

(2024) 04 GAU CK 0054
In the Gauhati High Court
Case No : Criminal Appeal (J) No. 56 Of 2019

Birsha Murah

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 10-04-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 162(1), 164, 173(2), 207, 209, 235(2), 313, 374(2), 383
Indian Penal Code, 1860 — Section 300, 302, 324, 325, 326
Evidence Act, 1872 — Section 145, 154, 154(1), 154(2)

Citation : (2024) 04 GAU CK 0054

Hon'ble Judges : Manish Choudhury, J; Robin Phukan, J

Bench : Division Bench

Advocate : A. Tiwari, N. Das

Final Decision : Dismissed

Judgement

1. The instant criminal appeal under Section 383 read with Section 374[2], Code of Criminal Procedure, 1973 [‘the CrPC’ or ‘the Code’, for short] from jail is directed against a Judgment and Order dated 07.03.2019 passed by the Court of learned Sessions Judge, Dibrugarh in Sessions Case no. 112/2015 [The State of Assam vs. Sri Birsha Murah]. By the said Judgment and Order dated 07.03.2019, the accused-appellant has been convicted for the charge of murder under Section 302, Indian Penal Code [IPC] and he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default of payment of fine, to undergo rigorous imprisonment for another period of 1 [one] month. In addition, the accused-appellant has also been convicted for the offences under Section 325, IPC and Section 324, IPC. For the offence under Section 325, IPC, the accused-appellant has been sentenced to undergo rigorous imprisonment for 5 [five] years and to pay a fine of Rs. 1,000/-, in default of payment of fine, to undergo rigorous imprisonment for another 1 [one] month. For the offence under Section 324, IPC, the accused-appellant has been sentenced to undergo rigorous imprisonment for 1 [one] year.

2. The case of the prosecution, in brief, was that on 22.03.2012, a First Information Report [FIR] was lodged before the In-Charge, Ghoramara Police Out Post by the informant-P.W.2 alleging inter alia to the effect that at around 07-00/08-00 p.m. on 21.03.2012, the accused persons, namely, [i] the accused-appellant, Sri Birsha Murah; [ii] Smti. Rambha Murah, wife of Sri Birsha Murah; and [iii] Sri Debra Murah, son of Sri Birsha Murah; all residents of Rachi Line, Ramai Tea Garden; got engaged in a dispute with [i] the brother of the informant-P.W.2, Bideshia Mirdha; [ii] Sri Shyamlal Mirdha @ Putlu Mirdha; and [iii] Smti. Lakhi Mirdha, wife of Sri Shyamlal Mirdha; residents of the same Line and in the process, the accused persons caused grievous injuries on them with axe and hoe. As a result, Bideshia Mirdha died on the spot. As Sri Shyamlal Mirdha and Smti. Lakhi Mirdha sustained grievous injuries on their persons, they were undergoing treatment in critical conditions in the Assam Medical College & Hospital [AMC&H], Dibrugarh.

3. On receipt of the said FIR, the In-Charge, Ghoramara Police Out Post registered the same vide General Diary Entry no. 334 dated 22.03.2012 and forwarded the FIR to the Officer In-Charge, Lahowal Police Station for registering the same under proper sections of law. At the same time, the In-Charge, Ghoramara Police Out Post, Sri Bhupen Kumar Sarma, Sub-Inspector of Police [P.W.14] took up the investigation of the case. On receipt of the FIR, the Office In-Charge, Lahowal Police Station registered the same as Lahowal Police Station Case no. 38/2012, on 22.03.2012, for the offences under Sections 302/326/34, Indian Penal Code [IPC] and entrusted the investigation to P.W.14.

4. The Investigating Officer [I.O.] of the case, P.W.14 during the course of investigation visited the place of occurrence on 22.03.2012 itself and held the inquest on the deadbody of the deceased, Bideshia Mirdha. After inquest, he prepared an Inquest Report [Ext.-1]. In order to ascertain the actual cause of death, the deadbody was sent to the AMC&H, Dibrugarh vide a Deadbody Challan [Ext.-4] for conducting post-mortem examination. The I.O. of the case also prepared a Sketch Map [Ext.-7]. The post-mortem examination on the dead body was conducted at the AMC&H on 22.03.2012 by Dr. Nayanmoni Pathak [P.W.11], Assistant Professor, Department of Forensic Medicine, AMC&H. Meanwhile, the injured persons viz. Sri Shyamlal Mirdha and Smti. Lakhi Mirdha had also undergone treatment at the AMC&H. The injured person, Sri Shyamlal Mirdha after initial treatment at the AMC&H, was referred to M/s Sanjivani Diagnostics & Hospital, Dibrugarh for better treatment. The I.O. of the case upon completion of investigation, submitted a charge sheet under Section 173[2], CrPC vide Charge Sheet no. 112/2012 on 31.12.2012 in connection with Lahowal Police Station Case no. 38/2012 [corresponding G.R. Case no. 647/2012] finding a prima facie case for the offences under Sections 302/326/34, IPC established only against the accused-appellant. On submission of the Charge Sheet, the learned Sub-Divisional Judicial Magistrate [S], Dibrugarh after securing appearance of the accused-appellant, furnished copies to him in compliance of the provisions of Section 207, CrPC. As the offence under Section 302, IPC is exclusively triable by

the Court of Sessions, the learned Sub-Divisional Judicial Magistrate [S], Dibrugarh committed the case records of G.R. Case no. 647/2012, arising out of Lahowal Police Station Case no. 38/2012, to the Court of Sessions, Dibrugarh as per the provisions of Section 209, CrPC by an Order of Commitment dated 05.06.2015 and by allowing the accused-appellant to remain on previous bail till his appearance before the learned Court of Sessions. The learned Public Prosecutor was accordingly notified. On receipt of the case records of G.R. Case no. 647/2012 pursuant to the Order of Commitment dated 05.06.2015, the Court of Sessions ['the trial court', for short] registered the same as Sessions Case no. 112/2015.

5. On appearance of the accused-appellant before the learned trial court, the learned trial court after hearing the learned Public Prosecutor and the learned defence counsel and upon perusal of the materials on record, framed the following charges against the accused-appellant :-

On 21.03.2012, at Romai Tea Estate under Lahoal Police Station,

Firstly – That you committed the murder of Bideshia Mirdha, and thereby committed an offence punishable under Section 302 of the Indian Penal Code and within the cognizance of the Court of Sessions.

Secondly – That you assaulted Shyamlal Mirdha with dangerous weapon and voluntarily caused grievous hurt to him, and thereby committed an offence punishable under Section 326 of the Indian Penal Code and within the cognizance of the Court of Sessions.

Thirdly – That you assaulted Laxmi Mirdha with dangerous weapon and voluntarily caused grievous hurt to her, and thereby committed an offence punishable under Section 324 of the Indian Penal Code and within the cognizance of the Court of Sessions.

6. When the charges were read over and explained to the accused-appellant, he pleaded not guilty and claimed to be tried. During the course of the trial, the prosecution side examined 15 [fifteen] nos. of witnesses and exhibited 11 [eleven] nos. of documents to bring home the charges against the accused-appellant. The witnesses examined by the prosecution were :- [i] P.W.1 – Smti. Gangamoni Turi; [ii] P.W.2 – Sri Jagdeo Munda; [iii] P.W.3 – Sri Shyamlal Mirdha; [iv] P.W.4 – Smti. Lakhi Mirdha; [v] P.W.5 – Sri Gopal Murah; [vi] P.W.6 – Sri Binud Topno; [vii] P.W.7 – Sri Jiten Bhumij; [viii] P.W.8 – Sri Michel Guria; [ix] P.W.9 – Sri Sanjay Bawri; [x] P.W.10 – Smti. Panchami Turi; [xi] P.W.11 – Dr. Nayanmoni Pathak; [xii] P.W.12 – Sri Raghunath Turi; [xiii] P.W.13 – Dr. Joydeep Dey; [xiv] P.W.14 – Sri Bhupen Kumar Sarmah; and [xv] P.W.15 – Dr. Anjan Kumar Sharma. After closure of the evidence from the prosecution side, the accused-appellant was examined under Section 313, CrPC and his plea was denial. The defence did not adduce any evidence. After appreciation of the evidence on record and hearing the learned counsel for the parties, the learned trial court has convicted the accused-appellant for the offences, mentioned

above, and the accused-appellant has been sentenced in the manner, indicated above, after hearing the him on the point of sentence under Section 235[2], CrPC. It has been ordered that the sentences would run concurrently.

