GAHC010251612023

2026:GAU-AS:14886

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

Case No. : Crl.A./409/2023

SIKHAMONI DUTTA
W/O SRI NIRANJAN DUTTA,
R/O 2ND GOPAL PAR,
P.O.- SHANTIPUR, P.S.- SIVASAGAR,
DIST.- SIVASAGAR, ASSAM.

VERSUS

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

Advocate for the Petitioner : MR. D BARUAH, MR W TERON,MS S K GUPTA

Advocate for the Respondent : PP, ASSAM,

:::BEFORE:::
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Date on which judgment is reserved	: 30.09.2026
Date of pronouncement of judgment	: 06.10.2026
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 Mr. D. Baruah, learned counsel for the appellant and Mr. R. R. Kaushik, learned Addl. PP, Assam.

2. This criminal appeal under Section 374(2) Cr.PC is directed against the impugned Judgment and Order dated 12.09.2023 passed by the learned Sessions Judge, Sivasagar in Session Case no. 73(S-S)/2017. By the Judgment and Order dated 12.09.2023, the accused-appellant has been convicted for the offences under Section 302 and Section 201 IPC. For the offence under Section 302 IPC, the accused-appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/-, in default of payment of fine, to undergo simple imprisonment for another 3 (three) months. For the offence under Section 201 IPC, the accused appellant has been sentenced to undergo rigorous imprisonment for 3 (three) years and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo simple imprisonment for another 2 (two) months. The sentences were ordered to run concurrently.

3. The brief facts of the case is that Prosecution Witness-1 submitted an FIR dated 15.10.2016 to the Officer-in-Charge at Disangmukh Police Station (actually Police Outpost), stating that on the morning of 15.10.2016, he had made a report to the Police Station that his daughter, who was 1 month 8 days old, had gone missing since the night before. Upon interrogation by the police, his wife (appellant) had confessed, in the presence of local witnesses, that on the night of 14.10.2016 at approximately 8 p.m., she had murdered their daughter and disposed her body at Dikhow River. Pursuant to the FIR, Sivasagar P.S. Case No. 923/2016 under Sections 302/201 IPC was registered on 15.10.2016. PW-10 started the investigation and as he was transferred during the investigation period, he handed over the case diary to the O.C. of the Sivasagar P.S., who thereafter handed over the case to S.I. Anil Kumar Baruah. After the investigation being completed, charge sheet under Sections 302/201 IPC was filed against the appellant.

4. The learned Trial Court thereafter framed charges under Sections 302/201 IPC, to which the appellant pleaded not guilty and claimed to be tried.

5. The learned Trial Court thereafter examined 11 Prosecution Witnesses and after examining the appellant under Section 313 Cr.PC, the learned Trial Court came to a finding that the appellant was guilty of having committed an offence punishable under Sections 302/201 IPC, on the basis of her confessional statement made under Section 164 Cr.PC.

6. The evidence of pw-1 (informant), who is the husband of the appellant, is to the effect that his daughter was found missing and on inquiring with his wife (appellant), she stated that she did not know the whereabouts of their child. Thereafter, pw-1 was declared hostile by the prosecution and was examined by the prosecution. In the cross-examination, PW-1 denied giving a statement to PW-10 (I.O.) that the appellant had confessed to the villagers that she had thrown the child in the Dikhow river. PW-1 stated that the appellant was arrested on the suspicion that she had killed their child.

7. The evidence of pw-2, who is the father-in-law of the appellant and the evidence of PW-3, who is the brother-in-law of the appellant, are to the effect that the police told them that on the appellant being interrogated by the police, the appellant confessed that she had killed the child, by throwing the child into the Dikhow River.

8. The evidence of pw Nos. 4, 6 and 7 is to the effect that the police informed them and the other villagers that the appellant had killed the child, by throwing her into the Dikhow River.

9. The evidence of pw-5 is to the effect that he had gone to the house of the appellant and came to know that the child was missing.

10. The evidence of PW-8 is to the effect that on 18.10.2016, while being posted at Sivasagar as Judicial Magistrate First Class, the appellant had been produced before her for giving her statement under Section 164 Cr.PC. Vide order dated 18.10.2016, PW-8 sent the appellant to judicial custody, giving her reflection time of 24 hours. On 19.10.2016, the appellant was produced before her escorted by the woman constable Gulnahar Begum. The appellant seemed to be very sad and not in a proper frame of mind. Accordingly, another 24 hours reflection time was given to the appellant on 20.10.2016. The appellant was again produced before PW-8 at 3 p.m. on 20.10.2016, where she appeared to be normal and in a fit state of mind. On being asked, the appellant stated that she was willing and voluntarily going to confess. Thereafter, her confessional statement was recorded. PW-8 further stated that at the end of recording of the confessional statement, a memorandum was given by PW-8 in her own handwriting.

In her cross examination, PW-8 stated that as per the order dated 19.10.2016, she did not send the appellant or direct the district jail authority for medical treatment of the appellant, as she was only emotionally not in a fit state of mind to give her confession. However, in her order, though she had not specifically used the word "emotion", it was obviously implied from the language used that the appellant was not in a proper state of mind.

