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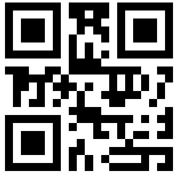

THE GAUHATI HIGH COURT

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

Case No. : CRL.A(J)/126/2018

KAMESWAR MAJHI
DIBRUGARH.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. S KHOUND, AMICUS CURIAE

Advocate for the Respondent : MR. M PHUKAN(ADDL.PP, ASSAM)

BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

For the Appellant : Mr. S. Khound, Amicus Curiae.

For the Respondent(s) : Mr. M. Phukan, Addl. P.P.

Date of Hearing : 20.05.2021.

Date of Judgment : 03.06.2021

JUDGMENT & ORDER(CAV)

(Soumitra Saikia, J)

Heard Mr. S. Khound, learned counsel for the appellant, Amicus Curiae appointed by the Court as well as Mr. M. Phukan, learned Additional Public Prosecutor for the State of Assam.

2. The present appeal has been preferred against the Judgment and Order dated 26.09.2018 passed by the learned Sessions Judge, Dibrugarh, in Sessions Case No. 132/2014 convicting the appellant under Section 302 IPC and sentencing him to undergo rigorous imprisonment for life and a fine of Rs.1,000/-(Rupees One Thousand Only) in default of payment of fine to undergo rigorous imprisonment for another 1(one) month.

3. The prosecution's case is that on 02.08.2006 at about 5:30 pm, the accused Kameswar Majhi called one Ramu Bhumij, his niece Pramila Bhumij and her husband Ramesh Bhumij to his house. He offered them a bench to sit in the courtyard of his house and asked them to prepare "sada" (chewing tobacco). While Ramu Bhumij and Ramesh Bhumij were preparing tobacco, the accused armed with a dao attacked Ramu Bhumij from behind beheading him. Ramu Bhumij, the deceased, died instantaneously as his head was severed from his body on being attacked with a dao by the accused-Kameswar Majhi.

4. An FIR was lodged by P.W.1, Sri Sukhchand Bhumij on 03.08.2006 i.e. the following day before the Tengakhat Police Station district Dibrugarh. The FIR filed, was duly received and registered as Tengakhat P.S. Case No. 61/2006 under Section 302 IPC. Upon due investigations, the Police filed the charge-sheet under one head wherein the accused Kameswar Majhi was charged with murder and intentionally causing death of the deceased-late Ramu Bhumij thereby committing an offence punishable under Section 302 IPC and within the cognizance of Court of Sessions, Dibrugarh. The prosecution presented 5(five) witnesses in support of their case as well as other evidences like Post-mortem report, inquest report, sketch map and dead body challan etc.

5. P.W.1 is the informant who is the elder brother of the deceased. In his deposition, the P.W.1 stated that on the date of occurrence i.e. 02.08.2006 while he was in his house, his sister-in-law i.e. wife of the deceased-Ramu Bhumij informed him that Ramu Bhumij was cut and murdered by Kameswar Majhi. He then came to the house of the accused-Kameswar Majhi and saw the dead body

of the deceased-Ramu Bhumij. The head of the deceased was separated from his body. He came to know from Ramu Bhumij that they saw the accused-Kameswar Majhi assault Ramu Bhumij. P.W.1 informed the matter to the Gaon Bura of the locality on the same day and on the next day the FIR was lodged at Tengakhat Police Station which was written by one Inam Khan, on his instructions and he had put his thumb impression on the FIR. P.W.1 deposed that the Police completed the inquest over the dead body of his deceased brother-Ramu Bhumij and he identified the deceased as his brother. The Police, thereafter, took the dead body for Post-mortem examination.

6. In his cross-examination, P.W.1 stated that he was not the eye-witness to the occurrence. The accused-Kameswar Majhi is his neighbour. He stated that he did not personally know who committed the murder. He deposed that when he went to the place of occurrence it was dark and although he did not enter into the compound of the accused he had seen the dead body from 100(hundred) yards. It was dark and there was no electricity in the village but he saw the head in the body at a distance. He also deposed that he cannot say whether there was any quarrel between the accused and the deceased nor had he seen Ramu Bhumij at any time with the accused-Kameswar Majhi. P.W.1 also denied a suggestion that the accused was falsely entangled with the case.

