GAHC040011652025 2026:GAU-AP:1145-DB

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

Case No. : CRL.A(J)/14/2025

Passang Saidu
Son of Shri Kesang Wangdi Saidu, resident of Village Khoina, PO and PS Nafra, West Kameng District, Arunachal Pradesh.

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Legal Aid Counsel, Jaya Doji

Advocate for the Respondent : P P of AP,

Linked Case : CRL.A(J)/16/2025

Sang Dorjee Khasidu
Age: 26
Occupation :
Address:Son of Late Atok Khasidu
resident of Village Khoina
PO and PS Nafra
West Kameng District
Arunachal Pradesh.

VERSUS

The State of AP
Age: 0
Occupation :

Address:represented by the PP of AP

Advocate for : Legal Aid Counsel
Advocate for : P P of AP appearing for The State of AP: Advocate appearing for respectively.

Linked Case : CRL.A(J)/15/2025

Tsering Dondu Saidu
Age: 20
Occupation :
Address:Son of Shri Dorjee Saidu
resident of Village Khoina
PO and PS Nafra
West Kameng District
Arunachal Pradesh.

VERSUS

The State of AP
Age: 0
Occupation :
Address:represented by the PP of AP

Advocate for : Legal Aid Counsel
Advocate for : P P of AP appearing for The State of AP: Advocate appearing for respectively.

BEFORE

HON'BLE MR. JUSTICE KARDAK ETE

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocate for the Appellant : Ms. Jaya Doji (Legal Aid counsel)

Advocate for the Respondents : Mr. D. Loyi, P.P (AP)

Date on which judgment is reserved : 05.11.2026

Date of pronouncement of judgment :12.11.2026

Whether the pronouncement is of the Operative part of the judgment ? : No

Whether full judgment has been pronounced ? : Yes

JUDGMENT & ORDER (CAV)

Date : 12-11-2026

(Y. Longkumer,J)

Heard the learned Legal Aid counsel Ms. Jaya Doji for the appellants. Also heard learned P.P. Mr. D. Loyi for the State respondents.

2. This is an appeal filed by the appellants from Jail against the judgment and order dated 22.03.2024 passed by the Court of Sessions Judge, West Kameng, East Kameng and Tawang, Arunachal Pradesh convicting the appellants in Sessions Case No.13/2023 under sections 302/201/34 IPC read with section 25(IB) of the Arms Act whereby they have been sentenced to life imprisonment with fine of Rs.20,000/- for the offence under section 302 IPC read with section 34 IPC. Further they have been sentenced to RI for seven years with fine of Rs.5000/- for the offence under section 201 IPC and further sentenced to two years SI with fine of Rs.5000/- for the offence under section 25 (IB) of the Arms Act with a default clause. All the sentences have been directed to run concurrently.

3. The prosecution case is that on 13.04.2023 a written FIR was received from Shri Sange Tsering the O.C of Nafra P.S to the effect that while investigating a missing report received on 09.04.2023 in respect of one

Gajabu Napudu, it was learnt that the missing person was last seen on a motor bike with accused Sang Dorjee Kasidu on 06.04.2023. The accused Sang Dorjee Kasidu was summoned to the Police station on 12.04.2023 and interrogated. During interrogation it was revealed that the accused Passang Siadu and accused Tsering Dondu Siadu had stopped accused Sang Dorjee Kasidu and the deceased when they were coming back from Bomdila on 06.04.2023 at Rahung Nalah and the deceased was hit by a wooden stick where he instantly fell down. His body was loaded into a red Maruti Car bearing registration No.AS-01-AJ-3337 and the three accused drove away towards Munna camp with the dead body.

4. On receipt of the FIR dated 13.04.2023, a case was registered being Dirang P.S Case No.8/2023 under section 302/120B/201/34 IPC and investigation was initiated. Having found prima facie case against the appellants, the I.O submitted charge-sheet against all the appellants under section 302/120B/201/34 IPC on 11.07.2023. Charges were framed against all the appellants under section 302/120 B/201/34 IPCand Sec 25 (1B)/27(1) Arms Act on 10.08.2023. The charges were read over to the accused/appellants and they pleaded not guilty and claimed to be tried. The case accordingly went up for trial.

5. In order to bring home the charges against the appellant-accused, the prosecution side examined 15 witnesses and exhibited documents and material exhibits. The defense did not adduce any evidence.

6. Upon examining the evidence available on record, the learned Trial Court was of the view that the prosecution had succeeded in establishing the case against the accused-appellants and had proved the charges brought against the appellants-accused under section

302/120B/201/34 IPC and Sec 25 (1B) Arms Act beyond reasonable doubt and accordingly convicted and sentenced the appellants.

7. Assailing the impugned judgment and order dated 22.03.2024, in Sessions Case No.13/2023, the learned Legal Aid counsel for the appellants has submitted that the impugned conviction and sentence cannot be sustained in view of the fact that there are several material inconsistencies in the prosecution case.

