GAHC010085832024

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

**Case No. : CRL.A(J)/74/2024**

SUREN SAWTAL
S/O SRI LUDHURA SAWTAL, R/O PAHUKATIA SONOWAL GAON, P.S.- BORHALLA, DIST.- JORHAT.

VERSUS

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

2:MANTU SAWTAL
C/O SUREN SAWTAL
R/O SONOWAL GAON
P.S.- BORHOLLA
DIST.- JORHAT

**Advocate for the appellant : Ms. B.R.A. Sultana, Legal Aid Counsel.**

Advocate for the respondents : Ms. B. Bhuyan, senior counsel & APP.

Ms. R. Saloi, Adv.

**- B E F O R E -**

**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**HON'BLE MR. JUSTICE NCHUMBEMO MOZHUI**

Date of hearing and judgement : 14/09/2026

**JUDGMENT & ORDER (ORAL)**

(M. Zothankhuma, J)

1. Heard Ms. B. R. A. Sultana, learned counsel for the appellant. Also heard Ms. B. Bhuyan, learned senior counsel and APP, Assam, assisted by Ms. R. Saloi, learned counsel

appearing for the State.

2. This criminal appeal from jail under Section 374, Code of Criminal Procedure, 1973 ('Cr. PC' or 'the Code', for short) is preferred against the Judgment & Order dated 25.05.2016 passed by the Court of learned Sessions Judge, Jorhat in Sessions Case no. 169(J-J) of 2014. By the Judgment & Order dated 25.05.2016, the accused-appellant has been convicted 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. 10,000/- (Rupees ten thousand), in default of payment of fine, to undergo rigorous imprisonment for another 6 (six) months.

3. The brief facts of the case is that an F.I.R. dated 21.09.2014 was submitted by the informant, who is the Prosecution Witness-1 and also the daughter of the appellant, which is to the effect that on 21.09.2014 at around 4.30 p.m, her father (appellant) killed his own brother Shri Samra Sawtal by striking him with a Naga dao, while he was sleeping at home. Pursuant to the F.I.R, Borohlla P.S. Case No. 82/2014 under Section 302 IPC was registered on 21.09.2014. After investigation was completed, the Investigating Officer (PW-7) submitted a charge sheet against the appellant under Section 302 IPC. The learned Trial Court thereafter framed charge under Section 302 IPC against the appellant, to which he pleaded not guilty and claimed to be tried.

4. The learned Trial Court thereafter examined 7 (seven) Prosecution Witnesses and after examining the appellant under Section 313 Cr.P.C, the learned Trial Court came to a finding that the appellant had murdered his brother, which was punishable under Section 302 IPC. The appellant was then convicted and sentenced under Section 302 IPC by the impugned judgement dated 25.05.2016 passed by the learned Sessions Judge, Jorhat, in Session Case Number 169 (J-J) of 2014.

5. A perusal of the evidence of PW-1, who is the 18 year old daughter of the appellant on 03-03-2015 and the evidence of PW-2 who is the 16 year old son of the appellant on 03-03-2015, is to the effect that they were eyewitnesses to the appellant striking his brother with a *dao,* while the brother of the appellant was sleeping in the room. In their cross-

examination, they have denied the suggestion that they did not see their father killing their uncle. Their cross-examination also shows that their father was a habitual drunkard.

6. The evidence of PW-3, who is the uncle of the appellant, is to the effect that he went to the house of the appellant, where the mother of the appellant told PW-3 that the appellant had murdered his brother with a naga dao. PW-3 also noticed blood oozing out from the injuries on the neck of the deceased. Further, PW-1 had also told PW-3 that her father had killed her uncle with a naga dao.

7. The evidence of PW-4, who is the brother-in-law of the appellant, is to the effect that he was informed by PW-2 that his father had killed his uncle with a *dao*. On reaching the house of the appellant, the mother and daughter of the appellant told PW-4 that the appellant had murdered his brother. PW-4 also noticed cut injury on the neck of the deceased, with blood oozing out from the wound.

8. The evidence of PW-5, who is the Doctor, who held autopsy over the body of the deceased, was to the following effect:-

> "*A male dead body of average built, swarthy complexion, wearing a green sporting and blue jeans pant. Dried blood stains over wearing garments at places. Body cold on touch. Rigor-mortis is present.*
>
> ***INJURIES:***-
>
> *1) Chop wound of size 16 cm x 4 cm x cranial cavity deep over the back of head 0.5 cm below the occipital protuberance extending from midline to tragus of left ear obliquely. The margins of the wound are abraded and contused at places underneath skull bones, vessels, membrane, brain matter are cut at places.*
>
> *2) Chop wound of size 4 cm x 2.5 cm x muscle deep situated 3.5 cm below injury No-1 on left side of neck. The above mentioned injuries contain adherent blood clots over wound margins which resist washing by running water.*"

In the opinion of PW-5, the cause of death was due to coma as a result of injuries sustained on the head of the deceased. All the injuries were ante-mortem in nature and caused by a moderately heavy to heavy sharp cutting weapon, which was homicidal in nature. PW-5 also stated that the deceased sustained head injury, which was sufficient to cause instantaneous

death of a person in the ordinary course of nature. In his cross-examination, PW-5 stated that the injuries were on the back side of the head and there was no injury on the front of the body of the deceased.

9. The evidence of PW-6, who is the brother-in-law of the appellant, is to the effect that the appellant's son informed him that his father had murdered his uncle with a dao. On going to the house of the appellant, he saw the dead body.

10. The evidence of PW-7, who is the Investigating Officer, is to the effect that he visited the place of occurrence and saw the dead body. An inquest was held over the dead body and thereafter, Post-Mortem Examination was done in the Jorhart Medical College and Hospital. The appellant was arrested and the naga dao was seized by him, which was exhibited as Material Exhibit-1.

11. The examination of the appellant under Section 313 Cr.P.C. is to the effect that he had not committed any crime and that the witnesses had falsely deposed against him, though he did not know the reason why they had implicated him with the death of the deceased.

12. A reading of the evidence of the Prosecution Witnesses and the explanation given by the appellant, goes to show that there was no reason given by anybody, for the witnesses to have fabricated a murder case against the appellant. Further, as the son and daughter of the appellant were eye witnesses to the crime, we do not find any reason to doubt the truthfulness of their testimonies given before the learned Trial Court. Though we have tried to understand as to why the appellant had killed his brother, there being no motive established by the Prosecution, we have not been able to do the same, except there being a lurking suspicion that due to being a habitual drunkard, the appellant might have killed his brother due to being drunk, which however cannot be of any benefit to him in terms of Section 86 IPC. In any event, motive loses its significance when there is direct ocular evidence to the murder. Motive plays an important role only when a criminal case is to be established solely on the basis of circumstantial evidence. In the present case, the evidence of all the

witnesses including the mother of the appellant proves the guilt of the appellant beyond reasonable doubt in killing his brother.

13. For all the reasons stated above, we do not find any reason to interfere with the conviction and sentence imposed upon the appellant by the learned Trial Court. The appeal is accordingly dismissed.

14. Send back the TCR.

15. In appreciation of the assistance provided by Ms. B.R.A. Sultana, learned Legal Aid Counsel, her fees should be paid by the Gauhati High Court Legal Services Committee, as per norms.

**JUDGE** **JUDGE**

**Comparing Assistant**