GAHC010136342023

undefined

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

Case No. : CRL.A(J)/76/2023

MAHESWAR @ MAHESH KANDA
S/O- LATE ABHIRAM KANDA, R/O- KHERBARI LINE, BADLABETA TEA ESTATE, P.S. DOOMDOOMA, DIST. TINSUKIA, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Advocates for the appellant : Ms. B. Sarma, Amicus Curiae.

Advocates for the respondents : Mr. R.R. Kaushik, APP, Assam.

Date on which judgment is reserved : **29/09/2026**

Date of pronouncement of judgment : **09/10/2026**

Whether the pronouncement is of the operative part of the judgment ? : No.

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(***M. Zothankhuma, J***)

1. Heard Ms. B. Sarma, learned Amicus Curiae, for the appellant. Also heard Mr. R.R. Kaushik, learned APP, Assam, appearing for the State.

2. This is an appeal filed against the impugned judgment dated 23-05-2023 passed by the Court of the learned Sessions Judge-2 (FTC), Tinsukia, in Sessions Case No. 21(T)/2021, by which the appellant has been convicted under Section 302 IPC and sentenced to undergo life imprisonment with a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 6 (six) months.

3. The brief facts of the case is that an FIR dated 11-06-2020 had been submitted by Prosecution Witness No. 2 (PW-2) to the Officer-in-Charge of the Doomdooma Police Station, stating that around 5.30 p.m. on 16-05-2020, while her husband Anil Reba Singh was sitting beside the road in front of their house, a fellow villager (appellant) struck his head from behind with an axe, injuring him grievously. They immediately took her husband to Badlabheta Hospital and again to Longsual Hospital. Her husband was thereafter admitted to Assam Medical College and Hospital, Dibrugarh on 20-05-2020. However, he expired on 29-05-2020 at around 2.30 p.m. The FIR also stated that the delay in filing the FIR was due to the PW-2 being busy in the Shraddha ceremony of her deceased husband. Subsequent to the FIR, Doomdooma Police Station Case No 188/2020 under Section 302 IPC was registered. PW-7 was made the Investigating Officer. After investigation by PW-7 was complete, he submitted the charge sheet against the appellant under Section 302 IPC.

4. The learned Trial Court thereafter framed the charge under Section 302 IPC against the appellant, to which he pleaded not guilty and claimed to be tried. The learned Trial Court then examined 7 Prosecution Witnesses and after examining the appellant under Section 313 Cr. PC, it came to a finding that the prosecution had been able to prove the guilt of the appellant under Section 302 IPC beyond reasonable doubt. Consequently, the appellant was convicted and sentenced under Section 302 IPC. The appellant being aggrieved, has filed the present appeal.

5. The appellant's counsel submits that there has been an enormous delay in filing the appeal. She also submits that the evidence of PW-3, who is an independent witness, in his cross examination, had stated that he did not know what the appellant was armed with, as the appellant had come from behind him at the time of the incident. Thus, there was a doubt as to whether any weapon was being carried by the appellant. She also submits that there is no motive established by the prosecution, for the appellant to have killed the deceased. The appellant's counsel also submits that there is discrepancy as to the place of seizure of the weapon (axe), whether it was at the place of occurrence or in the Police Station. The learned counsel for the appellant further submits that PW-3 in his cross-examination had stated that the deceased was his paternal uncle and on hearing his hue and cry, one Lal Das Mahali and Puja Mahali had also come to the place of occurrence. However, they have not been made Prosecution Witnesses, which implies that the evidence of PW-3 might not be correct and that the prosecution was hiding certain facts pertaining to the innocence of the appellant, which could have been brought out in the open, if they had been made witnesses. The appellant's counsel thus submits that it would not be safe to rely upon the evidence of PW-3 only, for convicting the appellant, due to the above reasons.