8. The first ground taken by the counsel for the appellants is that in the seizure memo dated 13.04.2023, it is not indicated from which accused the Maruti Car or the Honda Bike or the SBBL gun was seized. Even the seizure memo of the mobile phones does not indicate from whom the phones were seized. The seizure memo of one wooden stick measuring 30 inches long and one miji local dao measuring 21 inches also does not show from which accused they were seized. It is the submission of the learned counsel that the recovery of the dead body and also the seizure of the wooden stick and local dao did not have any independent witnesses and therefore they could not have been admissible in evidence.

9. Another discrepancy which the learned Legal Aid counsel has pointed out is that the dead body of the deceased was handed over for post mortem examination on 13.04.2023 at 1050 hours. However, the disclosure statements of the accused persons under section 27 of the Evidence Act were recorded only at 1750 hours, 1800 hours and 1815 hours respectively on 13.04.2023. The learned Trial Court has mainly relied on the disclosure statements of the accused persons to arrive at the conviction. However, the records reveal that the disclosure statements of the accused persons were recorded only after the discovery of the dead body and therefore, the said

disclosure statements could not have been admissible in evidence.

10. The learned Legal Aid counsel has submitted that the extra judicial confession made by accused Sang Dorjee Kasidu before the village authorities cannot be the basis of a conviction in respect of the co-accused Passang Siadu and Tsering Dondu Siadu, at best it could be admissible only against accused Sang Dorjee Kasidu.

11. Another ground taken by the learned Legal Aid counsel is that the evidence of PW 4/wife of accused Passang Siadu and that of PW 15/I.O of the case has proved that there was no motive in the instant case. The said PWs had deposed that the misunderstanding between accused Passang Siadu and the deceased has been amicably settled and there was no enmity. Another finding of the learned Trial Court was that the extra marital affair between the deceased and accused Passang Siadu's wife was the motive behind the crime. However, this finding has also been negated by the evidence of PW 4 and PW 15.

12. Another finding of the learned Trial Court was that the CDR records of the accused persons and that of the deceased shows that during the time of the incident the tower location of the accused persons and that of the deceased were the same which revealed that they were all together at the P.O at the time of the incident. With regard to this finding, the learned Legal Aid counsel submits that it is mandatory that a section 65B certificate under the Evidence Act should accompany the CDR in order to make it admissible as evidence. However, in the instant case there was no Section 65B certificate to make the electronic evidence/CDR admissible. The learned Trial Court could not have therefore relied upon the CDR which was produced by the prosecution.

13. As regard the conviction under section 25(1B) of the Arms Act, the learned Legal Aid counsel submits that the prosecution could not prove that the seized SBBL gun was in the possession of the accused persons at the time of the seizure. In the seizure memo there is no indication as to the person from whom the gun was seized. In such a situation, the learned Trial Court could not have convicted the accused persons under section 25 (1B) of the Arms Act.

14. The learned Legal Aid counsel further submits that the prosecution has not been able to establish that there was a meeting of minds and a common design between the accused persons in order to sustain a conviction under Sec 120B IPC. Mere knowledge, association, presence or suspicion of involvement is not sufficient. She submits that the prosecution must establish a conscious agreement to pursue an illegal act or a legal act by illegal means. However, in the instant case the prosecution has not been able to show any common intention in respect of the accused persons.

15. Under the circumstances as stated above, the learned Legal Aid counsel submits that the conviction and sentence imposed upon the appellants cannot be sustained and the same should be interfered with by this Court.

16. In support of her submissions, the learned Legal Aid counsel relies upon the following authorities: -

1. ***Pooranmal vs The State of Rajasthan &Anr reported in 2026 INSC 217***

2. ***Desh Deepak Kumar Vihangam @ Deepak Kumar vs The State***

of Bihar reported in (2022) 7 SCC 721

17. Mr. D. Loyi, learned Public Prosecutor on the other hand submits that the inconsistencies pointed out by the learned Legal Aid counsel are only minor in nature and does not go to the root of the matter.

18. The learned Public Prosecutor submits that the challenge in the appeal must be examined in the light of the entire evidence and not by isolating individual circumstances from the chain proved by the prosecution. The learned P.P. submits that the appellants have failed to disclose any material infirmity warranting reversal of the conviction.

19. It is submitted that the prosecution case rest on a chain of circumstantial evidence when taken together points consistently towards the guilt of the appellants and forms a complete chain excluding a reasonable hypothesis of innocence. Learned P.P. submits that the circumstance of motive; conspiracy and preparation; events leading to the occurrence; the last seen theory; confession before the village elders; the disclosure and recovery of material objects; and the CDRs viewed cumulatively supports the conviction.

20. The learned P.P. further submits that the extra judicial confession made before the village elders is required to be evaluated in conjunction with the other circumstances relied upon by the prosecution. In this regard, the learned P.P. relies on the case of ***Siva Kumar vs State by Inspector of Police, (2006) 1SCC 714,*** and the case of ***Laxman vs State of Rajasthan*** reported in ***1997 Supreme (Raj) 25***, to support his contention that an extra judicial confession may constitute reliable evidence of guilt where it is voluntary, truthful, trustworthy and beyond reproach and that

corroboration is not required for every material particular. The essential requirement is that the Court must be satisfied as to the genuineness and reliability of the confession. The statement made before the village elders is therefore voluntary and truthful and can be admissible in evidence.

