

GAHC010278152019



2024:GAU-AS:9102

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

CRIMINAL APPEAL [Jail] no. 105/2019

Lakhan Goyawali

.....Appellant

-VERSUS-

The State of Assam

.....Respondent

Advocates :

Appellant : Mr. N. Deka, Amicus Curiae

Respondent : Ms. B. Bhuyan, Addl. Public Prosecutor
Ms. M. Chakraborty, Advocate

Date of Hearing and Judgment & Order : 29.08.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MRS. JUSTICE MITALI THAKURIA

JUDGMENT & ORDER

[Manish Choudhury, J.]

The present criminal appeal from Jail under Section 383, Code of Criminal Procedure [CrPC], 1973 [‘the Code’ or ‘the CrPC’, for short] is directed against a Judgment and Order dated 24.04.2019 passed

by the Court of learned Sessions Judge, Karbi Anglong, Diphu [‘the trial court’, for short] in Sessions Case no. 78 of 2016. By the Judgment and Order dated 24.04.2019, the learned trial court has convicted the accused-appellant for the offence of murder under Section 300, Indian Penal Code [IPC] and he has been sentenced under Section 302, IPC to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/-, in default of payment of fine, to undergo simple imprisonment for another two months.

2. The case, Sessions Case no. 78 of 2016 arose out of Khatkhathi Police Station Case no. 133 of 2015 and corresponding G.R. Case no. 1168 of 2015. The crime case, Khatkhathi Police Station Case no. 133 of 2015 came to be registered on lodgment of a First Information Report [FIR] by one Khemraj Upadhyay as the informant [P.W.1] before the Officer In-Charge, Khatkhathi Police Station on 27.12.2015. In the FIR, the informant had inter alia alleged that at about 03-00 p.m. on 26.12.2015, his co-villager, Narayan Sarma had been murdered and it came to his knowledge from the villagers that Narayan Sarma had been murdered by the accused, Lakhan Goyawali using a Naga dao at the residence of the deceased at Village - Borlengri.

3. On receipt of the said FIR, the Officer In-Charge, Khatkhathi Police Station registered the same as Khatkhathi Police Station Case no. 133 of 2015 on 27.12.2015 itself for the offence under Section 302, IPC and entrusted the investigation of the case to one Prabin Borah, a Sub-Inspector of Police attached to Khatkhathi Police Station. The Investigating Officer [I.O.], Prabin Borah after completing the investigation into the case, Khatkhathi Police Station Case no. 133 of 2015 submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 07/2016 on 28.02.2016 finding a prima face case against the accused-appellant who was named in the FIR, for the offence under Section 302, IPC. It is not in dispute that the accused was arrested on 28.12.2015 and after his arrest, the accused was produced before the Court of learned Magistrate, First Class on 28.12.2015.

4. On submission of the charge-sheet, the Court of learned Magistrate, First Class secured the appearance of the accused from Jail custody on 10.08.2016 as the accused was in custody since 28.12.2015. As the copies were found ready, the same were furnished to the accused in compliance of the procedure laid down in Section 207, CrPC. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the Court of learned Magistrate, First Class by an Order of Commitment dated 10.08.2016, committed the case records of G.R. Case no. 1168/2015 to the Court of Sessions, Karbi Anglong, Diphu for disposal. The learned Public Prosecutor was notified accordingly.

The P.I., Diphu Court was directed to produce the accused before the Court of Sessions, Karbi Anglong, Diphu on 20.09.2016.

5. On receipt of the case records of G.R. Case no. 1168/2015 pursuant the Order of Commitment dated 10.08.2016, the Court of Sessions, Karbi Anglong, Diphu [the trial court] registered the case as Sessions Case no. 78 of 2016. Before the learned trial court, the case was opened by the Public Prosecutor. After hearing the learned Public Prosecutor and the defence counsel; and on perusal of the materials on record; the learned trial court, on 07.02.2017, framed the following charge against the accused :-

That you, on 26th day of December, 2015 at about 03-00 p.m. at Village - Borlengri Block-I Police Station - Khotkhoti assaulted to your brother-in-law Narayan Sharma at his home located at the said village with a 'Naga Dao' on his neck/face causing his instantaneous death, and thereby committed an offence punishable under Section 302, Indian Penal Code and within my cognizance.

6. When the charge was read over and explained to the accused, the accused pleaded not guilty and claimed to be tried. During the course of the trial, the prosecution side examined fourteen nos. of witnesses and exhibited thirteen nos. of documents in order to bring home the charge against the accused. The prosecution witnesses examined were – [i] P.W.1 : Khemraj Upadhyay; [ii] P.W.2 : Welson Sangma; [iii] P.W.3 : Suresh Thapa; [iv] P.W.4 : Purno Nayak; [v] P.W.5 : Kamal Gurung; [vi] P.W.6 : Babulal Thapa; [vii] P.W.7 : Tilok Bahadur Tamang; [viii] P.W.8 : Simon Changma; [ix] P.W.9 : Dr. Sarsing Rangpi; [x] P.W.10 : Sailendra Pathak; [xi] P.W.11 : Renu Bora; [xii] P.W.12 : E. Kithang; [xiii] P.W.13 : Probin Bora; and [xiv] P.W.14 : Jyotirmoy Daimary. The documents exhibited during the trial were – [i] Ext.-1 : Seizure List, M.R. no. 139/2015; [ii] Ext.-2 : Seizure List, M.R. no. 140/2015; [iii] Ext.-3 : Seizure List, M.R. no. 141/2015; [iv] Ext.-4 : FIR; [v] Ext.-5 : Post-Mortem Examination [PME] Report; [vi] Ext.-6 : Inquest Report; [vii] Ext.-7 : FSL Report; [viii] Ext.-8 : G.D. Entry no. 693 dated 26.12.2015; [ix] Ext.-9 : Sketch Map of the P.O.; [x] Ext.-10 : Charge-Sheet; [xi] Ext.-11 : Order dated 28.12.2015; [xii] Ext.-12 : Statement of the accused recorded under Section 164, CrPC; and [xiii] Ext.-13 : Order dated 29.12.2015. In addition, prosecution also exhibited two material exhibits and they were :- [i] Mat. Ext.-1 : two wooden piras; and [ii] Mat. Ext.-2 : one dao.

7. After closure of the evidence from the prosecution side, the accused was examined under Section 313, CrPC to provide him the opportunity to explain the adverse circumstances appearing against him in the evidence led by the prosecution. The plea of the accused was of denial. According to the accused, the entire case was false. When the accused was asked whether he would adduce any evidence in support of his defence, the accused declined to adduce any defence evidence. After hearing the learned counsel for the parties; and upon appreciation of the evidence/materials on record; the learned trial court proceeded to deliver the Judgment and Order, impugned herein, whereby the accused has been convicted for the offence of murder under Section 300, IPC and sentenced under Section 302, IPC in the manner, mentioned hereinabove.

8. We have heard Mr. N. Deka, learned Amicus Curiae appearing for the accused-appellant and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor for the respondent State, assisted by Ms. M. Chakraborty, learned counsel.