7. We have heard Mr. A. Tiwari, learned Amicus Curiae for the accused-appellant and Ms. N. Das, learned Additional Public Prosecutor for the respondent.

8. Mr. Tiwari, learned Amicus Curiae appearing for the accused-appellant has submitted that there were inconsistencies in the testimonies of the prosecution witnesses on the issue who had taken the injured persons from the place of occurrence to hospitals for medical treatment. It is his further contention that only witnesses who were closely related to the deceased, claimed that they had seen the occurrence whereas from the evidence on record, it has emerged that there were many houses nearby the place of occurrence. Witnessing of the alleged incident only by the related witnesses and not by any persons from the locality has clearly created a doubtful situation. It is his contention that in the absence of corroboration from independent witnesses, the case of the prosecution resting on testimonies of related witnesses needs to be disbelieved and discarded. It is his further contention that non-recovery of the alleged weapon of assault has further weakened the prosecution case. He has further contended that as there was darkness at the time of the alleged incident, the benefit of doubt should go in favour of the accused-appellant. The learned Amicus Curiae has further contended that since three of the prosecution witnesses had turned hostile, it is a clear pointer towards the fact that the story projected by the prosecution was not the correct story.

9. Au contraire, the learned Additional Public Prosecutor has contended that there were eye-witnesses to the incident and their testimonies are cogent, credible and trustworthy. It has been contended that two of the eye-witnesses were injured in the incident and the evidence on record, therefore, is to be appreciated by taking into consideration that two of the eye-witnesses were also assaulted by the accused in the process. Just because none of the persons from the locality, had come to the place of occurrence the same cannot be a reason to disbelieve the testimonies of the eye-witnesses, who happened to be related to the deceased. It has been contended that when eye-witness accounts were direct, cogent and consistent, non-recovery of the alleged weapon of assault cannot be of much significance. It is contended that the alleged inconsistencies in the testimonies of the prosecution witnesses, which the learned Amicus Curiae has strenuously harped on, were minor in nature and those pertain to post-occurrence events and not to the incident of assault. Such alleged inconsistencies are to be disregarded in presence of overwhelming cogent and credible ocular evidence, which have been corroborated by the medical evidence as well.

10. We have given due consideration to the submissions advanced by the learned counsel for the parties and have also gone through the materials/evidence on record including the testimonies of the witnesses, available in the case records of Sessions Case no. 112/2015, in original. We have also gone through the

decisions cited by the learned counsel for the parties.

11. In order to appreciate the submissions of the learned counsel for the parties, it appears necessary, at first, to refer to the testimonies of the prosecution witnesses.

12. P.W.1, Smti. Gangamoni Turi was the daughter of the deceased. In her examination-in-chief, she stated that at about 07-00 p.m. on the date of occurrence, her father, Bideshia Mirdha @ Turi was coming to their house from the Garden Line. Hearing noise from outside their house, she went out of the house and saw the accused-appellant assaulting her father with an axe. When she tried to go near her father in order to save him, the accused-appellant also tried to assault her. She had, however, managed to escape. P.W.1 further stated that when the accused-appellant was assaulting her father, her uncle, Sri Shyamlal Mirdha [P.W.3] and her aunt, Smti. Lakhi Mirdha [P.W.4] went near her father to save him but the accused-appellant also assaulted both of them. P.W.1 testified to the effect that due to the assault by the accused, her father fell on the ground with injuries. P.W.1 stated that her father sustained injuries on his chest and at his backside. Her uncle, P.W.3 sustained injury on his head and her aunt, P.W.4 sustained injury on her chest. Both her uncle [P.W.3] and aunt [P.W.4] had to take treatment for days in hospitals. P.W.1 further stated that one of her uncles, Sri Jagdeo Mirdha [P.W.2] lodged the FIR regarding the incident at the Police Station. On the next day, Police came to their house and conducted inquest over the deadbody of his father. In the Inquest Report, Ext.-1 so prepared, she subscribed her signature as Ext.-1[1]. P.W.1 stated that her statement was recorded by Police.

12.1. In her cross-examination, P.W.1 stated that her father was a habitual drunker and he used to create unpleasant situation in the locality under influence of liquor. The villagers did not like him for his such conduct and behaviour. She denied the suggestions that on the date of the incident, her father was armed with a sharp cutting weapon; that she did not know who had assaulted her father and caused his death; that at the time of occurrence, she was inside the house, and for that reason, could not say as to who had assaulted her father outside the house. P.W.1 also denied suggestion of the defence side that on the date of occurrence, the accused-appellant was not present in his house. She also denied the suggestions that she did not state before the I.O. of the case that the accused-appellant also chased her; that the neighbouring people took her injured uncle and injured aunt to the hospital for their treatment; that her uncle sustained injury on his head; and that her father sustained injuries. As regards the locality, P.W.1 stated that there were about 10 houses near their house but, at the time of occurrence, nobody came to the place of occurrence on hearing hue and cry. P.W.1 deposed that on the date of occurrence, a quarrel took place between her father and her uncle, Sri Shyamlal Mirdha [P.W.3]. She stated that the deadbody of her father was lying in a field. In re-cross-examination, P.W.1 denied a suggestion that she did not state before the police that the accused-

appellant attacked her father with an axe.

13. In his testimony, P.W.2, Sri Jagdeo Munda, younger brother of the deceased, stated that he knew the accused. At around 07-00/07-30 p.m. on the date of occurrence, his son-in-law, Philip came to him to inform that the accused had killed his elder brother and left his body near his house. On receiving the information, he rushed to the spot and found the deadbody of the deceased with a cut injury on his leg. P.W.2 stated that Sri Shyamlal Mirdha [P.W.3] and Smti. Lakhi Mirdha [P.W.4] also sustained injuries on their persons and they had to be taken to the AMC&H, Dibrugarh. He stated that P.W.3 sustained an injury on his head and P.W.4 sustained an injury below her neck. He stated to have heard that when P.W.3 and P.W.4 went to save the deceased from the assault of the accused-appellant, they sustained those injuries on their persons. P.W.2 stated to have taken both the injured persons to hospital for treatment. On the day following the date of incident, police came to the house of the deceased. P.W.2 stated that he got the FIR written and putting his signature in the FIR, lodged same at the Police Station. He exhibited the FIR as Ext.-2 with a signature thereon as Ext.-2[1]. He stated that in the Inquest Report [Ext.-3], which the police prepared after conducting inquest on the deadbody of the deceased, he gave his signature as Ext-3[1].

13.1. In his cross-examination, P.W.2 stated that the deceased used to take liquor everyday and used to create unpleasant situation in the locality by entering into quarrels with other co-villagers. For the said reason, the deceased was also disliked by him. P.W.2 had, however, denied that the deceased used to misbehave with the female co-villagers after consuming liquor. P.W.2 stated that he could not say whether there was any quarrel among the deceased, Sri Shyamlal Mirdha [P.W.3] @ Putul Mirdha. He further stated that there was no provision of electricity light in the locality or in the house of the accused, at the time of occurrence. There was a field in front of the house of the deceased and the deadbody of the deceased was found lying on the said field. P.W.2 denied a suggestion that he did not state before Police regarding the injuries sustained by P.W.3 and P.W.4.

