

GAHC010027132020



2025:GAU-AS:7527

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

Case No. : CRL.A(J)/5/2020

SAJAN MURA
JORHAT, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. A KALITA, AMICUS CURIAE,

Advocate for the Respondent : PP, ASSAM,

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MRS. JUSTICE MARLI VANKUNG

Advocate for the Appellant : Shri A. Kalita, Amicus Curiae
Advocate for the Respondent : Ms. A. Begum, APP, Assam

Dates of Hearing : **08.05.2025 & 09.05.2025**
Date of Judgment : **10.06.2025**

JUDGMENT & ORDER

(S.K. Medhi, J.)

The present appeal has been preferred from jail against the judgment and order dated 20.09.2018 passed by the learned Additional Sessions Judge, Jorhat, Assam in Sessions Case No. 170/2014 under Section 302 of the IPC [corresponding to Section 103 BNS], thereby sentencing the appellant under Section 302 Indian Penal Code [corresponding to Section 103 BNS] to undergo RI for life and fine of Rs. 15,000/. (Rupees Fifteen Thousand) in default, further imprisonment for six months.

2. The criminal law was set into motion by lodging of an *Ejahaar* on 20.10.2014 by the PW1, who is the brother of the deceased. It was alleged that on the previous day i.e. 19.10.2014, the accused had assaulted his younger sister. He had also stated that prior to the said incident, the accused had been assaulting his younger sister since a month after their marriage. It has also been stated that the deceased was three months pregnant. On the said date at 9 P.M., the appellant had assaulted his younger sister again, due to which she had sustained grievous injuries. On receiving the said information, they went to see her and found her dead. It has been alleged, that after commission of the offense, the accused had attempted to escape but was apprehended by the local public and handed over to the Police Station. It was also stated that the accused had confessed to have assaulted the younger sister of the informant, which led to her death.

3. Based on the aforesaid *Ejahaar*, the formal FIR was registered as Teok Police Station Case No. 324/14 under Section 302 IPC [corresponding to Section 103 BNS] and investigation was carried out.

4. After completion of the investigation, the Charge Sheet was laid and on consideration of the same, the charge was framed by the learned Trial Court under Section 302 of the IPC [corresponding to Section 103 of BNS]. On denial thereof, the trial had begun in which the prosecution had adduced evidence through 10 Nos. of witnesses including two official witnesses.

5. PW1, who is the informant, is the brother of the deceased. He had stated that the information regarding the assault committed by the appellant upon his sister was given by a boy, who informed him about her critical condition. He had accordingly gone to her house with his mother and brother and on reaching there, had noticed grievous injury on the left side of her eye. It has also been stated that the deceased was three months pregnant. He had also hinted upon an extrajudicial confession made by the appellant that he had beaten her and thereafter gave her medicine.

6. The FIR was proved as Exhibit 5 and the inquest made over the dead body culminating into an Inquest Report was proved as Exhibit 1. In his cross-examination, the PW1 had stated that the father-in-law, mother-in-law, brother-in-law, and sister-in-law of the deceased were in the same house.

7. PW2 is the mother of the deceased whose deposition is almost identical to that of the PW1. She had also deposed that on being, the appellant had admitted to having beaten the deceased stating that she was not taking her medicines. She had proved the Inquest Report as exhibit 1.

8. PW3 is a resident of the locality who had, however, deposed that she

did not know how the deceased had died. She had further stated that she never witnessed any incident of assault by the appellant on the deceased.

9. PW4 is the father of the appellant who had stated that the deceased had died by consuming some medicines and the appellant had never inflicted any torture upon her. The said PW4 was declared hostile and accordingly cross-examined by the prosecution. He had, however, denied all the suggestions put to him by the prosecution.

10. PW5 is also a resident of the locality and had deposed that the appellant used to quarrel and torture the deceased. He had stated that on 19.10.2014, one Sajan Munda (PW7) had informed him about the incident and accordingly, he had gone to the place of occurrence. He had found that the appellant was absconding and subsequently the local people had apprehended him. He had also hinted about a confession made by the appellant of causing death by punching and assaulting on the head of the deceased. He had also deposed of noticing injury marks on the neck of the deceased. In his cross-examination he had denied the contradictions put to him by the defence.