6. The learned APP, on the other hand, submits that the reason for the delay has been explained in the FIR and there is nothing in the evidence at the time of cross-examination of the witnesses, suggesting that there has been any embellishment in the case made out against the appellant. There has also been no challenge to the credibility of PW-3 as a Prosecution Witness, who was an eyewitness to the crime. He also submits that when there is an eyewitness to the assault of the deceased by the appellant with an axe, establishment of a motive for the crime loses its significance. He also submits that PW-2, who is the wife of the deceased, had seen the appellant at the place of occurrence holding an axe, while finding an injury on the head of her husband, which corroborates the evidence of PW-3. He submits that as the appellant had surrendered to the police with an axe on 15/06/2020 as per the evidence of PW-7, the same proved the fact that the appellant had assaulted the deceased with the axe. The learned APP submits that as there is no infirmity with the decision of the learned Trial Court, the same should not be interfered with.

7. We have heard the learned counsels for the parties.

8. The evidence of PW-1, who is the doctor who conducted the Post-Mortem examination over the dead body of one Anil Bhumij, male, 45 years, in connection with Borbari Outpost GD Entry no. 811 dated 13/05/2020, is to the effect that he found the following injuries on the deceased.

"***External appearance***:

A male dead body of average built, dark brown complexion. Surgical bandage seen over right chest. Body found cold on touch both externally and internally. Rigor-mortis passing off and present partially over the lower parts of the body.

Injuries*:*

(1) Partially healed Stitched wound of length 4 cm over right parietal scalp near midline.

On dissection wound margin found to be irregular and contused (brownish colour) underline areas.

(ii) Depressed fracture of size 3 X 2 cm over right parietal bone near vortex.

(iii) Stitched wound of length 2 cm over right lateral chest wall made surgically for chest tube.

Membrane*:*

Sub-dural haemorrhage present bi-laterally.

Brain*:*

Congested and oedematous.

Pleura *:*

Adherent to chest wall.

Pleura cavity contained pus.

Larynx & Trachea*:*

Pre and para tracheal lymph node are enlarged and matted.

Lungs *:*

Both lungs are contracted and congested. On cut, cavities seen containing pus and caseous of various sizes materials. Collapsed right lung.

Other organs are congested."

In the opinion of PW-1, death was due to coma following head injury sustained by the deceased, which were ante-mortem in nature and caused by blunt impact. PW-1 also testified that to know the exact nature of the injury of the deceased, the opinion of the treating surgeon was necessary.

9. The evidence of PW-2, who is the wife of the deceased Anil Reba Singh, is to the effect that she was the informant and that the appellant was their neighbour. PW-2 stated that their neighbour Debu Mahali (PW-3) was present at the place of occurrence and that after the incident, Debu Mahali (PW-3) called her to the place of occurrence. On going there, she found the appellant holding an axe in his hand. She also found her husband with an injury on his head. She took her husband to the tea garden hospital for treatment and he was later shifted to Assam Medical College and Hospital, Dibrugarh, as his injuries were serious. However, he thereafter succumbed to his injuries.

10. In her cross examination, PW-2 stated that she did not know the contents of the FIR as she was illiterate and that she did not witness the incident. She denied the suggestion that their neighbour Debu Mahali was not present at the place of occurrence. She also denied the suggestion that Debu Mahali (PW-3) had not called her to the place of occurrence, where she found the appellant holding an axe, besides seeing her husband with a head injury.

11. The evidence of PW-3 is to the effect that he knew the informant, the deceased as well as the appellant. The incident had taken place on 16/05/2020 at about 5.30 p.m, while he was sitting on the road. At that time, the deceased Anil Reba Singh was coming from his house. Then the appellant, who was coming towards them, holding an axe, struck Anil Reba Singh with the axe. Anil Reba Singh fell to the ground and blood oozed from his injuries. On raising an alarm, people from the neighborhood gathered at the place of occurrence. The deceased was taken to the garden hospital and thereafter to the Assam Medical College and Hospital (AMCH), Dibrugarh, where he succumbed to his injuries. PW-3 also stated that he also saw the axe which was used by the appellant for assaulting the deceased, which was exhibited as MO-1. He also put his signature in the seizure list, which was exhibited as Ext.P-2, by which the axe had been seized.

In his cross-examination, PW-3 stated that he could identify the axe, which was produced in the Court. He also denied the suggestion that the appellant did not assault the deceased with an axe from behind. He also stated that he initially could not know as to whether the appellant was initially armed, as he had approached them from behind.

