

GAHC010006142016



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

Case No. : CRL.A(J)/1/2016

RATUL NATH

VERSUS

THE STATE OF ASSAM

2:SRI KIRAN NATH

LT. BUDBAR NATH
VILL-JARABARI BORGHAT
P.O.-ALIKUCHI
P.S.-RAHA
DIST.-NAGAON
ASSAM

Advocate for the Petitioner : AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR JUSTICE SONGKHUPCHUNG SERTO

JUDGMENT (CAV)

28/02/2023

(M.R. Pathak, J)

Heard Mr. Debarshi Kumar Bhattacharya, learned *Amicus Curiae* for the accused appellant and Mr. Hrishikesh Sharma, learned Additional Public Prosecutor, appearing for the State.

2. This criminal appeal is against the judgment and order of conviction and sentence dated

14.12.2015 passed by learned Additional Sessions Judge, Nagaon, in Sessions (T-1) Case No. 552(N)/2013, arising out of Raha Police Station Case No. 194/2013, corresponding to G.R. Case No. 3222/2013, filed by the accused appellant Ratul Nath from jail whereby he has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life with fine of Rs. 10,000/-, in default of payment of fine to undergo a further term of simple imprisonment for 1 year.

3. The appellant is presently in jail in terms of the said impugned judgment and order of conviction and sentence dated 14.12.2015.

4. Brief facts of the case is that on 12.09.2013 in the evening at around 06:00 pm, one Pradip Kumar Nath (PW.6) informed Raha Police Station over phone that his nephew Krishna Nath, aged about 14 years, was found dead in the jungle at Borghat village under the jurisdiction of Nagaon Police Station in Nagaon district. Accordingly, GD Entry No. 308 dated 12.09.2013 was made in Raha Police Station and on receipt of the said information, police went to the place of occurrence. On the following day, i.e., on 13.09.2013, one Sri Kiran Nath (PW.1) lodged a written *ejahar* before the Raha Police Station, stating that on 12.09.2013 in the morning at around 07:00 am, his grandson Krishna Nath had gone missing from his home and after a long search around 05:00 pm, he was found dead in the jungle near Borghat *erabari* and he learned that the accused, Ratul Nath, in furtherance of his previously hatched plan called said Krishna Nath away from home and killed him. Said *ejahar* was accordingly registered as Raha Police Station Case No. 194/2013, under Section 302 IPC corresponding to G.R. Case No. 3222/2013.

5. During the course of the investigation, the concerned Investigating Officer visited the place of occurrence, drawn the sketch map, made inquest report on the person of the deceased, forwarded the dead body of the deceased to the Nagaon Civil Hospital for its post mortem examination, recorded the statements of the witnesses acquainted with the facts of the case under Section 161 CrPC, arrested the accused person of the case and sent him to Court, collected the post mortem examination report of the deceased and on completion of the investigation and finding sufficient incriminating materials against the accused person, regarding his involvement in commission of the crime in the case under Section 302 IPC filed the charge sheet No. 154 on 27.10.2013 in said Raha P.S. Case No. 194/2013 against the accused appellant. As Section 302 IPC is exclusively triable by the Court of Sessions Judge, the learned Chief Judicial Magistrate,

Nagaon, by his order dated 13.11.2013, committed the said G.R. Case No. 3222/2013 to the Court of learned Sessions Judge, Nagaon, wherein the same was registered and numbered as Sessions (T-1) Case No. 552(N)/2013.

6. The learned Sessions Judge on 08.01.2014 framed charge under Section 302 IPC against the accused appellant for committing murder of Krishna Nath, aged about 14 years, that was read over and explained to him to which the accused appellant pleaded not guilty and, claimed to be tried. Accordingly, trial of the case commenced.

7. To prove the guilt of the accused, the prosecution adduced evidence of sixteen prosecution witnesses including the autopsy doctor (PW.11), as well as the concerned Investigating Officer of the case (PW.16). On completion of recording of evidence of prosecution witnesses, the learned Trial Court on 16.11.2015 recorded the statement of the accused under Section 313 CrPC placing all the allegations that were adduced by the prosecution witnesses against him. The accused denied all the allegations adduced by the prosecution witnesses against him. The defence did not adduce any evidence from its side but cross-examined the prosecution witnesses.