11. PW6 is the Doctor, who had conducted the post-mortem on the deceased. In his opinion the following observations have been made.

“In my opinion, death of the deceased was due to coma as a result of the head injury. All injuries were ante mortem caused by blunt weapon which was homicidal in nature.

Approximate time since death – 18 to 24 hrs.

Ext.2 is the said post mortem report prepared by me. Ext.2(1) is my signature thereon.”

In his cross-examination, he had, however, clarified that the deceased was not found to be pregnant. The report was proved as Exhibit 2.

12. PW7 is one Sajan Munda, who was working as a Night Guard in a nearby office which was at a distance of about 200 metres from the house of the appellant. He had deposed that the brother of the deceased, one Lalit Dandashi, had come to his office and told him about the incident. He had also hinted upon an extra-judicial confession made by the appellant that he had assaulted the deceased. He had also deposed that on the next morning, the Police had come and arrested the appellant and deposed that he had seen injuries on the right forehead of the deceased. In his cross-examination, he had, however, clarified that the appellant was apprehended by them from the adjoining garden.

13. PW8 is a resident of the locality of the appellant and had deposed that at about 9 P.M. on the said date, PW7 had informed him over telephone regarding the incident, whereafter he had gone to the house of the appellant and found the deceased lying dead on a bed. The appellant was accordingly apprehended, and the Police had come in the morning. He had also deposed of noticing injuries near the eye of the deceased. The said PW8 was cross-examined where he had denied the contradictions.

14. The evidence of PW9 does not appear to be relevant and therefore is not required to be discussed.

15. PW10 is the Investigating Officer, who had conducted the investigation. He had deposed that on 20.10.2017 at about 6 A.M., PW7, PW8 and one Uttam Dandashi had appeared in the Out Post bringing the appellant with them. Accordingly, he had registered GD Entry No.3, which

was proved as Exhibit 3. The steps taken in the investigation were also narrated including preparation of the Sketch Map which was proved as Exhibit 4. He had also proved the Inquest Report prepared by the Additional District Magistrate, Dujen Singh, as Exhibit 1. The FIR was proved as Exhibit 5. He had also stated that the appellant had confessed before him. In addition, he referred to the statement of PW4, who was declared hostile, and clarified that the said witness had given his statement under Section 161 of CrPC [corresponding to Section 180 of BNSS]. In his cross-examination he had stated that he reached the place of occurrence at 7 A.M., and the contradictions were duly proved.

16. Based on the aforesaid deposition and the materials, the appellant was examined under Section 313 of the CrPC [corresponding to Section 351 of BNSS], wherein he had denied the allegations. Against Question No. 5, which was on the aspect of consumption of poison, it was replied that the deceased had consumed poison and died by falling inside the house. Against Question No. 14, the response was that he had never tried to flee away and against Question No. 16, he had stated that the deceased had died by falling inside the house as she had consumed poison.

17. Based on the aforesaid materials including the depositions and the response of the appellant in his examination under Section 313 of the CrPC [corresponding to section 351 of BNSS], the impugned judgment has been passed which is the subject matter of challenge in the present appeal.

18. We have heard Shri A. Kalita, learned Amicus Curiae for the appellant. We have also heard Ms. A. Begum, learned Additional Public Prosecutor for the State of Assam.

19. Shri Kalita, the learned Amicus Curiae, has submitted that in the present case, there is no direct evidence in the form of eyewitness and the evidence is circumstantial in nature and therefore the prosecution bears a heavy burden to prove the circumstances without any break, which leads to only one conclusion, i.e., the guilt of the appellant and no other hypothesis is possible. He has further submitted that the proof has to be without any reasonable doubt.

20. The learned Amicus has submitted that both in the FIR dated 20.10.2014 and from the deposition of PW1 who is the informant, it appears that the brother of the victim, mother-in-law and brother-in-law, who were in the know of things were not examined. He has added that though the father-in-law of the victim was examined, he had turned hostile. He has also submitted that in the instant case motive is not established and since the case hinges upon circumstantial evidence, motive is required to be established and proved.

