
(2019) 02 GAU CK 0042
In the Gauhati High Court
Case No : CRL.A(J) 50 Of 2016

Jolen Kandulana

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302
Code Of Criminal Procedure, 1973 — Section 161, 164

Citation : (2019) 02 GAU CK 0042

Hon'ble Judges : Manash Ranjan Pathak, J; Songkhupchung Serto, J

Bench : Division Bench

Advocate : M Bujarbaruah, Minakshi Bujarbaruah, Makhan Phukan

Final Decision : Disposed Off

Judgement

S.Serto, J

1. Heard Ms. M. Bujarbaruah, learned Amicus Curiae appearing for the appellant and Mr. M. Phukan, learned Addl. Public Prosecutor, Assam.

2. This is a Jail appeal directed against the judgment dated 30/4/2016 passed by the learned Addl. Sessions Judge-1 (FTC), Tinsukia in Sessions Case No.168 (T)/2012, wherein the learned Sessions Judge held the appellant guilty of having committed the offence punishable under section 302 IPC and sentenced him to life imprisonment and a fine of Rs.30,000/- and a stipulated imprisonment of 6 months which is also rigorous, in default of payment of fine.

3. The prosecution case in brief is that on the night of 16/3/2012 around 8.30 PM, the deceased/victim Johan Soley was invited by one Soren Soley to his house for dinner. As invited, the deceased victim went to the house of Soren Soley and while they were having dinner, the accused-appellant came with an iron rod and hit the deceased victim on his head twice. Soon thereafter, the victim was taken to Kakopathar hospital but was brought back to the house of one Bishram Soley and in the early morning of the next day he was once again

taken to the same hospital but, he succumbed to his injuries before he could reach the hospital. The Police was informed by lodging an ejahar by Neloni, daughter of the deceased victim on 17/3/2012. The P.S at Tongona registered the FIR and investigated the case. They also arrested the accused appellant and seized the weapon allegedly used i.e. iron rod. In the process, post mortem was conducted on the dead body of the deceased victim by one Dr. Apurba Kumar Borthakur. After completion of collection of evidence including examination of the witnesses under section 161 Cr.PC, the I.O. of the case was of the opinion that there was sufficient materials to go for trial against both the accused-appellant and the owner of the house (P.O) therefore, charge sheet was submitted against them before the Chief Judicial Magistrate, Tinsukia who forwarded the same to the learned Sessions Judge, Tinsukia. On receipt of the same, the learned Sessions Judge made over the case to the learned Addl. Sessions Judge-1(FTC) and the learned Addl. Sessions Judge, on 14/8/2012 framed the charge under section 302 read with section 34 IPC both against the accused appellant and the owner of the house where the incident took place. In the trial 13 witnesses were examined by the prosecution but not a single witness was examined by the defence. After examining the evidence and on hearing the parties, the learned Sessions Judge held the accused Soren Soley, owner of the house where the incident took place not guilty but held the accused appellant guilty of having committed the offence under section 302 IPC and sentenced him as stated above. Not satisfied with the judgment of the learned Addl. Sessions Judge, the accused-appellant has approached this Court on appeal from jail.

4. Ms. M. Bujarbaruah, learned Amicus Curiae after leading us through the evidence given by the 13 witnesses submitted that the evidence on record are not sufficient to held the accused-appellant guilty under section 302 of IPC. The learned counsel further submitted that there are discrepancies between the evidence given by the witnesses therefore, the learned Addl. Sessions Judge has erred in convicting the accused appellant. According to the learned Amicus Curiae, there are only 2 eye witnesses to the incident i.e. PW 8 and PW 9 and according to their statements, at the time, when the incident took place, the light was dim inside the house (P.O.) as the room was lighted with lamp. Therefore, it is not possible that the 2 eye witnesses would have been able to clearly see as to who caused the injuries on the head of the deceased victim. The learned Amicus Curiae also submitted that PW 9 though stated in his examination in chief that the accused appellant came with an iron rod and hit twice on the deceased-victim, in hier cross examination she had stated that it is not a fact that Jolen had hit Johan with iron rod. Therefore, there is contradiction in his statement and because of this the evidence of the witness cannot be accepted as prove against the accused-appellant.