8. PW,11, autopsy doctor Jiauddin Ahmed, who conducted the post mortem examination on the person of the deceased. In his examination-in-chief, he deposed that on such examination, the following injuries were found on the person of the deceased:-

- 1) *Injury over the right eye with contusion and ulceration of right cornea.*
- 2) *Contusion over the right side of the scalp of size 3" x 2".*
- 3) *Bruise mark over the right side of the face of size 2" x 2".*
- 4) *Swelling over the right side of the scalp of size 3" x 2".*
- 5) *Linear fracture of right parietal bone of size 2" in length.*
- 6) *Haemorrhage inside the both lobes of cerebrum (brain).*

Said PW.11 opined that the cause of the death of the deceased was due to cerebral haemorrhage from the blunt injury over the head by heavy blunt object and that all the injuries were ante-mortem in nature and further the time of death of the deceased was 24 to 30 hours prior to the post mortem examination. Said autopsy doctor also stated that the death of the deceased was homicidal in nature. He proved the said Post Mortem Examination Report Exhibit.3 and his signature on it. The defence declined to cross examine the said autopsy doctor PW.11.

Now let us briefly examine the evidence of the other prosecution witnesses.

9. PW.1, Sri Kiran Nath, is the informant of the case, in his evidence, he deposed that the deceased was his grandson and on the date of the incident, he was missing since morning and in the afternoon, they could find the dead body of his said grandson in the jungle near Erabari. He also deposed that the dead body of his grandson was found with torn clothes having injuries all over his body and he was informed by his neighbour Punit Nath that he saw his said grandson with the accused Ratul Nath going towards *erabari* jungle and later the dead body of his grandson was found there. He also deposed that he narrated the said incident in his FIR filed in the case and further stated that while the villagers went to the house of the accused, they did not find him there and later, he was detained by police and was arrested. PW.1 also stated that he is the signatory of the inquest report of the deceased (Exhibit.2).

During his cross examination, said PW.1 admitted the fact that the accused used to visit his house occasionally, but he did not allow his children to go out along with the accused. He denied the suggestion made by the defence. He also stated that the accused used to work as a wager occasionally and denied the suggestion that the accused went out for his work on the date of the incident as wager.

10. PW.2, Bhapen Nath, deposed before the learned Trial Court that the deceased was a school going boy and was the grandson of PW.1 and on the date of the incident, he was not found in his house since 7 O' clock in the morning and when Punit Nath was asked as to whether he saw the minor boy Krishna Nath, he told him that he saw the accused Ratul Nath taking said Krishna Nath (deceased) towards *erabari* jungle (where the body of the deceased Krishna Nath was found). He further deposed that on receipt of said information around 01:00 pm that the accused took the deceased towards the said jungle, they searched for the deceased in the *erabari* jungle and during such search, they could detect the dead body of the deceased around 05:00 pm on the same day and found that the dead body was lying with injuries on his person and, thereafter, a co-villager, Pradip Nath (PW.6), informed police over telephone and then police came along with the Executive Magistrate and prepared the inquest report (Exhibit.2) of the dead body. He also deposed that police took the dead body for post mortem examination and after completion of the same, it was handed over to his family members.

During his cross-examination, said PW.2 denied the suggestions made by the defence.

11. PW.3, Bina Devi is the wife of PW.6, who deposed before the learned Trial Court that the incident occurred on 12.09.2013, i.e. the day on which there was a religious function, where all the women of the village were gathered in the house of PW.1 and while the said function was going on, they heard that the grandson of the owner of the house was missing since early morning and in the afternoon when they were present in the function, they learnt that the dead body of the missing boy was detected in the jungle and, thereafter, along with co-villagers, she went to the place of occurrence and saw the body lying inside the jungle, wearing a *gamosha* (hand-made big size towel) and a vest. She deposed that she had seen black marks on the person of the deceased and is not aware who killed the said boy and that when police came, the accused confessed that he killed the said boy. She further deposed that all the villagers heard the said statement made by the accused on the road and then the dead body was taken away by police.

During her cross-examination by the defence, she denied the suggestion made by the defence. She stated that police did not ask her any question and, therefore, she did not make any statement before police. She further stated that as police did not ask her anything, she did not state about witnessing any such injuries on the person of the deceased. She also stated that she did not make any such statement before the Investigating Officer of the case about the confession made by the accused person of the case that he killed the boy as she was not interrogated by police.

12. PW.4, Sri Pankaj Nath, deposed before the learned Trial Court that while he attended the religious function in the house of Krishna Nath (deceased), mother of said Krishna Nath enquired about his said son and at that time, Sunil Nath told her that he saw Krishna going with the accused Ratul Nath and then he along with other villagers went out in search of deceased Krishna and found him lying dead in the jungle at erabari, and then they informed his guardians, who later came to the place of occurrence with police and the said dead body was taken away by police. He further deposed that he did not see the accused in the place of occurrence, but saw the deceased with blood stains over his body and that blood was oozing out from the mouth of the deceased.