9. Mr. Deka, learned Amicus Curiae appearing for the accused-appellant has contended that there was no eye-witness to the alleged occurrence and the case of the prosecution rested on circumstantial evidence. It is his contention that the prosecution side have not been able to establish all the required circumstances by leading satisfactory evidence and as a result, there are many missing links in the chain of circumstances. Yet, the learned trial court by observing that the chain of circumstances is complete, has convicted the accused-appellant for the offence of murder. Referring to the two Seizure Lists, M.R. no. 140/2015 and M.R. no. 141/2015, exhibited as Ext.-2 and Ext.-3 respectively, whereby one sky blue half-pant with bloodstains of the accused and wearing apparels of the deceased were seized, he has contended that from the dates of seizures appearing therein, the entire matters of seizure and preparation of the two Seizure Lists became doubtful. He has contended that though the wearing apparels of the deceased were allegedly seized on 26.12.2015, yet, the Seizure List was numbered and marked as M.R. no. 141/2015. On the other hand, the wearing apparels of the deceased, that is, the half-pant was allegedly seized from the accused on 27.12.2015, that is, the day when the accused was apprehended, the concerned Seizure List was numbered and marked as M.R. no. 140/2015. The learned Amicus Curiae has further contended that though the Seizure List, M.R. no. 140/2015 [Ext.-2] was shown to be signed by the informant-P.W.1 as a seizure witness, but the informant-P.W.1 in his testimony, deposed to the effect that on that day, that is, on 27.12.2015, when the seizure was shown to

be made, he was in his house. The learned Amicus Curiae has further contended that the learned trial court had rightly discarded the alleged confessional statement of the accused [Ext.-12] that the accused was not granted sufficient reflection time and the confessional statement [Ext.-12] was clearly made under Police influence. He has contended that the State has not preferred any appeal on the point of discard of the confessional statement and as such, the appellate court has also to exclude the same from consideration. In support of his above submissions, learned Amicus Curiae has referred to the decisions in [i] **Rabindra Kumar Pal @ Dara Singh vs. Republic of India, [2011] 2 SCC 490**; [ii] **Abdul Subhan vs. State of Assam, 2022 [4] GLT 679**; and [iii] **Sarwan Singh vs. State of Punjab, 1957 SCR 953**. Learned Amicus Curiae has submitted that in any view of the matter, a retracted judicial confession is a weak piece of evidence and no conviction can be based solely upon such retracted confession. In support of such submission, learned Amicus Curiae has referred to the decision in **Aloke Nath Dutta and others vs. State of Wes Bengal, [2007] 12 SCC 230**.

10. Ms. Bhuyan, learned Additional Public Prosecutor appearing for the State has submitted that if the entire evidence/materials on record are scrutinized minutely, it would emerge that the seizure of the half-pant with bloodstains was seized on 27.12.2015 and the wearing apparels of the deceased were seized on 26.12.2015. The numbering of the Seizure Lists - M.R. no. 140/2015 [Ext.-2] and M.R. no. 141/2015 [Ext.-3], though not in proper order in relation to time, but the same is inconsequential and not a relevant factor to create any dent in the core case of the prosecution in any manner whatsoever. In so far as the statement of the accused recorded under Section 164, CrPC [Ext.-12] is concerned, learned State Counsel has contended that the learned trial court had clearly misconstrued the ratio of the judgment in **Sarwan Singh** [supra] to hold that the accused was only given for reflection time of forty-five minutes. Learned State Counsel has contended, by referring to the evidence/materials on record, that the accused was remanded to judicial custody on 28.12.2015 and as such, the accused had more than twenty-four hours for reflection. It was only on 29.12.2015, the statement of the accused [Ext.-12] was recorded by the concerned Magistrate and from the testimony of the recording Magistrate [P.W.14] and from the statement recorded under Section 164, CrPC [Ext.-12], it is clearly evident that all the procedural safeguards were followed by the concerned recording Magistrate. In the appellate jurisdiction, this Court has to reach its own finding as regards the admissibility or otherwise of the statement of the accused [Ext.-12] recorded under Section 164, CrPC. As the case is rested on circumstantial evidence and the alleged incident had taken place within the premises of the house

where the accused and the deceased used to reside together, there was clearly an obligation on the part of the accused to offer an explanation. But in the case in hand, the accused seemed to have offered a false explanation by taking a feeble plea of alibi. Such non-explanation or giving false explanation is to be treated as an adverse circumstance for the accused and the same is to be considered as a circumstance completing the chain. Learned State Counsel has further contended that the accused did not offer any explanation as to why the blood group found in his wearing apparels matched with the blood group of the bloodstains found in the seized dao and the wearing apparels of the deceased. Ms. Bhuyan has, thus, contended that the prosecution has been able to establish all the possible circumstances including motive, by leading reliable and credible evidence, which were possible on the part of the prosecution in the facts and circumstances of the case and in the absence of any plausible explanation and the false plea of alibi on the part of the accused, the same had completed the chain of circumstances and as such, the learned trial court has rightly returned the finding of guilt against the accused. Ms. Bhuyan has referred to the judgment in the decisions in **Sarwan Singh** [supra], as referred to by the learned trial court, as well as to the decision in **Shankaria vs. State of Rajasthan, [1978] 3 SCC 435**. Ms. Bhuyan has also referred to the testimonies of P.W.5, P.W.6 and P.W.7 to contend that apart from the confession statement of the accused, there was extra-judicial confession by the accused before those witnesses.

11. We have duly considered the rival submissions of the learned counsel for the parties. We have also perused the evidence/materials on record including the testimonies of the prosecution witnesses and the documentary evidence, available in the case records of Sessions Case no. 78 of 2016, in original. We have also taken note of the decisions referred to and relied upon by the learned counsel for the parties.

12. Out of fourteen prosecution witnesses, the prosecution witnesses – P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, P.W.7, P.W.8 and P.W.12 – are inhabitants of Village – Borlengri where the deceased and the accused also used to reside.

13. P.W.1, Khemraj Upadhyay who was the informant and the Gaonbura of Village – Borlengri, stated that he used to know the deceased and the accused. In his testimony, P.W.1 deposed to the effect that the accused was living with his brother-in-law, that is, the deceased at the house of the deceased at Village - Borlengri. P.W.1 stated that on the date of the incident, that is, on 26.12.2015, the accused and

the deceased were present together at the house. At that time, the wife of the deceased went to Nepal. It was at about 03-00 p.m. on 26.12.2015, a neighbour of the deceased, Babulal Thapa [P.W.6] informed him over phone that the deceased was murdered by someone and the deadbody of the deceased was lying in the cowshed. On receiving the news, P.W.1 went to the house of the deceased and going there, he saw the bloodstained deadbody of the deceased in the cowshed with his throat cut. The villagers also gathered at the place of occurrence [P.O.], that is, the house of the deceased. But the accused was not present at the P.O. at that time. He [P.W.1] then informed about the incident telephonically to Khatkhathi Police Station. Thereafter, Police personnel came to the P.O. during his presence. Police personnel after inspecting the deadbody, recovered a blood stained naga dao, which was lying near the deadbody of the deceased. After such recovery, the said naga dao was seized vide a Seizure List, M.R. no. 139/2015 [Ext.-1] wherein P.W.1 subscribed his signature as Ext.-1[1]. When the said naga dao was shown to him [P.W.1] in the court, he identified the said naga dao as Mat. Ext.-1. P.W.1 further deposed that he signed as a seizure witness in two other Seizure Lists, M.R. no. 140/2015 [Ext.-2] and M.R. no. 141[2015 [Ext.-3]. He also identified one sky blue colour half pant as Mat. Ext.-2 and a black colour half-pant and blue colour t-shirt as Mat. Ext.-3. P.W.1 stated that the black colour half pant and the blue colour t-shirt were seized from the deadbody of the deceased in his presence. P.W.1 further stated that the Police personnel prepared an Inquest Report [Ext.-6] thereafter and took the deadbody from the P.O. P.W.1 further stated that the villagers suspected the accused to be assailant because the accused was not present at the P.O. at that point of time. P.W.1 stated that the villagers searched for the accused, but he was not found. P.W.1 also stated that as he was undergoing treatment at that point of time, he later on, went to his house. It was at around 07-00/08-00 a.m. on the following day, that is, on 27.12.2015, P.W.1 was told by some villagers that the accused had been caught by the villagers and he was asked to inform the Police about the matter. Accordingly, P.W.1 informed the Police about the matter whereafter, Police personnel came to the P.O. and arrested the accused. P.W.1 stated that on that day, that is, on 27.12.2015 he was at home. P.W.1 also stated that he submitted the written FIR as the Gaonbura of the village and the said FIR was exhibited by him as Ext.-4 with his signature therein as Ext.-4[1]. P.W.1 claimed ignorance as regards the reason for killing the deceased.

13.1. During cross-examination, it was elicited by the defence from P.W.1 that the accused had been living with his brother-in-law, that is, the deceased since about last six months before the date of occurrence. P.W.1 reiterated that it was Babulal Thapa [P.W.6], a neighbour of the deceased, who informed him [P.W.6] about the incident and he [P.W.1] did not witness the incident.

