GAHC010155022023

2026:GAU-AS:16965-DB

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

Case No. : CRL.A(J)/86/2023

SURESH GUWALA
S/O LT. SHIKARI GOWALA, R/O BONGALI BALIJAN, JOLOKIA BASTI, P.S.-DOOMDOOMA, DIST- TINSUKIA (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the appellant : Mrs. P. B. Bordoloi

Advocate for the respondent : Mr. R. R. Kaushik, Addl. P.P.

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 12.11.2026

Date of pronouncement of judgment : 18.11.2026

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)

Heard Mrs. P. B. Bordoloi, learned Legal Aid counsel for the appellant and Mr. R. R. Kaushik, learned Addl. Public Prosecutor, Assam.

2. This is an appeal against the judgment dated 25.05.2023 passed by the Court of the Additional Sessions Judge-2 (FTC), Tinsukia in Sessions Case No. 81(T)/2018, by which the appellant has been convicted under Sections 448 and 302 IPC. The learned Trial Court has sentenced the appellant to undergo imprisonment for 6 months under Section 448 IPC and sentenced him to undergo life imprisonment with a fine of Rs. 10,000/- under Section 302 IPC for killing his brother. The sentences were to run concurrently.

3. The brief facts of the case is that an FIR dated 11.02.2018 was submitted by the informant (PW-1), to the effect that the appellant had dragged her husband from inside the house and cut his neck into two pieces with a pruning knife in the courtyard, thereby killing him in a brutal manner around 7:00 p.m on 10.02.2018. Pursuant to the FIR, Talap O.P GDE No. 219 dated 11.02.2018 was registered. The FIR was thereafter forwarded to the O/C Doom Dooma Police Station, wherein Doom Dooma P.S Case No.36/2018 under Section 448/302 IPC was registered.

4. PW-6 was made the Investigating Officer and on completing the investigation, PW-6 submitted the charge-sheet on finding a *prima facie* case

under Section 448/302 IPC made out against the appellant.

5. The learned Trial Court thereafter framed two charges under Section 448 IPC and Section 302 IPC against the appellant, to which the appellant pleaded not guilty and claimed to be tried.

6. The learned Trial Court then examined six Prosecution Witnesses during trial. After examining the appellant under Section 313 Cr.P.C, the learned Trial Court came to a finding that the Prosecution had proved the guilt of the appellant for offences punishable under Section 448 IPC and 302 IPC. The appellant was accordingly convicted under Section 448 IPC and Section 302 IPC and sentenced accordingly.

7. The appellant's counsel submits that PW-1 (informant), who is also the wife of the deceased, cannot be the eye witness to the crime in question, in view of the evidence of PW-2, which is to the effect that PW-1 was neither present at the place of occurrence nor in her house at the time of occurrence. She also submits that due to the seized clothes of the deceased not being marked by the police and the weapon, i.e., *dao*, not having been produced before the learned Trial Court during trial, there was a defect in the investigation and trial, for which the appellant should be acquitted of the charges framed against him and he should be released from judicial custody. The learned counsel for the appellant further submits that though the evidence of PW-4 is to the effect that the appellant had allegedly told him that he had killed PW-4's maternal uncle, it is settled law that an extra-judicial confession was a weak type of evidence, which cannot be made the basis for conviction alone, without there being any corroboration from some other evidence/witnesses.

8. Mr. R.R. Kaushik, the learned APP, submits that the evidence of the eye-witnesses is consistent, except for PW-2, who has been declared to be a hostile witness. He also submits that the extra-judicial confession made by the appellant to PW-4 is corroborated by the evidence of the informant (PW-1). He also submits that defective investigation cannot override the eye-witness's statement. He accordingly prays that the impugned judgment should not be interfered with.