7. From the deposition of the P.W.1, it is apparent that he is the elder brother of the deceased and a neighbor of the accused but he was not an eye-witness to the offence committed. But he had seen the dead body with its head severed lying in the courtyard of the accused.

8. P.W.2 Smt. Pramila Bhumij who is the niece of the deceased-Ramu Bhumij. In her deposition, she stated that while she was coming from her work, the accused called her. Thereafter, she along with her husband Ramesh, the deceased-Ramu Bhumij and her son went to the house of th e accused. The accused gave them a bench to sit into the courtyard of the house and the accused also offered them betel nut. When her maternal uncle, the deceased-

Ramu Bhumij was preparing "sada" (chewing tobacco) in his hands, the accused was cutting fencing tree with a dao. Suddenly, the accused attacked her maternal uncle, the deceased-Ramu Bhumij with a dao on his neck. In the assault, the head of the deceased was severed and it fell to the ground. When the P.W.2 asked the accused as to what he had done, the accused wanted to assault them also and, therefore, they fled away from the place of occurrence. She, then, informed the matter to the wife of the deceased. She informed her elder maternal uncle-Sukhchand Bhumij (PW.1) who also went to the place of occurrence but the accused fled away from the place.

9. In the cross-examination, P.W.2 stated that distance between her house and the house of the deceased is about 200 meters. There are houses of other persons on all the sides of house of the accused. After the incident, she raised hue and cry but nobody from the surrounding houses assembled at the place of occurrence. She stated that the deceased used to take liquor and also prepare liquor in the house of the accused. But she does not have any relation with the accused nor did she used to talk with the wife of the accused. She denied the suggestions that the accused went to her house on the day of the occurrence or that the deceased misbehaved his wife very badly or that the deceased was also present in her house. She stated that when dead body of the deceased was lifted by her husband, her maternal uncle and some other persons, she saw a kopi dao about 1 ½ feet in length which is tagged inside the pant of the deceased. She further denied the suggestions that the accused was in the bari (Garden/Vegetation) and not in the courtyard. She also denied that she and others had proceeded to the house of the accused armed with dao in their hands and upon seeing them when the accused attempted to flee, then her husband chased him and wanted to assault him with a dao, but the dao blow instead fell on the deceased and as a result the deceased died. She admitted that although she did not see the accused striking the deceased with the dao but she heard sound of falling of the decapitated head of the deceased. She stated that after the occurrence she and her husband left their village and went

to their parental house in Lejai and thereafter came to Dibrugarh and has been residing in Chiring Chapori, Dibrugarh. She further denied the suggestions that the accused is an innocent person or that they had bad relationship with him. She specifically stated that she heard the sound of the falling head of the deceased on the ground although she did not see the accused striking the deceased.

10. P.W.3, Ramesh Bhumij is the husband of the P.W.2. He also deposed that on the date of the occurrence at about 4:30 pm. He, his wife accompanied by the deceased went to the house of the accused, where they were offered a bench to sit in the courtyard. He deposed that he and the deceased were preparing "sada" (chewing tobacco) with their hands and that the accused was cutting fencing tree by the side of his courtyard with a dao. He deposed that suddenly the accused dealt Ramu Bhumij-the deceased, a blow with the dao in his hands and as a result of which the head of the deceased was severed and it fell on the ground. Out of fear he and his wife fled away from the place of occurrence. They immediately reported the matter to the wife of the deceased as well as to the elder brother of the deceased. He deposed that he accompanied by one Lakhi Bhumij on the following day and went to the Tengakhat Police Station to inform the matter. Thereafter, the police came to the place of occurrence and recorded his statements and conducted inquest over the dead body of the deceased in his presence. The police, thereafter, sent the body for post-mortem.