During his cross examination by the defence, said pw.4 stated that the accused used to visit the house of the deceased occasionally and used to take food there. He denied the suggestion made by the defence.

13. PW.5, Smt. Barnali Devi, deposed before Trial Court, that on the date of the occurrence, there was a religious function in their house and the deceased Krishna Nath came to their house in the morning and later went out for bathing, but did not return. His mother searched for him, who could not find him around and when all of them went in search of said Krishna, one Sunit Nath of their village told them that he saw the deceased Krishna going towards the jungle at erabari with the accused and the said village boy reported the said fact before the mother of the deceased Krishna during the time when she was present there and the mother of said Krishna requested some of the village boys to go in search of her son and then one boy named Pankaj Nath along with some other boys, whose names she did not remember, went to erabari jungle. She further deposed that she heard cries inside the jungle and came to know that the dead body of said Krishna was lying inside the jungle. She deposed that she went there to see the dead body of the deceased and saw it was lying on the ground with injuries. She also deposed that later police came and took away the dead body for post-mortem examination. She also deposed that the accused was arrested by police and then the village headman told before police that the accused confessed before him that he had killed the deceased. She further deposed that she enquired from the Gaon Burah (Bulising Das) as to what had happened to which the said Gaon Burah replied to her that it was the accused who confessed before him that he killed Krishna.

During her cross-examination, said PW.5 stated that she is the aunt of the deceased Krishna and denied the suggestion. However, she stated that she did not see the occurrence as to who killed the deceased, but she went to the place of occurrence and saw the dead body.

14. PW.6, Pradip Kumar Nath a service man, who stated that he knew the deceased Krishna, who was his nephew and on the date of the occurrence, he was present in the village by taking leave from his duty and attended the religious rites at his uncle's house. On hearing that the deceased was missing since morning on that day, he went to console his mother and in the afternoon, they became worried as the boy did not return. In the meantime, a boy from their village informed them that they saw the deceased along with the accused and thereafter, some of the boys from their village went to the jungle in search of said missing boy and found his dead body lying in the jungle. He further deposed that one of them informed about the matter and

immediately, he went to the place of occurrence and saw the dead body of the deceased with some black marks in his thighs and bally and he also saw the *gamosha* worn by the deceased was lying across the dead body and he informed police about it on the basis of which they came around 07.30 pm and took the dead body from the jungle and then he noticed that blood was oozing out from the eyes of the dead body and on the next day, he went for his duty and later came to know that the accused was arrested by police.

During his cross-examination, said PW.6 stated that the boy was missing since the morning on the date of the incident and none had gone out in search of him and that the religious rites started in the morning and ended in the evening. He failed to state who went out in search of the boy in the jungle. He further stated that he did not state before police that religious rites was performed on the date of the occurrence in the house of his uncle and denied the suggestion that he heard from the villagers about the detection of the dead body from the jungle.

15. PW.7, Anjana Devi deposed before the learned Trial Court that on the date of the incident, religious rites was performed in the house of her maternal uncle. On that day, the mother of the deceased came to their house enquiring about the deceased and in the afternoon a boy named Sunit Nath came and told them that he saw the deceased along with the accused Ratul Nath going towards the jungle. Later some of the boys of her village detected the dead body in the jungle and informed the villagers and then only they could come to know about the incident. She further deposed that when the dead body was taken by police from the open field, she noticed injuries on his person and she named one of the boy who went in search of the deceased as Pankaj Nath (PW.4).

During her cross-examination, said PW.7 stated that she did not state before police that a religious rite was performed on the date of the occurrence, which started in the morning and ended in the afternoon. However, she denied the suggestion that Sunit Nath did not inform them that the accused took the deceased towards the jungle.

16. PW.8, Smt. Junu Devi, mother of the deceased deposed before the learned Trial Judge that the informant Kiran Nath is her father and the deceased is her son. She deposed that on the date of the occurrence at around 07:00 am, her said son went out from her house to take his bath in a nearby river and while his son was waiting on the road, the accused called him and took him away. Though she thought that her son will return after taking bath from the river, since the

accused was his relative uncle, but as he did not return for long period of time, she went in search of her son, but could not find him. Then the witnesses Sumit Nath (PW.10), Kalyan Nath (PW.12) and Pankaj Nath (PW.4), on their search, could find the dead body of her son in nearby a jungle. Said witness Sumit Nath (PW.10) informed her that he saw the accused person took her son Krishna in the morning around 07.30 on the same day. Accordingly, her family members informed the village headman who came to their house and, thereafter, she along with her father and sister-in-law went to the house of the accused, where he was found there and when the village headman asked him, he confessed before them that he killed her son. Accordingly, police was informed, who came to the place of occurrence, sent the dead body of her son to the Nagaon Civil Hospital for post-mortem examination and after completion of the same, handed his dead body to her family members. She further deposed that the police had arrested the accused in connection with the case and took him to the police station.