5. PW 1 is the informant who is the daughter of the deceased victim. She stated in her examination in chief that on 16/3/2012, two persons namely, Soren Soley and Prem Kurti came to their house and told them that some guest had come from Jharkhand and invited her father for dinner. She also stated that she was

told by Soren Soley that he would bring back her father after dinner. The witness further stated that at about 3 AM Soren Soley and Daniel Kandula came to their house and told her that her father was coming but, a little later, she and her family members were told that the person who came from Jharkhand i.e. Jolen Kandulana (accused-appellant) had caused injury on her father by assaulting him with an iron rod while her father was in Soren's house and that he is in Bishram Soley's house. On receiving the information her mother Makdali Soley PW 11, her brother Tirash Soley and she went to Bishram Soley's house and found that her father had suffered injuries on his head. Since they could not take him by Ambulance due to mechanical failure, they took him by an Auto brought by Soren Soley. However, her father died on the way. The witness furthermore, stated that after all that, she lodged a written ejahar to the P.S and exhibited the same as Ext.1 and her signature as Ext.1(1). The witness also mentioned that the iron with which her father was assaulted was seized as it was found in the house of Soren Soley. In her cross examination she stated that her father was lying with injury in Bishram Soley's house and he had already been taken to hospital earlier before she and her family members were informed about the incident. She confirmed her statement given in examination in chief that ejahar was lodged by her on the basis of information received from Soren Soley in whose house the incident took place. She admitted that she was not aware as to who were present at the place of occurrence, however, she stated that she noticed that there was injury on the head of her father. She also stated that when they met her father, he was not in a position to speak.

It appears from the statement of the witness that she was not an eye witness to the incident but, an eye witness to the injury suffered by her father as a consequence of the incident at the place of occurrence and was informed of who committed the offence by none other than the owner of the house where the occurrence took place. And she is the one who lodged the FIR regarding the incident.

6. PW 2 stated that he knew the deceased victim and at the time of the incident he heard a scream from the house of Soren Soley. He also stated that he saw an iron rod in the hand of the accused appellant and he snatched the same from him. He also stated that after snatching the iron rod from the hand of the accused he entered the house and saw the deceased victim lying on the ground unconscious with his head fractured and his condition serious. The witness further stated that he and Soren Soley took the deceased victim to Kakopathar hospital but since no Doctor was present, they brought him back home. The witness further stated that he informed the wife of the deceased victim and after her arrival with Neloni Soley, i.e. the informant, the deceased was once again taken to hospital but died on the way to hospital. The witness also stated that since he suspect that the crime was committed by the accused-appellant, he handed him over to the Police. He also stated that he handed over the iron rod to the Police. In his cross examination, he stated that he had no personal knowledge as to how the deceased died.

What can be gathered from the statement of the witness is that though he did not see the actual incident when it happened but he saw an iron rod in the hand of the accused-appellant right after the incident and he snatched the same from him. One can also conclude that he saw the injury suffered by the victim and he was involved with all that was done to save the victim's life like taking him to the hospital and, he is the one who handed over the accused-appellant to the Police. From all these we can safely conclude that though he was not an eye witness to the actual incident, he was very near to the place of incident and he saw everything that happened immediately thereafter.

7. PW 3, according to his statement he is the brother of the victim deceased. He stated in his examination in chief that on the following day of the incident, he was told by his brother Bishram that the accused-appellant had assaulted his deceased-victim brother with an iron rod. The witness also stated that he went to the Police station and saw the dead body of his brother and also saw the injury on his head. In his cross examination the witness stated that the Police questioned him.

From the statement of the witness one can conclude that the witness was not present at the place of occurrence and all that he know about the incident was through the information he received from others.