21. With regard to the contention of the appellants that the CDR cannot be relied upon for want of certificate under section 65B of the Indian Evidence Act, the learned P.P. submits that no objection was raised by the appellants regarding the exhibition of the CDR during the trial. He submits that an objection directed to a curable defect in the manner of proving a document ought ordinarily to be raised when the document is tendered, so that the party producing it has an opportunity to meet the objection. It is submitted that the belated objection should not by itself displace the conviction without an assessment of the admissibility issue and the other evidence on record.

22. In view of theabove submissions, the learned P.P would argue that the Trial Court has rightly convicted the appellants by consideration of the entire evidence on record and the grounds raised in the appeals do not warrant interference with the impugned judgment of conviction.

23. We have heard the submissions made by the learned counsel for the rival parties and we have perused the trial court record. In order to find out as to whether the impugned judgment and conviction can be sustained or not, we will examine the evidence adduced by the prosecution during the trial.

24. PW 1 is the complainant and he is the O.C of Nafra PS. He stated that on 09.04.2023 a missing person report was received at the Police

station. It was reported by one Asangbu Napudu that his elder brother namely Gajabu Napudu was missing since 06.04.2023. Basing on the report PW-1 initiated enquiry and visited Khoina village and came to know that the deceased Gajabu Napudu had come from Bomdila with one Sang Dorjee Kasadu on his Bike and thereafter he was not seen. He enquired from Sang Dorjee Kasadu and he disclosed that he had brought the deceased from Bomdila and dropped him at Khoina village. But he found that Sang Dorjee Kasadu had lied to him and had not disclosed the real facts. He therefore summoned him to the Police station on 12.04.2023 and during his interrogation Sang Dorjee Kasadu disclosed that one Passang Saidu and Tsering Dondu Siadu had killed the deceased at Rahung Nalah area. Sang Dorjee Kasadu disclosed that they had taken the dead body in a Maruti Car and disposed it near Munna camp.PW-1 arrested Passang Saidu and Tsering Dondu Siadu from Saidel. As the place of occurrence was within the jurisdiction of Dirang P.S, he prepared a report regarding the enquiry conducted by him and submitted the same before the O.C of Dirang P.S in the form of an FIR and also handed over the accused persons. He identified all the accused person at the dock. PW-1 was not cross-examined.

25. PW 2 deposed that the deceased person came from Shergaon to his house on 04.04.2023 and stayed with him at Bomdila. The deceased stayed in his house from 04.04.2023 to 05.04.2023. On the evening of 06.04.2023, Sang Dorjee Kasadu came to his residence and took away the deceased on his Bike. After the deceased went with Sang Dorjee Kasadu, he was not seen again. On 07.04.2023 he had a telephonic conversation with the parents of the deceased who asked him about the deceased. He told them that the deceased had gone with Sang Dorjee Kasadu on 06.04.2023.

PW 2 was not cross-examined.

26. PW 3 is the brother of the deceased. He deposed that on 06.04.2023 there was a festival in their village Khoina. On the morning of 06.04.2023, his deceased brother called him from Bomdila and told him that he will come to the village on 07.04.2023 with Sang Dorjee Kasadu to attend the festival. In the evening also at around 5 PM his brother made a video call to him and asked him as to what he needed for celebrating the festival. His brother had purchased one pair of boots and socks for him and showed him the same on the video call.His brother told him that he will be coming to the village the same evening i.e. 06.04.2023 with Sang Dorjee on his motorbike. He told his deceased brother to be careful as Sang Dorjee used to consume liquor and does not know how to ride a bike properly. At about 8 PM his brother had not reached home and he repeatedly called him on his mobile phone. Initially his phone was not reachable, then he found it busy and after a while it was switched off. He then called Sang Dorjee Kasadu to ask about the whereabout of his brother but he did not receive his calls. At about 10.30 PM he came back home from the festival ground and found his deceased brother's bag in his room but his brother was not there. He again went to the festival ground in search of his brother and Sang Dorjee but they were not there. After searching for a while he returned home again but his brother had not arrived till then. He thought that his brother might be somewhere with Sang Dorjee. He called Sang Dorjee again and upon receiving the call Sang Dorjee told him that they have reached the village and that his brother had gone home. The next dayi.e.07.04.2023 he searched for his brother in the village but he was not found and therefore he informed the villagers and all the villagers searched for his brother all day

and night on 07.04.2023 but he was not found. Accordingly, on 08.04.2023 he lodged the missing person report at Nafra Police station. PW 3 further deposed that during enquiry by the village elders Sang Dorjee Kasaduinformed them that when he was coming with the deceased on the evening of 06.04.2023 on a motorcycle they saw Passang Siadu who was waiting on the road as his Car was damaged. They stopped near Passang Siadu and one person with his face covered assaulted the deceased with a stick from behind. On being asked by the village elders as to why Sang Dorjee did not try to save the deceased, he said that a gun was pointed at him. Sang Dorjee also said that he brought the bag of the deceased to his house in the village but the deceased was left behind. Thereafter Sang Dorjee was taken to Nafra Police station. Later on,PW-3 came to know that Sang Dorjee, Passang Siadu and Tsering Dondu Saidu had killed his brother. PW 3 identified all the three accused persons at the dock as they are all from the same village and he knows them since childhood. PW 3 also deposed that prior to the incident of murder of his brother there was a meeting of the village authorities for a dispute between Passang Siadu and the deceased on the ground that Passang Siadu's wife used to roam around with the deceased. His deceased brother also came to attend the village meeting where he was found innocent and Passang Siadu had to give a fine of a traditional bowl to his brother as compensation for false allegation. He came to know that Passang Saidu and the other accused persons had killed his brother due to the said incident.