During her cross-examination, said PW.8 stated that it takes only five minutes' time by walking from her house to the river where her son went for bathing and that when her son went out to take bath it is the accused, who called her son and took him along with the accused and when her son did not return home from the river, she enquired and searched for him. She also stated that it is Sumit Nath (PW.10) who saw the accused taking away her son around 07.30 am and when she met said Sumit Nath in the evening, he told her around 07.30 pm that he saw the accused along with her son around 07.30 am. She also stated that the house of said Sumit Nath is nearby her residence and when her said son disappeared, all the persons went to her residence and she was alone in the house. She denied the suggestion that the also denied the suggestion made on behalf of the accused.

17. PW.9, Malati Debi, deposed before the learned Trial Court that on the day of the occurrence at about 9/10 am, around 100 numbers of village women assembled in the house of the maternal uncle of the deceased for *Nam Prasanga*. She also stated that while they were in the house of the maternal uncle of the deceased, they came to know that the deceased disappeared from his house and his mother searched for him and also enquired as to whether they saw her son, who came out from her house in the morning at about 7 who went out for bathing in the nearby river. Said *Nam Prasanga* ended by 05:00 pm, they heard hue and cry outside and while they rushed to the field, they heard the news that the dead body of said deceased was found lying in the erabari

jungle and then, all of them went to the place of occurrence and saw the dead body of the deceased lying in the said jungle.

During her presence, Sumit Nath (PW,10) informed the mother of the deceased that he found the accused talking with the deceased Krishna around 07.30 am on the same day. She also deposed that the village headman of their village along with some other persons went to the house of the accused and asked him about death of Krishna and that the accused confessed before the said village headman that it is he who had killed Krishna and then the said village headman informed the villagers that it is the accused, who confessed before him that he was involved in murdering said deceased. Police was accordingly informed, who came to the spot, sent the dead body of the deceased to the Nagoan Civil Hospital for post-mortem examination and after completion of the post-mortem examination, the dead body was handed over to the family members of the deceased.

During her cross-examination, said PW.9 stated that she did not state before police that on the date of the occurrence in the morning at around 9/10 there were 100 numbers of women assembled in the house of the maternal uncle of Krishna Nath for *Nam Prasanga*. She also denied the suggestion made by the defence.

18. PW.10, Sumit Nath, who identified the accused and mentioned his name as Ratul Nath deposed that he is a co villager and he knew the informant Kiran Nath as well as the deceased Krishna, who are from his own village. He stated that on the date of the occurrence around 07:00 AM, while he was on his way to Sorabari Rice Mill for grinding paddy by riding his bicycle, he saw the accused along with the deceased walking and entering into a nearby jungle and then he proceeded towards the mill for that purpose and returned home around 10/11 AM and in the evening when he came to know that the mother of the deceased was in search of her son Krishna then he informed her that he saw her son Krishna with the accused in the morning hours while they were walking and entering into the nearby jungle. He also deposed that after hearing the same, the villagers searched for Krishna and Kalyan Nath and Pankaj Nath traced out him in a nearby jungle, wherein his dead body was recovered with a cloth. He also deposed that on being informed by someone, police came to the place of occurrence and he did not see the accused amongst the people gathered therein and later police took away the dead body of Krishna for post-mortem examination and arrested the accused on that night itself in connection with the said case.

During his cross-examination, said PW.10 denied the suggestion made by the defence.