8. PW 4 stated that at the time of the incident he was at his home and the incident took place in the house of Bishram Soley. He also stated that on the next day of the incident Bishram told him that the accused-appellant had assaulted and killed the deceased victim. The witness further stated that he also went to the place of occurrence and the Police station with one Father Gabriel and he knew that the deceased victim suffered head injury. The witness also stated that the accused-appellant assaulted Johan with iron rod and the incident took place in the house of Soren Solley. In his cross examination, the witness stated that Bishram's house is about 2 Km from that of Soren Solley. He also stated that he did not know where Bishram was at the time of the incident and he did not ask him as to how he came to know that the accused appellant had assaulted and killed the deceased-victim. The witness also stated that he did not know how the inquest report was prepared and he did not remember the date on which he put his signature on the same. Lastly he stated that the Police did not record his statement.

From the above statement of the witness, one can conclude that he was not an eye witness to the incident and he was not very sure of the information that he received, except that part of his statement that he was a witness when the inquest was conducted. There is nothing much to be taken from his statement.

9. PW 5 stated that he knew Soren Soley but not the accused-appellant. The witness further stated that he knew the deceased. He also stated that on the next day on which the incident took place, Neloni (informant) had informed him that her father has been assaulted with an iron rod and that has caused fracture

on his head. The witness further stated that he saw the dead body with the injuries on his head. Furthermore, the witness stated that the accused-appellant had caused the injury at the house of Soren Soley. Lastly, the witness stated that Ext.2(2) is his signature that he put at Tongona P.S. In his cross examination the witness stated that he did not submit before the Police the phone number through which Neloni made a call. He also admitted that he had made the statement after hearing from Neloni. The witness further admitted that he had no personal knowledge about the incident.

From the statement of the witness what one can understand is that he was not an eye witness to the incident but he was a witness when the inquest over the dead body was conducted.

10. PW 6 stated that he know PW 4 Nobin Soley and he also know both the accused-appellant and the deceased-victim. The witness further stated that at the time of the incident, the deceased victim was taking meal in Soren's house and while dinner was going on, all of a sudden he heard a scream from Soren's house and when he went to the said house, he saw the accused appellant coming out of the house with a rod in his hand. The witness also stated that he noticed injury on the deceased victim's head. Further, the witness stated that Soren took Johan to Kakopathar hospital however, Johan died on the following day. In his cross examination, the witness stated that he was in another person's house at the time of the incident and did not see who assaulted the victim.

From the statement of the witness what can be gathered is that the witness was not an eye witness who saw the accused-appellant while hitting on the head of the deceased but he saw the accused-appellant coming out with a rod from the house where the incident happened.

11. PW 7 stated that he knew the informant and all the accused and the deceased-victim. The witness further stated that on the day of the incident, the deceased victim came to the house of Soren Soley to have dinner. The witness further stated that Wutami i.e. PW 9 called the deceased victim inside the house to take his meal and while he was having meal, the accused-appellant hit him with an iron rod on his head. The witness also stated that upon hearing them screaming he went inside and saw the accused appellant running away. The witness also stated that Soren brought a vehicle and took away the deceased victim to Kakapathar PHC but was brought back without treatment as no document from the Police was submitted. The witness further stated that the deceased-victim succumbed to his injuries while being taken to the P.S therefore, his dead body was taken to Tinsukia Civil Hospital. Lastly, the witness stated that iron rod was found at the place of occurrence and Police seized the same and Ext.3 is the seizure list and Ext.3(1) is his signature. In the cross examination the witness stated that at the time of the incident, he was outside Soren Soley's house i.e. the place of occurrence and the incident took place at 8.30 PM. The witness also stated that at the time of the incident the house was lighted with lamp and the inner portion of the house was not clearly visible from outside. The

witness further stated that the Police interrogated him 2 days after the incident and he did not tell the Police that the accused-appellant ran away after killing the deceased-victim. The witness denied the suggestion that he did not see the incident however, he admitted that he did not ask the deceased as to who had assaulted him. The witness also stated that at the time of the incident he was drinking liquor. Lastly, the witness stated that length of the iron rod was 2 feet. The witness also denied the suggestion that the Police did not seized the iron rod.