21. He has submitted that the injuries mentioned in the Inquest Report were not matching with the opinion given by the Doctor in the PM report. He has further elaborated by contending that while in the Inquest Report the injury mark was said to be on the right side near the eye with no injuries on the head, however in the PM report (Exhibit 2) wounds were found to be present and as per the opinion as extracted above, the death was due to coma, as a result of head injuries by blunt weapon. He has submitted that in the instant case, there is no allegation of use of any weapon and further, no weapon was recovered from the appellant or from the place of occurrence.

22. The learned Amicus has submitted that the impugned judgment is

mainly on the basis of Section 106 of the Evidence Act [corresponding to section 109 of BSA], which would not have any application in the present case. He has also submitted that the learned Trial Court has taken into consideration certain extrajudicial confessions which are not admissible as evidence, as the appellant was assaulted by the public and those confession were not free from any threat, promise or inducement and is accordingly hit by Section 24 of the Indian Evidence Act [corresponding to Section 22 of BSA].

23. The learned Amicus has additionally submitted that it remains unexplained why the prosecution did not record the statements of the appellant's mother-in-law, brother-in-law, and sister-in-law, who were present in the same house, a matter which has not been addressed during the course of the trial.

24. In support of his submissions, the learned Amicus has relied upon the following judgments:

- a. (2020) 14 SCC 750 [Shailendra Rajdev Pasvan & Ors. Vs. State of Gujarat]***
- b. 2022 SCC OnLine SC 1454 [Nandu Singh Vs. State of M.P. (now Chhattisgarh)]***
- c. AIR 2023 SC 1464 [Pawan Kumar Chourasia Vs. State of Bihar]***
- d. (2025) 3 SCC 565 [Ramu Appa Mahapatar Vs. State of Maharashtra]***

25. In the cases of ***Shailendra*** (supra), ***Pawan Kumar Chaurasia*** (supra) and ***Ramu Appa*** (supra), the aspect of extrajudicial confession has

been explained by the Hon'ble Supreme Court. In the case of **Shailendra** (supra), the following observations have been made:

“9. In Sahadevan v. State of T.N. [(2012) 6 SCC 403] referring to the aspect of evidentiary value of extra-judicial confession, it was observed:

“14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.”

Elaborating on the jurisprudence that has evolved with regard to extra-judicial confessions, this Court in Sahadevan (supra) had stipulated the principles that are required to be kept in mind while relying on extra-judicial confession as evidence. These principles have been succinctly mentioned in Jagroop Singh v. State of Punjab[(2012) 11 SCC 768] as:

“30. Recently, in Sahadevan v. State of T.N., after referring to the rulings in Sk. Yusuf v. State of W.B. and Pancho v. State of

Haryana, a two-Judge Bench has laid down that the extra-judicial confession is a weak evidence by itself and it has to be State of Haryana, a two-Judge Bench has laid down that the extra-judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution; that it should be made voluntarily and should be truthful; that it should inspire confidence; that an extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence; that for an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities; and that such statement essentially has to be proved like any other fact and in accordance with law."

26. In the case of **Pawan Kumar Chaurasia** (supra), the following observations have been made:

“EVIDENTIARY VALUE OF EXTRA-JUDICIAL CONFESSION

5. As far as extra-judicial confession is concerned, the law is well settled. Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extra-judicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith. Normally, a person would not make a

confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra-judicial confession is corroborated by other evidence on record, it acquires more credibility.”

27. In the case of **Ramu Appa** (supra), the following observations have been made:

“19.2. Upon an indepth analysis of judicial precedents, this Court in Sahadevan (supra) summed up the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused:

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact

and in accordance with law.”

28. In the case of **Nandu Singh** (supra), the aspect of motive, which is required to be proved in a case based on circumstantial evidence, has been reiterated. For ready reference, the relevant observation is extracted hereinbelow-

“10. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.”

29. The learned Amicus concluded his arguments by submitting that the chain of circumstances in the instant case is not complete; the crucial witnesses have not been examined; the boy from whom the informant obtained the information has not been examined; and there are inconsistencies between the Inquest Report and the PM report. Finally, he submitted that the age of the appellant is a relevant factor that must be considered in relation to conviction and sentencing, which has not been taken into account.