14. The prosecution witnesses, Sri Shyamlal Mirdha [P.W.3] and Smti. Lakhi Mirdha [P.W.4] are the husband and the wife respectively. Sri Shyamlal Mirdha [P.W.3] was an younger brother of the deceased.

15. P.W.3 in his examination-in-chief, stated that at around 07-00 p.m. on the date of the incident, he and his wife [P.W.4] were in the house of his mother. He used to reside in a separate house, situated near the house of his parents. At that time, the deceased, Bideshia Mirdha was engaged in an altercation with the wife of the accused-appellant. At that time, he and Sri Jiten Bhumij [PW.7] were sitting in the house of his mother. It was in the course of the quarrel, the accused-appellant assaulted and caused the injuries to his elder brother, Bideshia Mirdha. He tried to save his elder brother from the assault and during the process, the accused-appellant also hit him on his head with a sharp cutting

weapon. At that time, when his wife [P.W.4] tried to save him from the assaults of the accused-appellant, the accused-appellant also assaulted his wife [P.W.4] with a dao on her head and caused an injury to her. P.W.3 stated that after the assault, he became unconscious. Both of them [P.W.3 and P.W.4] were taken to the Tea Garden Hospital at first and thereafter, to the AMC&H, Dibrugarh. While his wife [P.W.4] had undergone treatment at the AMC&H for

13 days, he was shifted to M/s Sanjivani Diagnostics & Hospital, Dibrugarh from the AMC&H and at M/s Sanjivani Diagnostics & Hospital, Dibrugarh, he had to undergo treatment for about 20 days. It was during the treatment, P.W.3 came to know that the deceased succumbed to his injuries. P.W.3 stated that it was after release from the hospital, his statement was recorded by Police. As regards the injury sustained in the alleged incident, he stated that he sustained the injury on head and he had not fully recovered from the head injury.

15.1. In his cross-examination, he denied the suggestions put to him by the defence that he did not state before the I.O. that on the date of the occurrence and at the time of quarrel, his wife [P.W.4] was not with him; that the accused chased the deceased to assault; that the accused assaulted his wife [P.W.4] on her neck; that he went to save the deceased from the assaults of the accused; and that he had to stay in the hospital for treatment for 20 days. He stated that the deceased used to take liquor regularly. He had, however, denied the suggestions that after consuming liquor, the deceased used to make quarrels with the co-villagers and used to misbehave with the womenfolk of the village under influence of liquor. He also denied the suggestion that the actual quarrel took place between him and his deceased brother and the deceased was armed with a sharp cutting weapon. P.W.3 deposed that at the place of occurrence, there was no provision of light, though light was available at a little distance. He stated that there were about 30-35 houses located near the place of occurrence and there was also a ground nearby. He also denied the suggestions that he assaulted the wife of the accused with a dao on the date of occurrence and the deceased was armed with a sharp cutting weapon, sustained self-inflicted injuries during the quarrel and died.

16. P.W.4, Smti. Lakhi Mirdha, in her deposition, stated that at about 07-00 p.m. on the date of occurrence, Bideshia Mirdha went to the house of the accused-appellant and there was a quarrel between them. On hearing a quarrel, her husband [P.W.3] went towards the house of the accused and she followed him to the place of occurrence. At the place of occurrence, she saw the accused and the deceased altercating. When she reached the place of occurrence, she saw her husband [P.W.3] falling on the ground by holding his head. When she rushed towards her husband to save him, the accused also assaulted her on her neck with a dao. She shouted for help and hearing her shouting, few people gathered the place of occurrence. She and her husband [P.W.3] were thereafter, taken for medical treatment. At first, they were taken to the Tea Garden Hospital and thereafter, they were taken to the AMC&H. From the AMC&H, her husband

[P.W.3] was referred M/s Sanjivani Diagnostics & Hospital, Dibrugarh for better treatment. It was during her treatment at the AMC&H, she came to know that the Bideshia Mirdha succumbed to his injuries. P.W.3 stated that her statement was recorded by Police during her stay at the AMC&H. As regards the injury sustained by P.W.3, P.W.4 stated that P.W.3 sustained the injury on his head and had not fully recovered from the said injury till the time of her deposition.

16.1. In her cross-examination, P.W.4 denied the suggestions put to her by the defence that she did not state before the I.O. that hearing the quarrel between the deceased and the accused, P.W.3 went to the house of the accused; that 'arriving at the place of occurrence, she saw her husband falling down by catching his head'; and that after the alleged incident, she shouted for help. P.W.4 like P.W.1, P.W.2 and P.W.3, also admitted that the deceased used to take liquor regularly and he used to create unpleasant situation in the locality after consuming liquor and due to his such conduct and behaviour, the inhabitants of the locality did not like him. Like P.W.1, P.W.2 and P.W.3, P.W.4 also stated that there was no provision of electricity at the place of occurrence and there was darkness at the time of occurrence. P.W.4 denied a suggestion that the actual quarrel took place between her husband [P.W.3] and the deceased. P.W.4 claimed ignorance as to whether the deceased was armed with any kind of sharp cutting weapon at the time of occurrence.

17. The three witnesses - P.W.5, P.W.6 and P.W.7, were called by the prosecution as prosecution witnesses. After examining them for some part, the prosecution declared them as hostile witnesses and on the ground that they had resiled from their previous statements and sought permission from the learned trial court to cross-examine them. On being permitted, they were first cross-examined by the prosecution and thereafter, they were cross-examined by the defence.

18. In his examination-in-chief, P.W.5, Sri Gopal Mura deposed that it was on the day following the date of occurrence, he came to know about the death of the deceased and about the injuries sustained by P.W.3 and P.W.4. When the prosecution side cross-examined him with a marked part [Ext.-9(i)] from his previous statement, P.W.5 denied to have made such part in his previous statement recorded under Section 161, CrPC. He denied a suggestion made to him by the prosecution that he had deposed falsely in favour of the accused in order to save the accused.

18.1. In his cross-examination by the defence, P.W.5 stated that during the investigation, he stated before the I.O. that he did not know about the incident. P.W.5 had stated about the conduct and behavior of the deceased as a habitual drunker.

19. When he was examined-in-chief, P.W.6, Sri Binod Topno deposed that he only heard about the occurrence but he did not know as to how the alleged incident took place. When the prosecution side cross-examined him with a marked part [Ext.-10(i)] from his previous statement, P.W.6 denied to have made such part in

his previous statement recorded under Section 161, CrPC. He denied a suggestion made to him by the prosecution that he had deposed falsely in favour of the accused in order to save the accused.

19.1. In his cross-examination by the defence, P.W.6 stated that the Police did not interrogate him in connection with the case and did not tell him why his signature was taken on Ext.-1. He stated that Police did not read over the content of Ext.-1 to him and he simply put his signature on Ext.-1. He further stated that he did not know anything about the occurrence.

20. When he was examined-in-chief, P.W.7, Sri Jiten Bhumij deposed that at about 06-00 a.m. on the date of occurrence, he went to the house of Sri Shyamlal Mirdha [P.W.3] to bring his bicycle. He stated that he came to know only on the next day that there was a quarrel in which the deceased died. When the prosecution side cross-examined him with a marked part [Ext.-11(i)] from his previous statement, P.W.7 denied to have made such part in his previous statement recorded under Section 161, CrPC. He denied a suggestion made to him by the prosecution that he had deposed falsely in favour of the accused in order to save the accused.

20.1. In his cross-examination by the defence, P.W.7 admitted that his statement was recorded by Police. He deposed that Police was told that he did not have any knowledge about the incident. He further stated that the house of the deceased was situated near to the house of one Putul and on the date of occurrence, he went to the house of Putul but did not meet anyone there. P.W.7 stated that there was no facility of electricity on the road.