11. In his cross-examination, P.W.3 stated that the deceased used to make country liquor in the house of the accused sometimes. He stated that he as well as the deceased and the accused also used to drink liquor in the accused's house sometimes. He also stated that he did not see the accused striking the deceased but he heard the sound of the head of the deceased falling on the ground and which is why he could not say who killed the deceased and caused his death. He stated that after the attack, the accused also chased them and out

of fear they fled away from the place of occurrence. He stated that there was no quarrel between the accused and the deceased and there was good relation between both of them. P.W.3 also stated that he saw some blood at the place of occurrence and on the dead body of the deceased.

12. From the deposition, it is seen that P.W.3 was also present at the place of occurrence and at the time of occurrence. In his deposition he stated that he did not witness the striking of the blows leading to the death of the accused but he had heard the sound of the head falling on the ground after it was decapitated from the body of the deceased because of the assault. It is also evident from the deposition of P.W.3 that the deceased, P.W.3 and his wife P.W.2 were sitting on the bench and the deceased and the P.W.3 were preparing "sada" (chewing tobacco), when the deceased was attacked from behind by the accused. It is also evident that the accused was cutting fencing tree with his dao near the courtyard. Besides the P.W.2 and P.W.3, there was the accused and the deceased who were present in the courtyard of the accused at the time of occurrence. From the deposition of P.W.2 and P.W.3 it is evident that at the time and place of occurrence, the accused had a dao and he was attending to the fencing tree in the courtyard, just prior to the occurrence.

13. P.W.4, the Investigating Officer deposed that after receipt of the FIR it was registered as Tengakhat P.S. Case No. 61/2006 under Section 302 IPC and endorsed to him to investigate the case. He went to the place of occurrence with his staff and he found the beheaded body. The head of the deceased was lying on the ground and the torso was lying on the wooden bench. Inquest was completed by the Circle Officer on the body in the presence of witnesses and he completed the sketch map. He identified the inquest report and the sketch map in his deposition. He further deposed that the body was sent for post-mortem examination and report was accordingly collected. He deposed that the accused evaded his arrest on several occasions and accordingly charge-sheet was filed showing him as an absconder. In his cross-examination, he stated that he had

noted the names of the persons who were present there, namely, Sukchand Bhumij, Ramesh Bhumij, Pramila Bhumij, Lakhi Bhumij and Sukra Majhi. He deposed that besides the severed head and the torso which was lying on the bench he did not see anything from the place of occurrence. He deposed that there was blood stain on the ground and he did not find any dao inside the clothing of the deceased.

In his cross-examination, he declined the suggestion that the accused was falsely implicated in the case. He also stated that all the witnesses are related families and he did not record the statement of any independent witness. He also declined the suggestion that the dead body of the deceased was not found in the compound of the accused.

14. P.W.5 is the medical expert, who conducted the post-mortem. P.W.5, Dr. Hemanta Kumar Mahanta was posted in the Department of Forensic Medicine in the Assam Medical College, Dibrugarh during the period of occurrence and he conducted the post-mortem on the deceased. He deposed that the Post-mortem report was present in the evidence during the trial. In the report, he has stated that one beheaded body with the head separated by cut injury on the neck was presented for post-mortem. All the clothes on the body were blood-stained. While, examining the injuries, he had stated in the post-mortem report that the head was separated by three blows from a "heavy sharp cutting weapon". He had also opined that when taken together the separated head and the body were found fit each other both anatomically and in complexion.

In his cross-examination, the Medical expert stated that he had not sent the blood samples of the body and the head as to whether the blood belongs to the same person. The Medical expert further deposed that he had not done the further investigation to affirm that the head belongs to the body as it was necessary according to his opinion.

15. In the examination of the accused under Section 313 Cr.P.C. the accused

stated that he was not at home (on the date of occurrence) and that he did not kill the accused. The accused stated that there was a quarrel between his wife and Pramila Bhumij (P.W.2) and that P.W.2 went and called Ramu Bhumij-the deceased to his house. When he reached he saw Ramu Bhumij in his house and there was a fight between P.W.3 and his wife and then his wife asked him to flee and he went away. He stated that he did not know how the incident took place. Besides the said explanation, the accused did not have anything to say to any of the eight questions put to him by the Sessions Judge. He merely stated that he was innocent and that did not kill the deceased.

