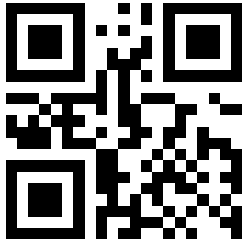


GAHC010017822022



2024 : GAU-AS : 8121-DB

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

CRIMINAL APPEAL [I] NO. 25/2022

Leben Ramchiary

.....Appellant

-VERSUS-

The State of Assam, Represented by
Public Prosecutor, Assam.

.....Respondent

Advocates :

Appellant	:	Ms. B. Chowdhury, Amicus Curiae
Respondent	:	Ms. A. Begum, Additional Public Prosecutor, Assam

Date of Hearing, Judgment & Order : 01.08.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

JUDGMENT & ORDER [ORAL]

[M. Choudhury, J]

The instant criminal appeal from jail under Section 383, Code of Criminal Procedure, 1973 [CrPC] is preferred against a Judgment and Order dated 23.09.2021 passed by the Court of learned Sessions Judge, Baksa at Mushalpur in Sessions Case no. 50 of 2020, which arose out of Mushalpur Police Station Case no. 41/2020 and corresponding PRC Case no. 834/2020. In the trial before the learned Sessions Judge, Baksa, the accused-appellant faced a charge of murder under Section 302, Indian Penal Code [IPC] and after the trial, the learned Sessions Judge, Baksa [‘the trial court’, for short] finding the accused-appellant guilty of uxoricide for committing the murder of his wife, has convicted him under Section 300, IPC. After hearing him on the point of sentence under Section 235[2], IPC, the learned trial court has sentenced the accused-appellant under Section 302, IPC to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/-, in default of payment of fine, to undergo rigorous imprisonment for further 6 [six] months.

2. The case of the prosecution, in brief, is that investigation into the case, Mushalpur Police Station Case no. 41/2020 was launched on 20.05.2020 when one Amrit Brahma, as the informant, lodged a First Information Report [FIR] before the In-Charge, Nikashi Out Post on that day alleging that the accused was involved behind the murder of his wife, Phishi Ramchiary on 14.05.2020.
3. On receipt of the FIR, the In-Charge, Nikashi Out Post, Mukunda Das [P.W.11] registered the same at 10-00 a.m. as Nikashi Out Post General Diary Entry No. 339 dated 20.05.2020 and forwarded the FIR to the Officer In-Charge, Mushalpur Police

Station for registering a case after proper sections of law. On receipt of the FIR, the Officer In-Charge, Mushalpur Police Station registered the FIR as Mushalpur Police Station Case no. 41/2020 for the offences under Section 302, IPC and Section 201, IPC. The In-Charge, Nikashi Out Post, Mukunda Das [P.W.11], a Sub-Inspector of Police had already taken up the investigation of the case on being authorized by the Officer In-Charge, Mushalpur Police Station in reference to General Diary Entry no. 339.

4. In the FIR, the informant who also testified as P.W.2, had *inter alia* mentioned that on 20.05.2020, the accused, Leben Ramchiary, a resident of Village No. 2 Shantipur, Police Station – Mushalpur confessed before the Government Gaonburah, Somnath Sarma [P.W.3] to the effect that on 14.05.2020, he [the accused] had killed his wife, Phishi Ramchiary with a *Khukuri* over domestic issues and kept the body buried under the floor of his house.
5. In the course of investigation of the case, the I.O. [P.W.11] recorded statements of a number of witnesses under Section 161, CrPC. The dead body of the deceased was also dug out from a place inside the house of the accused on 20.05.2020. After digging out the dead body, inquest proceeding was conducted at that place itself by an Executive Magistrate on 20.05.2020. Thereafter, the dead body of the deceased, Phishi Ramchiary was forwarded to Dr. Ravi Boro Civil Hospital, Mushalpur on 20.05.2020 itself. The I.O. after going to the place of occurrence [P.O.], that is, the house of the accused took the accused into custody. The I.O., in the course of investigation, also made seizure of a *Khukuri* [a sharp cutting weapon], besides preparing a Sketch Map of the P.O.
6. After completing investigation into the case, Mushalpur Police Station Case no. 41/2020 [corresponding PRC Case no. 834/2020], the I.O. submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 20/2020 on 25.06.2020 finding a *prima facie* case well established against the accused for committing the

offences under Section 302, IPC and Section 201, IPC. On submission of the charge-sheet, the learned Chief Judicial Magistrate, Baksa, Mushalpur secured the appearance of the accused from jail custody on 02.11.2020. After making enquiry with the accused, a Legal Aid Counsel was appointed to represent the accused in the case. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate, Baksa complied with the procedure prescribed in Section 207, CrPC by furnishing copies of the case, PRC Case no. 834/2020 to the accused on 02.11.2020. The learned Chief Judicial Magistrate, Baksa, Mushalpur, by an Order of Commitment dated 02.11.2020, committed the case records PRC Case no. 834/2020 to the Court of Sessions, Baksa, Mushalpur for trial, by notifying the Public Prosecutor as regards commitment of the case; and by directing the jail authority to cause production of the accused before the Court of Sessions on 11.11.2020.