21. P.W.8, Sri Michel Guria in his examination-in-chief, deposed that he knew both the accused and the informant-P.W.2 as both resided in the same Line. The deceased, Bideshia Mirdha was his brother-in-law. As Smti. Lakhi Mirdha was the mother-in-law of his sister, he also knew Smti. Lakhi Mirdha [P.W.4] and her husband, Sri Shyamlal Mirdha [P.W.3]. As regards the alleged incident, he deposed to the effect that at around 08-00 p.m. on the date of the incident, he was coming from his in-law's house towards his house and at that time, he heard hue and cry in front of the house of the accused and then, the second wife of Sri Shyamlal Mirdha [P.W.3] came near him and told him that Munu had been cut and she was weeping and crying. P.W.8 claimed to have seen injury mark on the neck of the second wife of Sri Shyamlal Mirdha [P.W.3] and he took her to the Tea Garden Hospital. P.W.8 stated that the Police personnel had recorded his statement.

21.1. In the cross-examination, P.W.8 stated that there was darkness in the place of occurrence. There was no facility of electricity on the road and in the houses nearby. He denied the suggestion that he did not state before the Police that he saw the injured by focusing a torch light. He claimed ignorance as to how the occurrence took place and the deceased sustained the injuries.

22. P.W.9, Sri Sanjay Bawri was a nephew of the accused. He stated, in his

examination-in-chief, that he knew the deceased, Bideshia Mirdha and the two injured persons, Sri Shyamlal Mirdha [[P.W.3] and Smti. Lakhi Mirdha [P.W.4]. He deposed that on the night of occurrence, he came to know from his mother and other family members that there was an altercation between the accused and Sri Shyamlal Mirdha [P.W.3]. In the morning on the next day, he saw the deadbody of the deceased in a field, near to the house of the accused. He stated that his statement was recorded by Police.

22.1. During his cross-examination, he stated that he and his family members did not visit the place of occurrence though they heard hue and cry. He stated that the deceased used to consume alcohol and in intoxicated state, the deceased used to make hue and cry and because of such his nature and conduct, the local people used to dislike him. P.W.9 like P.W.8, stated that there was no electricity near the place of occurrence. He claimed ignorance as to how the occurrence took place.

23. P.W.10, Smti. Panchami Turi is a neighbour of the accused and an aunt of the informant-P.W.2. She was the mother of the deceased. Sri Shyamlal Mirdha [P.W.3] is her youngest son and Smti. Lakhi Mirdha [P.W.4], the wife of P.W.3, is her daughter-in-law. In her examination-in-chief, P.W.10 stated that she hearing hue and cry from the house of the accused, went running to the place of occurrence and saw Bideshia Mirdha lying on the road and also saw an injury on the head of Sri Shyamlal Mirdha [P.W.3]. She saw people taking Sri Shyamlal Mirdha [P.W.3] to the Tea Garden Hospital. At that time, blood was oozing out from the head of Sri Shyamlal Mirdha [P.W.3]. She saw her daughter-in-law, Smti. Lakhi Mirdha [P.W.4] holding her neck by her hand. She came to know from the villagers that the accused had killed her son, Bideshia Mirdha and also assaulted Sri Shyamlal Mirdha [P.W.3] and Smti. Lakhi Mirdha [P.W.4]. She stated that her statement was recorded by Police. In her testimony, P.W.10 stated that Sri Shyamlal Mirdha [P.W.3] was admitted in the hospital, M/s Sanjivani Diagnostics & Hospital, Dibrugarh for about two months. After the incident, Sri Shyamlal Mirdha [P.W.3] was not in a position to talk and it was only after treatment for about one month in M/s Sanjivani Diagnostics & Hospital, Dibrugarh, Sri Shyamlal Mirdha [P.W.3] was able to talk. When she asked him about the incident, Sri Shyamlal Mirdha [P.W.3] told her that in the night of occurrence, he [P.W.3] hearing Bideshia Mirdha's shouting ran to him. At that point of time, the accused, along with his wife and son assaulted Bideshia Mirdha and him and the same resulted into their injuries.

23.1. In the cross-examination, P.W.10, stated that she could talk to her son [P.W.3] only after a month. She denied the suggestions that she did not state before Police that she saw blood oozing from the head of Sri Shyamlal Mirdha [P.W.3]; and saw Smti. Lakhi Mirdha [P.W.4] holding her neck by her hand. She admitted that there was darkness at the place of occurrence and she could not say about the persons present at the place of occurrence.

24. P.W.11, Dr. Nayanmani Pathak was, on 22.03.2012, serving as an Assistant

Professor, Department of Forensic Medicine, AMC&H, Dibrugarh. He stated that he performed the post-mortem examination on the deadbody of the deceased, Bideshia Mirdha on 22.03.2012 on Police requisition in connection with Lahowal Police Station Case no. 38/2012. In his testimony, P.W.11 stated that on examination, he found the following injuries on the body of the deceased :-

1. Chop wound of size 8 x 3 cm x thoracic cavity deep over anterior aspect of left thoracic wall;
2. Cut injury of size 2 x 1 cm x bone deep over right temple;
3. Stab wound of size 3 x 2 x 1 cm over upper lateral portion of left hip;
4. Chop wound of size 4 x 3 x 2 cm over left leg posteriorly, 3 cm above ankle;
5. Fracture ribs 2nd, 3rd and 4th side anteriorly.

He also found cut injuries on the left side of pleurae, in the upper lobe of left lung and over left ventricle of pericardium. He stated that in the Post-Mortem Examination [PME] Report, exhibited by him as Ext.-3 with his signature thereon as Ext.-3[1], he opined that the death of the deceased was instantaneous, resulting from the injuries sustained. According to him, all the injuries were ante-mortem in nature and were caused by sharp cutting heavy weapon. He had further opined that the death was homicidal in nature. He stated that when he placed the PME Report before Dr. R.K. Gogoi, Associate Professor & In-Charge, Department of Forensic Medicine, AMC&H, Dr. Gogoi concurred with his findings with his endorsement. He exhibited the signature of Dr. Gogoi on Ext.-3 as Ext.-3[2]. He stated that at the time of post-mortem examination, the documents viz. Ext.-1 – Inquest Report and Ext.-4 – Deadbody Challan were placed before him and he proved his signatures thereon as Ext.-1[5] and Ext. 4[1] respectively.

24.1. In his cross-examination, P.W.11 deposed that the injuries which were found on the deadbody of the deceased might be caused by a single weapon or by different weapons. No post-mortem injury was detected on the body. He found five nos. of injuries externally. He opined that the injuries which he had found could not happen due to fall on any sharp object.

25. P.W.12, Sri Raghunath Turi being a resident of the same village, knew the accused-appellant; the informant-P.W.2; the deceased, Bideshia Mirdha; and the two injured persons, Sri Shyamlal Mirdha [P.W.3] and Smti. Lakhi Mirdha [P.W.4]. In his examination-in-chief, he deposed to the effect that at about 07-00 p.m. on the date of occurrence, he was at his residence. He heard shouting of Bideshia Mirdha as his house was located at about 40-45 metres from the residence of P.W.12. Hearing the voice of Bideshia Mirdha, he came out of his garden quarter along with his wife as the daughter of Bideshia Mirdha came running to him to report that her father had been cut; her aunt, Smti. Lakhi Mirdha [P.W.4] had been assaulted on her back; and Sri Shyamlal Mirdha [P.W.3] had been hit on his head. The daughter also told P.W.12 that she was also chased. On reaching the

place of occurrence, P.W.12 stated to have seen Bideshia Mirdha lying dead in a field, situated in front of the residence of the accused. P.W.12 stated that he took both Sri Shyamlal Mirdha [P.W.3] and Smti. Lakhi Mirdha [P.W.4] to the Tea Garden Hospital. He further stated that Sri Shyamlal Mirdha [P.W.3] and Smti. Lakhi Mirdha [P.W.4] were thereafter, taken to the AMC&H, Dibrugarh.

