Court for

remand. P.W.10 stated that he received the FIR at around 12-30 p.m. from the informant-P.W.1. But he had already recorded the statements of three of the witnesses before receipt of the FIR as those statements were recorded at the place of occurrence itself.

- 21.2. The other I.O., P.W.9 after joining as In-Charge, Mailoo Out Post, collected the PME Report on the 13.10.2010. He stated that after perusal of the case diary, he found that the investigation was almost completed and there were sufficient incriminating material against the accused and accordingly, he submitted the Charge Sheet [Ext.-5] on 31.12.2010. The defence side did not cross-examine P.W.9.
22. The prosecution witnesses – P.W.1, P.W.6 and P.W.7 were categorical in their testimonies that the incident had occurred during the morning hours, in between 10-00 a.m. to 11-00 a.m., on the date of the incident, that is, 13.09.2010. All the three prosecution witnesses, that is, P.W.1, P.W.6 and P.W.7 had deposed that they had witnessed the incident of assault on the deceased by the accused with a *dao*. Their testimonies are also identical on the point that after assaulting the deceased with the *dao*, the accused fled away from the spot. P.W.1, in his testimony, stated that he noticed cut injuries on the neck, brain, etc. on the person of the deceased. The inquest on the deadbody of the deceased was performed on 13.09.2010 and as per the Inquest Report [Ext.-3], cut injuries, allegedly by a sharp weapon, were present on the head, the neck, etc. of the deceased.
23. At this juncture, it is apposite to refer to the testimony of the Autopsy Doctor [P.W.5] and the PME Report [Ext.-4].
- 23.1. P.W.5, Dr. Dentong Teron, who was posted as the Medical & Health Officer, Diphu Civil Hospital on 14.09.2010, performed the post-mortem examination on the deadbody of the deceased on that day. In his testimony, P.W.5 stated that on examination of the deadbody, he found the following :-

Incised wound over right forehead upto root of the nose. Another incised wound over right shoulder running in oblique direction. Another incised wound over lower part of the neck upto left

shoulder. Incised wound over interior part of the neck upto left shoulder.

23.2. P.W.5 opined that the cause of death was haemorrhagic shock resulting from bleeding from various parts due to incised wounds caused by sharp weapon. He exhibited the PME Report as Ext.-4 with his signature therein as Ext.-4[1]. He also identified the signature of Dr. Kareng Rongpipi, Superintendent of Diphu Civil Hospital and Dr. Deori, Joint Director of Health Services, Diphu in the PME Report [Ext.-4] as Ext.-4[2] and Ext.-4[3] respectively. When P.W.5 was cross-examined by the defence, he stated that he had mentioned about presence of rigor mortis indicating that the death took place within 24 hours.

23.3. In the PME Report [Ext.-4] which was prepared after performing autopsy on 14.09.2010, the following findings were recorded :-

I - EXTRANAL APPERANCE

1. Condition of subject stout emaciated, decomposed etc:

P.M. examination is carried out on a female dead body of 60 yr of age with brown complexion & of short height & long hair wearing a white colour Sadar. Rigor mortis present.

2. Wounds - position, and character :

An incised wound over the [1] right forehead upto the root of nose is seen. [2] Incised wound on the right shoulder in running in oblique direction. [3] Incised wound on lower part of neck upto left shoulder. [4] Around the anterior part of neck upto left shoulder. No other injury seen.

* * * *

II - CRANIUM AND SPINAL CANAL

1. Scalp, Skull, Vertebrae : Lacerated injury of the scalp in forehead on rt side of around 6 cm upto the root of nose.

2. Membrane : Intact

3. Brain and spinal cord : NAD

* * * *

V - MUSCLES, BONES AND JOINTS

1. Injury : Incised wounds in forehead, lower part of neck, shoulder.

2. Disease or deformity : None

3. Fracture : None

4. Dislocation : None

* * * * *

MORE DETAILED DESCRIPTION OF INJURY OR DISEASE

Multiple incised injury over many parts caused by sharp weapon is noted. The sites are [1] forehead on right side upto the root of nose [2] right shoulder running obliquely [3] lower part of the neck upto left shoulder [4] around the anterior part of neck upto left shoulder.

OPINION OF ASSISTANT SURGEON AS TO CAUSE OF DEATH SUB – ASSISTANT SURGEON

In my opinion, the cause of death is due to haemorrhagic shock resulting from bleeding at various site due to incised wound caused by sharp weapon.