7. On receipt of the case records of PRC Case no. 834/2020, the Court of Sessions, Baksa, Mushalpur [‘the trial court’] registered the same as Sessions Case no. 50 of 2020. On appearance of the accused before the learned trial court, the case of the prosecution was opened by the learned Public Prosecutor. After hearing the learned Public Prosecutor and the learned defence counsel; and upon perusal of the materials available in the case record, the learned trial court framed the following charge, on 23.12.2020, against the accused :-

That you on 14.05.2020 at your own house, in Vill-No. 2 Shantipur under Mushalpur Police Station, committed murder of your wife Phishi Ramchiary by intentionally causing her death and thereby you have committed an offence punishable under Section 302 IPC within my cognizance [Sessions Judge].

8. When the charge was read over and explained to the accused, the accused pleaded not guilty to the charge and claimed to be tried. During the course of the trial, the prosecution in order to bring home the charge, examined eleven nos. of witnesses

including the I.O. and the Autopsy Doctor, and the prosecution witnesses were :- [i] P.W.1 : Dr. Manoj Mazumdar; [ii] P.W.2 : Amrit Brahma; [iii] P.W.3 : Somnath Sarma; [iv] P.W.4 : Sonaram Goyary; [v] P.W.5 : Rabi Basumatary; [vi] P.W.6 : Sansuma Daimary; [vii] P.W.7 : Arun Boro; [viii] P.W.8 : Nebla Boro; [ix] P.W.9 : Guneswar Ramchiary; [x] P.W.10 : Sibra Goyary; and [xi] P.W.11 : Mukunda Das, the I.O. The prosecution side also exhibited seven nos. of documents, namely, [i] Ext.-1 : Post-Mortem Examination Report; [ii] Ext.-1-A : FIR; [iii] Ext.-2 : Inquest Report; [iv] Ext.-3 : Dead Body Challan; [v] Ext.-4 : Seizure List; [vi] Ext.-5 : Sketch Map of the P.O.; and [vii] Ext.-6 : Charge-Sheet. In additional, the prosecution also exhibited two material exhibits:- [i] Mat. Ext.-1 : a Nepali *Khukuri*; and [ii] Mat. Ext.-2 : a Compact Disc. One Charan Ramchiary, the son of the accused and the deceased was examined as a Court Witness, C.W.1.

9. After closure of the evidence from the prosecution side, the accused was examined under Section 313, CrPC and he was asked to explain the incriminating circumstances which had emerged against him from the prosecution evidence. The plea of the accused was of denial. When the accused was asked as to whether he would adduce defence evidence, he declined to adduce any defence evidence in support of his case. After hearing the learned counsel for the parties; and upon evaluation of the evidence/materials on record; the learned trial court holding the accused guilty of the offence under Section 300, IPC, passed the Judgment and Order dated 23.09.2021 of conviction and sentence under Section 302, IPC, impugned herein.
10. We have heard Ms. B. Chowdhury, learned Amicus Curiae for the accused-appellant and Ms. A. Begum, learned Additional Public Prosecutor for the respondent State of Assam.
11. Ms. Chowdhury, learned Amicus Curiae appearing for the accused-appellant has submitted that the learned trial court has erred in placing absolute reliance in the

testimony of a child witness, who was examined as C.W.1. It has been contended that the testimony of a child witness is to be considered with utmost care and caution. Ms. Chowdhury has further contended that the learned trial court has placed reliance in the extra-judicial confession allegedly made by the accused before few of the prosecution witnesses to hold that the accused had confessed about the commission of crime of murder of his wife. Contending that an extra-judicial confession by itself is a weak piece of evidence, and requires corroboration by credible evidence, Ms. Chowdhury has also contended that the purported extra-judicial confession was alleged to have been made much after the death of the deceased. The learned Amicus Curiae has also expressed doubt about the manner in which the alleged weapon of assault was shown to be recovered. It has been contended that the *Khukuri*, seized during the course of investigation, cannot be held as the weapon of assault as the same was not sent for serological examination. It has been contended that the learned trial court has also failed to take into consideration the explanation given by the accused during his examination under Section 313, CrPC wherein he mentioned about the involvement of other person[s] as the perpetrator[s] of the crime. Contending as above, the learned Amicus Curiae has submitted that the case of the prosecution is full of infirmities and it is settled proposition that the benefit of doubt, at all stages, goes in favour of the accused. In such view of the matter, the Judgment and Order of conviction and sentence passed by the learned trial court is liable to be set aside on the ground that the prosecution has failed to prove its case beyond all reasonable doubts.

12. Strenuously opposing the contentions of the learned Amicus Curiae, Ms. Begum, learned Additional Public Prosecutor appearing for the State has submitted that in the case in hand, the prosecution was successful in proving of the required circumstances by cogent and credible evidence. The story sought to be projected by the accused during his examination under Section 313, CrPC by providing an explanation, a feeble one, was clearly not true and in view of such explanation turning out to be not truthful one, such explanation has emerged as an additional

link, corroborating the case of the prosecution. The testimony of the prosecution witnesses regarding extra-judicial confession were not at all disputed by the defence during the trial and as such, the contention of the learned Amicus Curiae that such extra-judicial confession is not to be believed is not acceptable at all at the stage of appeal. The learned Additional Public Prosecutor has contended that the dead body of the deceased was recovered from inside the house of the accused and the same is a clear pointer to the fact that the accused had the exclusive knowledge about the place where the dead body of the deceased was kept concealed. The weapon of assault, that is, the *Khukuri* was handed over to Police by the accused himself at the P.O. and by the time the *Khukuri* was handed over, a period of about six days had already elapsed. Thus, the factum of not sending the same for serological examination cannot have any effect in the case of the prosecution, which, at best, can be a defect in the investigation, without ensuring any benefit to the accused. The extra-judicial confession made by the accused together with the testimony of the court witness, C.W.1 have conclusively established that it was the accused and none else who was the perpetrator of the crime. From the nature of injuries found on the person of the deceased, it is conclusive that the death of the deceased was due to an act of murder. By so canvassing, the learned Additional Public Prosecutor has submitted that as the learned trial court has rightly returned the finding of guilt against the accused, the appeal being bereft of any merits, deserves dismissal.