25.1. In his cross-examination, P.W.12 stated that when he reached the place of occurrence, there was no other person. The deadbody of Bideshia Mirdha was lying in the field and it was dark at that point of time. He stated that he did not know as to how the alleged incident took place. He stated that there were more than 50 houses near the place of occurrence. He further stated that the Police did not record his statement regarding the alleged incident. It was stated by him that the deceased used to consume alcohol and used to create nuisance in the locality and for his such conduct and behaviour, the local people used to dislike him.

26. P.W.13, Dr. Joydeep Dey was, on 21.03.2012, serving as a Resident Surgeon in the Department of ENT, AMC&H, Dibrugarh. He deposed to the effect that on 21.03.2012, a patient named Smti. Lakhi Mirdha [P.W.4], brought with alleged history of physical assault by a known person near her residence at 06-00 p.m. on 21.03.2012, was treated by him. On her examination, he found a linear wound from the right side of the upper chest to the left lower part of the neck and the size of the injury was 10 x 3 x 2 cms and there was active bleeding from the wound. The age of the injury was three hours and the nature of the injury was simple from the ENT aspect. The patient, Smti. Lakhi Mirdha [P.W.4] was admitted in the AMC&H on

21. 03.2012 and after conservative treatment, she was discharged on 24.03.2012. P.W.13 exhibited the Medical Report prepared in respect of Smti. Lakhi Mirdha as Ext.-5 with his signature thereon as Ext.-5[1].

26.1. When P.W.13 was cross-examined, he stated that the injured was not examined in reference to any case. The patient was admitted in the female ward of the ENT Department. He further stated that Police did not make any visit to the AMC&H either to examine the medical papers or to examine him.

27. P.W.14, Sri Bhupen Kumar Sarma was posted as In-Charge, Ghoramara Police Out Post on 22.03.2012. In his testimony, P.W.14 stated that on 22.03.2012, the Manager of M/s Romai Tea Estate, Sri Bhaskar Jyoti Phukan informed at the Police Out Post that two persons – Sri Shyamlal Mirdha and Smti. Lakhi Mirdha – residents of Rachi Line were lying injured and another person was lying dead. It was informed that the injured persons were taken to the AMC&H, Dibrugarh. P.W.14 stated that on receipt of the said information, he recorded an entry in the General Diary on 22.03.2012 and thereafter, proceeded to the place of occurrence along with his staff. At the place of occurrence, he prepared a Sketch Map [Ext.-7] and he proved his signature thereon as Ext.-7[1]. He stated that he recorded the statements of witnesses and held inquest on the deadbody

of the deceased. He exhibited and proved the Inquest Report as Ext.-1 with his signature thereon as Ext.-1[5]. The I.O. further stated that on 22.03.2012, he received the FIR and within his endorsement thereon, he took up the investigation of the case. This witness exhibited and proved the FIR as Ext.-2 and the signature of Sri Rajen Saikia, Officer In-Charge, Lahowal Police Station on it as Ext.-2[2]. He stated that he submitted the Charge Sheet finding prima facie materials against the accused for the offences under Sections 302/326/34, IPC and had exhibited the said Charge Sheet as Ext.-8 with his signature therein as Ext.-8[1]. He had also exhibited and proved the statements of P.W.5, P.W.6 and P.W.7 recorded under Section 161, CrPC by him as Ext.-9, Ext.-10 and Ext.-11 respectively and also a part each of those statements as Ext.-9[1], Ext.-10[1] and Ext.-11[1] respectively.

27.1. In his cross-examination, P.W.14 stated that he did not make Sri Bhaskar Jyoti Phukan as a listed witness and he denied that the witnesses – P.W.5, P.W.6 and P.W.7 – did not give their statements under Section 161, CrPC. He stated that he did not collect any blood from the earth at the place of occurrence and did not examine the victim at the Garden Hospital. He stated that he got the statements of the injured persons recorded by the court under Section 164, CrPC. He stated that P.W.4 did not state before him that she saw her husband falling down holding his head and she raised alarm and the people assembled. The I.O. further stated that P.W.1 did not state before him that she was chased by the accused to assault and the neighbouring people took her injured uncle and aunt to the hospital and that the weapon of offence was an axe.

28. P.W.15, Dr. Anjan Kumar Sarma deposed in the capacity of the Superintendent, M/s Sanjivani Diagnostics & Hospital, Dibrugarh. In his deposition, P.W.15 exhibiting a Report of Medico-Legal Case as Ext.-6, stated that the Ext.-6 Report pertained to Sri Shyamlal Mirdha [P.W.3] and the Report was submitted by Dr. Rohini Borkotoki, who was the then Superintendent of M/s Sanjivani Diagnostics & Hospital, Dibrugarh. He stated that he was acquainted with the signature of Dr. Rohini Borkotoki as he worked with Dr. Borkotoki for several months in M/s Sanjivani Diagnostics & Hospital, Dibrugarh. On the basis of the Ext.-6 Report, P.W.15 stated that Sri Shyamlal Mirdha [P.W.3] was admitted in M/s Sanjivani Diagnostics & Hospital, Dibrugarh on 22.03.2012 and after treatment, he was discharged on 09.04.2012.

29. From the testimonies of the prosecution witnesses, P.W.8, P.W.9, P.W.10 and P.W.12, it has emerged that they knew the accused, the deceased and the two injured persons. P.W.10 was/is the mother of the deceased, Bideshia Mirdha and the injured, Sri Shyamlal Mirdha. P.W.8 claimed to have heard commotion in front of the house of the accused. He stated to have heard that Munu was in an injured condition immediately after the alleged incident. P.W.8 seeing cut wound on the neck of the second wife of Sri Shyamlal Mirdha, took her to the Tea Garden Hospital. In her cross-examination, P.W.9 stated that there was darkness at the place of occurrence. From the testimonies of P.W.9 and P.W.12, it has

emerged that the deceased was habituated to alcohol and after consuming alcohol, he used to create nuisance in the locality. It was because of his such conduct and behaviour, the people in the locality used to dislike him.

30. Injuries to the deceased :- The injuries/wounds sustained by the deceased were already mentioned in paragraph 24 above, wherein the testimony given by the autopsy doctor [P.W.11] was extracted. The PME Report was exhibited and proved by P.W.11 as Ext.-3. The witness, P.W.11 who performed the post-mortem examination on the deadbody of the deceased, had after finding the injuries/wounds, as recorded in the PME Report [Ext.-3], categorically opined that the death of the deceased was instantaneous and it resulted from those injuries/wounds. There were cut injuries on the left side of pleurae, in the upper lobe of left lung and over left ventricle of pericardium. The injuries/wounds were ante-mortem in nature. P.W.11 had categorically observed that the injuries/wounds were caused by a sharp cutting heavy weapon and the death of the deceased was homicidal in nature. He had categorically observed that such kinds of injuries/wounds would not happen if a person had fallen on a sharp object, meaning thereby, such injuries/wounds were results of assaults on another person by a sharp cutting heavy weapon. P.W.3 stated that at first, he was hit on his head by the accused with a sharp cutting weapon and thereafter, the accused assaulted his wife [P.W.4] with a dao on her neck. P.W.4 who also bore the brunt, stated that it was with a dao the accused had assaulted her on her neck. Nothing has been brought by the defence to the effect that the injuries/wounds sustained by the deceased could not have been inflicted by a dao. No inconsistencies are, therefore, found between the ocular evidence and the medical evidence.