What can be concluded from the statement of the witness is that though he was not present exactly at the spot where the deceased victim was struck with iron by the accused-appellant he was present near the same and he knew all about the incident and saw the accused appellant running away. From his statement we can also conclude that he saw the deceased-victim after the incident and he was also a seizure witness of the crime weapon.

12. PW 8 stated that she knew the accused appellant and also knew the deceased victim who was her uncle. The witness also stated that the incident occurred at night at Soren's house in the presence of her sister Dutami, Johen, Soren and herself. The witness also stated that the accused-appellant was about to go to bed and Soren Soley, the house owner was talking to one Kerketta, PW 6 and it was at that time that the accused-appellant came with an iron rod and hit the deceased victim on his head twice. The witness also stated that kerketta (PW 6) took hold of the accused appellant and Soren took hold of the deceased-victim. The witness also stated that the deceased-victim was taken to hospital but he expired on the way. Lastly, the witness stated that Neloni Soley, PW 1 lodged an ejahar and the Police came and seized the iron rod. In her cross examination, the witness stated that there was no electricity at the place of occurrence but there was a lamp burning. The witness further stated that Johan, the deceased-victim sat on her right side but she could not see from which side the accused-appellant entered the room. The witness confirmed that she, Dutami and Johan, i.e the deceased victim were having food. She admitted that there was no clear visibility in the room but denied the suggestion that because of the dim light she did not see as to who killed the deceased victim. The witness stated that she did not go to hospital and was not aware from where the iron rod was seized. The witness also stated that Jolen (accused appellant) had come with the deceased victim however, she was not sure whether Enam Kandaluna was there at the time of the incident. Lastly, the witness stated that Police recorded her statement. She denied the suggestion that the accused appellant did not kill the deceased.

On proper scrutiny of the statement of the witness what can be concluded from the same is that the witness was present at the spot where the incident took place along with other people and she exactly saw the accused appellant hitting the deceased victim with the weapon of offence i.e. iron rod. This evidence given by the witness is corroborated by the evidence given by PW 2, 6 and 7 who stated that they saw the accused-appellant with an iron rod in his hand. The

evidence of this P.W being eye witness account and not controverted it can safely be relied upon.

13. PW 9 stated that she knew the deceased because he was her maternal uncle. The witness then stated that about 2 years ago at 8 PM when she was in the house (P.O) with Deepali (PW 8), Johan (victim), Soren, (the house owner) and Jolen, (the accused-appellant). Jolen (accused-appellant) came with an iron rod and hit twice on the head of Johan (deceased-victim). The witness also stated that, Soren, Julian kerkutta, Gusna Solley came and caught hold of the accused-appellant. Thereafter, the victim was taken to hospital but he succumbed to his injuries. The witness lastly stated that Police recorded her statement and seized the iron rod. In her cross examination, the witness stated that 3 persons were having food and they used lamp for lighting. The witness further stated that the incident occurred after she had finished her food and there are 2 doors in the kitchen. The witness admitted that the light was dim at the relevant time but she saw Jolen (accused-appellant) entering the kitchen. She also added that one Enam had come with the accused-appellant. The witness denied the suggestion that Jolen, the accused-appellant did not strike Johan, the victim with the iron rod. She however, stated that she could not go to the hospital.

From the statement of the witness what one can conclude is that the witness was present at the place of occurrence and she saw the accused appellant hitting twice on the head of the deceased victim which caused the injuries and ultimately led to his death. This statement of the witness corroborates with the eye witness account of PW 6,7 and 8. The evidence of P.W being eye witness account and not controverted but rather corroborated by other witnesses can also be safely relied upon. Reading together of the statements of PW 6,7,8 and 9 would reveal that the victim deceased was hit on the head with iron rod by the accused appellant while he was having food in the house of Soren Soley in the night of 16/3/2012 at around 8.30 which led to his death. There can be no doubt on this because of the eye witness account of these PW's which are all corroborated with each other and by the other evidences given by the other P.W's.