11. The evidence of PW-9 is to the effect that he saw the police interrogating the appellant, but did not hear anything.

12. The evidence of PW-10, who is the Investigating Officer, is to the effect that on interrogating the appellant, the appellant had confessed to killing her daughter, by throwing her body in the Dikhow River. Though they had searched for the body, they did not find the body.

13. The examination of the appellate under Section 313 Cr.PC shows that she had stated "I don't know anything sir" and "I don't know sir" with regard to all the questions that had been put to her.

14. At the time of hearing the appellant, on the question of the sentence to be imposed upon her under Sections 302/201 IPC, the appellant had stated as follows:-

> "***Question****: Trial of the case has been proceeded against you U/S 302/201 of the IPC and after conclusion of trial, you are held guilty and convicted for the offence punishable under section 302/201 of Indian Penal Code (IPC). Section 302 of IPC provides for punishment with death, or imprisonment for life, and shall also be liable to fine and Section 201 of the Indian Penal Code provides for punishment with rigorous imprisonment for a term which may extend to 3 (three) years, and shall also be liable to fine. What is your say about the quantum of sentence?*
>
> ***Answer****: As the accused, I submit before this Hon'ble court that I engaged in the commission of the offense under the influence of severe emotional distress. I am a mother, responsible for the care of one child, and I presently reside with my husband. I wish to bring to the court's attention the potential hardship that may arise if I were to be incarcerated, as my husband may not possess the capacity to provide suitable care for our child under such circumstances. In light of these circumstances, prayed before the court for a lenient sentencing disposition.*"

15. From a consideration of the evidence adduced by the Prosecution

Witnesses and the examination of the appellant under Section 313 Cr.PC, it is quite apparent that the appellant has been found guilty, only on account of her confessional statement made under Section 164 Cr.PC, where she has admitted to killing her daughter, by throwing the 38 day old baby in the river. The reason for doing the same being that she was not feeling mentally well and did not like to take her in her arms. The confessional statement is reproduced hereinbelow as follows:-

> "*I was married 4 years ago. After wedding, I started living at my husband's house with my husband, father-in-law Akonman Dutta and brother-in-law Niranjan Dutta. My family life was good and there was cordial relationship among all of us. At first, I gave birth to a boy. He is two years old now. On 06.09.16, I gave birth to a girl child. I named her Baby Dutta. At the time of birth, her weight was only 1.5 kg. I did not like my daughter from the day she was born. Because, when I was pregnant, initially I was not aware of it for about 4 months. When I got to know about it, I went for abortion but time was already up and I could not undergo abortion. As my male child was young, I did not want another child right now. After my daughter was born, I started to feel mentally unwell. I didn't feel like taking her in my arms. Since the morning of 14/10/16, I had been feeling mentally unwell. I kept on doing my daily chores. I did not feel like having meal at mid-day and I did not feel like going into my room. I was feeling sad for my son. Around 6:30-7:00 p.m. in the evening, I finished cooking. My husband went out to attend 'Diha Naam' in the village at that time. I had dinner at about 7:00 p.m. and only my brother-in-law was at home at that time. Then, I went to bed to sleep taking my son and daughter along. At about 7:30 p.m., my brother-in-law had dinner and went to bed and at about 8:00 p.m., my father-in-law returned. After a while I fell asleep. Suddenly, I woke up at around 8:30-9:00 p.m. I was heartbroken. I got up taking my daughter in my lap and went out from the house. My father-in-law and brother-in-law were asleep at that time and they were not aware of me going out. Walking in the darkness of the night, I reached the bank of Dikhow river. Then, without thinking anything, I threw away my little daughter into the river. She drowned and was swept away. I did not feel bad at all and returning home, I slept with my son in the bed. At about 10:30 p.m., my husband*

returned home and woke me up from sleep. He asked me about our daughter and I replied that I did not know. My husband raised a hue and cry and the rest of the people at house woke up. We searched for the girl together. Later, people from the village arrived and helped in searching. I did not tell anything to anyone at that time. I was afraid and I could realize my mistake. I started feeling like a criminal. The villagers asked me whether I had done something to the girl. But I remained quiet. The next morning the police were informed and they came. The villagers had suspicion on me and after interrogation, the police also suspected me. Then I was compelled to admit my crime and in front of everyone, I said that I had thrown away my little daughter into the river. Now, I have realized my guilt and I confess my crime."

16. The 164 Cr.PC confessional statement made by the appellant was then signed by the appellant, the woman head constable Gulnahar Begum and PW-8. The signing of the appellant's confessional statement by the police-woman implies that the policewoman was also present at the time of recording the confessional statement. The same makes the said confessional statement inadmissible as evidence, as the accused cannot be said to be completely free from police pressure or influence at the time of making her confession.

17. In the case of ***Jiten Engti & Ors v. State of Assam & Anr***, reported in ***2026 Live Law, (GAU)*** 75, the Division Bench of this Court has held that the presence of a Police Officer during recording of a confession under Section 164 Cr.PC renders it inadmissible in evidence, as the said confession cannot be said to be voluntary, being made in the presence of a Police Officer.