14. Like P.W.1, P.W.2, Welson Sangma also stated that he came to know about the incident at around 03-00 p.m. P.W.2 stated that when he went to the P.O., he saw the deadbody of the deceased with cut injuries on head and neck lying on the ground in the cowshed. P.W.2 also noticed a bloodstained dao at the P.O. near the deadbody. The villagers of the village, except the accused, spent the whole night at the P.O., that is, the house of the deceased. P.W.2 like P.W.1, stated that the accused was staying in the house of the deceased at the time of the incident and that the accused was apprehended by the villagers in the morning hours on the following day. During cross-examination, P.W.2 stated that when he and others came to the house of the deceased, they did not find the accused at the P.O.

15. P.W.3, Suresh Thapa deposed to the effect that having learnt about the incident, he reached the P.O. and at the P.O., he noticed that the deadbody of the deceased was lying in the cowshed with injuries on head and neck and the dao at a place near the deadbody. He and the villagers noticed absence of the accused at the P.O. at that time. P.W.3 also stated that the accused used to stay in the house of the deceased and during the relevant date, the wife and the children of the deceased had gone to Nepal and thus, it was only the deceased and the accused who were present in the house of the deceased. P.W.3 further stated that it was in the morning hours on the following day, he and some youth of the village caught hold of the accused and at that time, the accused disclosed before them that he [the accused] murdered the deceased. During cross-examination, P.W.3 stated that he did not know whether the accused was present in the house of the deceased on the date of occurrence.

16. P.W.4, Purno Nayak testified to the effect that it was at around 03-00 p.m. on the date of the incident, he went to the house of the deceased and going there, he saw the deadbody of the deceased lying on the ground in the cowshed. During cross-examination, P.W.4 stated that he did not know who killed the deceased.

17. P.W.5, Kamal Gurung stated that he knew the deceased, the accused and the informant. P.W.5 stated that the house of his father-in-law situate in front of the house of the deceased. On the incident, P.W.5 stated that on the date of the incident, he went to his father-in-law's house to drop his wife. At that time, he saw gathering at the house of the deceased and when he went there, he saw that the deadbody of the deceased was lying in a pool of blood on the ground in the cowshed. P.W.5 further stated that in the following morning, the villagers caught hold of the accused and brought the accused

to the house of the deceased. When he [P.W.5] went there, he heard the accused confessing that the deceased was killed by him [the deceased]. During cross-examination, P.W.5 reiterated that he heard the accused confessing that he [the accused] had killed the deceased but he was not a witness to the incident of killing.

18. P.W.6, Babulal Thapa deposed to the effect that at around 04-00 p.m. when he saw gathering at the house of the deceased, he went there and saw the deadbody of the deceased lying in a pool of blood on the ground in the cowshed. P.W.6 also stated that the accused used to stay at the house of the deceased but at that point of time, the accused was not seen at the P.O. after the incident. The villagers, present there, informed him [P.W.6] that the accused had killed the deceased and the villagers thereafter, started searching for the accused. It was in the course of the search made by the villagers, the accused was found and caught of at around 07-00 a.m. in the following morning. P.W.6 stated that the accused was apprehended when he was found consuming liquor in the house of one Uttam Rai. After apprehending the accused, the villagers brought the accused to the P.O. where the accused confessed before him [P.W.6] and the villagers that he [the accused] had killed the deceased. Thereafter, the Gaonbura [P.W.1] informed the Police and Police personnel arrived at the P.O. and the accused, after arrest, was taken to the Police Station. During cross-examination, P.W.6 stated that he did not witness the incident of killing of the deceased.

19. P.W.7, Tilok Bahadur Tamang stated that on receiving the information about the death of the deceased, he went to the house of the deceased and going there, he saw the deadbody of the deceased lying on the ground in the cowshed. P.W.7 found that the deadbody was smeared with blood and Police personnel did not arrive at the time when he reached the P.O. Since the accused was not in the house of the deceased at that time, the villagers started searching for the accused. It was on the following morning the villagers found the accused in another person's house and after apprehending the accused, he [the accused] was brought to the house of the deceased. At that time, he [P.W.7] went to the house of the deceased again and found presence of Police personnel at the P.O. P.W.7 further stated that the Police took the deadbody of the deceased for post-mortem examination and the accused to the Police Station. During cross-examination, it was elicited from P.W.7 by the defence that the accused was staying in the house of the deceased.

20. P.W.8, Simon Changma stated that it was at around 01-00/02-00 p.m. on the date of the

occurrence, he came to know that someone had killed the deceased and on receiving the news, he went to the house of the deceased and going there, he found the dead body of the deceased lying in the cowshed. At that time, blood was oozing out from the deadbody. P.W.8 did not see presence of the accused in the house of the deceased at that point of time. P.W.8 received information on the following day that the accused was found by the villagers and was brought to the house of the deceased. On getting the said information, he went to the house of the deceased again and on going there, he found that Police personnel had already arrived at the P.O. In cross-examination, P.W.8 stated that the accused had been staying in the house of the deceased for about one/two years. He did not know with what weapon the deceased was killed.

21. P.W.12, E. Kithang also went to the P.O. on the date of the incident after receiving the news of killing of the deceased and going there, he found that the deadbody of the deceased was lying on the ground in the cowshed. He witnessed the seizure of a naga dao from the P.O. and he signed as a witness in the Seizure List, M.R. no. 139/2015 [Ext.-1] prepared in that connection. P.W.12 identified his signature thereon as Ext.-1[2]. P.W.12 further stated that the Police seized a bloodstained sky blue half-pant vide Seizure List, M.R. no. 140/2015 [Ext.-2] and a black half-pant and a black T-shirt, both stained with blood, vide Seizure List, M.R. no. 141/2015 [Ext.-3] from the P.O. P.W.12 subscribed his signature as Ext.-3[2] - as a witness in the Seizure List, Ext.3. During cross-examination, P.W.12 stated that he gave his signatures in the Seizure List at the P.O.

22. On a combined analysis of the testimony of the afore-mentioned prosecution witnesses – P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, P.W.7, P.W.8, and P.W.12 – it is clear that none of these prosecution witnesses had seen the incident which led to the death of the deceased inside the cowshed within the precinct of his own house.. But, from the testimony of these prosecution witnesses, it has emerged that the crime was committed, at least, at a time anterior to 03-00 p.m. on the date of the incident, 26.12.2015, as these prosecution witnesses had arrived at the P.O., that is, the house of the deceased at a time in and around 03-00 p.m. At the P.O., these prosecution witnesses found the deadbody of the deceased was lying on the ground in the cowshed in a pool of blood. From their testimony, it has further emerged that a bloodstained dao was found lying near the deadbody. From the testimony of P.W.1 [the informant] and P.W.6, it is revealed that it was the informant-P.W.1, in his capacity as Gaonbura of the Village, who informed about the incident to Khatkhathi Police Station. The said fact finds support from General Diary Entry no. 693 dated 26.12.2015, exhibited as Ext.-8 by the I.O. when

he testified as P.W.13. From the contents of the G.D. Entry no. 693, it is discerned that it was the informant – P.W.1 in his capacity as the Gaonbura of Village - Borlengri, informed at the Police Station that a person was hacked to death at Village – Borlengri and the deadbody of the person was lying there. From G.D. Entry no. 693, it has further emerged that the Officer In-Charge, Khatkhati Police Station after recording the information in the General Diary Entry at 04-10 p.m., also informed a Magistrate to hold inquest on the deadbody and deputed Prabin Borah [P.W.13] to take necessary steps in that regard. From the testimony of P.W.13 [the I.O.], it is revealed that the Police personnel proceeded to the P.O. at around 04-30 p.m. on 26.12.2015. From the above evidence/materials on record, it has also been established that when the villagers and the neighbours of the deceased came to the P.O., that is, the house of the deceased, at around 03-00 p.m. on 26.12.2015, the accused was not present in the house. These prosecution witnesses had categorically testified to the effect from an earlier point of time, the accused had been staying with the deceased in the house of the deceased and nothing has been elicited by the defence by cross-examining these prosecution witnesses to draw any inference even remotely that the accused was not staying in the house of the deceased at the relevant point of time. The fact that the wife and the children of the deceased had gone to Nepal at the relevant point of time, was also not disputed by the accused. It has, thus, emerged that at the relevant time, the deceased and the accused used to stay together in the house of the deceased and there was no evidence that any other person was present with the deceased and the accused at that point of time.