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

10. The evidence of PW1, who is the informant and the wife of the deceased, is to the effect that the incident had taken place five and six months back at about 7:00 p.m, when her husband and herself were inside the house. The appellant had come to their house and quarreled with her husband. The appellant then went away and came back with a dao in his hand and began to assault her husband with the dao, after dragging him out to the courtyard. PW-1 screamed, but out of fear, could not go near her husband, while her husband was lying in the courtyard. The appellant stayed the whole night in their courtyard and as such, PW-1 could not say when the appellant went away. In the morning, PW-1 went to the Police Station and informed the Police. She later lodged the FIR. Police came to the place of occurrence and recorded her statement and the dead body of her husband was shifted to the hospital later.

In her cross-examination, PW-1 stated that she did not know the contents of the FIR, as she did not know how to read and write. She also stated that the distance between her house and the house of the appellant was about 200 ft. PW-1 denied the suggestion that her husband used to consume local liquor

(Haria) daily. She also stated that she did not see the dao in the Court. She identified the appellant who was in the dock. She denied the suggestion that she was not present in her house at the time of the incident. She also denied the suggestion that the appellant had not inflicted the injuries on her husband. She also denied the suggestion that due to previous enmity she had lodged a false case against the appellant. She also stated that she could not say who assaulted whom and for what reason.

This statement made by PW-1 in her cross-examination only implies that she was not sure if the deceased had also assaulted the appellant and that she did not know the reason for the assault made on the appellant by the deceased.

11. The evidence of PW-2 is to the effect that she knew both the informant and the appellant. PW-2 stated that the incident took place about six months back at about 7:00 p.m. At that time, he was not at home, but was present at around 8:00 a.m on the next day, when the Police had come to the place of occurrence. At this stage, PW-2 was declared hostile on the prayer of the Prosecution. PW-2 stated that he had not stated before the Police that on the day of the incident, he had heard a hue and cry in the house of PW-1 and on reaching the said place of occurrence, he saw the elder brother (appellant) quarrelling with the deceased. As the villagers intervened in the quarrel, his brother, the appellant went to his house from where he brought out a Kalam dao and entered the house of the deceased and dragged the deceased out of the house. Thereafter he cut him into two pieces and killed him. In fear, he fled from the scene. PW-2 also stated that he was a seizure witness to the Police seizing the bloodstained clothes.

In his cross-examination, PW-2 stated that the distance between his house and the complainant (informant) was about 20 ft. and any hue and cry happening in the home of the informant was easily audible. PW-2 stated that the complainant was not present in her house at the time of the incident. He also stated that the deceased used to consume liquor and on the date of the incident the deceased had also consumed liquor. PW-2 also stated that he was not present at the time of the incident and that Police had recorded his statement the day after the incident, wherein he stated that he was not present in his house at the time of the incident. As such, he could not say anything about the incident. PW-2 also stated that there was previous enmity between the deceased and the appellant. PW-2 also stated that he did not see the seized dao in the Court.

12. The evidence of PW-3 is to the effect that on 11.02.2018, he was in the Talap Outpost as a Sentry. PW-3 identified his signature on the Seizure List Ext.2. PW-3 also saw the appellant carrying a kalam dao in his hand at 6:30/7:00 a.m, though he could not recollect the date. PW-3 stated that the appellant had told him that he had inflicted cut injuries on his deceased brother, who had died. PW-3 also recognized the dao and the clothes in the Court, stating that M. Ext.1 was the kalam dao and M.Ext.2 were the clothes seized by the Police.

In his cross-examination, PW-3 denied the suggestions that the appellant did not surrender at the Police Station with the kalam dao and that the appellant did not kill his brother.

13. The evidence of PW-4 is to the effect that he knew the informant, who was his aunt and the wife of the deceased. PW-4 also stated that he knew the appellant, who is the cousin brother of the deceased. The incident had taken place about three/four months back at night, while he was at home and his house was located at a distance of 20 ft from the house of the appellant. PW-4 stated that he was informed by the appellant that he had killed his maternal uncle. The police thereafter came in the morning and recorded his statement. The dead body of the deceased was then taken to Tinsukia Civil Hospital for post-mortem examination. PW-4 also identified the seizure list Ext.2 and his signature on the same.