12. The evidence of PW-4 is to the effect that he heard that the appellant had assaulted the deceased with an axe and that he had been shifted to hospital for treatment and he did not know what happened thereafter. However, in his cross-examination, PW-4 stated that after a few days of treatment at AMCH, Dibrugarh, Anil Reba Singh returned home. This new fact that has been brought out in the cross-

examination of PW-4 for the first time by PW-4, has not been controverted/or put to re-examination by the Prosecution. PW-4 also stated in his evidence that the police had prepared a paper and asked to put his signature on the same, which was P.Ext.2. P. Ext.2 was the seizure list by which the axe had been seized by the police.

13. The evidence of PW-5 Shri Deb Bhumij, who is the son of the informant and the deceased, is to the effect that he knew the appellant. The incident took place on 16/05/2020 in the evening in front of their house. His father was assaulted by the appellant with an axe due to which he was taken to the Garden hospital and thereafter to the AMCH, Dibrugarh. He died on 25/05/2020. PW-5 also stated that he did not see the incident.

14. The evidence of PW-6 is to the effect that he knew the informant, as the informant was his maternal aunt, while the deceased was his maternal uncle. PW-6 also stated that he knew the appellant, who was his father. In his testimony, he stated that while returning from work, he saw the injured (deceased) lying on the ground and brought him to the garden hospital, from where he was shifted to the AMCH, Dibrugarh. However, he died in the AMCH, Dibrugarh. PW-6 further stated that the Police prepared one seizure list near his house, where he gave his signature as a seizure witness. He also testified that the Police seized one axe from the place of occurrence. However, he was not certain whether the axe produced in the Court, was the one that had been seized. In his cross-examination, PW-6 stated that the seizure list (P. Ext. 2) was blank at the time he gave his signature.

15. The evidence of PW-7, who is the Investigating Officer, is to the effect that on 11-06-2020, PW-2 lodged an FIR, which was registered as Doomdooma PS case no. 188/2020 under section 302 IPC. He was asked to investigate the case and accordingly he investigated the case. He could not trace out the appellant. However, on 15-06-2020, the appellant surrendered at the Police Station with an axe, which was seized by way of the seizure list (P. Ext-2) in the presence of the witnesses, i.e. PWs- 3, 4 & 6. He also stated that he sent PW-3 to the Court for recording his statement under Section 164 Cr.P.C. He also collected the post-mortem report and on completion of investigation, he submitted the charge sheet. He also stated that he did not send the seized axe for FSL examination.

16. The examination of the appellant under Section 313 Cr.P.C is to the effect that he had been falsely implicated in the above case and that he was innocent. However, in reply to the last question put to him by the Court, which is-

"*Do you have anything to say in this case*?"

The appellant replied "*Deceased first attempted to kill me for defence I also use force out of which deceased causes hurt and he immediately shifted to hospital.*"

17. With regard to the delay in filing the FIR, we find that the deceased had been assaulted with an axe on 16/05/2020 and that he was immediately taken to Badlabheta Hospital and then again to Longsual Hospital. He was apparently admitted into the AMCH, Dibrugarh on 20/05/2020 and he breathed his last on 29/05/2020. However, the FIR had been filed only on 11/06/2020, i.e. 25 days after the incident and 12 days after his death. We find it difficult to understand as to why a strike on the head of the deceased with an axe on 16/05/2020 had not been reported immediately to the Police on 16/05/2020, either by the PW-3 or even by the hospital authorities. The reason given in the FIR for the delayed filing of the FIR, is that PW-2 was busy in the Shraddha Ceremony. However, a Shraddha Ceremony is held only after the person dies and not prior to a person's death. No explanation has been given for not filing the FIR between 16/05/2020 and 28/05/2020, i.e. the dates prior to the death of the deceased. There is also no medial report/s or prescription/s exhibited by the Prosecution during trial, as to the medical treatment and injury suffered by the deceased, prior to his death.