16. On these evidences which were presented during the trial the Sessions Judge convicted the appellant under Section 302 IPC sentencing him to undergo rigorous imprisonment for life and a fine of Rs.1,000/-(Rupees One Thousand Only) and in default of payment of fine to undergo rigorous imprisonment for another 1(one) month. The Sessions Judge did not consider the case to be within the category of rarest of the rare cases and, therefore, declined to pass an order of death sentence.

17. Mr. S. Khound, learned Amicus Curiae submits that a perusal of the evidence before the trial Court reveals that the murder weapon was never recovered and consequently the same could not be sent for proper examination which can point to the guilt of the accused. He referred to the evidences of P.W.3 to submit that no blood stains were seen at the place of the occurrence nor were any blood stains were noticed on the clothes of the deceased. He refers to the post-mortem report and the medical opinion to submit that the victim's head was severed after three heavy blows with the help of the sharp weapon. The learned Amicus Curiae referring to the medical opinion and Post-mortem report that three blows by sharp weapon were dealt on the deceased which resulted in the head being severed from the torso, it is unbelievable as to why the witnesses who claimed to be present in the place of occurrence did not witness the alleged assault by the accused. He submits that when three blows

were effected on the deceased by the accused as per the post-mortem report and the P.W.2 and P.W.3 claimed to be sitting on the bench with the deceased, it is impossible for them not to have witnessed an eye account of the alleged assault made by the accused upon the deceased. That apart, there were several houses situated in the surroundings the house of the accused and in her evidence P.W.2 deposed that she raised a hue and cry after the incident but none of the people nearby came out and that P.W.2 and P.W.3 also fled away from the place of the occurrence immediately after the incident, does not inspire any confidence and thereafter such testimony of the P.W.2 and P.W.3 ought not to have been relied upon to arrive at a conclusion towards the guilt of the accused leading to his conviction. The learned Amicus Curiae also pointed out that the only weapon which was stated to be present at the time of occurrence was a Kopi dao which is about 1 ½ feet and which was stated to have been tagged on the clothing of the deceased.

18. Referring to all these evidences, the learned Amicus Curiae submits that the trial Court convicted the accused solely on the circumstantial evidence and that there was no eye-witness to the incident alleged. He further submits that the depositions of P.W.2 and P.W.3 are unreliable in view of the discrepancies pointed out hereinabove. He further referred to the medical opinion and submits that since further medical investigation relating to the blood stains found on the victim's body were not examined and which in the opinion of the medical expert was necessary to ascertain as to whether the blood stains on the body and the head belonged to the same person, the medical evidence presented during trial cannot be relied upon to prove the guilt of the accused. He also submitted that non-recovery of the murder weapon, namely, "a heavy sharp cutting weapon" used allegedly by the accused to decapitate the deceased, was fatal to the prosecution, inasmuch as, there were no eye-witnesses to the assault alleged to have been committed by the deceased.

19. Mr. Khound, learned Amicus Curiae, therefore, submits that this is a case

where the impugned judgment needs to be interfered with as the conviction solely based on circumstantial evidences failed to point towards the guilt of the accused beyond reasonable doubt and that to without recovery and production of the murder weapon.

20. In support of his contentions, Mr. Khound, learned Amicus Curiae relies on the Judgment of the Supreme Court in *Chandubhai Shanabhai Parmar –vs- State of Gujarat* reported in *AIR 1982 SC 1022.* Mr. Khound, learned Amicus Curiae submits that Apex Court in the said judgment had held that when ocular evidence is unreliable, then the chain of circumstances is not completed to base a conviction solely on circumstantial evidences.

21. Mr. Khound, learned Amicus Curiae for the appellant submits that out of the five witnesses, P.W.1 to P.W.3 are near relations of the deceased. Accordingly, being relatives, their depositions cannot be safely relied upon solely to point the guilt to the accused, more particularly, in a case where there are no eye-witnesses or where the murder weapon is not recorded. The learned Amicus Curiae also submits that the prosecution also failed to attribute any notice to the accused. As such, in the absence of any notice attributed to the accused, the conviction of the accused based solely on circumstantial evidence could not have been maintained by the learned Sessions Judge. The learned Amicus Curiae submits that the impugned judgment of the learned Sessions Judge, Dibrugarh be interfered with and be set aside and the accused be released from jail.

