

**IN THE COURT OF THE SESSIONS JUDGE, UDALGURI**

**Sessions Case No. 95/2017**  
(Arising out of G.R. Case No. 450/2016)  
**U/S 302 IPC**

**PRESENT : Sri M. Kalita,**  
**Sessions Judge, Udalguri.**

**Charge framed on:-4.12.2017**

State  
-Vs -  
Agastosh Kerkata  
.....Accused person.

Date of Recording Evidence on – 18.8.18, 28.9.18, 15.11.18,  
24.1.19, 26.2.19, 6.7.2019

Date of Hearing Argument on – 15.12.2021

Date of Delivering the Judgment on –22.12.2021.

**Appearance:**

For the State-----Mr. A. Basumatary, Ld. P.P.

For the Accused -----Mr. M.C. Narzary, Ld. Advocate.

**JUDGMENT**

1. The factual matrix of the prosecution case as unfolded by the case record is that informant Saru Tigga, W/o- Late Joyram Tigga, , a resident of No.2 Borangajuli (Orang Basti) under Dimakuchi PS lodged the written FIR before Dimakuchi PS on 25.4.2016 stating, inter-alia, that on

24.4.2016 at about 7 PM her deceased husband Joyram Tigga, aged about 43 years had gone to the residence of accused, a neighbour. When the deceased was at the house of Agastosh Kerkata then without any reason the accused by giving a blow with axe on head caused the death of Joyram Tigga. So, the informant prayed before the police for taking necessary action.

2. Before receiving the FIR, the Officer-In-Charge of Dimakuchi PS prepared GD Entry No.414 dated 24.4.2016 on the basis of the information received over phone from Babul Paik regarding the causing of death to one person of Nalapara village by the person of same village by giving axe blow. Then SI Powal Hazarika was entrusted to visit the place of occurrence. During the course of investigation, the Officer-In-Charge of Dimakuchi PS again prepared the GD entry No.418 dated 24.4.2016 and took step for bringing the dead body for conducting inquest. Thereafter, FIR was received on 24.4.2016. After receiving the FIR, the Officer-In-Charge of Dimakuchi PS registered the case being Dimakuchi P.S. case No.32/2016 U/S 302 IPC and entrusted the case to SI Powal Hazarika to investigate the case. The investigating officer had already taken step for conducting inquest with the help of Executive Magistrate. The dead body had also been referred for post-mortem examination. The accused was arrested and forwarded to the jail through the court and on completion of investigation the I.O. submitted the charge sheet against the accused person U/S 302 IPC.

3. After appearance of accused, the learned court below committed the case by furnishing the copies of all relevant documents to the accused person. Thereafter, the case was taken up for trial by this court.

4. Considering the materials available in the case diary and case record and on hearing the submissions of learned counsels of both sides the charge was framed U/S 302 IPC. Then the contents of charge was read over and explained to the accused to which the accused pleaded not guilty and claimed to stand trial. During the trial, the prosecution has examined as many as 9 (nine) PWs including the informant, Medical Officer and Investigating Officer to bring home the case. Then the accused has been examined U/S 313 Cr.P.C. Defence case is total denial. No witness has been examined by the defence in support of the defence case.

5. **Point for determination of the case:-**

Whether the accused committed the murder of victim by intentionally causing his death at the time of occurrence?

**Discussion, Decision and reasons for decision:-**

6. During the trial it has been reflected that the prosecution has relied on the evidence of nine PWs including the medical officer to establish the case against the accused. The prosecution's version is that the accused without any reason gave the fatal blow by an axe and as a result the

deceased died at the spot and at the residence of accused itself. At that moment the deceased was with the accused. No third person was present at that time. So, the death was caused by none other than accused person. On the other hand, the defence version is that the prosecution case is not based on reliable evidence. The case was not properly investigated by the investigating officer. There is no eye witness of the case. The circumstantial evidence brought forward by the prosecution is not credible one. There is no direct evidence to point the guilt of the accused.

7. So, in view of above position of facts, I like to discuss the evidence of PWs to decide whether the evidence is able to prove the charge leveled against the accused.

8. For the benefit of convenient discussion and appreciation of evidence, I like to discuss first the evidence of PW4, the Medical Officer to decide whether the victim was murdered or not.

8. PW4, Dr. Aridom Bora, who had conducted the autopsy over the dead body has deposed that on 25/04/16 while he was working as M&HO-1 at Udalguri Civil Hospital on that day during the emergency duty he conducted the post-mortem over the dead body of one Joyram Tigga, 42 years old male body, brought by constable Jeevan Hazarika. On examination he found following:

EXTRANAL APPEARANCE:-

An average 42 years male body wearing black Jacket and Coffee color long pant.

CRANIUM AND SPINAL CANAL:-

Scalp, Skull- cut injury on skull (left side), Membrane, Brain and spinal cord, Liver, Spleen, Kidneys, Bladder, Organs of generation- all are intact.