In his cross-examination, PW-4 stated that there was no house between the house of the deceased and his house. PW-4 also stated that he did not witness the incident with his own eyes and could not say who assaulted the deceased and the reason for the assault. PW-4 also stated that the informant was at her home at the time of the incident.

14. The evidence of PW-5, who is the doctor, is to the effect that on 11.02.2018, while working as a Medical and Health Officer-I, Civil Hospital, Tinsukia, he performed a post-mortem examination on the dead body of the deceased, who was 38 years old. The medical examination report of the deceased as per the evidence of PW-5, was as follows:

> "***External appearance***:
> *Medium built, 5'5" height, Swarthy complexion wearing white colour shirt, Ash colour long pant. Rigor mortis present.*

The Injuries are:
(i) Head separate at the upper end of the neck from the body.
(ii) lacerated injury face left side 60 x 3 X 2 CM.
(iii) lacerated injury left elbow 10 X 3 X 2 cm
(iv) lacerated injury right ankle 30 X 3 X 3 cm
(v) lacerated injury over back 40 X 4 X 3 cm.
(vi) lacerated injury over abdomen 4x 2 x 1 Cm
(vii) Multiple lacerated injury are present all over the body.
(viii) fracture of scalp and bone right tibia and left tibia.
***Examination of Thorax** :*
Pleurae, larynx and trachea, right and left lung and pericardium are congested.
***Examination of Abdomen** :*
Peritoneum, mouth, oesophagus - congested.
Stomach contained undigested food and fluid.
Small Intestine contains digested food and fluid.
Large Intestine contains fecal matter and gases.
***Cranium** :-*
Membrane - congested. Brain- multiple haematoma present.
Liver, Spleen, Kidney - congested,
Bladder - empty.
***Opinion**: In my opinion, death is due to shock and haemorrhage as a result of injuries as described. All the injuries are antemortem in nature caused by sharp weapon and homicidal in nature. Approx. time since death 12 to 24 hours.*
Ext. 3 is the Post mortem report and Ext. 3(1) is my signature."

15. The evidence of PW-6, who is the Investigating Officer, is to the effect that on 11.02.2018 while he was working as an Attached Officer at Talap Outpost, the wife of the deceased verbally informed him at the outpost that on 10.02.2018 at 7:00 p.m that her husband was killed by his own brother, the appellant. Accordingly GDE No.208 dated 11.02.2018 was registered. PW-6 recorded the statement of the informant and proceeded to the place of occurrence. PW-6 saw the deceased in two pieces at the place of occurrence. PW-6 drew up a sketch map and prepared the inquest report. At the place of

occurrence, he seized one part of the shirt and two pieces of blood-stained clothes of the deceased in front of witnesses. PW-6 also stated that he recorded the statements of the witnesses. PW-6 also stated that the appellant surrendered before the outpost along with the dao. PW-6 seized the dao in the presence of witnesses and other staff and arrested the appellant. On completion of the investigation, PW-6 submitted a charge-sheet against the appellant under Section 448/302 IPC.

In his cross-examination, PW-6 stated that the appellant was arrested at 8:00 p.m on 11.02.2018. PW-6 also stated that he did not recover the assault weapon, kalam dao and the blood-stained clothes from the place of occurrence. He also stated that he forwarded the seized articles to the FSL. In his cross-examination, PW-6 also stated that he had conducted the inquest of the deceased but he had not called any Magistrate or Doctor at the time of inquest of the deceased.

During further examination of PW-6 on 10.11.2020, PW-6 stated that he had seized one kalam dao which was exhibited as M.Ext.1 and which was produced in the Court.

16. In the examination of the appellant under Section 313 CrPC, the appellant was apprised of the evidence that had been adduced against him with regard to the killing of his brother, to which the appellant gave a blanket denial, by saying that a false case had been lodged against him and that he did not know anything about the medical examination report of the deceased.