13. We have given due consideration to the rival submissions of the learned counsel for the parties and have also perused the evidence/materials on record, including the ocular evidence and the documentary evidence, by going through the case records of Sessions Case no. 50 of 2020, in original.
14. As the learned counsel for the parties have advanced arguments on the aspect of extra-judicial confession and the extra-judicial confession of the accused is also one

of the basis on which the learned trial court has reached the finding of guilt, it is apt, at first, to refer to the evidence/materials led on that point.

14.1. The prosecution witness, P.W.3 is the Government Gaonburah and the informant, P.W.2 is the President of the Village – No. 2 Shantipur. The prosecution witnesses, P.W.4, P.W.5, P.W.6, P.W.7, P.W.8, P.W.9 & P.W.11 are residents of Village – No. 2, Shantipur and are co-villagers of the accused and the deceased.

14.2. In their testimonies, P.W.4 – P.W.11 had all deposed that it was P.W.3, Somnath Sarma before whom the accused had confessed first.

14.3. In his testimony, P.W.3, Somnath Sarma, a resident of Village – Bhutan Khuti, deposed to the effect that it was on a day in May, 2020, the accused came to his house in the morning and confessed to him [P.W.3] that he [the accused] had killed his wife, Phishi Ramchiary. After such disclosure was made, P.W.3 took the accused with him to the village of the accused, a resident of Village – No. 2 Shantipur. When they reached the village of the accused, the villagers were made to gather at a place. Before those villagers and in presence of P.W.3, the accused again confessed that he had killed his wife, Phishi Ramchiary. Thereafter, a village *mel* was called wherein also the accused had confessed that he had killed his wife. The matter was thereafter, telephonically informed to Police. The Police personnel came to the village of the accused after about half an hour after the village *mel*. An Executive Magistrate also accompanied the Police personnel. P.W.3 further stated that before the Police personnel and the Magistrate, the accused again confessed that he had killed his wife. P.W.3 further stated that when Police asked the accused about the dead body, the accused himself dug the earth under the *chang* [a kind of platform] of his house and fetched the dead body of his wife therefrom. The accused disclosed that he had killed his wife by a *Khukuri* and thereafter, he produced the *Khukuri* to the Police. The *Khukuri* was thereafter, seized by Police by preparing a Seizure List, Ext.-4 and P.W.3 identified his signature therein as Ext.-4[1]. P.W.3

further stated that inquest on the dead body was held by the Executive Magistrate in his presence and he exhibited the Inquest Report as Ext.-2 with his signature therein as Ext.-2[2]. The *Khukuri* seized by the Seizure List [Ext.-4] when shown to him before the court, P.W.3 identified the *Khukuri* [Mat. Ext.-1] as the one which the accused produced before the Police.

14.4. During cross-examination, P.W.3 deposed that Police personnel came to the P.O. on receiving his information given telephonically. The FIR was lodged subsequently and after lodging of the FIR only, his statement was recorded by Police. This witness further stated that the FIR was lodged after arrival of the Police personnel at the P.O. P.W.3 denied a suggestion that he did not give any statement before Police in connection with the case; and that he deposed falsely.

14.5. From the above testimony of P.W.3, who is the Government Gaonburah, it has emerged that he was the first person before whom the accused stated to have confessed that he had killed his wife, Phishi Ramchiary. It has further emerged that after such disclosure of the accused before P.W.3, both P.W.3 and the accused proceeded to the village of the accused, No. 2 Shantipur. At Village – No. 2 Shantipur, a number of villagers gathered at a place and before the gathering of such villagers, the accused confessed again that he had killed his wife, Phishi Ramchiary.

14.6. P.W.3 has also made mention of a village *mel* wherein the accused had confessed that he had killed his wife. It was after such confession of the accused, the Police was informed.

15. The informant–P.W.2, Amrit Brahma testified to the effect that the occurrence took place in the year 2020. P.W.2 deposed that when the wife of the accused, Phishi Ramchiary was not seen by the neighbours for some time, they made an enquiry about her but she could not be found. P.W.2 stated that after about six days, the

accused visited the house of the Government Gaonburah, Somnath Sarma [P.W.3] and confessed before him [P.W.3] that he [the accused] had killed his wife. Thereafter, the accused, accompanied by P.W.3, came back to the village and informed the villagers at a village *mel*, which was presided over by him [P.W.2]. P.W.2 further stated that at the village *mel*, the accused confessed before them that he had killed his wife and buried her under the soil inside his house. It was thereafter, the Police was informed. Then Police personnel arrived at the village and took the accused into custody. An Executive Magistrate also came with the Police personnel. At the house of the accused, the accused dug the earth of his house and disinterred the dead body of his wife in presence of the Executive Magistrate and the Police personnel apart from him, the Government Gaonburah [P.W.3] and other villagers. P.W.2 stated that the accused had confessed before them that he had killed his wife by stabbing her with a sharp *Khukuri* and the accused himself produced the *Khukuri* to the Police. P.W.2 identified the *Khukuri* [Mat. Ext.-1], shown to him in the court, as the one which the accused produced before the Police. P.W.2 further stated that he was a witness to the seizure of the *Khukuri*, which the Police had seized by a Seizure List. P.W.2 exhibited the FIR lodged by him as Ext.-1 with his signature therein as Ext.-1[1]. Like P.W.3, P.W.2 also stated that it was P.W.3 who telephonically informed the Police prior to the institution of the FIR [Ext.-1] by him in the capacity of the President of the village. P.W.2 stated that his statement was recorded by Police during the investigation.