14. PW 10, the witness stated that he knew the accused persons and the deceased was his relative. He also stated that at the time of the incident, he was at his house but heard noise coming from Soren's house. The witness further stated that he saw a rod in the hands of Jolen Kandaluna (accused-appellant). The witness also stated that he saw Tutan, Soren and Johan, the victim lying with injuries. The witness further stated that he caught hold of Jolen (the accused-appellant) who was not in his right mind. Thereafter, the witness also stated that the injured was taken to Kakopathar hospital and from there to Tirak hospital but he was brought back since there was no police papers. The witness furthermore stated that the victim was taken to the P.S the next day but he expired. The witness lastly stated that he was told by someone that Jolen had injured Johan. In his cross examination he denied that he was not present at the

place of occurrence. The witness also stated that he saw Jolen, the accused appellant in the 2nd part of the kitchen and Johan, the victim in the first part of the kitchen. He also stated that Johan did not talk to him because he was unable to talk. The witness further stated that he, Soren, Bishram and Tutan went to the hospital. He affirmed that Johan Solley was his cousin. He admitted that he could not remember what were the shouts all about.

On close scrutiny of the statement of the witness, what one can conclude is that the witness was not present at the place of occurrence when the incident took place but reached right thereafter and saw the accused-appellant with the iron rod (the crime weapon) still in his hands. This account of the witness corroborates with the statement of the eye witnesses that the accused appellant had used iron rod in hitting the head of the deceased.

15. PW 11, the witness stated that she did not know the accused appellant but the deceased victim was her husband. She stated that she was at home when Soren Soley (owner of the house where the incident took place) came to her house and took her husband. She further stated that at around 3 AM Soren informed her that a person from Bihar/Jharkhand has injured her husband with an iron rod and on receiving the information reached the house of Soren and found her husband with injuries. She also stated that her relatives came and they took the victim to the P.S but on the way her husband died. She also stated that Soren told her that the person from Jharkhand had killed her husband. In her cross examination, the witness stated that Police had recorded her statement and she had no knowledge about how her husband died. She however stated that she saw 2 head injuries. She denied the suggestion that she did not tell the Police that Soren told her a person from Jharkhand had killed her husband. She admitted that she did not know about the place of occurrence.

What can be concluded from the statement of the witness is that she was not present at the place of occurrence but she was informed by the owner of the house as to who killed her husband. Further, the evidence of the witness corroborated the eye witness account given by the four witnesses i.e. PW 6,7,8 and 9.

16. PW 12 is the I.O. of the case. The witness stated that on 17/3/2012, he was posted at Tongona P.S. as O.C under which the place of occurrence falls. The witness stated that Neloni Solley (PW 1) had filed an ejahar regarding the murder of her father by the accused appellant by hitting him from the back side with an iron rod. The witness also stated that on the way to the P.S. the victim expired. The witness further stated that the case was registered as Tongona P.S. Case No.3/10, under section 302 IPC and he took up the investigation. He exhibited the ejahar as exhibited as Ext.1 and his signature on it as Ext.1(2). The witness also stated that since the Magistrate concerned was not well he conducted the inquest over the dead body after obtaining due permission from his seniors. The witness then exhibited the inquest report as Ext.2 and his signature on it as Ext.2(3). The witness also stated that since the witnesses were