19. PW.12, Kalyan Nath, deposed before the learned Trial Court that the accused is his neighbour and he also knew the informant Kiran Nath as well as the deceased and that the occurrence took place on Thursday (12.09.2013) around 07:00 am and that on the date of the occurrence, the said deceased disappeared from his house and when his mother informed the same to the villagers, they went in search of him. He also deposed that on the said date, there was a *Nam Prasanga* in the house of the informant and the mother of the deceased went in search of her said missing son in the entire village. Later they also went out in search of him and during such search, one Sumit Nath informed that he saw the accused talking and going towards the erabari jungle along with the deceased in the morning on the date of the occurrence and then he along with Pankaj Nath (PW.4) and others went to erabari in search of the deceased, where they found the dead body of the said deceased lying in the ground near the jungle covered with *gamocha* and a vest and, thereafter, somebody amongst the villagers informed Raha Police and they came to the place of occurrence and after removing all the wearing of the deceased, he saw the injuries on his eyes from where blood was oozing out. He further deposed that he saw the injuries near private parts of the deceased and further deposed that when all the villagers were in search of the deceased, the accused did not accompany them and he was not found in the village. Subsequently, police searched for him and arrested the accused in connection with the case. He deposed that police made the inquest report (Exhibit. 2) in his presence and he is a signatory to the said inquest report.

During his cross-examination, said PW.12 stated that the deceased is his distant relative and on the date of the incident, he was present in the house, where said *Nam Prasanga* was held and it is the mother of the deceased, who informed them about the incident around 12 in the noon and he met said Sumit Nath, who informed the incident to the villagers gathered in said *Nam Prasanga* around 12.30/01:00 pm and the body of the deceased was traced out around 4/5 pm. It is only after the recovery of the dead body the villagers were informed about the same. He denied the suggestion made by the defence.

20. PW.13, Bhabjyoti Deka, deposed before the learned Trial Court that he knew the accused person and on the date of the occurrence, he heard that a murder was committed in the village and on the following day of the incident, around 10/11 am, he went to Raha Police Station to meet its Officer-in-Charge for personal work and while he was in the said Police Station, the

concerned Officer recorded the statement of the accused person and he heard saying that it is he who committed the murder of the boy on the previous day at village Erabari and in his such presence, police asked the accused whether any other person involved in the matter or not to which the accused replied before police that it is he who committed the murder.

During his cross examination, said PW.13 stated that he did not go to the place of occurrence nor he had seen the occurrence.

21. PW.14, Chandra Nath, who deposed that the victim was the grandson of the informant and that on the date of the incident, a prayer session was held in the house of the informant, which was attended by him and after said prayer session came to an end, around 04:00 pm, mother of said Krishna looked for him and the villagers also searched for the said boy. He further deposed that while search was going on, a boy named Sumeet Nath, a co villager told people present there, including the mother of the deceased, that on his way to the mill for grinding paddy on the date of the occurrence he saw the said deceased along with the accused going together in the road and that he talked with them as well and, thereafter, the accused and the said deceased had gone into the jungle while he left for the mill to grind paddy. He further deposed that after hearing the same, the youths of the village went to the jungle and began their search and found the deceased lying death in the middle of the jungle. He also deposed that along with other people he went to the jungle and finding deceased lying there in the jungle and then villagers informed police over phone, who came to the place of occurrence along with the village headman. He also deposed that along with the said village headman, they went to the house of the accused looking for him and met him in his house and then when the said village headman asked him, the accused confessed to have killed the deceased and during such confession made by the accused, he was present there.

During his cross, said PW14 confirmed whatever he is stated during cross-examination-in-chief and denied the suggestion led by the defence.

22. PW.15, Sri Muhi Sing Das, village headman during his examination-in-chief, deposed that on the date of the incident, while he was at Raha, the Officer-in-Charge of Raha Police Station informed him over phone that a boy had been murdered in his area and enquired as to whether he is aware about it or not and thereafter, police instructed him to go to village Borghat which he obliged. He also deposed that when the police entered the jungle at Borghat to follow them to

the place of occurrence whom he could identify later that it was the dead body of Krishna Nath, son of Junu Devi and people gathered there, told him that the deceased was roaming with the accused since morning and asked him to find out as to whether the deceased was at home or not. Accordingly, he along with the co-villagers went to the house of the accused and finding him there asked him about the incident, where the accused confessed before him that he had killed the deceased. Thereafter, he rang up the Officer-in-Charge and told that it is the accused who had committed the murder of the deceased and then police interrogated him and took him to the police station.

During his cross-examination by the defence, he denied all the suggestions made by the defence and reiterated the statement made during his examination-in-Chief.

23. PW.16, Gautam Ch. Kumar, Sub Inspector of Police, Investigating Officer of the case, during his examination-in-chief, deposed before the learned Trial Court about the steps that he had taken during investigation of the case. He also stated that on the basis of telephonic information, he made G.D. Entry No. 308 dated 12.09.2013 (Exhibit.4) and that after recording such G.D. Entry, he along with other police personnel proceeded to the place of occurrence and found the dead body of the deceased lying there. On the same night at around 10 pm when the Executive Magistrate, Raha, visited the place of occurrence to conduct inquest on the dead body, due to insufficiency of light, the same could not be done and on his instruction, the dead body was brought to the Raha Police Station and at that time, the local people informed him that the culprit was at his own house as shown by public and accordingly, he took the accused in his custody. Thereafter, he along with the accused came to the police station.