- 15.1. During cross-examination, P.W.2 stated that *Khukuri* like Mat. Ext.-1 is usually kept almost in every household of the village. P.W.2 also stated that the wife of the accused used to visit houses of other persons and the accused used to enter into quarrels with her. P.W.2 further stated that he never saw the wife of the accused interacting with other male persons of their village. When suggestions were given to P.W.2, he denied those suggestions. P.W.2 denied suggestions that he in his previous Police statement did not state that the accused dug the earth of his house

and fetched the dead body of his wife; and that he did not state that Police personnel and the Executive Magistrate came to the house of the accused.

16. P.W.2, the President of the village, had corroborated the testimony of the P.W.3 on the point that the accused first visited the house of P.W.3 and after confessing before P.W.3, both P.W.3 and the accused came to the village of the accused to confess before the villagers again in the same manner. There was a village *mel* which was presided over by P.W.2 and in the said village *mel*, the accused confessed before the villagers that he had killed his wife and buried her under the ground inside his house. The witness, P.W.2 like P.W.3, deposed that after the accused made confession, at first, before P.W.3 and thereafter, before the villagers during the village *mel*, the Executive Magistrate and the Police personnel came to the village and thereafter, all proceeded to the house of the accused.
17. P.W.4, Sonaram Goyary also testified that it was on 20.05.2020 the accused made the confession before the villagers that he had killed his wife. Hearing about the incident, P.W.4 stated to have visited the house of the accused and after going there, he found presence of the accused, the Gaonburah and other villagers there. P.W.4 stated that the accused stated before them that he had killed his wife. It was after such confession, the Gaonburah [P.W.3] telephonically informed the Police and the Police personnel accompanied by the Executive Magistrate came to the village thereafter. P.W.4 further stated that when Police asked the accused, the accused confessed again that he had killed his wife and buried her under the ground of his house. Thereafter, the accused himself dug out the earth and disinterred the dead body of his wife. P.W.4 further stated that the accused himself produced and handed over the *Khukuri* to the Police personnel and the same was seized by Police in his presence by the Seizure List[Ext.-4]. P.W.4 proved his signature in the Seizure List [Ext.-4] as Ext.-4[2]. P.W.4 also identified the *Khukuri* [Mat. Ext.-1], when shown to him in the court, as the one which the accused

produced before the Police. In the cross-examination, the defence put a number of suggestions before him and P.W.4 denied all those suggestions categorically.

18. The prosecution witnesses – P.W.5, P.W.6, P.W.7, P.W.8, P.W.9 & P.W.10 – have all corroborated the testimonies of P.W.2, P.W.3 & P.W.4 on the aspects that the accused had made confession before P.W.3 at first and thereafter, before them by disclosing that he had killed his wife and thereafter, buried her dead body under the soil in the inside of his house. These prosecution witnesses have also corroborated the testimonies of P.W.2, P.W.3 & P.W.4 on the point that the Executive Magistrate and the Police personnel had come to the village after being informed telephonically by P.W.3 about the matter at Nikashi Out Post. After arrival of the Police team, all of them went to the house of the accused where the accused again confessed regarding killing of his wife by him. These prosecution witnesses had also corroborated the testimonies of P.W.2, P.W.3 & P.W.4 on the point that after arrival of the Executive Magistrate and the Police personnel, the accused after confessing that he had killed his wife, dug out the soil of a place inside his house and disinterred the dead body of his wife therefrom. These prosecution witnesses have also supplemented the testimonies of P.W.2, P.W.3 & P.W.4 on the point that it was the accused, who after confessing that he had killed his wife by a *Khukuri*, handed over the *Khukuri* to the Police and the *Khukuri* was seized by way of a Seizure List [Ext.-4] in presence of P.W.2, P.W.3 & P.W.4, who subscribed their signatures on it witnessing the seizure of the *Khukuri*. The prosecution witnesses, P.W.2, P.W.3 & P.W.4 had identified the *Khukuri* [Mat. Ext.-1], when shown to them in court, as the one which the accused had handed over to Police in their presence. On scrutiny, it is found that the afore-mentioned prosecution witnesses were not cross-examined by the defence on any of the afore-mentioned aspects.
19. A reference to the medical evidence which are in the forms of the testimony of the Autopsy Doctor, P.W.1 and the Post-Mortem Examination [PME] Report [Ext.-1] can be made now to find out about the nature of death met by the deceased.

20. P.W.1, Dr. Manoj Mazumdar, on 20.05.2020, was serving as a Senior Medical & Health Officer at Dr. Ravi Boro Civil Hospital, Mushalpur. P.W.1 testified to the effect that at 04-15 p.m. on 20.05.2020, he performed post-mortem examination on the dead body of Phishi Ramchiary, a female aged about 48 years, in connection with Mushalpur Police Station Case no. 41/2020, after it was identified by UBC, Rahul Barman and Sansuma Daimary [P.W.6]. P.W.1 stated that after conducting autopsy on the dead body, he found the following :-

External appearance: Partially decomposed female dead body without cloth. Mud and sand particle present over the body. Eye and mouth are partially open. Body cold. Rigor Mortis passes out.