23. In a trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the court as per the provisions of Section 313[1][b], CrPC, after the witnesses for the prosecution have been examined and before the accused is called on for his defence, question him generally on the case. The purpose of examining of the accused under Section 313, CrPC is to provide the accused a reasonable opportunity to explain the adverse circumstances which have emerged against him during the course of the trial. During his examination under Section 313, CrPC, the accused was asked, on the basis of the testimony of the prosecution witnesses, as regards his whereabouts at the time of occurrence and the accused was asked to provide his explanation as to how the deceased sustained the injuries. In response, the accused had admitted that during the time of the occurrence, he was staying in the house of the deceased together with the deceased. The accused further stated that it was at around 09-30 a.m. on the date of the occurrence, 26.12.2015, he had gone out from the house of the deceased for the purpose of going to Dimapur. Thus, from the testimonies of the prosecution witnesses and reply given by the accused during examination under

Section 313, CrPC, it can be accepted that at the date of the occurrence, the accused was staying with the deceased in the house of the deceased and that the accused was in the house of the deceased, as per the version of the accused, till 09-30 a.m. on 26.12.2015.

24. We can now turn to the medical evidence led in the case, which are in the forms of the testimony of the Autopsy Doctor, P.W.9 and the Post-Mortem Examination [PME] Report [Ext.-5]. The inquest proceeding on the deadbody of the deceased was performed at around 05-20 p.m. on 26.12.2015 at the P.O. by the Sub-Divisional Magistrate, Bokajan Sub-Division. After completing the inquest proceeding, an Inquest Report [Ext.-6] was prepared recording the findings therein. As per the Inquest Report [Ext.-6], there were two cut marks measuring about 5-6 inches in the left face; two cut marks in the mouth; and a cut mark in the neck. After the inquest proceeding, the deadbody of the deceased was sent to Diphu Civil Hospital for post-mortem examination in reference to General Diary Entry no. 693 [Ext.-8]. The post-mortem examination was performed at Diphu Hospital on 27.12.2015.

25. P.W.9, Dr. Sarsing Rangpi who, on 27.12.2015, was posted as S.D.M. & H.O., performed the post-mortem examination on the deadbody of the deceased and after autopsy, he recorded his findings in a Post-Mortem Examination [PME] Report, exhibited by him as Ext.-5 with his signature therein as Ext.-5[1]. P.W.9 also identified the signature of the Superintendent of Diphu Civil Hospital and the Joint Director of Health Services, Karbi Anglong in the PME Report [Ext.-5] as Ext.-5[2] and Ext.-5[3] respectively. In the PME Report [Ext.-5], P.W.9 opined that the death of the deceased was due to heamorrhagic shock following severe cut injuries on the neck and mouth. The defence opted not to cross-examine the Autopsy Doctor, P.W.9.

25.1. In the PME Report Ext.-5, the following findings were recorded :-

I - EXTRANAL APPERANCE

1. Condition of subject stout emaciated, decomposed etc :

PM done on a male dead body. Body was found fresh.

2. Wounds - position, and character :

On external examination found - Cut injuries - 2 Nos in the left face measuring about 5 - 6 inches. Deep cut injuries in his mouth and neck.

II - CRANIUM AND SPINAL CANAL

1. * * * *

III - THORAX

1. * * * *

IV - ABDOMEN

1. Walls : Intact

2. Peritonoum : Intact

3. Mouth, pharynx, oesophagus : Cut injuries to mouth and
oesophagus

V - MUSCLES, BONES AND JOINTS

1. * * * *

MORE DETAILED DESCRIPTION OF INJURY OR DISEASE

Two cut injuries in the left side of face measuring 5-6 in chest. Two more cut injuries in the neck and mouth. The left carotid artery has been cut by the injury.

OPINION OF ASSISTANT SURGEON AS TO CAUSE OF DEATH

SUB - ASSISTANT SURGEON

In my opinion, dead was due to haemorrhagic shock following severe cut injuries on the neck and mouth.

26. When the testimony of the prosecution witnesses, who arrived at the P.O. immediately after the occurrence, and the medical evidence are considered together, we find consistency between the testimony of the prosecution witnesses and the medical evidence as regards the nature and location of the injuries. The findings recorded in the Inquest Report [Ext.-6] are consistent with the injuries recorded in the PME Report [Ext.-5].

27. At this juncture, it is relevant to reiterate that during his examination under Section 313, CrPC, the accused stated that at around 09-30 a.m. on the date of the incident, he had gone out from the house of the deceased for going to Dimapur and on the night following the day of the occurrence, he was in Dimapur in the house of his friend, Dhruba Sarma [not brought as a witness]. The accused further stated that in the morning hours on the following day, that is, on 27.12.2015, he was coming back from Dimapur and when he was on his way back, he was caught hold by the villagers. By replying in that manner, the accused seemed to have taken a plea in the nature of alibi and sought to explain his absence at the P.O. As per the consistent version the prosecution witnesses, mentioned above, who arrived at the P.O. immediately after receiving the news of death of the deceased, when they saw the deadbody in the cowshed of the house of the deceased, the accused was not found at the P.O.

28. Resting the discussion on this aspect here, we now refer to the seizure lists made during the investigation. By the Seizure List, M.R. no. 139/2015 [Ext.-1], a naga dao was seized as it was found lying near the deadbody of the deceased at the P.O. The naga dao so seized, was exhibited as Mat. Ext.-1. As per the Seizure List [Ext.-1], the length of the iron portion of the bamboo handle of the naga dao was about 1 foot 15 inches and one side of the iron portion was found sharp edged. The seizure of the naga dao from the P.O. was supported by the prosecution witnesses – P.W.1 and P.W.12. Vide Seizure List, M.R. no. 140/2015 [Ext.-2], one sky blue half-pant with bloodstains was seized on 27.12.2015 from the person of the accused as he was wearing the said half-pant at the time when he was caught hold of by the villagers at another place and thereafter, brought to the P.O. Vide Seizure List, M.R. no. 141/2015 [Ext.-3], one black colour half-pant and one black t-shirt were seized from the person of the deceased at the P.O. on 26.12.2015 in presence of three seizure witnesses – [i] Eldad L. Faihriem, Executive Magistrate, Bokakhat; [ii] Khemraj Upadhyay [P.W.1]; and [iii] E. Kithang [P.W.12].

29. During their testimony before the court, the prosecution witnesses – P.W.1 and P.W.12 – had deposed to the effect that the articles mentioned in the Seizure Lists were seized in their presence. It has

been contended by the defence that from the testimony of P.W.1, it would emerge that it was not possible for P.W.1 to subscribe his signature in the Seizure List, M.R. no. 140/2015 [Ext.-2] as P.W.1 testified to the effect that on the date, 27.12.2015, P.W.1 was present in his house. The defence has also raised a doubt as regards obtaining of signatures of P.W.12 in the two Seizure Lists. On close scrutiny of the testimony of the two prosecution witnesses – P.W.1 and P.W.12, we find that the contentions raised by the defence are specious. It is true that P.W.1 stated that on 27.12.2015 he was present in his house. It is not the testimony of P.W.1 that on that day he did not go to the P.O. when the accused after being caught by the villagers, brought to the P.O., in the morning hours on 27.12.2015. When the testimony of P.W.12 is examined, we do not find anything to doubt that P.W.12 did not subscribe his signature in the two Seizure Lists on two different dates, that is, on 26.12.2015 and on 27.12.2015 at the P.O. It has clearly emerged that the Seizure List, M.R. no. 141/2015 [Ext.-3] [the wearing apparels of the deceased] was prepared at the P.O. in presence of the Executive Magistrate, Eldad L. Faihrien, on 26.12.2015. It has also emerged from the evidence on record that in the morning hours of 27.12.2015, the accused was found by the villagers at a place other than in Village – Borlengi. After being so found, the accused was brought to the P.O., that is, the house of the deceased and the Seizure List, M.R. no. 140/2015 [Ext.-2] showed that the sky blue half-pant with bloodstains which was worn by the accused when he was brought to the P.O., was seized thereafter, at the P.O. Mere numbering of the Seizure List dated 27.12.2015 as M.R. no. 140/2015 ahead of the Seizure List dated 26.12.2015 as M.R. no. 414/2015, by no stretch, had created a dent in the prosecution case. Such view of ours is reached after looking at the two Seizure Lists in original.