22. Per contra, Mr. M. Phukan, learned Additional Public Prosecutor submits that there is no infirmity in the appreciation of evidence by the trial Court which requires any interference by this Court at the Appellate stage. He refers to the testimony of P.W.3 in the cross-examination to submit that the P.W.3 in his cross-examination stated that when he went to the house of the accused there was no other person present. At the time of his arrival accompanied by P.W.2 and the wife of the deceased, the accused was cutting fencing tree with long

handle Mechi dao.

23. Mr. Phukan, learned Additional Public Prosecutor submits that although the P.W.3 and as also P.W.2 did not witness the assault on the deceased by the accused on the date of occurrence, they have both heard the sound and had seen the severed head falling on the ground.

24. Mr. Phukan, learned Additional Public Prosecutor submits that it is evident from the perusal of the depositions of the witnesses that the witnesses had given their depositions after about 9 or 10 years after the incident had taken place. He, therefore, submits that these depositions were given by the witnesses recollecting the sequence of the events from their memories. Therefore, there may be minor discrepancies in the narration of the sequence of the events in the depositions of the witnesses, which ought to be ignored. He submits that such discrepancies will not scuttle the prosecution's case against the accused. In this regard, he relies on the judgment of the Supreme Court in the case of *Kishan Narain –vs- State of Maharashtra* reported in *(1974) 3 SCC 368* para-9. Mr. Phukan further submits that the Apex Court in this judgment held that when depositions are made by witnesses from their memory, some discrepancies in the sequence of events are not to be considered fatal for the prosecution.

25. With regard to the submissions of the learned Amicus Curiae that the P.W.1 to P.W.3 are related witnesses of the deceased and, therefore, conviction based solely on their depositions is unfair and not reliable, the learned Additional Public Prosecutor submits that where other independent witnesses are not available and if the depositions of these witnesses, even though related would be necessary when P.W.2 and P.W.3 as submitted above, were present at the place of occurrence and at the time of occurrence. They are the most natural witnesses in the facts of the present case.

26. Mr. Phukan, learned Additional Public Prosecutor submits that the Supreme Court has held that where related witnesses are natural witness their

depositions can be safely relied upon. He refers to the judgment of the Apex Court rendered in the *State of Rajasthan –Vs- Smt. Kalki and Anr.*, reported in *(1981) 2 SCC 752* para-7. He further submits that it is the quality of testimony of the witnesses which are more relevant rather than the quantity. It is his submission that where there is a quality in the testimony even in a case of single witness, the same will be sufficient to rely upon for the trial Court for the purposes of conviction of an accused. He submits that where the ocular evidence is duly supported by the injuries in the post-mortem report and the evidence of the medical expert, then such ocular evidences duly corroborated by the medical evidences, can be relied upon by the trial Court for conviction. For this purpose, the learned Additional Public Prosecutor relies upon the case of *Chittar Lal –vs- State of Rajasthan* reported in *(2003) 6 SCC 397* PARA- 7, *Kishan Ram and Ors. –vs- State of Uttarakhand* reported in *(2013) 16 SCC 383 para-22, Solanki Chimanbhai Ukabhai –vs- State of Gujarat* reported in *(1983) 2 SCC 174 para-13*.

27. Mr. Phukan, learned Additional Public Prosecutor further submits that non-recovery of the murder weapon is not always fatal to the prosecution, more particularly, where there are direct evidence available. He submits that where the testimony of the witnesses are sufficiently corroborated by medical evidences, non-recovery of the murder weapon will not be fatal to the prosecution's case. In support of the submission, Mr. Phukan relies upon the judgment of the Apex Court in the *Pradumansinh Kalubha –vs- State of Gujarat 1992 (Supp) 2 SCC 62* para-19.