1. Cut injury of 10 x 2 cm bone deep present over front of neck 4cm above sternocleavicular joint.
2. Multiple cut injury of sizes ranging 10 x 3 cm muscle deep to 5 x 1cm present over waist, buttock, back, hands and thighs. Black stain is present around the margin around the injury.

No ligature mark detected. Injury as described.

Cranium and Spinal Canal: Scalp as described. Skull healthy. Vertebrae as described. Membrane healthy. Brain semi liquified. Spinal cord not examined.

Thorax: Walls as describes. Rib and cartilage healthy. Pleurae healthy. Larynx and trachea as described. Both lung partial decomposed. Pericardium healthy. Heart healthy. Vessels healthy.

Abdomen: Walls as described. Mouth pharynx, oesophagus - partial decomposed. Stomach - Partial decomposed. Small intestine : Partial decomposed. Large intestine: partial decomposed. Liver : Partial decomposed. Spleen: partial decomposed. Kidney : Both kidneys partial decomposed. Bladder : partial decomposed. Organs of generation, external and internal: Uterus healthy and empty.

Muscles, bones and joints: Injury as described. Disease and deformity not detected. Dislocation not detected.

20.1.P.W.1 testified that after autopsy, he gave his opinion to the effect that the death was due to injuries sustained and all the injuries were ante-mortem in nature. It was his opinion that the death was caused by sharp cutting weapon and the approx. time of death was 3-7 days. P.W.1 proved the Post-Mortem Examination [PME] Report as Ext.-1 and identified his signature therein as Ext.-1[1] and the signature of Dr. Subash Chandra Sarma, Superintendent of Dr. Ravi Boro Civil Hospital as Ext.-1[2] respectively. P.W.1 also exhibited the Inquest Report as Ext.-2 and his signature therein as Ext.-2[1] and the Dead Body Challan as Ext.-3 with his signature therein as Ext.-3[1]. Notably, cross-examination of P.W.1 was declined by the defence.

21. In the PME Report[Ext.-1], it was recorded that the arrival of the dead body was at 03-45 p.m. on 20.05.2020 and the post-mortem examination was performed at 04-15 p.m. on 20.05.2020. In the PME Report[Ext.-1], the following findings were recorded :-

I – External Appearance

1. Condition of subject stout emaciated, decomposed etc. :
Partially decomposed female dead body without cloth. Mud and sand particle present over the body. Eye and mouth are partially open. Body cold. Rigor mortis passes out.
2. Wounds – position, and character :
 - 1] Cut injury of 10 X 2 cm bone deep present over front of neck 4 cm above sternocleavicular joint.
 - 2] Multiple cut injury of sizes ranging 10 X 3 cm muscle deep to 5 X 1 cm present over waist, buttock, back, hands and thighs.
3. Bruise Position size and nature :
Black stain is present around the margin around the injury.
4. Mark of ligature on neck dissection, etc. :
No ligature mark detected. Injury as describe.

II – Cranium and Spinal Canal

- | | | |
|-------------------------------|---|---|
| 1. Scalp, Skull and Vertebrae | : | Scalp as describe Skull healthy
Vertebrae as described |
| 2. Membrane | : | Healthy |
| 3. Brain and spinal cord | : | brain semi liquefied Spinal cord not
examined |

III – Thorax

- | | | |
|------------------------------|---|---|
| 1. Walis ribs and cartilages | : | As described. Rib and cartilage healthy |
| 2. Pleurae | : | Healthy |
| 3. Laryax and trachea | : | As described |
| 4. Right lung | } | Both lung partial decomposed |
| 5. Left lung | | |
| 6. Pericardium | : | Healthy |
| 7. Heart | : | Healthy |
| 8. Vessels | : | Healthy |

IV – Abdomen

- | | | |
|---|---|------------------------------------|
| 1. Walls | : | As described |
| 2. Peritonoum | : | Healthy |
| 3. Mouth, pharyanx, oesophagus | : | Partial decomposed |
| 4. Stomach and its contents | : | Partial decomposed |
| 5. Small intestine and its contents | : | Partial decomposed |
| 6. Large intestine and its contents | : | Partial decomposed |
| 7. Liver | : | Partial decomposed |
| 8. Spleen | : | Partial decomposed |
| 9. Kidneys | : | Both kidneys partial
decomposed |
| 10. Bladder | : | Partial decomposed |
| 11. Organs of generation
external and internal | : | Uterus healthy and empty |

V – Muscles, Bones and Joints

- | | | |
|-----------|---|--------------|
| 1. Injury | : | As described |
|-----------|---|--------------|

- | | | |
|-------------------------|---|--------------|
| 2. Disease or deformity | : | Not detected |
| 3. Fracture | : | Not detected |
| 4. Dislocation | : | Not detected |

More detailed description of injury or disease**Opinion of Assistant Surgeon as to cause of death Sub-Assistant Surgeon**

Death was due to injury sustained in the body. All injury antemortem and caused by sharp cutting weapon.

Time since death 3-7 days.