30. P.W.11, Renu Bora, in her testimony, deposed to the effect that on 06.01.2016, she was attached with the Directorate of Forensic Science [DFS], Assam, Guwahati as a Scientific Officer, Serology Division. P.W.11 stated that on that day, she received a packet from the Additional Superintendent of Police [HQ], Karbi Anglong, Diphu in reference to Khatkhati Police Station Case no. 133 of 2015 through the Departmental In-Charge. The big parcel had seal impression of the Additional Superintendent of Police, Karbi Anglong, Diphu. P.W.11 stated that on opening the parcel, the items with the descriptions :- [i] One bamboo handled naga dao containing stains of suspected blood & marked as M.R. no. 139/2015, having length - 58 cms [Sero-3623-A]; [ii] One black colour half-pant containing stains of suspected blood & marked as M.R. no. 141/2015 [Sero-3632-B]; and [iii] One sky blue colour half-pant containing of suspected blood & marked as M.R. no. 140/2015 [Sero-3623/C]; were found. P.W.11 stated that on examination, Exhibit nos. Sero-3623/A, Sero-3623/B and Sero-

3623/C gave positive test for human blood of Group-A. P.W.11 proved the Serological Examination Report as Ext.-7 and her signature therein as Ext.-7[1]. In cross-examination, P.W.11 stated that the packet was received in sealed condition on 06.01.2016.

31. From the Serological Examination Report [Ex.t-7] dated 06.01.2016 which is admissible in evidence in a trial as per the provisions of Section 293[1] CrPC, it is demonstrated that Sero-3623/A, Sero-3623/B and Sero-3623/C gave positive test for human blood of Group-A. From the testimony of P.W.11 and Serological Examination Report [Ext.-7], it has been conclusively established that the naga dao seized vide Seizure List, M.R. no. 139/2015 [Ext.-2]; the sky blue colour half-pant seized from the person of the accused by the Seizure List, M.R. no. 141/2015 [Ext.-3] on 27.12.2015; and the sky blue colour half-pant seized from the person of the deceased by the Seizure List, M.R. no. 140/2015 [Ext.-2] on 26.12.2015; all of which were seized from the P.O., contained blood stains and on examination, those blood stains were found to be of humans, belonging to Blood Group-A.

32. From the discussion already made above, it is revealed that the accused himself had admitted that he had left the house of the deceased at around 09-30 a.m. on 26.12.2015 and he was, later on, caught hold of at a different place in the morning hours on 27.12.2015 by the villagers. Thereafter, the accused was brought to the P.O. by the villagers. It is true that it is not proved that the human bloodstains of human belonging to Blood Group-A, found in those three exhibits belonged to the deceased. But at the same time, presence of the same blood group, Group-A on the seized naga dao, the half-pant worn by the deceased and the half-pant worn by the accused emerges as a strong circumstance pointing towards involvement of the accused as the probable assailant, if the other surrounding circumstances are taken together into consideration.

33. The sequence in which the investigation was carried out, can be found from the testimony of P.W.13 [the I.O.]. In his evidence-in-chief, P.W.13 stated that on 27.12.2015, he was officiating as Attached Officer at Khatkhathi Police Station and the informant-P.W.1, Khemraj Upadhyay lodged the FIR on that day at the Police Station informing that the accused had killed Narayan Sarma [the deceased], a fellow villager of the informant, by hacking with a naga dao. The then Officer In-Charge of Khatkhathi Police Station registered the said FIR as Khatkhathi Police Station Case no. 133 of 2015 under Section 302, IPC on 27.12.2015 and assigned the investigation of the case to him. P.W.13 further stated that on the previous date, that is, on 26.12.2015 at about 04-10 p.m., the informant-P.W.1 gave an

information telephonically about the murder and on receiving the said information, an entry was made in the General Diary of Khatkhathi Police Station. Upon registration of the said entry as General Diary Entry no. 693, the Officer In-Charge, Khatkhathi Police Station entrusted him to investigate into the matter on 26.12.2015 itself and accordingly, he [P.W.13] proceeded to the P.O. at about 04-30 p.m. on 26.12.2015 itself. P.W.13 further stated that the Executive Magistrate, Eldad L. Faihrien [ACS] also accompanied him to the P.O. On reaching the P.O., P.W.13 saw the deceased, Narayan Sarma lying dead on the ground of his cowshed. He also found a 5/6 inches long cut mark in the front part of the neck of the deceased which seemed to have been caused by hacking with a dao. The deceased was found lying in a pool of blood. P.W.13 also stated that he saw bloodstains in the naga dao lying about 8/10 feet away from the deadbody. P.W.12 accordingly prepared a Sketch Map of the P.O. and thereafter, seized the bloodstained naga dao in presence of witnesses. P.W.13 also seized a bloodstained black half-pant and a black t-shirt found worn by the deceased, in presence of witnesses, vide Seizure List, M.R. no. 141/2015 [Ext.-3]. Thereafter, the Executive Magistrate, Bokajan held inquest on the deadbody of the deceased in presence of witnesses. The statements of the witnesses available at the P.O. were recorded by him under Section 161, CrPC. He came to know that prior to the incident, the accused stayed in the house of the deceased. P.W.13 further stated that when he searched for the accused, the accused could not be found at the P.O. The deadbody of the deceased was thereafter, sent to Diphu Civil Hospital for post-mortem examination. On the following date, that is, on 27.12.2015, the informant-P.W.1 telephonically informed that the accused was found and the accused had been kept detained at the P.O. On receiving the said information, P.W.13 along with his staff immediately proceeded to the P.O. and at the P.O., he found that the accused was kept detained by the villagers. At that time, P.W.13 saw that the sky blue half-pant which the accused was wearing, was stained with blood and suspecting that it might be the blood of the deceased, P.W.13 seized the said sky blue half-pant of the accused in presence of witnesses vide the Seizure List, M.R. no. 140/2015 [Ext.-2]. It was thereafter, at about 02-00 p.m. on 27.12.2015, the accused was brought to the Police Station. On 27.12.2015, the accused was sent to judicial custody after his medical examination. On 28.12.2015, P.W.13 stated to have made a prayer before the jurisdictional Magistrate's Court to record the statement of the accused. P.W.13 further stated that on 29.12.2015, he sent the half-pant of the deceased stained with blood and the blood stained half-pant of the accused, to the Forensic Science Laboratory [FSL] for examination. P.W.13 further stated that after collecting the PME Report on 21.01.2016 and after receiving the Serological Examination Report from the FSL on 26.01.2016, he submitted the charge sheet on 28.02.2016 finding a prima facie case against the accused under Section 302, IPC. P.W.13

exhibited the Seizure Lists, M.R. no. 139/2015 [Ext.-1]; M.R. no. 141/2015 [Ext.-2]; & M.R. no. 140/2015 [Ext.-3]; the Sketch Map of the P.O. [Ext.-9]; the FIR [Ext.-4]; the Charge-Sheet [Ext.-10]; and the Inquest Report [Ext.-6].

33.1. During cross-examination, P.W.13 stated that on 26.12.2015, he arrived at the P.O. at 04-55 p.m. and when he arrived at the P.O., he saw assemblance of many villagers at the P.O. P.W.13 stated that he did not get the fingerprints examined. He further stated that after getting information about the accused being found and detained by the villagers, he went to the P.O. again. At that time, he came to know that the villagers found the accused at a distance from the P.O. P.W.13 stated that when the accused was arrested, the accused was in inebriated condition.