present in the P.S they were examined there itself. The witness further stated that the dead body was sent for post mortem and exhibited the dead body challan as Ext.4 and his signature on the same as Ext.4(1). The witness then testifies that he went to the place of occurrence and drew the sketch map and exhibited the same as Ext.5 and his signature on the same as Ext.5(1). The witness further stated that the accused Jolen was arrested and the iron rod used in the offence was seized from his hand. The witness then exhibited his signature in the seizure list as Ext.3(2). The witness further more stated that the accused was in the P.S and he was interrogated and thereafter was forwarded to the Court. The witness lastly stated that the charge sheet was filed against Jolen (accused-appellant) under section 302 IPC. He then exhibited the charge sheet as Ext.6 and his signature on the same as Ext.6(1). In his cross examination the witness stated that the seized iron rod is not before the Court today however, he stated that the iron rod was seized from the place of occurrence. The witness admitted that there was nothing in the CD to show as to where or from which place the iron rod was seized. The I.O also admitted that the iron rod was not sent to FSL. The witness however confirmed that the sketch map was prepared on the spot. He denied that the iron rod was not seized from Jolen (accused appellant) and he also denied the suggestion that the Ext.5 i.e the sketch map was not prepared at the place of occurrence. The witness confirmed that the witnesses was examined on 17th, 26th. The witness admitted that he did not record the statement of Jolen the accused but he only took his signature as the accused and not as seizure witness. The witness denied the suggestion that he did not conducted the investigation properly and the accused was not involved in the commission of offence. The witness confirmed that there was no prayer for recording the statement of the accused under section 164 Cr.PC.

17. The last witness is PW 13 who is none other than the Doctor who conducted the post mortem on the dead body of the victim deceased. The statement of the PW 13 are as follows:-

"On 17.03.12 I was working as Senior Medical & Health Officer at Tinsukia Civil Hospital. On that day, at 2.45 PM to 3.30 PM I examined Soran Sholey s/o B. Sholley referred from Tangana PS Case No.3/12 u/s 302 IPC. He was identified by UBC 63 Dhanbar Sewa and Sri Gabriel Soley. On examination, I found as follows:-

External Appearance:

5'4" in length, dark in 2" in black scalp hair, wearing violet jacket blue full brown blue shot, blue full shirt, soiled in blood, both half knee. Eye and mouth closed. Rigor-motis passed.

Wound:

Forced deep cut in occipital region and scalp of size (10cmX1X17 cm & 7X1XX1cm).

Cranium and Spinal Canal:

2" black scalp hair. Cut in through occipital bone and skull.

Vertebrae cut.

Membrane - rupture in occipital area.

Brain & Spinal cord:

Found cut lower occipital area as love spread cut to in and filled in blood, approx. 700ml in the cranial cords.

Liver enlarged. Spleen enlarged. Kidney healthy. Bladder empty. Organs of generation, extema, and internal-Healthy.

Thorax Walls ribs and cartilagts- Intact Health, Pleasure-Healthy, Right lung-conjused. Left lung-conjused, Pericar (dium)- healthy, Heart-Intact Healthy, vessels conjused. Abdomen Wall-Healthy, Peritonoun-Healthy, Mouth, Pharnyx. Oesophagus-healthy, Stomach and its contents-partial digested material and gases.

Small intestine and its contents- Fecel matters moth and gases.

Muscles, Bones and Joints:

Injury-As described, Disease or deformity - As described, Fiacture - As deccribed, Dislocation-As described.

Opinion:- The death was due to intracranial haemorrhage due to sharp cut injury. Homicidal in nature and antimortem in nature. Time since death is appx-24 to 36 hours. Ext.7 is the post mortem report, Ext.7(1) is my signatute. Ext.8 is the dead challan, Ext.8(1) is my signature.

XXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX

Both the injuries are fatal but the time in both the injuries can be sustained at the same time. If there is any time gap I caanot say. I have not mentioned the space in between the injury no.1 and 2. The injuries are caused by sharp cutting object but i cannot say the exact name of the weapon. I have not mentioned the rigor-motis."