31. Injury to Sri Shyamlal Mirdha [P.W.3] :- In the FIR [Ext.-2], it was mentioned that P.W.3 sustained grievous injury on his person and he was undergoing treatment in critical condition. P.W.1 stated, in her testimony, that her uncle, P.W.3 went near her father to save him from the assault of the accused and in the process, P.W.3 sustained an injury on his head and for the injury, he had to undergo treatment in the hospital. P.W.2 had also deposed that P.W.3 sustained an injury on his head and he heard that P.W.3 sustained the injury when he went to save the deceased from the assault of the accused. P.W.3 had testified that when he tried to save the deceased, the accused hit him on his head with a sharp cutting weapon. P.W.4 deposed to the effect that when she arrived at the place of occurrence, she saw her husband, P.W.3 falling down by catching his head. P.W.10 stated to have learnt from the villagers that the accused assaulted P.W.3 and P.W.3 was admitted in the hospital, M/s Sanjivani Diagnostics & Hospital, Dibrugarh for a long period and it was after one month, P.W.3 was able to talk about the incident. P.W.12 in his examination-in-chief, stated that he took P.W.3 to the Garden Hospital at first. P.W.15 had exhibited and proved the Medico-Legal Report regarding the medical treatment of P.W.3 as Ext.-6. In Ext.-6, Medico-Legal Report, it was reported that there was a cut injury on the head of P.W.3 by a sharp weapon. As per Ext.-6, Medico-Legal Report, the injury was grievous. There was fracture of frontal bone. In the said Report, the approximate

age of the injury was mentioned as 18 hours. All these go to establish that P.W.3 sustained a grievous injury on his head on the date of the incident, 21.03.2012 and the grievous injury was caused by a sharp cutting weapon.

32. Injury to Smti. Lakhi Mirdha [P.W.4] :- In the FIR [Ext.-2], lodged on 22.03.2012, it was mentioned that P.W.4 sustained grievous injury on her person and she was undergoing treatment in critical condition in the AMC&H, Dibrugarh. P.W.1 stated, in her testimony, that her aunt, P.W.4 went near her father to save him from the assault of the accused and in the process, P.W.4 sustained injury on her chest and had to undergo treatment in the hospital. P.W.2 had deposed that in the incident, P.W.4 sustained injury on her person and she had to be taken in the AMC&H, Dibrugarh for treatment. P.W.2 had stated that P.W.4 sustained the injury below her neck. He learnt that P.W.4 sustained the injury when she and P.W.3 went to save the deceased from the assault of the accused. P.W.3 stated that as he was being assaulted by the accused, his wife, P.W.4 tried to save him from the assault of the accused. But the accused also assaulted P.W.4 with a dao on her neck and caused injury to her. In her testimony, P.W.4 stated that on arriving at the place of occurrence, she saw her husband, P.W.3 falling down by holding his head. When she ran towards P.W.3 to save him, the accused assaulted her on her neck with a dao. Before the learned trial court, P.W.4 showed the injury on her neck and it was recorded by the learned trial court that there was a cut mark running from lower part of the neck, left side across the right collar bone. P.W.10 stated to have learnt from the villagers that the accused assaulted P.W.4. P.W.12 in his examination-in-chief, stated that he took P.W.4 to the Garden Hospital at first. P.W.13 had exhibited and proved the Medical Report regarding the medical treatment of P.W.4 as Ext.-5[1]. P.W.13 stated that he found a linear wound extending from right side of the upper chest to left lower part of the neck on the person of P.W.4, when he treated her on 21.03.2012. He stated that the age of injury was 3 hours and there was active bleeding from the wound, which was of size, 10 x 3 x 2 cms. P.W.3 was admitted in the AMC&H on 21.03.2012 and after conservating treatment, she was discharged on 24.03.2012. In Ext.-5, Medical Report, the time & date of reporting at the AMC&H was mentioned as 09-00 p.m., 21.03.2012. Ext.-5 also recorded that the injury had resulted due to physical assault by a known person near his own residence. All these go to establish clearly that P.W.4 sustained a grievous injury on her neck on the date of the incident, 21.03.2012.

33. Place of occurrence :- In the FIR [Ext.-2], it was mentioned that the incident occurred among residents of Rachi Line, Romai Tea Garden. In the Sketch Map [Ext.-7], it was mentioned that the house of the accused is adjacent to Rachi Line Road. On the other side of the Rachi Line Road, there is a field. As per the Sketch Map, the deadbody of the deceased was found lying at a place in the field by the side of Rachi Line road. From the evidence of P.W.1, it has emerged that the incident occurred on the Line road. P.W.2 deposed that there was a field in front of the house of the deceased and in the said field, the body of the deceased was found lying. P.W.3 and P.W.4 deposed that they heard commotion in/near the

house of the accused. In his testimony, P.W.9 stated that he saw the body of the deceased in the field near to the house of the accused. P.W.10 had stated that when he came to the place of occurrence, he saw Bideshia Mirdha lying on the road. P.W.10 heard hue and cry from the house of the accused. In his testimony, P.W.12 stated that when he came to the place of occurrence, he saw Bideshia Mirdha lying dead in the field in front of the house of the accused. The I.O. of the case, P.W.14 stated that he received an information from the Manager of Romai Tea Estate on 22.03.2012 that one deadbody was lying on Rachi Line road and on receiving the information, he after recording a General Diary Entry, went to the place of occurrence and prepared the Sketch Map [Ext.-7]. From the above evidence on record, it is clear that the place of occurrence was in front of the house of the accused and after the assault, the deadbody of Bideshia Mirdha was found lying at a place in the field which was near to the road. In the Sketch Map [Ext.-7], the place where the deadbody of the deceased was found, was in the field, which was opposite to the house of the accused.

34. Time of occurrence :- There is no dispute to the fact that the incident had occurred in the evening hours of 21.03.2012 and from the evidence of the witnesses, it is established that at the time of the incident, there was darkness and there was no facility of electricity at the place of occurrence. From the evidence on record, it is also established that other than the official witnesses, the deceased, the accused, the two injured witnesses and all the other prosecution witnesses were residents of the same village and everybody knew one another from a long time. When a person on being assaulted by any sharp cutting weapon, the screaming is natural consequence. When a person screams loudly on being assaulted, it is not unnatural that the close relatives of such a person like a daughter [P.W.1] and a younger brother [P.W.3] to reach out for help of the person assaulted. It is also normal for a wife [P.W.4] to follow her husband [P.W.3] who had rushed towards the place of occurrence hearing clamour of an elder brother in distress. Just because any other person from the houses nearby did not reach the place of occurrence it would not mean that no such incident of assault had occurred. Darkness at the place of occurrence cannot stand in the way for a close relative of a person being assaulted, to reach the place of occurrence, on hearing shouting. A person like the accused who is known to the witnesses, P.W.1, P.W.3 and P.W.4 for years together as being the residents of houses very near to one another, can be easily identified by such witnesses even in the evening hours, more particularly, when the place of occurrence of the incident was just in front of the house of the accused and near to the houses of the witnesses.

35. The learned Amicus Curiae by referring to the cross-examination of P.W.1 and the answer given by the accused to Question no. 1 in his examination under Section 313, has sought to take a plea of alibi. A suggestion was put to P.W.1 that the accused was not present in his house on the date of occurrence and P.W.1 denied that suggestion. When the deposition of P.W.1 was referred to the accused during his examination under Section 313, CrPC as Question no. 1, the

accused gave an answer that he was not at home at the time the incident had occurred. When a plea of alibi is taken by the accused, then such plea is required to be proved with certainty and certainty should of such nature that it excludes the possibility of the presence of the accused at the time and place of occurrence. It is settled that to establish a plea of alibi, there is necessity to establish something more than a mere statement. It is, more so, when the prosecution side relies on statements of eye-witnesses and medical evidence to bring home the charge against the accused. In the case in hand, three eye-witnesses deposed in categorical terms that it was the accused who assaulted two of them. The third eye-witness had deposed that she saw the accused assaulting the other two eye-witnesses. Such eye-witness accounts lead to be conclusion that the accused was present at the time and place of incident. In such view of the matter, the plea of alibi is found not believable and we hold that the accused has failed to discharge the burden required to establish the plea of alibi.