30. *Per contra*, Ms. Begum, the learned APP, has opposed the appeal and has supported the impugned judgment and order of the learned Trial Court. She has submitted that though the instant case is based on circumstantial evidence, all the circumstances are complete in every aspect and the same leads to only one conclusion i.e. the complicity of the appellant. She has defended the approach of the learned Trial Court in applying Section 106 of

the Evidence Act [corresponding to section 109 of BSA] by submitting that the appellant and the deceased were under the same roof and the medical evidence would establish that the death is due to the head injuries, and therefore there was a burden cast upon the appellant to provide explanation. Ms. Begum has also submitted that the appellant attempted to explain the death as resulting from poison ingestion, which, however, has not been supported by the medical evidence. She has submitted that as per the medical evidence, the cause of death was head injuries inflicted by a blunt weapon. She has submitted that there are extrajudicial confessions made before PW 1, PW 2, PW 5, and PW 7 that the appellant had punched the deceased's face and head with his fist, which led to her death.

31. The learned APP has also highlighted the aspect that if the story introduced by the appellant that the deceased had died out of poisoning had any semblance of truth, there would not be an occasion for him to flee away which he had tried in the instant case. By drawing the attention of this Court to the PM report, which was proved as Exhibit 2, the learned APP has submitted that the description of the injuries are such that the same can be caused by punching with fist. She has also submitted that the extrajudicial confession made by the aforesaid witnesses are reliable. She has highlighted that amongst the witnesses before whom the extrajudicial confession was made by the appellant, PW 5 and PW 7 are independent witnesses and there is no record to show that there were any inimical terms of the appellant with the aforesaid two witnesses. She has submitted that even the depositions of the witnesses regarding extrajudicial confession tally with the description of the injuries in the PM report – Exhibit 2. In the PM report, the following injuries have been stated:

Injuries:

“(1) Periorbital tissues around right eye are contused. On dissection haemorrhages found inside the tissues and red in colour.

(2) Abraded contusion of size 3 cm x 2.5 cm over the right molar eminence. On dissection haemorrhages found inside the tissues and red in colour.

(3) Contusion of size 5 cm x 6 cm over the vertex of the scalp. On dissection clotted blood found in the layers of scalp and red in colour.”

32. In support of her submissions, the learned APP has relied upon the following cases-

a. (2010) 2 SCC 583 [Aftab Ahmad Ansari Vs. State of Uttaranchal]

b. 2022 0 AIR(SC) 5273 [Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh]

c. AIR 2023 SCC 5551 [Balvir Singh Vs. State of Uttaranchal]

33. The case of ***Aftab Ahmad Ansari*** (supra) has been relied upon to buttress the argument that extrajudicial confession of though may be a weak piece of evidence can be taken into consideration when the witnesses are unbiased.

34. The case of ***Balvir Singh*** (supra) has been relied upon on the aspect of circumstantial evidence being a rule of evidence to come to a conclusion of guilt and thereby appropriate order may be passed of

conviction and sentencing. In the said case, based on earlier case laws, the applicability of Section 106 of the Evidence Act [corresponding to section 109 of BSA] has been explained. For ready reference, the relevant observations of the Hon'ble Supreme Court are extracted hereinbelow:

“37. The aforesaid decision of Shambhu Nath (supra) has been referred to and relied upon in Nagendra Sah v. State of Bihar reported in (2021) 10 SCC 725, wherein this Court observed as under:

“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence

is no ground to convict the accused.”

(Emphasis supplied)

57. Even where there are facts especially within the knowledge of the accused, which could throw a light upon his guilt or innocence, as the case may be, the accused is not bound to allege them or to prove them. But it is not as if the section is automatically inapplicable to the criminal trials, for, if that had been the case, the Legislature would certainly have so enacted. We consider the true rule to be that Section 106 does not cast any burden upon an accused in a criminal trial, but that, where the accused throws no light at all upon the facts which ought to be especially within his knowledge, and which could support any theory of hypothesis compatible with his innocence, the Court can also consider his failure to adduce any explanation, in consonance with the principle of the passage in Deonandan Mishra (supra), which we have already set forth. The matter has been put in this form, with reference to Section 106 of the Evidence Act, in Smith v. R. reported in 1918 A.I.R. Mad. 111, namely, that if the accused is in a position to explain the only alternative theory to his guilt, the absence of explanation could be taken into account. In the present case, taking the proved facts together, we are unable even to speculate about any alternative theory which is compatible with the innocence of the accused.”