18. After having carefully gone through the evidence and also after having heard the learned Amicus Curiae and the learned Addl. Public Prosecutor, Assam, we are of the view that the learned Addl. Session Judge-1(FTC), Tinsukia have not committed any error in his findings and in his conclusions. As stated already, since the eye witness account of PW 6,7,8 and 9 are in corroboration with each other and since they have given vivid account of the incident, we find no reason to interfere with the impugned judgment. We may also state that the statements of the eye witnesses are also corroborated by the other witnesses as to the circumstances prior to the incident and the circumstances which followed the

same. The post mortem report also reveals that there was a forced deep cut in occipital region and scalp of the size 10cmX1X17 cm & 7X1XX1cm. This corroborates the statement of the eye witnesses that the accused had given 2 blows on the head of the victim with the iron rod. Further, in the post mortem report, the Doctor has stated that there were partial digested material and gases in the abdomen of the victim. This also goes to support the prosecution case that at the time of the incident the victim was with PW 8 and 9 having dinner. Further, the Doctor's opinion which says that it was due to intracranial haemorrhage caused by sharp cut injury also corroborates with the statement of the eye witnesses that the victim was hit with an iron rod twice.

19. We are unable to agree with the learned Amicus Curiae who submitted that there is nothing in the evidence to say that there was a motive in the commission of the crime therefore, the case of the prosecution is a weak one. In catena of cases, the Hon'ble Supreme Court has held repeatedly that where positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance. The Hon'ble Supreme Court has also held that we need not consider the question of motive if we are satisfied with the evidence that the accused was the assailant who committed the offence is acceptable.

The two cases of the Hon'ble Supreme Court referred to are given herein below:

(i). Gurcharan Singh vs State of Punjab reported in AIR 1956 SC 460, paragraph 9. The relevant portion is reproduced here below:-

' 9.But it has repeatedly been pointed out by this Court that where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance. As regards the question who gave which blows to the deceased, the prosecution evidence was that after Inder Singh fell from the blows of the two appellants, all the four accused gave gandas blows to the fallen man. Be that as it may, we are no more concerned with the case against those two accused persons who have been acquitted by the High Court; but so far as the appellants are concerned, the evidence of the four eyewitnesses referred to above is consistent and has not been shaken in cross-examination. That evidence has been relied upon by the courts below and we do not see any sufficient reasons to go behind that finding. It is true that three out of those four witnesses are closely related to the deceased Inder Singh. But that, it has again been repeatedly held, is no ground for not acting upon that testimony if it is otherwise reliable in the sense that the witnesses were competent witnesses who could be expected to be near about the place of occurrence and could have seen what happened that afternoon. We need not notice the other arguments sought to be advanced in this Court bearing upon the probabilities of the case because those are all questions of fact which have been adverted to and discussed by the courts below."

(ii) Narayan Nathu Naik vs State of Maharashtra reported in (1970) 2SCC 101, paragraph 2. The relevant portion is reproduced here below:-

2. ".....We need not consider the question of motive in this case if we are satisfied that the evidence that Narayan Nathu Naik was the assailant of Rattan, is acceptable. The Medical evidence showed that Rattan died of a single injury which was a stab wound through the heart. The left ventricle was cut and the heart was drained of all blood. The pericardium had also a tear but on its upper reach and the evidence of the doctor who performed the autopsy shows that the pericardium was full of blood. The clothes of the deceased were also profusely stained but no blood was found inside the house where the deceased was first sleeping, but some blood was found at the Ota where the dead body was found but the source of the blood could not be identified. From this the learned Counsel raised the contention that the scene of offence was probably not what the prosecution case described and his contention is wound up with the rest of the story given by the eye witnesses particularly the wife who named the appellant as one of the assailants. Therefore we must turn to that story."

20. In view of what has been stated above, we concur with the impugned judgment of the learned Addl. Sessions Judge-1(FTC), Tinsukia passed in Sessions Case No. 168(T) of 2012 and in the result dismiss the Jail appeal of the accused appellant.

21. Before we part with the judgment, we record our appreciation for the assistance rendered by the learned Amicus Curiae and direct the Gauhati High Court Legal Services Committee to pay her Rs.7500/- as professional fee.

22. The appeal is disposed of.

23. Let a copy of this judgment be sent to the Superintendent, District Jail, Tinsukia for onward communication to the appellant.

24. Send back the LCR along with a copy of this judgment to the Trial Court.