18. In the case of ***Hariprasad alias Kishan Sahu Vs. State of Chattisgarh,*** reported in ***(2024) 2 SCC 557,*** the Hon'ble Supreme Court held that the delay in lodging an FIR, by itself cannot be regarded as sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated to be fatal to the case of prosecution. The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of the prosecution.

19. In the above case of ***Hariprasad alias Kishan Sahu (supra),*** the Supreme Court further held that the object of insisting upon prompt lodging of the report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as names of the eye witnesses present at the scene of occurrence.

20. In the case of ***Apren Joseph alias Current Kunjunju and Ors. Vs. The State of Kerala,*** reported in ***(1973) 3 SCC 114,*** the Hon'ble Supreme Court has held that FIR is very useful if recorded before there is time and opportunity to make embellishments to the case, or before the informant's memory

fades. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to a suspicion, which should put the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version.

21. Para 11 of the judgement passed in ***Apren Joseph (Supra)***, is reproduced herein below as follows :-

> "***11.*** *Now first information report is a report relating to the commission of an offence given to the police and recorded by it under Section 154, CrPC. As observed by the Privy Council in K.E. v. Khwaja, [AIR 1945 PC 18 : ILR 1945 Lah 1 : 71 IA 203] the receipt and recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. Nor does the statute provide that such information report can only be made by an eye witness. First information report under Section 154 is not even considered a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in court. But this information when recorded is the basis of the case set up by the informant. It is very useful if recorded before there is time and opportunity to embellish or before the informant's memory fades. Undue unreasonable delay in lodging the FIR, therefore, inevitably gives rise to suspicion which puts the court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. In our opinion, no duration of time in the abstract can be fixed as reasonable for giving information of a crime to the police, the question of reasonable time being a matter for determination by the court in each case. Mere delay in lodging the first information report with the police is, therefore, not necessarily, as a matter of law, fatal to the prosecution. The effect of delay in doing so in the light of the plausibility of the explanation forthcoming for such delay accordingly must fall for consideration on all the facts and circumstances of a given case."*

22. In the case of ***Ram Jag Vs. State of U.P.*** reported in ***(1974) 4 SCC 201***, the Supreme Court held that even a long delay in filing an FIR can be condoned if the witnesses on whose evidence the prosecution relies, has no motive for implicating the accused. On the other hand, prompt filing of the FIR is not an unmistakable guarantee of the truthfulness of the version of the Prosecution.

23. In the present case, the incident took place on 16/05/2020 and the deceased was taken to 3 hospitals before he expired on 29/05/2020. The prosecution had not submitted any medical documents to prove as to what injury had been caused to the deceased on 16/05/2020 or the treatment given. No medical documents from Badlabheta Hospital, Longssual Hospital or AMCH Dibrugarh, had been exhibited before the learned Trial Court. Further, when PW-4 had stated that the deceased had gone home after a few days of treatment at AMCH, Dibrugarh, it cannot be said that the injuries that had been mentioned in the Post Mortem Examination Report dated 30/05/2020 by PW-1, had been sustained by the deceased on 16/05/2020. No Doctor or Nurse who treated the deceased prior to the PME report had been examined by the learned Trial Court. There is no admit card or discharge card of any hospital exhibited by the Prosecution. Further, if the deceased had gone home from AMCH, Dibrugarh, it implied that the deceased was fit to go home. We are not at all convinced with the reason for the delay in filing the FIR, as Shraddha is performed only after the death of a person, which had occurred 13 days after the incident. Then also, no FIR was filed for around 11 days even after the death of the deceased. However, the problem lies with the fact that there is a eye-witness and the explanation made by the appellant during his examination under section 313 Cr.P.C. that the deceased had first attempted to kill him, due to which he used force as a defence against the appellant.

24. There has been an unexplained delay in filing the FIR and suppression of information by the Prosecution regarding the medical examination and treatment given to the appellant in the 3 hospitals prior to his death. All the above factors cast a grave doubt on the credibility of the prosecution case and as to whether the evidence of PW-3 is credible.

25. In the present case, there is discrepancy in the evidence of the witnesses as to the date of death of the deceased, inasmuch as, all the witnesses have stated that the deceased died on 29.05.2020, except for PW-5, who stated that the deceased died on 25.05.2020. PW-5 as stated earlier, is the son of the deceased.