Said PW.16 also deposed that on the following day, the said Executive Magistrate conducted the inquest on the dead body of the deceased and that he recorded the statements examining the witnesses and recorded the statement of the accused under Section 161 CrPC in the place of occurrence. On the following day, the inquest on the dead body of the deceased was done by the concerned Executive Magistrate and a formal FIR (Exhibit.1) was lodged by the informant/PW.1 on the said date and Raha P.S. Case No. 193/2013 under Section 302 IPC was registered and visited the place of occurrence, after such registration of the FIR, recorded the statements of the witnesses under Section 161 CrPC and seized all registration certificate in the name of the accused issued by the Secretary, Board of Secondary Education, Assam (Exhibit. 6),

and after completion of the investigation submitted the charge sheet under Section 302 IPC against the accused.

He corroborated the fact that the mother of the deceased Junu Devi (PW.8) corroborated the statement that it is Sumit Nath, who informed her that he saw the deceased Krishna Nath with the accused Ratul Nath going towards the jungle around 07.15 in the morning. He corroborated that PW.14 Chandra Nath deposed before him that Sumit (PW.10) saw Krishna Nath (deceased) taken away by the accused Ratul Nath towards the jungle. However, he denied that Sumit (PW.10) did not state before him that Kalyan Nath (PW.12) and Pankaj Nath (PW.4) traced out the dead body of the deceased Krishna Nath. Though the learned Trial Judge placed all the allegation made against him by the prosecution witnesses during their examination to the notice of the accused person, while recording statement of the accused under Section 313 CrPC, the said accused denied all the allegations and statements made against him by the prosecution witnesses.

24. While recording his statement for the sentences under Section 235 (2) of the CrPC, the accused pleaded that he has his parents at his home and they will suffer greatly if he is sent to imprison and that he also have his sister.

25. Mr. Bhattacharyee, learned *Amicus Curiae* for the accused appellant submitted that the prosecution failed to prove the guilt of the accused beyond all reasonable doubts. In this regard, he placed before the Court that some of the prosecution witnesses named "Punit", some of other mentioned "Sunil" and others "Sunit" and few other "Sumit" as the informant, who told the prosecution witnesses and other villagers that he saw the accused talking with the deceased and taking him to the jungle in the morning on the date of the incident. He submits that the prosecution failed to place any specific name of the person as to who saw the accused taking away the deceased in the morning on the date of the incident to the jungle.

26. Mr. Bhattacharyee, learned *Amicus Curiae* for the accused appellant also submits that the prosecution failed to establish the guilt of the accused as the witness or the person, who specifically indicated that the deceased was seen along with the accused in the morning while proceeding towards the jungle Erabari. He further indicated that most of the prosecution witnesses are interested witnesses being relative to the deceased and, therefore, their evidence

as a whole cannot be considered since the entire matter relates to circumstantial evidence, where there is no eye witness to the incident. In this regard, Mr. Bhattacharyya placed reliance of the judgment of the Hon'ble Supreme Court in the case of *Nachhattar Singh And Others. -Vs- The State of Punjab* reported in (1976) 1 SCC 750.

27. On behalf of the accused appellant, learned *Amicus Curiae* Mr. Bhattacharyya placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Heramba Brahma & Another -Vs- State of Assam* reported in (1982) 3 SCC 351 submitted if any extra judicial confession is made by an accused, then the concerned witnesses must state the extra statement that the accused had made before him. But, in the present case, the concerned village headman except mere making statement that the accused confessed the guilt did not state anything about what the accused had exactly stated. It is also argued by Mr. Bhattacharyya, learned *Amicus Curiae* that the Hon'ble Supreme Court in catena of decision including the decision reported in the case of *Anil Kumar Singh -Vs- State of Bihar* reported in (2003) 9 SCC 67 have held that in order to base a conviction on circumstantial evidence, each and every piece of incriminating circumstances must be clearly established by reliable and clinching evidence and the circumstances, so proved, must form such a chain of events as would permit no conclusion other than the want of guilt of the accused, as the circumstance cannot be on any other hypothesis other than the guilt of the accused. In that regard, the Court has to be cautious and avoid the risk of allowing mere suspicion howsoever strong to take the place of proof since moral conviction or suspicion howsoever grave it may be cannot take the place of proof.