17. As can be seen from the evidence recorded by the learned Trial Court, PW-1 is the eyewitness to the appellant killing his brother with a dao. Though PW-2 has stated in his cross-examination that PW-1 was not present in her

house at the time of the incident, we do not give any weight to the said testimony of PW-2, inasmuch as, he has testified that he was not present in his house at the time of the incident and as such, could not say anything about the incident. This admission by PW-2 that he was not present at the place of occurrence at the time of the incident, gives rise to a clear inference that he could not have known whether PW-1 was present at the place of occurrence at the time of the incident, when he himself was not present at the place of occurrence. Further, PW-2 had stated in his cross-examination that the distance between his house and the informant's house was about 20 ft only. As such, no weight can be given to the evidence of PW-2 that the informant was not present in her house, at the time the incident occurred in her house and her courtyard.

18. The delay in filing the FIR by the informant has been clearly explained by PW-1, wherein she stated that when she saw the assault on her husband with a dao by the appellant, she screamed. However, as she was in fear, she could not go near her husband, who was apparently cut in nearly two pieces, as per the evidence of the Prosecution witnesses. Further, the appellant stayed in their courtyard the whole night, and it is plausible that due to fear and the gruesome manner of murder of her husband, she could not move away from the place of occurrence immediately, to lodge an FIR.

19. The evidence of PW-2, who is also the brother of the deceased and the appellant, shows that he had turned hostile, though a suggestion had been put to him that he was an eyewitness to the appellant and the deceased quarrelling, which led to the appellant bringing a dao from his house and cutting his brother into two pieces and killing him, after dragging him out from the house. As stated earlier, PW-2, who has been declared a hostile witness, had taken a stand

that he was not present in his house at the time of the incident, though his house was just 20 feet away from the house of the informant. If PW-2 was not present in his house at the time of the incident, he could not have known whether PW-1 was present in her house at the time of the incident.

20. The evidence of PW-3, who was on sentry duty in Talap Outpost on 11/02/2018, was to the effect that he saw the appellant carrying a kalam dao in his hand at around 6:30 to 7:00 a.m, and that the appellant had told him that he inflicted a cut injury on his brother, who had died. The evidence of PW-3 shows that an extra-judicial confession had been made by the appellant to PW-3. Though an extra-judicial confession is a weak type of evidence, the same can be used for corroboration and other evidence can also corroborate an extra-judicial confession.

21. In the case of ***Balku Oram Vs. State of Odisha***, reported in ***2026 INSC 852,*** the Supreme Court has held that the Court can act on the testimony of a single witness, provided he is wholly reliable. That is the logic of Section 134 of the Evidence Act. The Supreme Court further held that direct ocular evidence, if found natural, cogent and trustworthy, prevails over all other kinds of evidence. In the present case, there is nothing to doubt the evidence of PW-1, who is the wife of the deceased and the sister-in-law of the appellant, who had seen the gruesome murder of her husband being cut into nearly two pieces.

22. In the case of ***Kumar Vs. State of Tamil Nadu,*** *reported in* ***(2013) 12 SCC 699****,* the Supreme Court has held that an extra -judicial confession, if voluntarily made in a fit state of mind, the same can be relied upon along with

other materials, to convict an accused. As it is a weak piece of evidence, credibility of the witness will have to be seen. As stated earlier, the appellant had made an extra-judicial confession to PW-3 and on considering the evidence of the eyewitness PW-1, we have no reason to doubt the evidence given by PW-3.

23. The evidence of PW-4, who is the nephew of PW-1, is to the effect that he was informed by the appellant that the appellant had killed the deceased and that the informant was at home at the time of the incident. He also stated that he was at home at the time of the incident and his house was at a distance of 20 feet from the house of the appellant.