28. Mr. Phukan, learned Additional Public Prosecutor also submits that absence of the motive should also not be a ground to discard ocular evidences available. He refers two judgments of the Supreme Court to support the lack of motive is not always fatal to the prosecution's case. He refers two judgment of the Apex Court in the case of *Bipin Kumar Mondal –vs- State of West Bengal* reported in *(2010) 12 SCC 91* para-24, *Solanki Chimanbhai Ukabhai –vs-State*

of Gujarat reported in *(1983) 2 SCC 174para- 13* .

29. Mr. Phukan, learned Additional Public Prosecutor submits that the prosecution has established its case against the accused notwithstanding the non-recovery of the murder weapon and notwithstanding that the P.W.1 to P.W.3 are related witnesses to the deceased. He also submits that the doctrine of presumption viz-a-viz the burden of proof should not be pedantic as held by the Supreme Court in the case of *State of West Bengal –vs- Mir Mohammad Omar and Ors.,* reported in *(2000) 8 SCC 382* para- 31.

30. On the above premises, it is necessary to examine the judgment of the trial Court, which has been assailed in the present Criminal (Jail) Appeal will have to be examined. The case put up by the prosecution is that on 02.08.2006 at about 5:30 pm. (date and time of the occurrence) the deceased was assailed by the accused in the courtyard of the house of the accused. As a subsequent to the fatal blows, the head of the deceased was severed from his torso and the accused was killed instantaneously. Although, there are no specific eye-witnesses to the accused causing the fatal blows dealt upon the deceased by the accused that the murder weapon, P.W.2 and P.W.3 who are the niece and her husband of the deceased, were present in the courtyard of the accused's residence at the time of the occurrence. As is revealed from the testimony, the deceased, P.W.2 and P.W.3 were sitting on the bench offered by the accused in their courtyard and the P.W.3 were preparing "sada" (chewing tobacco) for the purposes of betel nut. Although P.W.2 and P.W.3 did not witness the actual fatal blow dealt upon the deceased by the accused, they heard the sound of the head falling on the ground and saw the body/torso of the deceased fall on the ground. The further testimony is that when they enquired from the accused as to what he had done, they were also sought to be assaulted by the accused with a dao and therefore they fled away from the scene and thereafter informed the wife of the deceased and elder brother of the deceased about the incident. It is further seen from the testimony of P.W.2 and P.W.3 that when they were

present in the courtyard of the accused, the accused was seen cutting fencing trees with a dao. Therefore, although P.W.2 and P.W.3 did not witness the actual blow with the murder weapon dealt upon the deceased by the accused, there is no denial of the fact that they were present at the place of occurrence on the date and time of occurrence. It is also not disputed that the deceased was assaulted in the courtyard of the accused's residences.

31. During his statements under Section 313 Cr.P.C., on the questions put to him, the accused merely denied that he had committed the crime and that he was innocent, but he did not offer any explanation as to who could have severed the deceased's head or how the death of deceased was caused in the courtyard of the accused's residence. The accused also stated in his 313 statements that he was not present in the house at the time of incident and that when he reached the house, he found the deceased and P.W.2 and P.W.3 along with his wife. He stated that his wife told him that P.W.2 had quarreled with her and that he was asked to flee from the place. Accordingly, he fled away from his residence and therefore, he does not know how the incident occurred. Such explanation sought to be offered by the accused in his statements underSection 313 Cr.P.C., does not inspire any confidence at all that the accused was not guilty of the offence. The defence has also not been able to dislodge the testimony of P.W.2 and P.W.3 in their cross-examination. The testimonies of all the witnesses examined i.e. P.W.1, P.W.2 and P.W.3 reveal that the incident of assault of the deceased did take place on the date and time of occurrence stated as well as at the place of occurrence, namely, the courtyard of the accused. The defence has not been able to put up any explanation as to how the death occurred in his house when he was present. It had taken place in his courtyard. The defence has also not been able to explain as to why the wife of the accused should ask the appellant to flee from the place, that is, his house. It defies common sense that the appellant should flee from his own house when there was a quarrel in his house of his wife with some others unless he was threatened, of which there is no explanation or evidence.