36. As regards non-recovery of the alleged weapon of assault is concerned, we are of the view that non-recovery of the weapon of assault has not created a dent in the prosecution case. We have already found that the eye-witnesses' accounts are credible and trustworthy as their ocular evidence has received full corroboration from the medical evidence. The defence has not been able to elicit anything of substantial nature to give rise to another view and as such, non-recovery of the weapon of assault has not affected the prosecution case.

37. Other than the official witnesses, there is unanimity in the versions of all the other prosecution witnesses, who were known to one another, that the deceased was habitual drunkard, who used to consume liquor everyday. It has emerged from the evidence on record that after consuming liquor, the deceased used to create unpleasant situation in the locality often and for his such conduct and behavior, he was disliked by the inhabitants of the locality. Even the daughter of the deceased, P.W.1 had deposed that her father was a habitual drunkard. The two brothers of the deceased, P.W.2, P.W.3 and a nephew of the deceased, P.W.9 had deposed in similar line. But, such established fact do not lead to any conclusion that the deceased was the aggressor in the incident which led to his death. There is no evidence on record that at the time of the incident, the deceased was armed with any kind of weapon/instrument of assault, not to speak of any sharp cutting weapon. In any matter of the view, from the injuries/ wounds sustained by the deceased at different parts of his person, as reflected in the PME Report [Ext.-3], it is not possible to reach a view that those injuries/ wounds were self-inflicted. There is no evidence on record that either of the two injured eye-witnesses, that is, P.W.3 and P.W.4 was armed with any kind of weapon/instrument.

38. The learned Amicus Curiae had harped on a part of the testimony of P.W.1 wherein she stated that a quarrel took place between her father, that is, the deceased and Sri Shyamlal Mirdha [P.W.3], one of the brother of the deceased.

But the defence has not brought anything on record to show that there was any kind of previous enmity, not to speak of any long-standing previous enmity, between the two which animosity would motivate P.W.3 to cause murder of his elder brother.

39. A discussion on the issue of hostile witness is found necessary as the prosecution, in the course of the trial, declared three of its witnesses, namely, P.W.5, P.W.6 and P.W.7, as hostile witnesses. As per sub-section [1] of Section 162, CrPC, no statement made by any person to a Police Officer in the course of an investigation under Chapter XII of the Code, shall, if reduced to writing, be signed by the person make it; nor shall any such statement or record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as provided in the proviso thereto, at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. As per the proviso to sub-section [1] of Section 162, when any witness is called for the prosecution in such enquiry or trial whose statement has been reduced as aforesaid, any part of his statement [hereinafter also referred to as 'the previous statement' or 'part of the previous statement', at places, as the case may be, for brevity], if duly proved, may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination. As per the Explanation to Section 162, CrPC, an omission to state a fact or circumstance in the previous statement may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. Section 145 of the Evidence Act, 1872 has dealt with the issue of cross-examination as to previous statements in writing. Section 145 of the Evidence Act has prescribed that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. Sub-section [1] of Section 154 [Question by a party to his own witness] of the Evidence Act has provided that the court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. As per sub-section [2] thereof, nothing in Section 154 shall disentitle the person so permitted under sub-section [1], to rely on any part of the evidence of such witness.

39.1. Section 154 of the Evidence Act has, thus, conferred a judicial discretion on the court to allow a party to cross-examine its own witness and declare him as hostile and such discretion can be allowed if the court is satisfied that the

statement of the witness has exhibited an element of hostility or he has resiled from a material point which he had made in his previous statement made under Section 161, CrPC or where the court is satisfied that the witness is not speaking the truth and it may be necessary to cross-examine him to elicit the truth. The previous statement made before the Investigating Officer [I.O.] under Section 161, CrPC can be used for contradiction only after strict compliance of the procedure stated in Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for cross-examination. When it is intended to contradict the witness by his previous statement or a part of the previous statement, as the case may be, reduced into writing, the attention of such witness, as prescribed by Section 145 of the Evidence Act, must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. The attention of the witness is to be drawn to that part and this must be reflected in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it would be held as proved and there is no further necessity to prove the contradiction and the same can be read as contradiction while appreciating the evidence. If the witness denies having made such previous statement or such part of the previous statement, as the case may be, then his attention must be drawn to that previous statement or that part of the previous statement and must be mentioned in the deposition. By this process, the contradiction is merely brought on record, but it is still to be proved. Having regard to the second part of Section 145 of the Evidence Act, it is necessary thereafter, to draw attention of the Investigating Officer [I.O.] when he is examined in the court, to that previous statement or such part of that previous statement marked for the purpose of contradiction. The contradiction will be held to be proved if the Investigating Officer [I.O.] by referring to the previous statement, in his testimony, deposes about the witness having made that statement. The process involves referring to the previous statement or a part of the previous statement and extracting out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with the part of the previous statement with which a party, either the prosecution or the defence, wanted to contradict him, then the court cannot make, on its own, use of the previous statement which is not proved in compliance with Section 145 and/or Section 154 of the Evidence Act, that is, by drawing attention to the part of the previous statement intended for contradiction, for any purpose. The statements under Section 161, CrPC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose of : [i] contradicting such witness by an accused under Section 145 of the Evidence Act; [ii] the contradiction of such witness also by the prosecution but with the leave of the court; and [iii] the re-examination of the witness, if necessary [Ref :- V.K. Mishra and another vs. State of Uttarakhand and another, [2015] 9 SCC 588].

39.2. Reverting back to the materials on record of the case in hand, it is found that the prosecution sought permission from the learned trial court to cross-

examine its three witnesses, namely, P.W.5, P.W.6 and P.W.7, when these witnesses were found to have resiled from their previous statements recorded under Section 161, CrPC by the I.O. [P.W.14], after declaring them hostile. On permission being granted by the learned trial court, the prosecution cross-examined P.W.5, P.W.6 and P.W.7. Attention of these hostile witnesses was drawn to a part each from their previous statements, reduced into writing, made before the I.O. and the same were reflected in their cross-examination by reproducing those parts. P.W.5 when so cross-examined by the prosecution, denied to have made such part marked as Ext.-9[1] in his previous statement, exhibited as Ext.-9. P.W.6 when so cross-examined by the prosecution, denied to have made such part marked as Ext.-10[1] in his previous statement, exhibited as Ext.-10. P.W.7 when so cross-examined by the prosecution, denied to have made such part marked as Ext.-11[1] in his previous statement, exhibited as Ext.-11. As these three hostile witnesses denied to have made statements marked as Ext.-9[1], Ext.-10[1] and Ext.-11[1] respectively, those marked parts from their previous statements exhibited as Ext.-9, Ext.-10 and Ext.-11, that is, Ext.-9[1], Ext.-10[1] and Ext.-11[1] respectively were brought to the attention of the I.O. of the case, when he was examined as P.W.13. The I.O. [P.W.14] of the case after referring to the case diary of Lahowal Police Station Case no. 38/2012, testified to the effect that the parts marked as Ext.-9[1], Ext.-10[1] and Ext.-11[1] were parts of the statements of P.W.5, P.W.6 and P.W.7 respectively, when their previous statements under Section 161, CrPC were recorded by him on 22.03.2012 and they were parts of Ext.-9, Ext.-10 and Ext.-11 respectively. P.W.14, when cross-examined by the defence, had categorically denied that the three hostile witnesses did not give those previous statements - Ext.-9, Ext.-10 and Ext.-11 - under Section 161, CrPC. Thus, we are of the clear view that the prosecution has been able to bring out the contradictions in respect of those parts of the previous statements of the witnesses - P.W.5, P.W.6 and P.W.7, whom they had declared as hostile during the trial. It is trite law that the evidence of a prosecution witness cannot be rejected in toto because the prosecution side has chosen to treat him as hostile and has cross-examined him. The evidence of such a witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny. It is open to the court to rely upon the dependable part of the evidence of a hostile witness which is found to be acceptable and duly corroborated by some other reliable evidence available on record. On making a revisit to the testimonies of the three witnesses - P.W.5, P.W.6 and P.W.7, it is found that they were declared hostile immediately after start of recording their depositions. P.W.5, in his evidence-in-chief, stated to have learnt from others that P.W.3 and P.W.4 were involved in the incident and sustained injuries in the incident and to that extent, he corroborated the story of the prosecution. P.W.6 other than stating that he knew the accused, the informant and the deceased, stated that he did not know how the occurrence took place. P.W.7 deposed to the effect that he knew the accused, the informant and the deceased. What P.W.7 further stated was that in the evening hours on

the date of occurrence, he had gone to the house of Sri Shyamlal Mirdha [P.W.3] to bring his bicycle and from the house of P.W.3 he brought back the bicycle. It is iterated that the injured witness, P.W.3 in his testimony made a mention that at the time of the incident, P.W.7 was with him.