In his cross-examination, PW-4 however, stated that he did not witness the incident with his own eyes and he could not say who had assaulted the deceased and for what reason the assault had been made. He also stated that the complainant was at her home at the time of the incident.

24. We are not at all sure as to whether the evidence of PW-4 can be relied upon, especially when he was not a witness to the incident. If he was in his house and not a witness to the incident, how could he have known if PW-1 was in her house at the time of the incident?

25. In any event, leaving aside the evidence of PW-4, the evidence of the Doctor (PW-5), is to the effect that the injuries on the deceased showed that the head was separate at the upper end of the neck from the body. There was laceration all over the body of the deceased and death had occurred due to

shock and haemorrhage as a result of injuries caused by a sharp weapon. On considering all the above, we find that the Doctor's evidence corroborates the evidence of PW-1 and PW-3 and proves that the appellant was the only person who had inflicted the injuries on the deceased with a dao.

26. With regard to the counsel for the appellant stating that there was a defect in the investigation on account of the seized clothes of the deceased not being marked by the police and the weapon not being produced before the learned Trial Court, we are afraid that the appellant's counsel has only considered the evidence of PW-1, without considering the evidence of PW-3, who has identified the dao that had been seized, which is exhibited as M. Ext. 1.

27. In any event, in the case ***Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr.,*** reported in ***(2013) 12 SCC 796***, the Hon'ble Supreme Court held that non-recovery of weapon is not fatal to the Prosecution case, if there is direct evidence to the crime. In the present case, the weapon (dao) has been seized by the police and identified by PW-3 in Court. Even if the same had not been seized or produced at the time of examining the Prosecution witnesses, the same would not lead to the acquittal of the accused, inasmuch as, there is an eyewitness to the crime in question.

28. With regard to the submission made by the appellant's counsel that the seized clothes of the deceased not being marked by the police amounted to a defect in the investigation, we have to remind ourselves of the fact that the Supreme Court has repeatedly affirmed that a defective or faulty investigation does not automatically result in the acquittal of an accused, nor does it vitiate

the trial or the Prosecution case, unless the defect is fatal, i.e, unless the defect goes to the core of the case, causing unmitigated prejudice to an accused.

29. In the case of ***Arvind Kumar @ Nemichand and Ors. Vs. State of Rajasthan***, reported in ***2021 SCC OnLine SC***, ***1099***, the Hon'ble Supreme Court held that a defective investigation per se would not enure to the benefit of the accused, unless it goes into the root of the very case of the Prosecution being fundamental in nature. While dealing with a defective investigation, a Court of law is expected to sift the evidence available and find out the truth, on the principle that every case involves a journey towards truth.

30. In the case of ***C. Muniappan & Ors. Vs. State Of Tamil Nadu,*** reported in ***(2010) 9 SCC 567***, the Hon'ble Supreme Court held that a defect in the investigation by itself cannot be a ground for acquittal. The conclusion of a trial in a case cannot be allowed to depend solely on the probity of the investigation, as investigation is not the solitary area for judicial scrutiny in a criminal trial. The Courts would have to see whether the evidence of the Prosecution is reliable or not and whether the lapse in the investigation affected the object of finding out the truth.

31. In the present case, the evidence of the eyewitness, which we find to be truthful, is corroborated by the evidence of PW-3 and PW-5. The above leaves us with no doubt that defect in investigation, if any, does not go to the root of the issue for finding out the truth, which is the fact that the Prosecution has been able to prove the guilt of the appellant, beyond all reasonable doubt, as having committed the offence punishable under Sections 448 and 302 IPC.

32. In view of the reasons stated above, we do not find any ground to interfere with the decision of the learned Trial Court. The appeal is accordingly dismissed.

33. Send back the TCR.

34. In appreciation of the assistance provided by the learned Legal Aid Counsel for the appellant, her fees should be paid by the Gauhati High Court Legal Services Committee as per norms.

JUDGE **JUDGE**

Comparing Assistant

Anupam Chutia

Digitally signed by Anupam Chutia
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