32. P.W.2 is the star witness of the prosecution. Although, she did not specifically witness the accused striking the deceased but she, her husband, the deceased and the accused were all in the courtyard of the accused's house. After the attack on the deceased by the accused, she heard the sound of the head of the deceased falling on the ground after the assault by the accused. For all practical purposes, she is an eye-witness to the entire incident, even though she may not have witnessed the actual, striking of the head by the dao, but she heard the sound of the head falling and saw the severed head immediately after the assault.

33. Although, some deficiency may be noted in the manner of examination conducted by the medical expert, the fact remains that the medical expert opined/deposed that the head and the body were found to fit each other both anatomically and in complexion and that all its internal organs were healthy and pale.

34. Considering all the evidences which were adduced before the trial Court, it cannot be said that there were material discrepancies in the testimony of the witnesses to such an extent that it cannot be relied upon and accepted. The evidences adduced by the prosecution witness, read with the injury report, there can be no other explanation other than the guilt of the accused. The testimony of the witnesses was duly corroborated by the Medical evidence and the Post-mortem report which point towards the guilt of the accused.

35. Insofar as the absence of motive is concerned, it cannot be accepted th at motive was totally absent, inasmuch as, the accused in his statement recorded under Section 313 Cr.P.C. has stated that when he had returned home he saw that there was a quarrel between his wife and P.W.3. He also saw the deceased being present in the house at the time of occurrence. However, when asked by his wife to leave the place he left the place of occurrence. That apart, P.W.3 in his deposition has stated that the deceased used to make country liquor in the house of the accused. It is not explained by the accused and/or put up by the

defence as to the cause of the quarrel between the wife of the accused and P.W.2 on the date of occurrence. What is established is that there was a quarrel and that his wife asked him to leave the place. Even assuming that there was no motive, the facts which are evident from the testimony of the witness is that the deceased was assaulted because of which his head was severed from the torso and he died instantaneously. The occurrence took place on 02.08.2006 at 5:30 p.m. in the courtyard of the accused. In this context, the judgment of the Apex Court in the case of *Bipin Kumar Mondal –Vs- State of West Bengal* reported in *(2010)12 SCC 91* may be referred to.

36. The relevant paragraph is extracted hereinbelow:-

> "*24. It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance.* ***Therefore, if thegenesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance.*** *(Vide Hari Shanker v. State of U.P. [(1996) 9 SCC 40 : 1996 SCC (Cri) 913] , Bikau Pandey v. State of Bihar [(2003) 12 SCC 616 : 2004 SCC (Cri) Supp 535] and Abu Thakir v. State of T.N. [(2010) 5 SCC 91 : (2010) 2 SCC (Cri) 1258]).*"
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> ***(emphasis supplied)***

37. Insofar as the non-recovery of the murder weapon is concerned as the accused was seen attending to cutting fencing tree in his courtyard just immediately proceeding occurrence, although P.W.2 and P.W.3 did not see the actual assault on the deceased by the accused they were present in his courtyard, at the time of occurrence. They had heard the sound of the head falling on the ground and had seen the head being severed from the body. The medical staff also points to the fact that the head and the torso are found to fit over both anatomically and in complexion.

38. In view of the above facts which were brought out during the trial from the testimony of the witness, the non-recovery of the murder weapon cannot be

considered to be fatal so as to demolish the case of the prosecution. The Apex Court in the case of *Pradumansinh Kalubha –Vs- State of Gujarat* reported in *1992 Supp (2) SCC 62* as held in respect of non-recovery of murder weapon as under:-

> "*19. According to the learned counsel, the absence of blood on the spot near the Haresh Stores, the absence of blood in the weapon seized throws doubt on the credibility of the investigation. The failure to examine non-Harijan witnesses is also commented upon amounting to suppression of material evidence. The nature of the injuries sustained by the deceased and the medical evidence justify the inference that there would not have been the possibility of any blood stain remaining on the spot for the injured was immediately removed from there and the place is one trampled upon by the public. It is quite possible that a large crowd gathered at the scene immediately after the occurrence and if no blood could be detected by the Inspector, it is not possible to infer that the incident did not happen at the spot. The presence of blood in the weapon is also of no consequence and no incriminating statement has been made by the accused on the production of the same.* ***In a case where there is direct evidence, even the seizure of the weapon is not very material.***"
>
> ***(emphasis supplied)***