27. PW 4 is the wife of accused Passang Siadu. She deposed that she does not know anything about the case and does not know how deceased GajabuNapududied and who killed him. She also stated that there

was a village meeting regarding an alleged illicit relationship between her and the deceased but the dispute was amicably resolved. On 20.11.2022, the deceased had called her over the phone and asked her to come to a newly constructed BPL building near their house to sellhousie ticket for the Chindang festival. She went to the building and when she entered the room the deceased closed the door from inside. He was then writing on the housie ticket to sell it, but during that time he saw Passang Siadu from the window and then he jumped from the window and ran away. When she opened the door her husband Passang Siadu was standing there and asked her as to why the deceased had run away. She told him that the deceased had come to sell housie ticket. On being cross-examined, PW 4 deposed that the misunderstanding between her and her husband regarding relationship with the deceased was amicably solved and there was no enmity.

28. PW 5 is the owner of the Honda motor bike bearing registration No.AR-04A-0832. He deposed that during the time of the incident there was a festival at the village. As his father was serving at Itanagar he had come to his village Khoina for doing social service on behalf of his father for celebration of the festival. He kept his bike along with the key at his residence at Khoina village. On 06.04.2023 at about 9:30 hours Sang Dorjee Kasadu who is his cousin brother came and asked him for his bike to go to Nafra. He gave him the bike and he returned back to Khoina at 1300 hours. Thereafter he again asked for the bike to go to Salari for some work. On the same day Sang Dorjee Kasadu went alone on his bike towards Salari. In the evening at around 1935 hours he called Sang Dorjee Kasadu and enquired about the bike but Sang Dorjee told him that he was reaching Salari and disconnected the call saying that he was riding the bike. On 07.04.2023

Sang Dorjee Kasadu told him to come to his house and take back his motorcycle. At around 1930 hours on 07.04.2023 he went to Sang Dorjee Kasadu's house and took back his motorcycle. He saw that the motorcycle had some minor damages and it was parked outside the house of Passang Saidu. In the evening of 07.04.2023, AsangbuNapudu came to the festival ground and informed that his brother was missing since the evening of 06.04.2023 and requested the villagers to help him search for his brother. Accordingly, all the villagers started searching for his deceased brother but could not find him.*PW 5 further deposed on 12.04.2023 Sang Dorjee Kasadu narrated in the presence of village panchayat that Passang Saidu had murdered the deceased and he was also present in the meeting.* On being cross-examined PW 5 reaffirmed that he had heard Sang Dorjee Kasadu explaining about the incident before the village panchayat but he did not talk about the entire incident.

29. PW 6 is a seizure witness. He deposed that he accompanied the I.O to the place of occurrence (P.O) and also to the residence of the accused persons. He stated that one wooden stick and one white colour gunny bag was recovered during the investigation. He also deposed that one Maruti Car, one Honda bike, one local dao and one SBBL gun were seized from the possession of the accused persons. *PW 6 also deposed that the accused Passang Siadu and Sang Dorjee Kasadu led the police team to the P.O for recovery of the dead body and other materials.* He identified the accused persons at the dock and he also identified the wooden stick recovered from the P.O, the local dao recovered from the residence of the accused persons and the while colour gunny bag recovered from the P.O. In his cross-examination PW 6 stated that it is not mentioned in the seizure memo from

whose possession the Maruti Car, the Honda bike and SBBL gun were seized.

30. PW 7 is also a seizure witness. *He deposed that the SBBL gun was recovered from the roadside of Khoina village in a hidden place which was shown by Passang Siadu.The dao, motorbike and Maruti Car were recovered from the residence of Passang Saidu. The wooden stick and white colour gunny bag were recovered from the P.O from where the dead body was recovered.PW 7 deposed that during recovery of the dead body and materials from the P.O the accused Passang Siadu and Sang Dorjee Kasadu led the Police team for the recovery.*The PW 7 identified accused Passang Siadu and Sang Dorjee at the dock. He also identified the wooded stick which was recovered from the P.O, the local dao which was recovered from the residence of Passang Siadu, the white colour gunny bag which was recovered from the P.O, the seized Car and also the seized bike. In his cross-examination PW 7 stated that in the seizure memo it is not mentioned from whose possession the materials were recovered.