26. Another interesting discrepancy is with regard to the evidence of PW-2 (wife), PW-5 (son) and PW-6, which is to the effect that the deceased died in AMCH, Dibrugarh. However, PW-4 has testified that after the deceased was shifted to the hospital for treatment and referred to the AMCH, Dibrugarh, he did not know what happened. Interestingly, in his cross examination PW-4 stated that after a few days of treatment at AMCH, Dibrugarh, the deceased Anil Reba Singh returned home.

27. The above discrepancies give rise to a doubt as to whether the deceased had really died in AMCH, Dibrugarh or in his house. This doubt gets further confounded by the fact that the name of the deceased, as per the FIR lodged by his wife and the testimony of his wife (PW-2), PW-3, PW-4 and PW-5 is to the effect that the name of the deceased is "Anil Reba Singh". However, the Doctor (PW-1), testified that he had conducted post-mortem examination over the dead body of one "Anil Bhumij" and not "Anil Reba Singh" in connection with, Borbari Outpost, vide G.D. Entry No.811 dated 30.05.2020, as reflected in the Post Mortem Examination report.

28. On a careful perusal of the learned Trial Court records, we find that the name of the son of the deceased is Deb Bhumij (PW-5) and in terms of the Injury Report made by the Senior Medical Officer, Badlabheta Tea Estate on 30.01.2021 (which is not exhibited in Court) pertaining to the deceased, we find that the name of the father of the deceased is one Late Rebasingh Bhumij. Thus, it appears that the deceased "Anil Reba Singh" did not include the surname "Bhumij" along with his name, as had been done by his son and his father. Be that as it may, this Injury Report made by the Senior Medical Officer, Budlabeta Tea Estate Hospital could not have been made on 30.01.2021, as the incident had occurred on 16.05.2020. Further, the deceased had been brought to the Budlabeta Tea Estate Hospital on 16.05.2020 and referred to the Longsoal Central Hospital on 26.05.2020. In any event, this Injury Report made by the Senior Medical Officer, Budlabeta Tea Estate Hospital on 30.01.2021, which appears to be a typographical error, has not been exhibited before the learned Trial Court.

29. Though there is nothing in the documents to show that "Anil Reba Singh" has an alias as "Anil Bhumij", as the body of the deceased "Anil Reba Singh" (Anil Bhumij) has been identified by his son (PW-5), it can be said that it was the body of the deceased that had been subjected to post-mortem examination by PW-1. We are thus of the view that Anil Reba Singh and Anil Bhumij are one and the same person.

30. With regard to the evidence of PW-6 which is to the effect that he was a seizure witness to the seizure of the axe, vide the Seizure List (P.Ext.2), the Seizure List shows that the same had been prepared in the Police Station and not at the place of occurrence. As such, the evidence of PW-6 in his cross-examination, that he had put his signature in a blank Seizure List appears to be correct. As stated above, though PW-7 (I.O.) in his evidence had stated that the appellant had surrendered at the police station with an axe on 15/06/2020, the evidence of PW-6 is to the effect that the seizure list had been prepared near his house and not at the police station. The police had also seized the axe from the place

of occurrence as per the evidence of PW-6. Though PW-4 had been shown as a seizure witness in respect of the seizure of the axe, PW-4 has also stated that the police prepared a paper and asked him to put his signature on P. Ext.2. The above discrepancy in the stand of the seizure witness and PW-7 cannot be said to prove that the appellant had surrendered to the police with an axe, thereby implying that the appellant was the cause of death of the deceased.

31. With regard to the submission of the appellant's counsel that the Prosecution had not been able to establish any motive for the crime, it is settled law that motive loses its significance when there is an eyewitness to the crime.

32. As stated in the preceding paragraphs, we have a doubt as to the credibility of the Prosecution case due to the delay in filing FIR, which has not been properly explained. However, as the appellant had taken a stand that he had used force against the deceased as a defence on being attacked by the deceased, during his examination under Section 313 Cr.P.C, we would have to see whether the explanation of the appellant can be used against him. Thus, the relevance of an explanation given under section 313 Cr.P.C. by an accused would have to be looked into.