THURAX:-

Walls ribs and cartilages- Intact.

Pleurae, Larynx and trachea, lungs, Pericardium, Heart, Vessels- all are intact.

ABDOMEN:-

Walls, Peritonum, Mouth, pharynx, oesophagus, Stomach and its contents, Small intestine and its contents, Large intestine and its contents- all are intact.

INJURY:-

Cut injury on skull left side, left cheek and left lower lip.  
Fracture of left parietal bone.

More details description:-

Cut injury on Skull (left side), left Cheek and left lower lip.

The PW4 has further stated that as per opinion the death was due hemorrhage and shock following head injury. He has proved the post-mortem report as Ext.1. The PW4 has further stated that the injuries sustained by the deceased were sufficient to cause death of a person under ordinary course of nature.

9. During cross-examination, PW4 has admitted that he found both sharp cutting and fractured injuries on the head and face of the deceased.

10. After scrutiny of evidence of PW4, the medical officer and upon the examination of Ext.1, the post-mortem report, it is found that the medical officer has categorically asserted in the evidence as well as in the report that death was due hemorrhage and shock following head injury. During examination, the medical officer also found Cut injury on Skull (left side), left Cheek and left lower lip. The medical officer has further contended that the injury sustained by the victim is sufficient in ordinary course of nature to cause the death. So, upon the scrutiny of the medical evidence, my considered opinion is that the victim was actually caused murder as due to fatal injury caused to the victim, the victim died instantaneously.

11. Now, I like to discuss the evidence of other PWs to decide whether the death was caused by the person none other than the accused at the material point of time.

12. PW1, Smti. Saru Tigga, the informant, has deposed that the deceased was her husband. The incident occurred about 2 years ago at around 7 PM. On the day of occurrence in the evening her husband had gone to the house of the accused. The accused at his house caused the death of her husband by giving axe blow on his head and thereafter the

accused fled away. One Barna Tirki witnessed the incident when death was caused to her husband by the accused by means of an axe. Accordingly Barna Tigga informed her. Thereafter, village people also came to her house and informed her about the incident. Thereafter, she lodged the FIR by putting her thumb impression in the FIR. The FIR was written as dictated by her. On the next day of the incident she lodged the FIR.

13. During the cross-examination, PW1 has disclosed that she knew the accused person since before the incident. The house of the accused was at a distance of 200 meters away from her house. In between her house and the house of accused the house of Barna Tirky and Jowakin were situated. The house of Filman Tigga was nearest to her house. She did not witness when her husband had gone to the residence of the accused. She did not visit the house of the accused after the occurrence. About ½ an hour after the incident she was informed about the occurrence by Barna Tirky. Barna Tirky also disclosed before her that the accused had assaulted her husband with an axe on his head causing his instant death at the place of occurrence. Accused was the uncle of her husband. There was no enmity between the accused and the deceased before the occurrence. On the day of occurrence accused was staying at his house alone as his family members had gone to stay in another house at Badlapara TE.

14. PW2, Smti. Sunita Tigga has deposed that she knew both the accused, informant and deceased, who was her brother. The occurrence took place about two years ago. At the time of occurrence while she was preparing meal in the kitchen at around 7 PM she heard loud cry of her sister-in-law in the house of the accused which is situated nearby her residence. She immediately rushed to the house of the accused where she saw the dead body of Joyram which was lying in the residence of the accused. There was head injury and an axe was lying beside the dead body. As soon as she reached the house of the accused, the accused had fled away after committing the murder of her brother by giving the blow with the axe on his head and face. In the meantime neighbouring people gathered at the spot and saw the dead body of her brother and the axe lying beside him. They informed the police and police came to the spot and took away the dead body of her brother. In connection with this incident her sister-in-law lodged the FIR.

15. In the cross-examination, PW2 has admitted that police recorded her statement when she came to the police station. There was no house in between her house and the house of the accused. There was the house of one Barna Tirki by the side of the house of the accused. There were other houses in a little distance from the house of the accused. The houses of Manika Kujur and Alter Kujur were situated on the same line near the house of the accused. The dead body was lying near the main door of the house of

the accused. She also noticed when the meal was prepared in the kitchen of the accused with the help of fire wood. She did not see as to who was preparing meal in the house of the accused. At the time of occurrence the accused was staying alone at his house as his family members had gone to stay in some other place about few ago. The accused fled away immediately after committing murder of her brother. She saw the accused in his house during day time but she did not see the accused when the accused was fleeing away after the incident. The accused after committing murder, voluntarily surrendered before the police immediately and confessed his guilt.