31. PW 8 is the gram chairperson of Khoina village. He deposed that he knows all the accused person as they are all residents of Khoina village. He stated that during the month of April there was afestival in the village but during that time the deceased was found missing. The brother of the deceased Asangbu informed him about the missing report at Nafra P.S. On 10th and 11th April 2023, they had engaged the villagers to search for the deceased but he was not found. Thereafter Sang Dorjee was asked about the whereabout of the deceased person. *In the public meeting Sang DorjeeKasadu disclosed before them that he along with Passang Saidu and Tsering Dondu Siaduhad killed the deceased*. After this disclosure he asked Sang Dorjee Kasadu to surrender before the Police as the village authorities

cannot resolve dispute relating to murder. In his cross-examination PW 8 stated that he has not seen the murder nor does he know with what kind of weapon the deceased was killed. However, he had signed as a seizure witness to the recovery of the arms license in his presence.

32. PW 9 deposed that he knows the accused persons as they are from his village. *He stated that on 12.04.2023 there was a village meeting where accused Sang Dorjee Kasidu was asked about the whereabouts of the deceased as he had brought him from Bomdila before he went missing. During the public meeting Sang Dorjee Kasidu disclosed before them that he along with Passang Siadu and Tsering Dondu Siadu had killed the deceased at 9th Mile area and they had taken away the dead body in a Car*. After this disclosure by Sang Dorjee Kasidu, he along with three other persons took him to the Nafra PS for his safety and handed him over to the Police to avoid untoward situation.

33. PW 10 is another person from Khoina village. He deposed that in the month of April 2023 there was a festival in their village but during that time Gajabu Napudu was found missing and he along with other villagers searched for him on 7th and 8th April 2023 but he was not found. *On 12th April there was a village meeting regarding the missing person wherein Sang Dorjee Kasidu was asked about the whereabouts of GajabuNapudu as he had brought him from Bomdila before he went missing. During the public meeting Sang Dorjee Kasidu disclosed before them that he along with Passang Saidu and Tsering Dondu Saidu had killed GajabuNapudu at 9th Mile area.*After the disclosure of Sang DorjeeKasidu regarding the murder, he along with three other persons took SangDorjee Kasidu to Nafra PS and

handed him over to the Police.

34. PW 11 is another villager from Khoina village. He deposed that he knows all the accused persons as they are from the same village. *PW 11 deposed that on 12th April there was a village panchayat meeting regarding the missing report of GajabuNapadu. Sang Dorjee Kasidu was asked about the whereabouts of the missing person as he had brought him from Bomdila before he went missing. During the meeting Sang Dorjee Kasidu disclosed before them that he along with Passang Saidu and Tsering Dondu Siadu had killed GajabuNapadu.*After the disclosure, he along with three other villagers took Sang Dorjee Kasidu to Nafra PS and handed him over to the Police. PW 11 also deposed that he was a seizure witness to the recovery of one registration certificate of Honda motorcycle and one mobile handset. In the cross-examination PW 11 stated that the seizures were made in the village itself.

35. PW 12 is also one of the Khoina villagers . He deposed that he knows all the accused persons as they are from his village. During the month of April there was a festival in his village but during that time GajabuNapudu was found missing. *On 12th April there was a village Panchayat meeting regarding the missing report where Sang Dorjee Kasidu was asked about the whereabouts of the missing person as he had brought him from Bomdila before he went missing. During the public meeting Sang Dorjee Kasidu stated that he along with Passang Siadu and Tsering Dondu Siadu had killed Gajabu Napudu.* After the disclosure by Sang Dorjee Kasidu, he along with three other villagers took him to the Nafra Police station and handed him over to the police.

36. PW 13 is also from Khoina village and he knows all the accused persons. *He deposed that in the month of April there was a village panchayat meeting regarding missing of GajabuNapadu. During the public meeting Sang Dorjee Kasidu disclosed that he along with Passang Saidu and Tsering Dondu Siadu had killed the deceased*. He further deposed that the arms license was seized in his presence at their village itself.

37. PW 14 is the Doctor/M.O who conducted the post mortem examination. In her examination-in-chief PW 14 deposed that on 13.04.2023 she was posted at CHC Dirang as Medical Officer. On that day a requisition was received from the I.O of the case praying for conducting postmortem upon the body of Late GajabuNapudu,male, aged about 26 years, at around 10:50 AM. PW 14 deposed that the *cause of death was due to spinal cord injury and traumatic brain injury and the death was homicidal in nature.*She further stated that the injuries on the dead body areanti-mortem in nature and the time of post mortem examination might be within 5 to 10 days from the time of death as decomposition and liquefaction had already started. *PW 14 also deposed that the injury suggested that blunt weapon was used for causing the same.The wooden stick and the local dao were shown to PW 14 and she affirmed that the wooden stick can cause the injury which was found on the dead body, and even the local dao can cause such injury if it is used from the blunt side. In her cross-examination, the PW 14 stated that it is a fact that basing on the nature of the injury, the injury might have been caused by a blunt weapon.She stated that the injuries found on the body of the deceased cannot be caused by a road traffic accident. She reiterated that the wooden stick and local dao might have caused the injury on the body and she has made the said assumption as per the nature of the injury.*