40. A contention has been advanced that other than the witnesses, P.W.1, P.W.3 and P.W.4, no other witness was at the place of occurrence and none had gone near the place of occurrence even after hearing hue and cry from the place of occurrence. It has been submitted that as these three witnesses were close relatives of the deceased and as such, their testimonies cannot be taken at face value. The learned Amicus Curiae has submitted that since these three witnesses were interested and related witnesses, their testimonies are to be disbelieved and discarded. It has been established that two of these three witnesses, that is, P.W.3 and P.W.4 sustained injuries on their persons due to assault in the said incident.

40.1. It is well settled that just because the relatives of the deceased are the only witnesses to the incident of assault, their testimonies are not to be discarded if their testimonies are found to be cogent and trustworthy. The Hon'ble Supreme Court of India in the decision, Mohd. Rojali vs. State of Assam, reported in [2019] 19 SCC 567, has curved out the distinction between an interested witness and a related witness. It has been held therein that the mere fact that the witnesses are related to the deceased does not impugn the credibility of their evidence if it is otherwise credible and cogent. It has been further observed as follows :-

13. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an 'interested' witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused [for instance see : State of Rajasthan vs. Kalki, [1981] 2 SCC 752; Amit vs. State of Uttar Pradesh, [2012] 4 SCC 107; and Gangabhavani vs. Rayapati Venkat Reddy, [2013] 15 SCC 298]. Recently, this difference was reiterated in Ganapathi vs. State of Tamil Nadu, [2018] 5 SCC 459, in the following terms, by referring to the three-judge Bench decision in State of Rajasthan vs. Kalki, [1981] 2 SCC 752 : [Ganapathi case, (2018)] 5 SCC 459, SCC p. 555, para 14].

14. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'.

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh v. State of Punjab* [*Dalip Singh v. State of Punjab*, 1954 SCR 145 : AIR 1953 SC 364 : 1953 Cri LJ 1465], wherein this Court observed : [AIR p. 366, para 26]

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person.

15. In case of related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent.....

41. The aspect as to how the testimony of an injured witness is to be assessed and appreciated is also well settled. If it is found that a witness has sustained injuries then it goes to show the presence of such witness at the place of occurrence. In other words, the fact that the witness has sustained injuries on his body would show that he was present at the place of occurrence and had seen the occurrence by himself and in such scenario, the defence would be required to lead convincing evidence to discredit such an injured witness.

41.1. As regards the weight to be attached to the evidence of an injured witness, the Hon'ble Supreme Court of India in *Abdul Syed vs. State of Madhya Pradesh*, reported in [2010] 10 SCC 259, has observed as under :-

Injured witness

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant[s] in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC 881], *Malkhan Singh v. State of U.P.* [(1975) 3 SCC 311], *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470], *Appabhai v. State of Gujarat* [1988 Supp SCC 241], *Bonkya v. State of Maharashtra* [(1995) 6 SCC 447], *Bhag Singh* [(1997) 7 SCC 712], *Mohar v. State of U.P.* [(2002) 7 SCC 606] (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270], *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477], *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673].

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under : (SCC pp. 726-27, paras 28-29).

"28. Darshan Singh [PW 4] was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka* [1994 Supp (3) SCC 235] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* [(2006) 12 SCC 459]). Thus, we are of the considered opinion that evidence of Darshan Singh [PW 4] has rightly been relied upon by the courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

42. It is well settled that discrepancies or inconsistencies which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. Only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. Where inconsistencies, contradictions or omissions which do not affect the core of the prosecution case, such minor inconsistencies, contradictions or omissions are not to be attached undue significance. The court is required to keep in mind that there may occur minor discrepancies, variations or omissions which can be in the normal course of human conduct. If the same were not material to the occurrence and were minor in nature, the same should not ordinarily be a ground

to doubt the testimony of the witness. The contention of the learned Amicus Curiae regarding inconsistencies, thus, raising doubt as regards the person[s] who had taken the injured persons from the place of occurrence after the incident for medical treatment, are found to be of insignificant nature and the same cannot be held to have dented the credibility of the testimonies of the eye-witnesses, which are found to be consistent, cogent and credible.

43. The intention to cause death or grievous hurt or hurt can be gathered from a combination of a number of factors and appreciation of the evidence in its entirety. In the case in hand, the accused wielded a sharp cutting heavy weapon [dao]. It is not a case of the defence that the weapon of assault was picked up by the accused from a place suddenly.

44. The intention to cause death can be gathered from a combination of a number of circumstances which, among others, can be [i] nature of a weapon used; [ii] whether the weapon was carried by the accused or was picked up from the spot; [iii] whether the blows are aimed at vital parts of the body; [iv] the amount of force employed in causing injuries; etc. The evidence on record have established that the injuries/wounds caused on the person of the deceased were in the vital parts of the body and it was the accused who caused the injuries/wounds with sufficient force. The parts of the body where the injuries/wounds were caused, as reported in the PME Repot [Ext.-3] with corroboration from the ocular evidence of P.W.3 and P.W.4, and the amount of force employed in causing those injuries/wounds on the person of the deceased, we are of the considered view that the offence committed by the accused in so far as the deceased is concerned, is the offence of murder under Section 300, IPC, which is punishable under Section 302, IPC.

45. Similarly, the assaults were made by the accused on the head of the injured witness, P.W.3 and on the neck of the injured witness, P.W.4. Those parts of the body, that is, the head and the neck are also vital parts of the body and injury by a sharp cutting weapon in any of those parts is likely to cause death or is likely to cause such injury which can lead to death or grievous hurt. The Medical Report, Ext.-6 in respect of the injury sustained by P.W.3 recorded that the cut injury caused on head was by a sharp weapon and the injury was grievous. As per Ext.-5, Medical Report in respect of the injured witness, P.W.4 and from the evidence of P.W.13, the injury sustained by P.W.4 was found to be simple in nature from ENT aspect. But the injury which was caused on P.W.4 was by dao, as testified by P.W.3 and the P.W.4. Thus, in view of the nature of injuries sustained by the two injured witnesses, P.W.3 and P.W.4, we do not find any good and sufficient reason to take a view, other than the view taken by the learned trial court in convicting the accused-appellant for the offences under Section 325, IPC and under Section 324, IPC.

46. In view of the discussions made above and for the reasons assigned, we do not find any merit in the present appeal. The appeal being bereft of any merits, is liable to be dismissed and it is accordingly dismissed. Consequently, the

Judgment and Order of conviction and sentence of the accused-appellant of the learned trial court for the offences under Section 302, Section 325 and Section 324 of the Indian Penal Code is affirmed.

47. We reiterated the view of the learned trial court as regards awarding of compensation to the parents of the victim, Bidehisa Mirdha as well as the other two victims, Sri Shyamlal Mirdha and Smti. Lakhi Mirdha under the Assam Victim Compensation Scheme, 2012. The Jurisdictional District Legal Services Authority is to consider the matter of grant of compensation as per the extant procedure.

48. This court records its appreciation for the assistance rendered by the learned Amicus Curiae. The learned Amicus-curiae be paid remuneration as per the rules in force.

49. Send back the trial court records with a copy of this judgment.