39. Insofar as the testimony of P.W.1, P.W.2 and P.W.3 are concerned, the learned Amicus Curiae raised a plea that they being related witnesses, the conviction ought not to have been based solely on their testimony. Such submission of the learned Amicus Curiae cannot be accepted in view of the fact that testimony of P.W.2 and P.W.3 has not been dislodged during the cross-examination by the defence. The testimony of the P.W.1, P.W.2 and P.W.3 in respect of the recovery of the body of the deceased along with severed head of the deceased from the courtyard of the house of the accused is also supported by the evidence of Investigating Officer, P.W.4. The testimony of P.W.2 and P.W.3 in respect of the events immediately after the assault by the accused has also not been dislodged by the defence in their cross. The medical evidence and the post-mortem further corroborate the testimony of P.W.2 and P.W.3 in respect of the fact that the deceased was assaulted and in consequence thereof his head was severed from his body and that they had heard the sound and had also

seen the head of the deceased falling on the ground after the assault.

40. Such testimony of the P.W.1, P.W.2 and P.W.3 which could not be dislodged by the defence during the trial, cannot be disbelieved merely because the said witnesses are related to the deceased. From the testimony of P.W.2 and P.W.3, it is seen that they are the most natural witnesses to the assault of the deceased by the accused in his courtyard. In this context, the judgment of the Apex Court in the case of *Bhudeo Mandal and Ors., -Vs- State of Bihar* reported in *(1981) 2 SCC 752* is relevant:-

> "*7. As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an "interested" witness. She is related to the deceased. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished.* ***A witness who is a naturalone and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested".*** *In the instant case PW 1 had no interest in protecting the real culprit, and falsely implicating the respondents."*
>
> ***(emphasis supplied)***

41. As discussed above in respect of the incident on the date and time of occurrence, when questions are put by the trial court to the accused under Section 313 Cr.P.C., the accused in his reply could not furnish any explanation which could have raised a doubt regarding his convictions. In spite of specific queries being put up by the trial Court to the accused, the accused merely maintained a stoic denial. The accused attempted to project that there was a quarrel between his wife and P.W.2 when he was not at home. However, when he reached home he saw the quarrel between his wife and P.W.2 and he also saw the deceased in his residence. Thereafter, on his wife asking him to free, he

fled away and, therefore, he does not know how the incident took place. Such explanation sought to be offered by the accused will not inspire confidence, inasmuch as, even assuming that the accused did not assault the deceased, the recovery of the cadaver of the deceased and his severed head from his courtyard by the police has not been explained by the accused in his statement under Section 313 Cr.P.C. There is also no denial that the accused was cutting fencing tree on the date and time of the incident in his courtyard. In this context, the Apex Court has in the judgment has laid down the principle that lack of motive and/or non-recovery of the murder weapon is not fatal to the prosecution in all circumstances.

42. In this context, the judgment of the Hon'ble Supreme Court in the case of *SolankiChimanbhaiUkabhai–Vs-StateofGujarat*reportedin*(1983)2SCC174* has held as under:-

> *13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses,* ***the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.***
>
> ***(emphasis supplied)***

43. In view of all the above discussions, we find no infirmity in the impugned judgment rendered by the learned Sessions Judge, Dibrugarh, in Sessions Case No. 132/2014 convicting the accused-appellant under Section 302 IPC and sentencing him to undergo rigorous imprisonment for life and a fine of Rs.1,000/-(Rupees One Thousand Only) in default of payment of fine to undergo rigorous imprisonment for another 1(one) month.

44. Accordingly, the instant Jail Appeal is dismissed as being found to be

devoid of any merit.

45. The Registry is to send back the trial Court records.

JUDGE **JUDGE**

Comparing Assistant