38. PW 15 is the I.O of the case. He deposed that on 13.04.2023 he was posted at Dirang P.S as O.C. On that day a written FIR was received from the O.C of Nafra PS. In the FIR, it was stated that the complainant had received one missing report regarding one person namely GajabuNapudu and during his enquiry regarding the missing report he had come to know that one Sang Dorjee Kasidu was involved in the case and that during interrogation of Sang Dorjee Kasidu, he had revealed that Passang Siadu and Tsering Dondu Saidu had killedGajabuNapudu at the 9th Mile area. It was alleged in the FIR that when Sang Dorjee Kasidu was coming from Bomdila with Gajabu Napudu, Passang Saidu and Tsering Dondu Saidu had stopped them at Rahung Nula and they assaulted GajabuNapudu with a wooden stick. GajabuNapudu fell down and his body was loaded into one red Maruti Car bearing registration No.AS-01AJ-3337 and was taken towards Munna camp. PW 15 stated that the three accused namely Sang Dorjee Kasidu, Passang Siadu and Tsering Dondu Saidu were handed over to him by the OC of Nafra PS as the incident had taken place within the jurisdiction of Dirang P.S.

39. PW 15 further stated that he had registered the Dirang P.S Case No.8/2023 under section 302/120B/201/34 IPC and started the investigation. *He also deposed that he was shown the P.O by accused Passang Siadu and Sang Dorjee Kasidu. They led him to the place where the dead body was thrown by them. As per their lead and direction he recovered the dead body from a deep gorge about 40 meters from the road.*The dead body was already in semi decomposed stage. He prepared a rough sketch map of the P.O and also took photographs of the dead body and the P.O. He examined the informant as well as other independent

witnesses and recorded their statements under section 161 Cr.PC. He also conducted inquest over the dead body in the presence of relatives of the deceased and the Executive Magistrate Dirang. *During the inquest he found injury mark on the head and the back side of the head*. He also handed over the dead body to the relative of the deceased after the post mortem. *On being led by Passang Siadu he recovered one wooden stick measuring about 30 inches from the P.O at Rahung Nala, and one 12 bore SBBL gun No.7781 from the jungle situated near the residence of Passang Saidu*.*He also recovered one local dao measuring about 21 inches with handle from the residence of Passang Saidu.* He also seized one white gunny bag from the P.O and it was disclosed that the same was used for packing the dead body. One Honda bike bearing registration No.AR-04A-0832 was seized near the residence of accused Passang Saidu as the said bike was used for bringing GajubuNapudu from Bomdila. One Maruti 800 car bearing registration No.AS-01AJ-3337 was seized from the possession of Passang Saidu who disclosed that the Car was used for transporting the dead body from Rahung Nala. After recovery of the above-mentioned materials the accused persons were formally arrested and during their interrogation, they admitted that they have murdered GajubuNapudu as he had illicit affairs with the wife of Passang Saidu. It was found that during the commission of the offence one SBBL gun belonging to WangjaMatadu was also used. Though the seized arms license No.3701WKD dated 04.05.2000 was in the name of WangjaMatadu with validity upto 31.12.2011, but it was being used by his son Tsering Wangja Matadu. It was discovered during investigation that the said SBBL gun was taken by Passang Saidu from Tsering WangjaMatadu for the purpose of hunting but his intention was to kill the deceased with the

gun. It was disclosed that accused Passang Saidu had fired the gun to kill the deceased but it misfired and they had thrown the misfired bullet in the Salari River. The misfired bullet could not be recovered. The PW 15 also stated that he submitted requisition for obtaining the CDR of the mobile phones belonging to the accused persons and the deceased. He obtained the CDR report and found that the mobile number of the deceased was 8798098676, that of accused Passang Saidu was 9612521106, that of accused Tsering Dondu Saidu was 8798912517 and the number of accused Sang Dorjee Kasidu was 7630807727. As perthe CDR it was found that there were multiple calls made between the accused and the deceased on 06.04.2023. Their last mobile tower location was also found to be together at the PO. PW 15 deposed that during investigation as it was found that the SBBL gun was used without proper license, and he had obtained prosecution sanction from the District Magistrate for prosecution of the accused persons under the Arms Act and application was moved before the Trial Court for adding section 27 and 30 of the Arms Act to the charges against the accused persons. Having found prima facie case against the accused persons he submitted charge-sheet against them under section 302/120B/201/34 IPC read with section 27 of the Arms Act. PW 15 also proved all the exhibits.

40. In his cross-examination PW 15 stated that he had recorded the disclosure statement but there was no independent witness. He did not produce the certificate under the Indian Evidence Act regarding the photographs. He also stated that he had not forwarded the wooden stick for FSL examination and had not collected or examined the finger prints of the accused to match with the stick. He further stated that there is no independent eye witness in the present case. He denied the suggestion that

the charge-sheet was filed against the accused person only on the basis of suspicion and also denied the suggestion that the accused persons are innocent.

41. After the prosecution witnesses were examined, the appellants were also examined under section 313 Cr.PC wherein their defense was only denial and they did not give any explanation regarding incriminating circumstances. On being asked whether they had any witness to examine in their defense and as to whether they had anything to say before the Court, their reply was in the negative.