- 23.4. Having regard to the nature of injuries sustained by the deceased and the cause of death, recorded in the PME Report [Ext.-4], it is not in doubt that the accused sustained a homicidal death. It has been clearly recorded in the PME Report and is also evident from the testimony of P.W.5 that the injuries sustained by the deceased were caused by a sharp cutting weapon. The material exhibit, Mat. Ext.-1, which was seized vide Seizure List [Ext.-2] on the date of the incident, 13.09.2003 falls in the category of a sharp cutting weapon.
24. Reverting back to the testimonies of the prosecution witnesses, more particularly, of the eye-witnesses, P.W.1, P.W.6 and P.W.7, we find that their testimonies as regards the incident of assault by the accused on the deceased by the accused with a *dao* as the weapon of assault was not shaken in any manner. Not even a suggestion was given to these eye-witnesses that it was not the accused who had committed the act of assault. In absence of any discrepancies on material points, the testimonies of these eye-witnesses, P.W.1, P.W.6 and P.W.7 are found to be credible, reliable and trustworthy. As discussed above, their testimonies received sufficient corroboration from the other prosecution witnesses, who had deposed about the events succeeding the incident of assault. That the accused had used the seized weapon of assault, *dao* in committing the murderous assault on the deceased was not contested, in any manner whatsoever by the defence. The testimony of the informant [P.W.1] as regards the injuries sustained by the deceased is also supported by the medical

evidence, which were in the form of the testimony of the Autopsy Doctor [P.W.5] and the PME Report [Ext.-5]. The Inquest Report [Ext.-3] is also consistent with the PME Report [Ext.-5].

25. A plea has been raised on behalf of the accused-appellant to the effect that the alleged disclosure statement, Ext.-6 would not be admissible under Section 27 of the Evidence Act for the reason that the statement was recorded by the I.O. only after recovery of the *dao*. On going through the disclosure statement, Ext.-6, we find that the statement appeared to have been recorded after recovery of the *dao* on 13.09.2010 and as such, it appears prima facie that the disclosure statement, Ext.-6 was only a post-recovery statement. Notwithstanding non-acceptance of Ext.-6, we find that there are overwhelming evidence which go to establish that it was none other but the accused who was the perpetrator of the crime. As it is a case of direct evidence, the prosecution is not obliged to establish the motive behind the crime of murder.

26. Another contention which has been canvassed, is that the prosecution witnesses, P.W.1, P.W.6 and P.W.7 being the son, the daughter and a near relative of the deceased respectively, fall in the category of interested witnesses. Such contention is considered qua their testimonies and after due consideration, the contention is found to be not acceptable. As P.W.1 and P.W.6 were inmates of the house, their presence at the time and near the place of incident were quite natural and plausible. 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'. A reference can be made to the decisions in State of Rajasthan vs. Smti. Kalki and another, reported in [1981] 2 SCC 752, and Mohd. Rojali and others vs. State of Assam, Ministry of Home Affairs through Secretary, reported in [2019] 19 SCC 567, in this connection. Merely by dubbing the witness, P.W.7 as a chance witness would not bring, by itself, any erosion in the admissibility of the testimony of P.W.7, who had clearly explained the circumstance in which he [P.W.7] saw the accused at the place, as deposed by him. There was not even a suggestion to these witnesses that they had any animosity towards the accused. Rather, P.W.1 was in clear terms stated that

there was no prior dispute with the accused and he did not know the reason behind the act of the accused.

27. In the light of the discussion made above and for the reasons assigned therein, we do not find any reason to take a view, other than the view taken by the learned trial court, which has reached the view that the prosecution has proved the case beyond all reasonable doubts. The direct ocular evidence and the medical evidence, discussed above, are found to be consistent with each other. The testimonies of the three eye-witnesses – P.W.1, P.W.6 and P.W.7 – are found to be consistent on the material point of assault on the deceased by the accused by a *dao* and their such evidence could not be discredited by the defence to create any dent in the prosecution case. As their eye-witness accounts on the incident of assault are found credible and consistent inspiring confidence we do not find any merits in the contentions raised on behalf of the accused-appellant. We have found ourselves in agreement with the finding of guilt reached by the learned trial court as it has based its Judgment and Order of conviction and sentence on correct appreciation of the evidence on record. The accused-applicant has not urged any other ground and has been able to show any other ground, not to speak of any good and merited ground, to interfere with the Judgment and Order of conviction and sentence passed by learned trial court. In such view of the matter, the appeal being devoid of any merits, is liable to be dismissed by affirming the Judgment and Order of the learned trial court. It is accordingly ordered.
28. Before parting with, we wish to place our appreciation on record as regards the services rendered by Mr. N. Hasan, 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.
29. The Registry to send back the case records of the learned trial court forthwith.

JUDGE

JUDGE

Comparing Assistant