34. From the testimony of the I.O. of the case [P.W.13] and other prosecution witnesses, it has been clearly established that the accused was found in the morning hours on 27.12.2015 at a place which was at a short distance from the P.O. After being so found by the villagers, the accused was brought to the P.O. at Village – Borlengri by the villagers. After the accused was kept detained at the P.O., the I.O. was informed by the informant-P.W.1 on 27.12.2015 itself. On receiving the said information, Police personnel including the I.O., proceeded to the P.O. and finding the accused at the P.O., the accused was brought to the Police Station at around 02-00 p.m. on 27.12.2015. On the next day, the accused after his medical examination, was produced before the jurisdictional Magistrate's Court on 28.12.2015 wherefrom the accused was sent to judicial custody.

35. As mentioned above, the learned counsel for the parties have raised contentions regarding admissibility or inadmissibility of the confessional statement of the accused recorded under Section 164, CrPC, which was exhibited during the trial as Ext.-12. The learned trial court after discussing about the admissibility or otherwise of the said confessional statement [Ext.-12], kept it out of consideration on the premise that the statement of the accused was not recorded in compliance of the requirements laid down in Section 164, CrPC. As per the finding recorded by the learned trial court, prior to recording his confessional statement, the accused was given only forty-five minutes time for reflection and according to the learned trial court, reflection time of forty-five minutes was not adequate. For the purpose of reaching such view, the learned trial court had referred to a passage from the decision in **Sarwan Singh** [supra]. The relevant passage from **Sarwan Singh** [supra] which the learned trial court had referred to, to reach the above finding is quoted hereinbelow, for ready reference

:-

....When an accused person is produced before the Magistrate by the investigating officer, it is of the utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and he must be sent to jail custody and given adequate time to consider whether he should make a confession at all. Ordinarily, he should be given at least 24 hours to decide...

36. In our considered view, in the aforesaid passage of **Sarwan Singh** [supra], the Hon'ble Supreme Court has emphasized that when an accused person is produced before the Magistrate by the Investigating Officer, the first task of the Magistrate would be to send the accused to jail custody so that the accused can get adequate time to consider whether he should make a confession or not. The object behind sending the accused to judicial custody before recording of his statement is to exclude all possibilities of Police influence so that the accused is free from any kind of fear, pressure or influence. In that context, the Hon'ble Supreme Court, in our considered view, has emphasized that at least twenty-four hours would be a reasonable time period for the accused to reflect whether he would make a confession or not. After referring to **Sarwan Singh** [supra], the Hon'ble Supreme Court in the subsequent decision in **Shankaria** [supra] has observed as under. :-

44. It will be seen that how much time for reflection should be allowed to an accused person before recording his confession, is a question which depends on the circumstances of each case. The object of giving such time for reflection to the accused, is to ensure that he is completely free from Police influence. If immediately before the recording of the confession, the accused was in judicial custody beyond the reach of the investigating police for some days, then such custody from its very nature, may itself be a factor dispelling fear or influence of the police from the mind of the accused.

37. Section 164 of the Code has provided for recording of confessional statement. As per sub-section [2] of Section 164, CrPC, the Magistrate shall, before recording any such confession, explain to the

person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily. Sub-section [4] of Section 164, CrPC has provided that such confession is to be recorded in the manner provided in Section 281, CrPC for recording the examination of the accused person and such confessional statement is to be signed by the person making the confession and the Magistrate shall make a memorandum at the foot of such record in the manner prescribed. As per sub-section [6] of Section 164, Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

38. In **Rabindra Kumar Pal** [supra], referred to by the learned Amicus Curiae, after considering a line of decisions on the point, the Hon'ble Supreme Court has delineated the principles with regard to Section 164, CrPC in the following manner :-

64. The following principles emerge with regard to Section 164 CrPC:

- [i] The provisions of Section 164 CrPC must be complied with not only in form, but in essence.
- [ii] Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.
- [iii] A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.
- [iv] The maker should be granted sufficient time for reflection.
- [v] He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.
- [vi] A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such

retracted judicial confession.

[vii] Non-compliance with Section 164 CrPC goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.

[viii] During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.

[ix] At the time of recording the statement of the accused, no police or police official shall be present in the open court.

[x] Confession of a co-accused is a weak type of evidence.

[xi] Usually the court requires some corroboration from the confessional statement before convicting the accused person on such a statement.

39. It is settled proposition that the provision of Section 164, CrPC is to be applied not only in form but also in essence. Before proceeding to record the confessional statement, the concerned Magistrate is required to make a probing enquiry from the accused as to why he wants to make the statement which might go against him in the trial. It is also necessary to assure the accused that he would be receiving protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement. The Magistrate by his enquiry has to ascertain about voluntary nature of the confession and the failure on the part of the Magistrate to put question from which he could ascertain the voluntary nature of the confession would materially affect the evidentiary value of the confessional statement and in such situation, it might not be safe to act upon the same. It has been held time and again that compliance not merely in form but in essence with the provisions of Section 164 is essential and its non-compliance would render the confession unworthy of credence. It has also been emphasized that there should be sufficient time for the accused for reflection before he is asked to make his statement and the Magistrate should assure himself that during the time of reflection, the accused is completely out of police influence.

40. The learned Amicus Curiae has strenuously contended that if the accused is not cautioned by the

Magistrate that even if he refuses to make the confessional statement he would not be remanded to police custody, then such confessional statement shall stand vitiated and for such submission, he has drawn support from the observation made in point no. [v] in **Rabindra Kumar Pal** [supra].

41. From the evidence/materials on record, more particularly, from the Order dated 28.12.2015 [Ext.-11], it is established that the accused was produced before the concerned Magistrate on 28.12.2015 and on that day, the I.O. made a prayer before the said Magistrate for recording confessional statement of the accused under Section 164, CrPC. On such prayer being made, the concerned Magistrate allowed the same and assigned Sri J. Daimary, Magistrate, First Class to record the confessional statement to the accused under Section 164, CrPC. Sri J. Daimary, learned Magistrate, First Class gave his testimony as P.W.14. In his testimony, P.W.14 deposed to the effect that on 28.12.2015, he was posted at Diphu Court as Magistrate, First Class. On that day, the case record was assigned to him for recording confessional statement of the accused vide Order dated 28.12.2015 [Ext.-11]. It was on the following day, that is, on 29.12.2015, the accused was produced before him at 11-00 a.m. P.W.14 stated that after the accused was so produced on 29.12.2015, he explained about the matter of making confession to the accused and also explained to him that he [P.W.14] was not a Police Officer but a Magistrate. P.W.14 further stated that the accused was explained that he was not bound to give confessional statement and if he did so, it might be used against him as evidence. P.W.14 further stated that he felt thereafter that the accused needed some more time for reflection and accordingly, P.W.14 kept the accused in a room adjacent to his chamber under the supervision of his peon for about forty-five minutes. After completion of the reflection period of forty-five minutes, the accused was again brought before him and the accused was cautioned by him about the matter of making confession like earlier. P.W.14 stated that in spite of repeated cautions the accused intended to give his confessional statement voluntarily. P.W.14 stated that it was after making due inquiry, he came to know that the accused was ready to give confessional statement voluntarily and it was only thereafter, he started recording the statement of the accused. P.W.14 exhibited the confessional statement of the accused as Ext.-12 and his signature therein as Ext.-12[1]. P.W.14 also exhibited the signature of the accused as Ext.-12[2], Ext.-12[3], Ext.-12[4] and Ext.-12[5] respectively. P.W.14 also exhibited his Order dated 29.12.2015 as Ext.-3 with his signature therein as Ext.-3[1]. When cross-examined, P.W.14 stated that when the accused was produced before him on the first occasion, the accused appeared to be nervous but he was found physically fit.

42. From the statement of the accused exhibited as Ext.-12, it is noticed that the learned Magistrate had asked the following questions, to the accused and also recorded the answers given by the accused to the said questions, :-

[i] Do you know that I am not an Officer of Police but a Magistrate?

Ans : Yes.

[ii] Whether any influence, promise, force or threatening was made by Police or any other person for making the confession?

Ans : No.

[iii] Do you know that you are not bound to make a confession?

Ans : Yes.

[iv] Do you know that if you confess the accusation, it may be used as evidence against you?

Ans : Yes.

[v] Why do you want to confess?

Ans : I want speak the truth.

[vi] Do you know that you should say nothing which is untrue and that you should not say anything because others have told you to say it but is at liberty to say whatever really you desire to say?