42. It is an admitted fact that there is no eye witness in the instant case. The conviction by the Trial Court has been made on the basis of circumstantial evidence. The case of ***Sharad Birdhichand Sarda vs State of Maharashtra, (1984) 4 SCC 116*** lays down 5 principles governing conviction on the basis of circumstantial evidence. At paragraph 153 of the judgment, the Supreme Court held that the following conditions must be satisfied before a case against an accused can be held to be fully established:

"*A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be

proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793 where the observations were made. "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions".

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

43. From the evidence adduced by the prosecution it can be seen that there was an extra judicial confession made by the accused Sang Dorjee Kasidu before the village authorities to the effect that he along with Passang Saidu and Tsering Dondu Saidu had killed the deceased person. This confession has been proved beyond reasonable doubt by the deposition of PW 3, 9, 10, 11, 12 and 13. These PWs have all deposed that on 12th April 2023 there was a village panchayat meeting regarding the missing report of Gajabu Napudu. They deposed that during the public meeting accused Sang

Dorjee Kasidu disclosed that he along with Passang Saidu and Tsering Dondu Siadu had killed Gajubu Napudu. Under the Indian Evidence Act, a confession caused by inducement, threat or promise is inadmissible. A confession made to a Police Officer or a confession made in Police custody without the presence of a Magistrate is also inadmissible. In the case of ***Siva Kumar vs State by Inspector of Police, (supra),*** the Supreme Court held that an extra judicial confession made before a village administrative officer was admissible because they are not Police Officers. In the case of ***Sahadevan vs State of Tamil Nadu, (2012) 6SCC 403,*** the Supreme Court held that an extra judicial confession to be admissible as evidence must be voluntary and truthful, it must inspire confidence, its credibility must be strengthened by corroboration and a chain of cogent circumstances and it should not suffer from material discrepancies or inherent improbabilities. In the case of ***State of Rajasthan vs Raja Ram (2003) 8 SCC 180***, it was held that an extra judicial confession if voluntary, true and made in a fit state of mind can be relied upon and its evidentiary value depends upon the credibility of the person to whom it is made. The Supreme Court also recognized that conviction can be founded on such a confession if the witnesses are unbiased and their evidence inspires confidence. It was further held by the Supreme court that,"*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 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*****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 PW 3, 9, 10, 11, 12 and 13 are credible witnesses. They are the appellant's own villagers and they have no reason to be biased nor do they have any enmity against the appellants. In the present case we are of the view that the confession was voluntarily made by the accused Sang Dorjee Kasidu before the village authorities without police presence and there was no threat, coercion or inducement.The Legal Aid counsel had raised an argument that the confession of co-accused Sang Dorjee Kasidu could not have been used to incriminate the other co-accused Passang Siadu and Tsering Dondu Siadu. However, in view of the provisions of section 30 of the Evidence Act the extra judicial confession is an additional circumstance against the other two co-accused as they are being jointly tried.

44. With regard to the submission of the learned Legal Aid counsel about the discrepancies in the timing between the discovery of the dead body and the recording of the disclosure statement, we are of the view that the discrepancy is not automatically fatal to the prosecution case. The question is whether the disclosure of the accused actually led to the discovery of the dead body and the other incriminating materials or whether the prosecution is attempting to attribute an already known recovery to the accused persons. In the case of ***Ravishankar Tandon vs State of Chattisgarh 2024 INSC 299,*** the Supreme held that the prosecution must establish that the dead body was recovered as a consequence of the information given by the accused and that the place of recovery was not already known to the

police or witnesses before the disclosure.

45. We have observed from the records that there is credible oral evidence establishing that the accused Passang Siadu and Sang Dorjee Kasidu had actually led the Police to the place where the dead body was recovered. Before that, the evidence shows that all the villagers have been searching for the deceased for the whole day and night on 07.04.2023 but they could not find the dead body. Therefore, the prosecution case is not defeated merely because the written disclosure statement was recorded at a later point of time. The important distinction is between the accused leading the police to the place before the body was discovered as opposed to the accused being taken to a place where the body had already been discovered. In ***A.N.Vankatesh vs State of Karnataka, (2005) 7SCC 714,*** the Supreme Court recognized that the conduct of an accused in pointing out the place where the dead body was found is relevant under section 8 of the Evidence Act, independently of whether the accompanying statement is admissible under section 27 or not. Thus, we are of the view that even if we hold that the disclosure statement made by the appellants is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. Hence, even if the formal disclosure statement is defective or was recorded later, the oral evidence in this case shows that the accused Passang Siadu and Sang Dorjee Kasidu led the Police to the P.O and such conduct is an admissible piece of evidence under Section 8 of the Evidence Act. In the case of ***Bodhraj@ Bodha vs State of Jammu and Kashmir, (2002) 8SCC 45,*** it was held that the exact information leading to discovery must be proved. If it was not recorded, it may be established through oral evidence. In this case the mere fact that the disclosure

statement was prepared after the recovery does not invalidate the discovery as the prosecution has proved through direct testimony that the accused Passang Siadu and Sang Dorjee Kasidu had led the Police to the place where the dead body was found and therefore, the delay in recording the disclosure statement can at best be treated as an investigative irregularity rather than a fatal infirmity.