28. In the present case, Mr. Bhattacharyya, learned *Amicus Curiae* submits that the prosecution only had mere presumption that the accused was seen with the deceased in the morning on the date of the incident cannot be considered as a final proof against him to convict him under Section 302 IPC.

29. Relying on the decision of the Hon'ble Supreme Court in the case of *Nachhattar Singh* (supra), Mr. Bhattacharyya, learned *Amicus Curiae* submits that the Court should try to separate the grain from the chaff and thought that it succeeded in separating them, wherein in the present case, the learned Trial Judge failed to do the same and, therefore, the impugned judgment and order of conviction needs to be set aside.

30. It is also submitted by Mr. Bhattacharyya, learned *Amicus Curiae*, that it is well settled that when two views are placed by the prosecution then the view of granting the benefit of accused is favoured the appellant herein. He also submitted that the FIR of the case in hand attracts Section 162 CrPC as the concerned Investigating officer already acted upon the G.D. Entry No. 308 (Exhibit.4) dated 12.09.2013 on the basis of which police already recorded the statement of the witnesses in the place of occurrence as well as arrested the accused on the same night as evident from the statements of the PW.12, PW.16, the concerned Investigating Officer of the case.

31. On the other hand, Mr. Sarma, learned Additional Public Prosecutor, Assam, submitted that the accused has been rightly convicted by the impugned judgment and order of conviction and sentence. He admitted that there is no ocular witness to the incident, but there are sufficient materials to prove the guilt of the accused in the case in hand. Mr. Sarma further submits that though at the time of recording of evidence, the name of PW.10 has been wrongly typed as Punit as stated by PW.1 and PW.2, Sunil as stated by PW.4, Sunit as stated by PWs. 5, 7, 8, 9, 12 and 14, but the Investigating officer of the case in his statement specified the PW.10 as Sumit and further PW.10 (Sumit), who himself stated that it is he who saw the accused taking the deceased towards the jungle Erabari in the morning while he was on his way to the rice mill and the said statement of "Sumit" could not be made out of place or destroyed by the defence.

32. The word "Sumit", "Sunit", "Sunil", "Punit" phonetically appears to be same. From the evidence, we have seen that the mother of the deceased (pw.8) was in search of her son, i.e. the deceased, throughout various places and it is only after PW.10 (Sumit), on coming to know that PW.8 was in search of her son, gave the information that he saw the accused taking away her son towards the jungle in the morning on the date of the incident around 7/7.30 am, which has been proved from his evidence and also been affirmed by the concerned Investigating Officer of the case (PW.15) specifically named "Sumit".

33. So in such kind of submissions where the prosecution fails to prove exactly the person who gave the information seeing the accused along with the deceased on the date of the occurrence is not acceptable. Further, we have also seen that only after knowing the statement of PW.10, that he had seen the accused taking away the victim/deceased towards the jungle Erabari, the villagers went to the jungle and searched for him and found his dead body. PW.8, the mother of the deceased, PW.9, PW.14 clearly stated that they accompanied the village headman

(PW.15) to the house of the accused and on being asked by the village headman, the accused admitted his guilt of murdering the deceased, son of PW.8. Further, PW.14 (independent witness) PW.15 (village headman and independent witness) in their evidence clearly deposed that he along with his co-villagers when went to the house of the accused, found him there and asked him about the incident to which the said accused stated that he had killed the deceased. This evidence of PW.9, including PW.15 remained intact as the defence could not demolish this evidence and the defence could not lead any other evidence excepting the same.

34. PW.10, Sumit, in his evidence clearly stated that on the date of the occurrence around 07:00 am while he was going to the rice mill for grinding paddy in his bicycle, he saw the accused taking away the deceased towards the jungle Erabari. The post-mortem examination report (Exhibit.3) as well as the opinion of the autopsy doctor (pw.11) clearly revealed that the post mortem examination of the deceased was done on 13.09.2013. The said post-mortem report (Ext.3) as well as the evidence of the PW11/the concerned autopsy doctor clearly reveals that the time of death of the deceased was 24 to 30 hours prior to the post-mortem examination.

35. Further from the perusal of the evidence of PW.8 and PW.10, it can be seen that while PW.8, the mother of the deceased was in search of her son, the fact which PW.10 came to know in the evening informed her that in the morning on the date of the incident, he saw the accused taking away her son to a nearby jungle and PW.8 in her examination in chief, stated that it is the PW.10, who informed her that he saw the accused person taking away her deceased son around 7.30 AM in the morning in the same day. As such, the statement of PW.10 has been corroborated by the statement of PW.8 and this piece of evidence remained intact.