Sessions Case no. 50/20
Ext. No. 1[1]
Date 6.1.2021
Sd/- Illegible
Sessions Judge, Baksa

Sd/- Illegible
[Dr. Manoj Majumdar]
Medical & health Officer – I
Dr. Ravi Boro Civil Hospital, Mushalpur
Dist.-Baksa, BTAD [ASSAM]

22. Prior to the post-mortem examination, inquest proceeding was conducted and the findings of the inquest proceeding was recorded in the Inquest Report[Ext.-2] by the conducting Executive Magistrate & Circle Officer, Baksa Revenue Circle. In the Inquest Report[Ext.-2], it was recorded that the inquest was held at 01-20 p.m. at Village - No. 2 Shantipur on 20.05.2020. The dead body was shown and identified by the accused and that it cut marks in neck, waist, buttocks, thighs, etc. were recorded. P.W.6 testified that the inquest proceeding was done in his presence and he exhibited the Inquest Report as Ext.-2 and identified his signature as Ext.-2[3].
23. The testimony of the I.O., P.W.11 was to the effect that when he was In-Charge of Nikashi Out Post, Mushalpur Police Station, he received the FIR at about 10-00 a.m. on 20.05.2020 from Amrit Brahma, P.W.2. After recording the FIR in the General Diary Entry, he forwarded the same to the Officer In-Charge, Mushalpur Police Station for registering a case. On being authorized by the Officer In-Charge, Mushalpur Police Station, P.W.11 after recording the statement of the informant, started preliminary investigation. After intimating the details about the occurrence to the Officer In-Charge, Superintendent of Police and the District Magistrate,

Baksa, formal requisition was submitted to the District Magistrate for deputing a Magistrate for disinterring the dead body and to conduct the inquest. Then, he accompanied by the Officer In-Charge, Mushalpur Police Station and the Circle Officer, Mushalpur Police Station proceeded to the P.O., that is, the house of the accused in Village – No. 2 Shantipur and after reaching the P.O., he [P.W.1] interrogated the accused in presence of public. P.W.11 testified that the accused confessed before him that because of quarrel, he on the night of 14.05.2020, committed the murder of his wife, Phishi Ramchiary inside his house by slashing her with a *Khukuri*. It was further confessed before him that the dead body was buried underground inside the house by digging. P.W.11 further stated that the accused himself in presence of him, the other Police personnel, the Executive Magistrate and the villagers including the Gaonburah, disinterred the dead body of his wife. The disinterred dead body was found partially decomposed. P.W.11 also stated that audio video recording was made of the entire proceeding. Thereafter, the inquest was done by the Circle Officer, Mushalpur. P.W.11 stated that after disinterring the dead body and before forwarding the dead body to Mushalpur Civil Hospital, the accused was taken into custody by him. Prior to that, the accused brought out a *Khukuri* from inside his house and handed over the *Khukuri* to him. Accordingly, he seized the *Khukuri* in presence of witnesses vide Seizure List, Ext.-4 and P.W.11 identified his signature therein as Ext.-4[3]. P.W.11 also identified the signature of the accused in Ext.-4 as Ext.-4[4]. P.W.11 also exhibited the FIR [Ext.-1]; the Sketch Map of the P.O. [Ext.-5]; the *Khukuri* [Mat. Ext.-1]; the Inquest Report [Ext.-2]; Charge-Sheet [Ext.-6]; and the Dead Body Challan [Ext.-3]. P.W.11 also identified his signatures appearing therein. P.W.11 admitted that he did not send the *Khukuri*, seized vide Ext.-4, to the Forensic Science Laboratory [FSL] for serological examination.

24. During cross-examination, P.W.11 stated that it was the Gaonburah who, at first, telephonically informed about the occurrence to him but he did not record the said information in the General Diary. He further stated that he did not immediately

proceed to the P.O. after receiving such telephonic information. He proceeded to the house of the accused at around 10-00 a.m. and the case was registered in the Police Station at around 11-15 a.m. P.W.11 further stated that he recorded the statement of the son of the accused, Charan Ramchiary, who was about 9 [nine] years of age. The I.O., P.W.11 was asked by defence, by referring to parts of the previous statements of P.W.2, P.W.4 and P.W.6 purportedly to bring out contradictions that these witnesses did not give such previous statements, as they had deposed before the court. But, the defence side did not follow the procedure prescribed in Section 145, Evidence Act to prove and to bring such contradictions on record. The audio video recordings of the proceeding, Mat. Ext.-2 was put under objection by the defence side.

25. From the evidence of the I.O., P.W.11, it is found that the testimony as regards the sequence of events including the information given by the Gaonburah telephonically at first; the institution of the FIR by the P.W.2; the confession made by the accused before the Police personnel, the Executive Magistrate and the villagers after arrival of the team of Police personnel and the Executive Magistrate at the P.O., that is, the house of the accused; the disinterment of the dead body of the deceased by the accused from inside his house; and handing over of the *Khukuri* by the accused to the Police personnel; are found in conformity with the testimonies of the other prosecution witnesses, already discussed hereinabove. The defence by way of cross-examination did not elicit anything on the material points to dent the case of the prosecution in any manner.
26. At this juncture, we turn to the testimony of Charan Ramchiary, the minor son of the accused and the deceased, who testified as C.W.1. At the time of giving testimony, C.W.1 was aged about 10 years. We find that in order to ascertain as to whether he was capable to testify, the learned trial court asked a number of questions to him for answer and on the basis of the answers given by C.W.1 in a language understood by him, the learned trial court had found that C.W.1 was