46. The Trial Court has also relied on the "last seen theory" as a link in the chain of circumstantial evidence in order to arrive at a conviction. We are also in agreement with the finding of the Trial Court that it was the accused Sang Dorjee Kasidu who was last seen with the deceased person. The testimony of PW 2 has proved that on the evening of 06.04.2023, accused Sang Dorjee Kasidu came to his residence and took away the deceased person on his bike. This evidence of PW-2 has not been rebutted by the defence. The accused is expected to offer an explanation as to when, where and under what circumstances he parted company with the deceased particularly when that fact is within his special knowledge. In this case the prosecution has established beyond reasonable doubt that the deceased was last seen alive in the company of the accused Sang Dorjee Kasidu and the interval between the last sighting and the discovery of death is sufficiently narrow and the possibility of intervention by another person is reasonably excluded.

47. In respect of the contention of the Legal Aid counsel that there is no motive in the present case, the evidence of PW 4 and PW 15 goes to reveal that there was an earlier dispute with regard to illicit relationship between the deceased and the PW 4/wife of accused Passang Sadu in the year 2022 and the said dispute had been settled by the village authorities. However,

the PW 4 deposed that on 20.11.2022 the deceased had called her over the phone and asked her to come to a newly constructed BPL building near her house to sell housie ticket. However, her husband Passang Siadu saw them from the window and the deceased ran away from there upon seeing Passang Siadu. The testimony of PW 4 is also another link in the chain of circumstantial evidence that the suspicion of an illicit relationship between the deceased and PW 4 can be a motive for the offence.

48. The recovery of a wooden stick from the P.O and the recovery of a local dao from the residence of accused Passang Saidu is also a relevant link in the chain of circumstantial evidence inasmuch as the post mortem report had revealed that the death of the deceased was caused by spinal cord injury and traumatic brain injury. The PW 14/M.O had corroborated the post mortem report by deposing that the injury suggested that a blunt weapon was used for causing the same. Even in the cross-examination the PW 14 deposed that as per the nature of injury, the wooden stick or dao could have caused the injury on the deceased which led to his death.In the case of ***Mukesh vs State (NCT of Delhi), (2017) 6SCC 1,*** the Supreme Court said that associating independent witnesses with recovery is a rule of caution and not an inflexible legal requirement. It was held that the seizure memo need not mandatorily be attested by independent witnesses. Non attestation of the seizure memo by independent witnesses cannot be a ground to disbelieve the recovery of articles consequent upon being led by the accused.

49. The principal ingredient of criminal conspiracy is an agreement or meeting of minds between two or more persons to achieve an unlawful object. To establish an offence under section 120B IPC, the prosecution

must prove that there were at least two or more persons involved in the conspiracy; there must be an agreement or meeting of minds between them to do an illegal act or do a legal act by illegal means. The accused persons must knowingly and intentionally become a party to the agreement. Conspiracy is generally hatched in secrecy and direct evidence of agreement is seldom available. However, it may be inferred from the circumstances and conduct of the accused persons. In the present case the evidence of the PWs has proved beyond reasonable doubt that there was criminal conspiracy to commit murder of the deceased person between Passang Siadu, Sang Dorjee Kasidu and Tsering Dondu Siadu.

50. We have also examined the evidence with regard to the conviction under section 25 (1B) of the Arms Act. The evidence of the PWs coupled with the material evidence produced by the prosecution has proved that the arms license of the SBBL gun was in the name of WangjaMatadu but the gun was being used by his son Tsering Wangja Matadu. During investigation, the said SBBL gun was recovered from the roadside at Khoina village in a hidden place on being shown by accused Passang Siadu as testified by PW 7. Section 25 (1B) of the Arms Act deals with unauthorized acquisition, possession or carrying of firearms or ammunitions in contravention of the licensing requirements under section 3 of the Arms Act. The fact that the 12 bore SBBL gun was recovered from the jungle near the house of the accused Passang Siadu as per his disclosure has not been rebutted by the defence. Section 3 of the Arms Act prohibits the possession or carrying of firearms or ammunitions without a valid license. There is no defenceevidence that the accused persons had license in their name to possess or use the SBBL gun. Therefore, the prosecution has established absence of valid license on the

part of the accused persons. The Trial Court has rightly arrived at a finding that the accused persons are guilty of committing offence under section 25 (1B) of the Arms Act.

51. With regard to the absence of explanation by an accused person in his 313 Cr.PC examination, the Supreme Court in the case of ***Shard Birdhichand (supra)*** held that a false explanation or absence of explanation can be used as an additional link only when the prosecution has satisfactorily established the other links in the chain and the circumstances point towards the guilt of the accused with reasonable definiteness and further the circumstances are proximate in time and situation. In the instant case an adverse inference can be drawn against the appellants regarding the absence of any explanation by them as the other links in the chain of circumstances have pointed towards their guilt.

52. Thus, under the facts and circumstances and upon due consideration of the evidence in its entirety, we do not find any merit in these appeals and accordingly, the same is dismissed.

53. For the valuable assistance rendered by Ms. Jaya Doji, the learned Legal Aid counsel, the Arunachal Pradesh State Legal Services Authority shall pay her the fees as per the prescribed rates.

54. Registry shall send back the Trial Court Records forthwith.

JUDGE **JUDGE**

Comparing Assistant