Ans : Yes.

[vii] Do you know that there is no police officer associated with the investigation in the vicinity and you are completely under liberty to confess about guild you need not be afraid of to speak?

Ans : Yes.

43. From the statement [Ext.-12], it is seen that relevant questions were asked to the accused; due care was taken before recording the statement of the accused; and it was specifically told to the accused that the statement could be used in evidence against him. The Magistrate who recorded the statement, had testified to the effect that in spite of repeated cautions given to the accused, the accused intended to give confessional statement and it was after making due inquiry, he arrived at the satisfaction that the accused was ready to give the statement voluntarily, he recorded the statement of the accused. Thus, the mandatory requirement provided under Section 164[2], CrPC, namely, explaining to the accused that he

was not bound to make a statement and if a statement is made, the same might be used against him has been complied with and the same is established from the evidence of P.W.14.

44. It is a settled proposition that a court can act upon a confessional statement if the court is satisfied that the confession is voluntary and true. To act upon a confessional statement, such confessional statement has to meet the twin test : [i] it must be perfectly voluntary; and [ii] apart from being perfectly voluntary, it should be true and trustworthy. In **Shankaria** [supra], it was noticed that the confession was retracted by the appellant when he was examined at the trial under Section 313, CrPC. In such backdrop, it has been held in **Shankaria** [supra] that satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the court to have been caused by an inducement, threat or promise such as is mentioned in Section 24, Evidence Act, it must be excluded and rejected *brevi manu*. In such a case, the question of proceeding further to apply the second test does not arise. If the first test is satisfied, the court must before acting upon the confession has to reach at a finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence there is not rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession, is to carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test.

45. In **Aloke Nath Dutta** [supra], it has been held that the confession ordinarily is admissible in evidence and it is a relevant fact. Therefore, it can be acted upon. It has been held that judicial confession must be recorded in strict compliance of the provision of Section 164 of the Code. While doing so, the court shall not go by the black letter of law as contained in the aforementioned provision; but must make further probe so as to satisfy itself that the confession is truly voluntary and had not been by reason of any inducement, threat or torture. In a case of retracted judicial confession, the courts while arriving at a finding of guilt would not ordinarily rely solely thereupon and would look forward for corroboration of material particulars. Such corroboration must be independent and conclusive in nature. The Hon'ble Supreme Court of India has observed that it is mindful of the fact that in India, retractions are as plentiful as confessions. The court should be a little slow in accepting

the confession although the accused may not be able to fully justify the reasons for his retraction. The Court at first, has to be satisfied that the confession at the first instance, is voluntary and true. Caution and prudence before accepting a retracted confession is an ordinary rule. If a retracted confession is found to be corroborative in material particulars, it may be the basis of conviction.

46. Reverting back to the facts of the case in hand, having regard to the nature of inquiry made by the concerned Magistrate [P.W.14] before he proceeded to record the confessional statement of the accused under Section 164, CrPC and from the testimony of P.W.14, we find that the necessary precautions were found to have been taken by him [P.W.14] to inquire about the voluntariness of the statement recorded under Section 164, CrPC. The contention raised by the learned Amicus Curiae that absence of a caution to the accused that if he would refuse to make the confessional statement, he would not be remanded to Police custody had vitiated the whole process of recording of the confessional statement does not appear to be of substance. The concerned Magistrate before assigning the task of recording the statement of the accused to the recording Magistrate [P.W.14], had by his Order dated 28.12.2015 [Ext.-11], already remanded the accused to judicial custody till 11.01.2016. Thus, it had been assured by the Order dated 28.12.2015 itself, that the accused would be remanded and kept only in judicial custody till 11.01.2016 irrespective of a fact that whether the accused would give his confessional statement or not. The learned Magistrate, P.W.14 after recording the statement [Ext.-12] in compliance of the procedure prescribed, had only the duty under sub-section [6] of 164, CrPC to forward the case record to the Magistrate by whom the case is to be dealt into thereafter. In view of such statutory prescription, the dispute raised by the learned Amicus Curiae to the Order dated 29.12.2015 Ext.13] is found to be of one which does not deserve further consideration.

47. It is settled proposition of law that the appellate jurisdiction is co-extensive with the original courts' jurisdiction as far as appraisal and appreciation of evidence and reaching findings on law and on facts are concerned. An appeal is considered to be continuation of the original proceedings. In an appeal under Section 386, CrPC against an order of conviction and sentence, the entire proceedings of the original court are before the appellate court which has the power to review findings subject to the statutory limitations prescribed therein. As the first appellate court, the court is required not only to appreciate the evidence on record, but also to refer to the arguments raised before it and after applying its own independent mind to decide the appeal. As the first appellate court, the appellate power is to be exercised not only to examine the questions of law but also the questions on fact and in doing so, it is

obligated to examine the evidence on record correctly. The first court of appeal has the duty to discuss the evidence independently and record its findings on the basis of such independent assessment of facts. In a first appeal, an obligation is cast on the appellate court to deal and discuss the matter and upon scrutiny of the relevant evidence, to come to a conclusion as to whether there is any error on the part of the original court to deal with the matter in the manner as has been done.

48. In the light of the discussions made above and having gone through the decisions cited at the Bar, as referred above, we are of the considered view that the time for reflection is to be considered from the time when the accused was remanded to judicial custody by keeping him outside the sphere and spectre of police influence. In such view of the matter, we are in disagreement with the view recorded by the learned trial court that in the case in hand, the accused was only given a period of forty-five minutes for reflection before recording his confessional statement on 29.12.2015. As the accused was already remanded to judicial custody, by Order dated 28.12.2015, till 11.01.2016, the accused had got more than forty-five minutes time for reflection as to whether he would make any confession or not when he appeared on 29.12.2015. The period of forty-five minutes was given by the learned Magistrate, on 29.12.2015, to the accused by keeping him in the room adjacent to his chamber after the accused was produced from judicial custody, where he was remanded on 28.12.2015. As we have been persuaded to take the view that the learned Magistrate had taken all the necessary precautions to ensure that the accused had sufficient time to reflect before he made his confessional statement and he was under no fear, threat or pressure before appearing in the court on 29.12.2015 to make the statement and was outside the sphere and spectre of any sort of police influence, the confessional statement of the accused exhibited, as Ext.-12, can be read into evidence as a corroborative piece of evidence.

49. In his confessional statement [Ext.-12], the accused stated that the incident took place when he was totally drunk. The accused stated that the deceased owed money to him against his labour and when he asked for the money against his labour from the deceased, the deceased refused to give him the money. In view of such refusal by the deceased, the accused quarreled with the deceased. The accused further stated that in the process, he became high-headed and hit the deceased with a naga dao and thereafter, left the place to surrender before the Police in Nagaland. The accused further stated that he was arrested by the Police personnel of Assam when he was with his sister and her husband at a place in Assam. The accused admitted that the incident took place due to his high-headedness and intoxication.

50. When the statement made by the accused before the court recorded on 29.12.2015 is examined, it is found that on the relevant date of the incident, the accused had asked for money from the deceased against his labour and the accused refused to give him the money. In view of such refusal, the accused got high-headed and hit the deceased with a naga dao. The accused further admitted that the incident took place due to his high-headedness and intoxication. The accused further explained that after the incident of assault, he left the P.O. in order to surrender himself before the Police in Nagaland. The said circumstances are found in conformity with and fits in properly with the other circumstances established by the prosecution by leading satisfactory and credible evidence. The same have lended corroboration to the case of the prosecution that it was the accused who in all probability, was the assailant responsible for the homicidal death of the deceased at the P.O. When the version given by the accused in his statement recorded under Section 164, CrPC is tested in the light of the surrounding circumstances and probabilities of the case, the second test regarding truthfulness and truthfulness is found to have been satisfied.