capable to depose as he had given answers rationally to the questions put to him. In his testimony, C.W.1 stated that his mother, Phishi Ramchiary had expired and she was hacked by his father, that is, the accused in an incident which took place inside their house in a night. C.W.1 further stated that on the night of the occurrence, he was woken up by his father from his sleep. His father then asked him to hold a torch. By flashing the torch and keeping it on the bed, his father hacked his mother by a *Khukuri*. C.W.1 further stated that prior to hacking, he was taken into lap by his mother. On being hacked, his mother screamed. After hacking his mother, his father dug a ditch inside his house and buried her there. When C.W.1 was further asked, he replied that after the incident, he fell asleep. In cross-examination, C.W.1 stated that after the incident, he was questioned by Police and as he could not understand Assamese, he could not say anything then. C.W.1 stated that once his mother left the house for about 2-3 days. When C.W.1 was asked as to whether his parents quarreled with each other on the night of the occurrence, C.W.1 replied to the effect that he was sleeping at that time and he could not say as to whether any quarrel took place or not. But they quarreled for a short while after her woke up on the night of the occurrence.

27. It is in the presence of the above evidence/materials on record, the respective contentions advanced by the parties are required to be considered.
28. As the contestation is on the matter of extra-judicial confession, a reference to Section 24 of the Evidence Act, 1872 is necessary. It is laid down in Section 24 of the Evidence Act, 1872 that a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

29. It is true that the extra-judicial confession is usually considered to be a weak piece of evidence. Therefore, an extra-judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record and it fails to inspire confidence, then it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. There is, however, no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. To act on an extra-judicial confession, the Court is to be satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872. Furthermore, the extent of acceptability of an extra-judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution has the duty to establish that a confession was made by the accused voluntarily and the confession which was made was true.

30. The evidentiary value of an extra-judicial confession came to be considered by the Hon'ble Supreme Court of India in the case of **State of Rajasthan vs. Raja Ram**, reported in [2003] 8 SCC 180. It has been held therein in the following manner :-

19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical

to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

20. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration as rightly submitted by the learned counsel for the respondent-accused, is a matter of prudence and not an invariable rule of law.

31. Reverting back to the facts of the case in hand, it is found, as discussed hereinabove, that the accused first made the confession before the P.W.3, the Government Gaonburah of the village. The Government Gaonburah, P.W.3 is not an inhabitant of the village of the accused and P.W.3 is an inhabitant of a nearby village, Bhutankhuti. That the accused had gone to the house of the Government Gaonburah [P.W.3] a functionary considered usually in higher esteem in rural areas, to confess first instead of any other person is a relevant aspect. When P.W.3 testified as regards the confession made before him by the accused, such testimony of the P.W.3 was never challenged in any manner whatsoever by the defence, much less from the standpoint of any inducement, threat or promise. It is further established from the testimonies of the other prosecution witnesses, as mentioned hereinabove, the accused had confessed before the villagers, in presence of P.W.3, once again by confessing that he had killed his wife by a *Khukuri* and after killing his wife, he buried the dead body at a place inside his house. There is no evidence to the effect that the accused prior to making of such confession by him, was induced or threatened or promised in any manner by these villagers. The Government Gaonburah, the village President or the villagers before whom the

accused made the confession twice, could not be termed as persons in authority to give rise to a belief in the mind of the accused that by confessing before them, he would gain any advantage or avoid any evil. Nothing has been brought on record by the defence during the course of the trial to infer that the confession made by the accused on the first two occasions were not voluntary in nature. The defence at no point of time had attributed any element of animosity against these prosecution witnesses. There is no evidence on record that any of these prosecution witnesses had any prior enmity with the accused.

32. When the events stated to have been disclosed by the accused in his extra-judicial confession are considered with the events unfolded during the subsequent period, it becomes evident that there was truth in the extra-judicial confession. The evidence of the prosecution witnesses and the I.O. that the accused had taken them to a place inside the house and thereafter, disinterred the deadbody of his wife would be admissible as conduct of the accused under Section 8 of the Evidence Act. Another reason to deduce such a view emanates from the fact that the confession made by the accused that he had killed his wife by a *Khukuri* is consistent with the medical evidence, as testified by the Autopsy Doctor, P.W.1 and as emerged from the PME Report [Ext.-1], that the injuries sustained by the deceased were caused by a sharp cutting weapon. As per the Seizure List [Ext.-4], seizure was made of a Nepali *Khukuri*, made of iron having a wooden handle of 18 inches in length. A number of prosecution witnesses like P.W.2, P.W.3 & P.W.4 had testified that the *Khukuri*, exhibited as Mat. Ext.-1, seized by Seizure List [Ext.-4] was the one which was handed over to Police by the accused on 20.05.2020. The view that the confession had the element of truthfulness is fortified by the fact that as per the FIR[Ext.-1-A], the act of murder was committed on 14.05.2020 and the disclosure was made on 20.05.2020 and the Autopsy Doctor in his testimony testified and in the PME Report [Ext.-1] reported that the approx. time of death was 3 to 7 days earlier.