35. Similarly, the case of **Ramanand** (supra) has been cited on the aspect of the requirement of motive in a case based on circumstantial evidence. It is submitted by the learned APP that it has been laid down that

absence of motive in such a case may not be fatal in all cases. The relevant observations are extracted hereinbelow-

“87. It is a settled principle of criminal jurisprudence that in a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. This Court in various decisions has laid down the principles holding that motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused.”

36. The learned APP accordingly submits that the instant appeal is devoid of any merits and is liable to be dismissed.

37. The rival submissions have been duly considered and the materials, including the TCRs placed before this Court have been carefully examined.

38. It is undisputed that the present case does not rest on direct evidence from eyewitnesses but is founded on circumstantial evidence. Consequently, it is essential to examine whether the conviction and sentence were based on a finding that the chain of circumstances is complete in all respects, leading to the sole conclusion of the appellant's guilt, and that no other hypothesis consistent with the innocence of the accused can be reasonably considered.

39. The FIR was lodged on 20.10.2014 at about 10.30 A.M. regarding an incident of 19.10.2014, which had occurred at about 9 P.M. It has been stated that the accused / appellant had assaulted the deceased who was three months pregnant and when the informant, along with his mother and brother had gone to the place of occurrence which was the residence of the appellant, they found the deceased lying dead. The PW1, PW2, PW5 and PW7 had stated that the appellant had confessed before them regarding him assaulting the deceased by fist on her head and face. The Inquest Report had provided that there were injury marks on the right cheek near the eye and it is highlighted by the learned Amicus Curiae that in the PM report it was recorded that the injuries were on the head. Though an argument has been made on behalf of the appellant, that there is inconsistency with the Inquest Report and the PM report, this Court is unable to accept the said argument as an Inquest Report is done on an overview of the body of the deceased whereas the Post-Mortem is done in a meticulous manner by examining each and every part of the body by dissecting the same. Therefore, observation in the Inquest Report of finding injury mark on the right cheek near eye cannot be held to be grossly inconsistent with the findings in the PM report.

40. The learned Amicus has laid great emphasis on the aspect that vital witnesses were not examined. While this aforesaid aspect may carry some relevance, we are of the view that the duty cast upon the prosecution is to prove the complicity of the accused, and the witnesses examined in the present case are adequate to fulfill this requirement.

41. Coming to the aspect of the application of Section 106 of the Evidence Act [corresponding to section 109 of BSA] in the instant case,

while the learned Amicus has submitted that the aforesaid provision would have no application, the learned APP has submitted that the instant is a fit case wherein there would be application of Section 106 of the Indian Evidence Act [corresponding to Section 109 of BSA]. To examine the said issue, the aforesaid provision is extracted hereinbelow:

“106. Burden of proving fact especially within knowledge.

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling in a railway without a ticket. The burden of proving that he had a ticket is on him.”

42. In the present case, it is undisputed that the deceased and the appellant not only lived under the same roof but shared a room, in which the deceased was found dead with fatal injuries to her face and head. As noted above, there are materials to show that such complicity of the appellant is also acknowledged by him in his examination under Section 313 of the CrPC [corresponding to Section 351 of BNSS], where he had explained that he had given a fist blow and subsequently administered medicine, after which the deceased had consumed poison and passed away.

43. As already held above, there is no evidence of the death caused by any poisoning and the medical evidence corroborates with the nature of the

assault which has been proved in the trial. Therefore, the findings arrived at that the death has been caused by injuries caused by blunt weapon on the head and face of the deceased stands established beyond all reasonable doubts and the complicity of the appellant is also proved. On the aspect of the response of the appellant accused in his examination under Section 313 of the CrPC [corresponding to Section 351 of BNSS] wherein he had admitted on inflicting fist blows on the deceased, it would be relevant to refer to the case of ***Paul vs. State of Kerala*** reported in ***(2020) 3 SCC 115*** wherein the Hon'ble Supreme Court made the following observations read as follows:

“20. We, therefore, have no hesitation in holding that a statement made by the accused under Section 313 CrPC even if it contains inculpatory admissions cannot be ignored and the court may where there is evidence available proceed to enter a verdict of guilt. ...”