18. The answer given by the appellant to question No. 12, while being examined under Section 313 Cr.PC, appears to show that the appellant did not know that her confessional statement was recorded. It can also be considered to be a retraction of the confessional statement made under Section 164 Cr.PC.

Question No. 12 and the appellant's answer to the same during her examination under Section 313 Cr.PC is reproduced herein below as follows:-

> "*Q. No.12: PW 8 Smti Manashreeporna Khound, in her evidence deposed that while she was posted as JMFC at Sivasagar, on 20.10.2016, she recorded your confessional statement u/s 164 Cr.P.C. in the prescribed format. Ext. 8 is the prescribed format, Ext. 8(1), 8(2) & 8(3) are the three relevant pages with relevant questions and answers. On looking at Ext.8, it depicts that you have confessed your guilt stating that you had thrown your baby daughter on the water of river. What is your say about it ?*
>
> *Ans: I don't know Sir.*"

19. Leaving aside the question as to whether there was a retraction of the confessional statement by the appellant, due to the presence of the woman head constable at the time of recording her confessional statement, the conviction of the appellant cannot be sustained under Sections 302/201 IPC only on the basis of the said confessional statement, which is inadmissible in evidence.

20. The above being said, the appellant had, at the time of sentence hearing under Section 235(2) Cr.PC, admitted to having committed the offence under severe emotional distress. The question that arises is whether an admission to a crime made by an accused, at the time of hearing on the question of sentence, can be admissible as evidence, for convicting an accused. In this respect, it would be profitable to refer to the case of ***Muniappan vs. State of Tamil Nadu***, reported in ***(1981) 3 SCC 11***, where the Supreme Court held that questions which the Judge can put to the accused under Section 235 (2) Cr.PC and the answers which the accused makes to those questions, are beyond the

narrow constraints of the Evidence Act. The Court, while on the question of sentence, is in an altogether different domain, in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction.

21. A reading of Section 235(2) Cr.PC shows that it is only when the Court has come to a conclusion/finding that an accused is guilty of the offence, after sifting through the recorded evidence, which has been made under oath, that a hearing on the sentence is required to be held. On the other hand, the admission of a crime during sentence hearing is not made under oath. Thus, the conviction of an accused having already been made, on the basis of recorded evidence on oath, an admission of a crime by an accused during sentence hearing cannot be considered to be additional evidence against the accused.

22. In the present case, the evidence that had been the basis for convicting the appellant was her confessional statement made under Section 164 Cr.P.C. However, as indicated earlier, her confessional statement under Section 164 Cr.P.C is inadmissible in evidence, inasmuch as, it could not be said to be voluntary, due to the presence of the woman Head Constable, who had given her signature in the said confessional statement. Further, an admission to a crime made by an accused, at the time of sentence hearing under Section 235(2) Cr.PC, is not admissible as evidence for the purpose of convicting an accused.

23. Due to the above reasons, we find that the conviction of the appellant under Section 302/201 IPC is not sustainable and accordingly, the conviction and sentence of the appellant has to be set aside.

24. The above being said, even if we have to assume that the confessional statement of the appellant which has been recorded by PW-8 could be relied upon, we are perplexed as to why the appellant would have killed her child. Her confessional statement is to the effect that she was mentally unwell and that she did not like her daughter from the day she was born. On trying to understand the case where a mother does not like her newborn child, we have come across rare cases of infanticide due to Postpartum Psychosis (P.P.P.).

25. Postpartum Psychosis is a severe mental illness which develops acutely in the early postnatal period. It is a psychiatric emergency where woman with P.P.P. can lose touch with reality. Some symptoms of P.P.P. can come and go, be fleeting and changeable. It has been estimated that some risk occurs to babies, in around 35% P.P.P. cases, due to the mothers acting upon false beliefs, incorrectly handling their babies, being severely confused or behaving in very unusual ways. This behavior is temporary and is caused by the P.P.P. effect on the brain.

26. The National Library of Medicine in the National Centre for Biotechnology Information states that P.P.P. is rare, affecting one and two per one thousand women. However, P.P.P. can develop rapidly and place the life of the mother and infant in danger. It's symptoms may include delusions, hallucinations, severe mood symptoms and cognitive symptoms. It also noted that childbirth is a potent trigger for severe mood disorder.

27. In the present case, though we are not required to go into the issue of whether the appellant suffered from P.P.P., the same should have been considered by the learned Trial Court, prior to convicting the appellant under

Section 302/201 IPC. As we have already held that the conviction of the appellant only on the basis of the confessional statement is not sustainable, as the confessional statement is inadmissible in evidence, the appeal succeeds. As the Prosecution has failed to prove the guilt of the appellant beyond reasonable doubt, the appellant is acquitted of the charges framed against her under Section 302 IPC and Section 201 IPC. Consequently, the impugned judgment dated 12.09.2023 passed by the Court of Sessions Judge, Sivasagar, in Case No. Session 73(S-S)/2017 is set aside. The appellant should be released immediately from judicial custody, if not wanted in any other case.

28. Send back the TCR.

JUDGE **JUDGE**

Comparing Assistant

Kalpana Devi

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