36. We have considered the judgment placed before this Court by the learned *Amicus Curiae* on behalf of the accused appellant. With regard to the submission of the learned *Amicus Curiae* that the Exhibit.4 (G.D. Entry No. 308 of Raha Police Station dated 12.09.2013 recorded around 06:20 PM is the FIR of the case on the basis of which the police already visited the place of occurrence, recorded the statement of the witnesses therein and also arrested the accused on the same date, i.e., on 12.09.2013 as stated by the concerned Investigating Officer (PW.16) and that the FIR of the case dated 13.09.2013 lodged by the informant, PW.1, was considered as second FIR, which cannot be considered as a piece of evidence only to be considered as statement under Section 161 CrPC.

37. We have seen that in the Exhibit.4, the G.D. Entry, made by Raha P.S. on 12.09.2013 that one Pradip Nath, PW.4, informed over phone that his nephew Krishna Nath of Borghat village was found dead in the Erabari jungle and on the basis of the said information, police proceeded to the place of occurrence and recorded the statement of the witnesses available therein and later took the custody of the accused appellant herein. However, the written FIR of the case (Exhibit.1) dated 12.09.2013 submitted on 13.09.2013 before Raha Police Station reflects that for the same incident, informant lodged an FIR against the accused that since morning around 7 of 12.09.2013, her minor son, the deceased, was found missing from her house and after long search, his dead body was recovered from the jungle at Erabari and, therefore, prayed for appropriate action in that regard.

38. The Hon'ble Apex Court in the case of *Yanob Sheikh -Vs- State of West Bengal* reported in (2013) 6 SCC 428 held that if any such mere entry in the General Diary in the police station has passed the order in a cryptic form without going into details as to who had committed the crime and/or how the occurrence took place as to who had committed the crime cannot be considered to be an FIR since under Section 154 CrPC, FIR contains the basic essentials in relation to the commission of a cognizable offence upon which the Investigating officer can immediately start his/her investigation in accordance with the provision of the said Section under Chapter XII of the Code.

39. Though Mr. Bhattacharyya submitted that the police recorded the statement of the witnesses in the place of occurrence on 12.09.2013 itself on reaching the said place but from the evidence of the Investigating Officer, it can be seen that later after receipt of the written FIR, he proceed to the place of occurrence and to the concerned village and also recorded the statement of the witnesses acquainted with the facts of the case. Further, from the arrest memo, we have seen that the accused was initially arrested on 13.09.2013 at 11.30 PM and was placed before the CJM, Nagaon, on 14.09.2013 and, therefore, we are of the considered opinion that the Exhibit. 1, FIR of the case in hand is as per Section 162 CrPC. From the evidence led by the prosecution as discussed above, we are of the opinion that the prosecution could prove the guilt of the accused beyond all reasonable doubt.

40. It is seen that the entire case is on the basis of the circumstantial evidence without any break in the chain of the circumstantial evidence. Moreover, it is PW Nos. 8, 9 and 14, who were

very much present in the house of the accused along with the village headman before whom the accused made confession on being asked by the said village headman about the occurrence and taking away the deceased to the jungle in the morning on the date of the incident, where the accused admitted to have killed the deceased. Moreover such confession was not during police custody.

41. For the reasons above, we are of the considered opinion that the prosecution could prove the guilt of the accused beyond all reasonable doubt. As such, the impugned judgment and order of conviction and sentence dated 14.12.2015 passed by the learned Sessions Judge, Nagaon, in Sessions (T-1) Case No. 552(N)/2013 does not call for any interference.

42. Before parting with the case, we appreciate the assistance rendered by Mr. Debarshi Kumar Bhattacharya, learned *Amicus Curiae* as well as by Mr. Hrishikesh Sharma, learned Additional Public Prosecutor. We direct the Gauhati High Court Legal Services Committee to pay remuneration of Rs. 7,500/- to Mr. Debarshi Kumar Bhattacharya, learned *Amicus Curiae* for his assistance rendered to the Court, on his raising a bill.

43. Registry shall forward a copy of this judgment and order to the Superintendent, Central Jail, Nagaon, for onward communication of the same to the accused appellant.

44. Return the trial court record to the court of learned Sessions Judge, Nagaon along with a copy of this order.

45. With the above observations and directions, this criminal appeal is accordingly dismissed.

JUDGE

JUDGE

Comparing Assistant