33. In the case of ***Nar Singh vs. State of Haryana*** reported in ***(2015) 1 SCC 496***, the Supreme Court held that while section 313 Cr.P.C. provides a procedural safeguard for an accused to explain the facts and circumstances appearing against him in the evidence, it imposes a duty on the Court to question the accused properly and fairly, so as to bring home to him the exact case he will have to meet.

34. In the case of ***Reena Hazarika Vs. State of Assam*** reported in ***(2019) 13 SCC 289***, the Supreme Court held that Section 313 Cr.P.C. confers a valuable right upon an accused to establish his innocence and can well be considered beyond the statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not considered as a piece of substantive evidence, not being an oath under Section 313(2) Cr.P.C. It further held that the defence taken under Section 313 Cr.P.C. would have to be considered whether the same is acceptable or not and whether it is compatible or incompatible with the evidence available, inasmuch as, the accused is only required to raise doubts on a preponderance of probability as observed in ***Hate Singh Bhagat Singh Vs. State of Madhya Bharat*** reported in ***AIR 1953 SC 468***. In the case of ***Mohan Singh Vs. Prem Singh & Anr,*** reported in ***2002 4 Crimes (SC) 453,*** the Hon'ble Supreme Court held that though the statement of accused under Section 313 of Cr.P.C is not a substantive piece of evidence, it can be used for appreciating

evidence led by the Prosecution to accept or reject it. It is, however, not a substitute for the evidence of the Prosecution. If the exculpatory part of the statement is found to be false and the evidence led by the Prosecution is reliable, the inculpatory part of the statement can be taken aid of to lend assurance to the evidence of the Prosecution. If the Prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of an accused's statement under Section 313 of Cr.P.C cannot be made the sole basis of his conviction.

35. Thus, on considering the explanation given by appellant to the last question where he has stated that the deceased first attempted to kill him for which he acted in defence, the same cannot be used as evidence against the appellant, inasmuch as, the same has not been made under oath. The explanation given by the appellant under 313 Cr.P.C. can only be considered in the context of whether the same raises a doubt on the prosecution case, on a preponderance of probability.

36. In view of the prosecution not having proved that the injury on the deceased, as recorded in the Post Mortem Examination report, was the result of the assault made on the deceased on 16/05/2020, besides the enormous delay in filing the FIR, we are of the view that a doubt has arisen as to whether the deceased had died due to the assault made on him on 16/05/2020. As the Hon'ble Supreme Court in the case of ***Laxmibai (Dead) Thru Lr'S & Anr. Vs. Bhagwanthbuva (Dead) Thru Lr'S. & Ors, Civil Appeal No.2058 of 2003*** has held that evidence must be weighed and not counted, we find that the testimony of the eye witness PW-3 does not prove that the assault on the deceased by the appellant on 16/05/2020, was the cause of death of the deceased, as there is no medical evidence for the period from the date of the assault to the date of the filing of the FIR, i.e, 16/05/2020 to 11/06/2020, to prove the said allegation.

37. In view of the reasons stated above, we are not in agreement with the finding of the learned Trial Court that the prosecution had been able to prove the guilt of the appellant under section 302 IPC. We find that the prosecution has not been able to prove the guilt of the appellant under Section 302 IPC beyond reasonable doubt. We accordingly set aside the impugned judgement dated 23/05/2023 passed by the Court of the learned Sessions Judge-2 (FTC), Tinsukia, in Sessions Case No. 21(T)/2021 by giving the appellant the benefit of doubt. The appellant, if in judicial custody, should be released immediately, if not wanted in any other case.

38. The appeal is accordingly allowed.

39. Send back the TCR.

40. In appreciation of the assistance provided by the learned Amicus Curiae, her fees should be paid by the Gauhati High Court Legal Services Committee, as per norms.

JUDGE **JUDGE**

Comparing Assistant

Sukhamay Dey

Digitally signed by Sukhamay Dey
Date: 2026.10.09 10:41:00 +05'30'