51. It is true that an extra-judicial confession is a weak type of evidence and is generally used as corroborative link to lend credibility to the other evidence on record. It has emerged from the evidence on record, more particularly, from the testimony of P.W.3, P.W.5 and P.W.6 that the accused had confessed before them that he had killed the deceased. There is no evidence/materials on record indicating that there was presence of Police in the vicinity when the accused made the extra-judicial confession before these prosecution witnesses, P.W.3, P.W.5 and P.W.6. The said prosecution witnesses - P.W.3, P.W.5 and P.W.6 - are co-villagers of the deceased and the accused; and nothing has been brought on record to the effect that these prosecution witnesses had any previous enmity with the accused or inimically disposed towards the accused for any reason and were persons in authority or were in positions to exert any kind of pressure or influence. It is never the case of the defence during the trial that these prosecution witnesses had any animosity with the accused. In **State of Rajasthan vs. Raja Ram, [2003] 8 SCC 180**, while dealing with the matter of admissibility of extra-judicial confession, observations are made in the following manner :-

19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to

confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

20. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration as rightly submitted by the learned counsel for the respondent-accused, is a matter of prudence and not an invariable rule of law....

Thus, the extra-judicial confession made by the accused before these prosecution witnesses can definitely be taken as a corroborative piece of evidence.

52. The law does enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led [Ref :- **Trimukh Maroti Kirkan vs. State of Maharashtra**, [2006] 10 SCC 681]. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case.

When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge may not be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. When an accused is alleged to have committed the murder inside the premises of a private property and the prosecution succeeds in leading evidence to show that either immediately before the commission of crime or at the time of the commission of the crime, the accused and the deceased were together there without any third person with them and if the accused does not offer any explanation how the deceased received the fatal injuries or offers an explanation which is found to be false, then it becomes a strong circumstance to indicate that he is responsible for the crime. Such obligation is cast in view of the rule of evidence embodied in Section 106 of the Evidence Act for which there will be a corresponding burden on the accused as the only other person present within the four corners of the premises with the deceased, to give an explanation as to how the crime was committed. In such position, the accused cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to prove the case resting on circumstantial evidence would always be on the prosecution in terms of the rule embodied in Section 101 of the Evidence Act and there is no duty at all on an accused to offer any explanation.

53. The following passage, quoted in the three-Judge decision in **Deonandan Mishra vs. the State of Bihar, AIR 1955 SC 801**, made in the context of failure of the accused to offer any explanation for circumstances appearing in evidence against him in a case resting on circumstantial evidence, can be appropriately referred to :-

9..... It is true that in a case of circumstantial evidence not only, should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved would afford a reasonable basis, for a conclusion on the entire

case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain.

54. In **Wazir Khan vs. State of Uttarakhand**, reported in [2023] 8 SCC 597, when the contention of the appellant accused was drawn to the incriminating circumstances that inculpated him in the crime, he failed to offer appropriate explanation or gave a false answer. It has been held that the same counted as providing a missing link for completing the chain of circumstances. It has been observed as follows :-

22. In a case based on circumstantial evidence where no eye witness is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court, namely **Nika Ram vs. State of Himachal Pradesh**, [AIR 1972 SC 2077](#); **Ganesh Lal vs. State of Rajasthan**, [2002] 1 SCC 73; and **State of Uttar Pradesh vs. Dr. Ravindra Prakash Mittal**, [AIR 1992 SC 2045](#).

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24. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show, like in the present case, that shortly before the commission of the crime they were seen together or the offence took place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not dispute his presence at home at the relevant time and does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.

55. In **Kalu @ Laxminarayan vs. State of Madhya Pradesh, [2019] 10 SCC 211**, after a discussion on the rule of evidence embodied in Section 106 of the Evidence Act and the failure to offer any explanation by the accused, the following observations have been made :-

16. In view of our conclusion that the prosecution has clearly established a prima facie case, the precedents cited on behalf of the appellant are not considered relevant in the facts of the present case. Once the prosecution established a prima facie case, the appellant was obliged to furnish some explanation under Section 313, Cr.P.C. with regard to the circumstances under which the deceased met an unnatural death inside the house. His failure to offer any explanation whatsoever therefore leaves no doubt for the conclusion of his being the assailant of the deceased.

56. Having regard to the facts and circumstances of the case, as discussed above, we find that the decision in **Abdul Subhan vs. State of Assam, 2022 [4] GLT 679** is not of assistance to the case of the appellant. The decision in **Abdul Subhan** has been rendered in the backdrop of a finding that the accused was not assured of, prior to recording of his statement, that if he did not give his statement he would not be sent to police custody.

57. When the accused was asked during his cross-examination under Section 313, CrPC to provide his explanation, to the evidence appearing against him, the accused was found to be placed in position requiring him to provide an explanation as to how the deceased sustained the injuries on his person. Apart from stating that he was staying together with the deceased in the house of the deceased on the date of occurrence he further stated that he went out of the house at 09-30 p.m. for Dimapur. The accused also stated that on the night following the date of the occurrence, he was in Dimapur and stayed in the house of his friend, Dhruba Sarma. Though during the entire course of the trial the defence did not take any plea in the nature of alibi, even by way of suggestion, the accused seemed to have taken a plea in the nature of alibi, albeit belatedly, only during such examination under Section 313, CrPC. It, thus, clearly emerge that such plea was taken by the accused as an afterthought. Further, when an accused takes a plea in the nature of alibi when he was examined under Section 313, CrPC, it is the obligation of the accused ordinarily, to establish it with certainty so as to exclude the possibility

of his presence at the P.O. When after taking such a plea of alibi the accused does not take any further step to establish the same in any manner whatsoever, such failure on the part of the accused to discharge the burden fallen on him becomes an additional circumstance adverse to him. Though absence from the house where he was residing for one day may not be termed as an act of abscondance strict senso, but, considering the entire surrounding circumstances it is not an aspect which can be ignored also.

58. Having considered the evidence/materials on record in its entirety, we are of the considered view that the prosecution had led satisfactory, reliable and credible evidence on all the circumstances which were possible to be led in the facts and circumstances obtaining in the case; non-explanation on the part of the accused as to how the blood stains of Group-A, similar to the blood group found in the naga dao and the wearing apparels of the deceased, were found in his wearing apparels even after a day after the homicidal death of the deceased; his failure to explain the circumstances, as to how the deceased received the injuries, as recorded in the PME Report [Ext.-5]; the deceased met the homicidal death either before the time when the accused left the company of the deceased and left the precinct of the house of the deceased on 26.12.2015; or as to when he last saw the deceased alive or as to when he parted the company of the deceased; had become the circumstances to complete the chain to point unerringly that in all probability it was he and none other, was the author of the crime.

59. In cases based on eye-witness account, proof or absence of a motive is not of much consequence. Motive, however, is of significance in a case resting on circumstantial evidence. If motive behind the crime is found to have been established in a case resting on circumstantial evidence, it becomes a corroborative piece of evidence, lending assurance to the prosecution case. It can be found out from an admissible confessional statement like the one in the case wherein the accused had clearly mentioned that he had committed the crime because of the refusal on the part of the deceased to give him the dues towards his labour. Such refusal to pay by the deceased appeared to have driven the accused to commit the offence of murder in an intoxicated condition. From such confession of the accused, a motive behind the murder has clearly emerged and the same has the effect of completing the chain.

60. In the light of the discussion made above and for the reasons assigned there, we do not find any reason, not to speak of any good and sufficient reason, to disagree with the return of finding on guilt reached by the learned trial court, however, with slightly different reasonings on certain aspects. As it

has already been found that the prosecution has been able to establish all the possible circumstances to make the chain complete, we find that the instant criminal appeal is not merited and the same is liable to be rejected. Therefore, affirming the Judgment and Order dated 24.04.2019 passed by the Court of learned Sessions Judge, Karbi Anglong, the instant criminal appeal stands dismissed.

61. We reiterate the direction given by the learned trial court as regards recommendation to award adequate compensation to the wife of the deceased by the District Legal Services Authority after due enquiry under Section 357A, CrPC and the extant Victim Compensation Scheme, 2012 framed thereunder. We further observed that such enquiry, if not completed till date, shall be undertaken and completed with utmost expediency and thereafter, to award and disburse appropriate compensation thereunder to the victims entitled upon conclusion of such enquiry.

62. Before parting with the record, we wish to place our appreciation on record as regards the serves rendered by Mr. N. Deka, 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.

63. The records of the trial court are to be sent back forthwith.

JUDGE

JUDGE

Comparing Assistant