44. On the aspect of admissibility of extra-judicial confession, one may gainfully refer to the case of ***Sahadevan and Anr. vs. State of Tamil Nadu*** reported in ***(2012) 6 SCC 403*** wherein the following observations have been made:

“16. Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

45. These bring us to the arguments advanced by the learned Amicus, who by relying upon the case of **Nandu Singh** (supra), has strenuously urged that in the instant case, no motive has been proved. Though in the case of **Ramanand** (supra), it has been held that absence of motive may not be fatal in every case based on circumstantial evidence, the said issue would be required to be examined so far as the aspect of sentencing is concerned. In other words, we are required to examine the aspect of the conviction and sentencing which has been given under Section 302 IPC

[corresponding to Section 103 of BNS].

46. The Hon'ble Supreme Court in the case of ***Anda & others. Vs. The State of Rajasthan*** reported in ***AIR 1966 SC 148*** has laid down as follows:

“5. Section 300 tells us when the offence is murder and when it is culpable homicide not amounting to murder. Section 300 begins by setting out the circumstance when culpable homicide turns into murder which is punishable under S. 302 and the exceptions in the same section tell us when the offence is not murder but culpable homicide not amounting to murder punishable under S. 304. Murder is an aggravated form of culpable homicide. The existence of one of four conditions turns culpable homicide into murder while the special exceptions reduce the offence of murder again to culpable homicide not amounting to murder. We are not concerned with the exceptions in this case and we need not refer to them.

...

7. ...The sufficiency of an intentional injury to cause death in the ordinary way of nature is the gist of the clause irrespective of an intention to cause death. Here again, the exceptions may bring down the offence to culpable homicide not amounting to murder.”

47. Section 300 of the IPC [corresponding to Section 101 BNS] lays down five exceptions where culpable homicide would not amount to murder. However, it is settled law that an offence under Section 299 of the IPC [corresponding to Section 100 BNS] will not be excluded from the charge of murder under Section 300 solely on the basis of five exceptions. For a

culpable homicide to be murder, it must come within the four provisions of Section 300. Murder is the gravest form of culpable homicide. At this juncture, it is pertinent to refer to the principles laid down by the Hon'ble Supreme Court in the case of ***State of AP Vs. Rayavarapu Punnayya & Anr.*** reported in ***AIR 1977 SC 45***.

“21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Sec. 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still

be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code."

48. Further in the case of ***Kishore Singh & Anr. Vs. The State of M.P.*** reported in ***AIR 1977 SC 2267*** it has been laid down as follows:

"11. The distinction between culpable homicide (Section 299, I.P.C.) and murder (Section 300, I.P.C.) has always to be carefully borne in mind while dealing with a charge under Section 302, I.P.C. Under the category of unlawful homicides fall both cases of culpable homicide amounting to murder and those not amounting to murder. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300, I.P.C. But even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300, I. P. C. to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300, I. P. C., namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under S. 299, I. P. C."

49. There is another aspect of the matter regarding the nature of the assault. From the materials on record, it appears that the injuries were caused by fist blows and no weapon as such was recovered or even alleged to be used. Though there is no strait jacket formula that where only fist blows are involved, there may not be an intention to cause death, it would be necessary to examine the particular facts and circumstances.

50. From the facts and circumstances discussed above, the intention of the appellant to cause death, or even the knowledge that death was a probable consequence of the inflicted injury, cannot be readily inferred.

51. Under the aforesaid facts and circumstances and the discussions made, we are of the view that the impugned judgment and order dated 20.09.2018 passed by the learned Additional Sessions Judge, Jorhat, Assam in Sessions Case No. 170/2014 under Section 302 of the Indian Penal Code [corresponding to Section 103 BNS] is warrants modification. The conviction made is liable to be altered to one under Section 304 Part II of the IPC [corresponding to Section 105 BNS] which is accordingly done. Consequently, the sentence is altered to rigorous imprisonment for a period of seven years with fine of Rs.15,000/- (Rupees Fifteen Thousand), and in default of which, simple imprisonment for three months.

52. Accordingly, the appeal stands partly allowed.

53. Let the TCRs be sent back.

54. We record our valuable appreciation for the assistance rendered by Shri A. Kalita, the learned Amicus Curiae and he shall be entitled to the prescribed fee.

JUDGE

JUDGE

Comparing Assistant