33. Not sending the *Khukuri* for serological examination cannot be held to be a circumstance to the benefit of the accused. The assault on the deceased was made at a much earlier period, in and around 14.05.2020, and the *Khukuri* was handed over by the accused to the Police only on 20.05.2020, almost ruling out the possibility of finding any incriminatory evidence in the absence of any bloodstains on it. The factum of recovery from a place inside the house of the deceased has gone in conformity with the confession made by him before P.W.3 and others.
34. The object and purpose of examination of the accused under Section 313, CrPC is to enable the accused to explain any circumstances appearing in the evidence against him. The accused may or may not admit involvement or any incriminating circumstance or may offer a version of his own regarding the events. Any statement made by the accused during his such examination, cannot form the sole basis of conviction as the same is not a substantive piece of evidence. But, such statement can be used to examine the veracity of the prosecution case and any inculpatory aspect as may be borne from the statement may be used to lend credence to the prosecution. When the accused was provided the opportunity to explain the circumstance appearing in the evidence against him at the stage of examination under Section 313, CrPC, the accused admitted that he confessed before P.W.2 that he had committed the murder. At the same time, he stated that he did not commit the murder. When he was asked to explain as to whether he had gone to the house of P.W.3 and made the confession, as testified by P.W.3, the accused admitted that he had gone to the house of P.W.3 and confessed before him that he had hacked his wife. When the accused was asked to explain as to whether P.W.3 and he came to the village and in presence of villagers too, he had confessed that he had killed his wife. The accused stating the same to be false that a village *mel* was called before the arrival of the Police, had admitted that when the villagers had gathered, he admitted before them that he had killed his wife. The accused also admitted about taking out the dead body of his wife by digging earth inside his house in presence of villagers, the Executive Magistrate and the Police.

35. While making denial of few of the other incriminating circumstances, the accused named three persons as the assailants of his wife. The accused also sought to project that members of a political party, at the time of election held in April last, got his wife drunk and committed bad act on her and thereafter, killed her. As is evident from the PME Report [Ext.-1] and the testimony of the Autopsy Doctor [P.W.1], the approx. time of death of the deceased was 3 to 7 days from 20.05.2020. In presence of such evidence, the projection of the accused that his wife was killed by the members of political party in April is not only to be disbelieved but it emerges as a false explanation. The other projection that the three persons, named by him, had killed his wife also is not a believable one for the reason that any husband if his wife was killed by other assailants, the husband would have been the first person to bring the matter to the knowledge of the Police. Not bringing such act of murder of his wife by other assailants for a period of 3 to 7 days, taking cue from the PME Report [Ext.-1], is itself is not a normal human conduct.
36. It is also settled law that a child witness if found competent to depose on the facts and to be reliable one, his evidence could be the basis of conviction. Even in the absence of oath, the evidence of a child witness can be considered under Section 118 of the Evidence Act, subject to the rider that such child witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and the credibility depends upon the facts and circumstances of each case. In **State of Uttar Pradesh vs. Krishna Master**, [2010] 12 SCC 324, the Hon'ble Supreme Court has held that there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without improvements or

embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill-will against any person. Therefore, there must be something on record to satisfy the court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of serious nature.

37. In *State of Madhya Pradesh vs. Ramesh and another*, reported in [2011] 4 SCC 786, on the test of acceptability of the testimony of a child witness, the following have been observed :-

11. The evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross-examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross-examination. A child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him.

* * * * *

14. In view of the above, the law on the issue can be summarized to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.

38. When by taking into consideration the above principles as to how testimony of a child witness is to be appreciated the testimony of C.W.1 is examined, we find that it was only after C.W.1 was found to be able to understand the questions put to him and C.W.1 had provided rational answers to them, the learned trial court reached the satisfaction as regards his suitability and competency to depose about the events. When the C.W.1 was examined thereafter, by the prosecution and cross-examined by the defence, C.W.1 who was aged about 10 years then, deposed in a manner wherefrom it does not emerge that he was being taught in any manner or influenced by any supervening event.
39. When the ocular evidence and the medical evidence, as mentioned above, led by the prosecution in the case are considered in its entirety, we find that the extra-judicial confession, made by the accused, on two occasions, prior to the advent of the Police in the scenario were voluntary and true in nature; and it received overwhelming corroboration on all the material points from other ocular evidence and the documentary evidence. Notwithstanding the principle that the evidence of even a child witness is sufficient to base a conclusion, and the testimony of C.W.1 in the case in hand is also found credible and trustworthy inspiring confidence of the court, we find that the testimony of C.W.1 stood corroborated by the testimonies of the other prosecution witnesses and the documentary evidence. Having evaluated the evidence/materials on record in its entirety, we do not find any infirmity in the finding reached by the learned trial court that the prosecution has been able to prove the case beyond all reasonable doubts that it was the accused alone who was the perpetrator of the crime of uxoricide. Finding no reason, much less good and sufficient reason, to interfere with the Judgment and Order of conviction and sentence passed by learned trial court, we are of the unhesitant view that the instant criminal appeal is devoid of any merit and the same deserves to be dismissed. Therefore, affirming the Judgment and Order dated 23.09.2021 of the learned trial court passed in Sessions Case no. 50 of 2020, the instant criminal appeal is dismissed.

40. Before parting with the records, we wish to place our appreciation on record as regards the services rendered by Ms. B. Chowdhury, learned Amicus Curiae appearing for the accused-appellant and direct the Registry to make available to her just remuneration as per the notified fee structure applicable to the Amicus Curiae.
41. Having regard to the fact that the deceased had left behind a minor child at the time of her death, we reiterate the observations and the direction made by the learned trial court as regards compensation to be made under Section 357A, CrPC. We further observe that if the enquiry ordered by the learned trial court has not been completed till date, such enquiry is to be completed with utmost expedition.
42. The records of the trial court are to be sent back forthwith.

JUDGE

JUDGE

Comparing Assistant