16. PW3, Barna Tirky has deposed that he knows both the informant and the accused. The deceased was also known to her. On the day of occurrence he was at his house after consuming local liquor. The house of the accused was situated adjacent to his house in the same courtyard intervening by a distance of about 10 feet. At about 7 pm the accused had asked his wife Nita Tirky to bring some cooked vegetables prepared by her in the kitchen. Accordingly, his wife took some cooked vegetable from his house. After some time they heard a loud sound at the house of the accused and he along with his wife rushed to the house of accused and noticed Joyram Tigga lying on the ground. At that time blood was oozing out from his heads and face. In the meantime, the accused had fled away from the scene leaving one blood stained axe at the spot. Jayram

Tigga died instantly at the spot as a result of axe blow inflicted by the accused. Later on he (PW3) came to know that accused after committing the offence surrendered before the police at Dimakuchi PS. Police immediately came to the place of occurrence. Other local people also gathered at the place of occurrence. Before the incident deceased had taken some money on credit from the accused. Due to non return of the credited amount by the deceased the quarrel took place between the accused and the deceased. On the day of occurrence altercation broke out between the deceased and the accused when the deceased came to the residence of the accused. Thereafter, the accused inflicted axe blow on the head and face of Joyram Tigga as a result of which he died on the spot. Later on, police took away the dead body of the victim.

17. During the cross-examination, PW3 has admitted that for the last 20 years the accused has been staying in the same compound in a separate house adjacent to his house. Accused had another house at Badlapara TE. The family members of the accused resided at the house situated at Badlapara. Badlapara TE is about 2-3 KMs away from his house. Accused used to live at the house situated at Badlapara now and then. When accused was staying in the house situated in the same compound he used to cook his meal by himself. The house of his nephew Alter Kujur and the house of his another nephew Jakir Tirkey was situated near his house. There were no other houses in the vicinity.

At the material point of the incident the accused was cooking rice in the kitchen room of his house when his (PW3) wife had gone to give the accused some cooked vegetables as asked by the accused. The deceased was the own nephew of the accused. Police recorded his statement. He had stated before the police U/S 161 Cr.P.C that after some moment his wife Nita Tirky come to give some cooked vegetables in the house of Augustus Kerketa and then saw when Joyram Tigga was lying in a pool of blood in the kitchen and noticing the scene she raised hue and cry. Then many people gathered there and he also came there. At that time Augustus was not found at his house. Many village people came to the place of occurrence when they were informed about the incident. The PW3 has denied the suggestion put by the defence that on the day of occurrence accused was at his other house situated at Badlapara and he did not inflict axe blow on the head and face of the deceased. The house of the accused consisted three rooms and situated in the same compound. He had no enmity with the accused.

18. PW5, Bhadeswar Hazarika has deposed that he knew the accused, informant and the deceased Joyram Tigga. The occurrence took place in the month of April,2016. At the material time he was at his residence. At about 7 PM one man of Nepali community of his village came to his residence and told him that Joyram Tigga had been killed by the accused Augustosh by inflicting cut injury. On coming to know about the incident he alongwith the said co-villager

went to the house of Joyram Tigga and saw the dead body of Joyram Tigga lying on the ground with cut mark injuries on his person near the kitchen room of Augustosh Kerketa. In the meantime police also arrived at the spot. Police recovered one blood stained axe on the spot and seized in his presence. He has proved the seizure list as Ext.2 and his signature as as Ext.2(1). He has also proved and identified the seized axe as Mat. Ext.1.

19. In the cross-examination, PW5 has disclosed that the house of the accused was about half kilometer from his house. The person who informed him about the incident did not tell him the name of the accused who had committed murder of the deceased Joyram Tigga by inflicting cut injuries. The informant, the wife of the deceased, told him that Augustosh had committed murder of her husband by inflicting axe blows. He saw the dead body at the spot covered by white cloth and blood was seen on the dead body.

20. PW6, Indra Rajbangshi has deposed that he knew the informant, the accused and the deceased Joyram Tigga. The occurrence took place about two years ago. On the day of occurrence he was at his residence. At around 8 PM his co-villager Madan Paik informed him over phone that Joyram Tigga had been killed by someone and his dead body was lying in the courtyard of the accused Augustosh. Then he

alongwith Bhadeswar Hazarika went to the place of occurrence and saw the dead body of the deceased Joyram Tigga lying with pool of blood and with cut injuries on his face caused by an axe. In the meantime police came to the spot. Police also recovered one blood stained axe which was lying by the side of the dead body and the same was seized in his presence. The people who gathered at the place of occurrence told him that the accused had caused the death of the deceased by inflicting axe blows on his face and neck near the kitchen of the accused. He has proved the seizure list as Ext.2 and the axe which has been identified by him as Mat. Ext.1.

21. In the cross-examination, PW6 has disclosed that blood stained axe was lying by the side of the dead body near the wall of the kitchen. The dead body was lying on the approach road to the kitchen. He did not know who had kept the blood stained axe in the wall of the kitchen. The kitchen wall was made of bamboo. Witness Babul Paik told him that accused had committed murder of the deceased. The informant Saru Tigga did not tell him that accused had killed her husband.

22. PW7, Babul Paik has deposed that he knows the accused, informant and the victim Joyram Tigga. On the day of occurrence while he was present at Aatharighat which was about the 5 kilometers away from his home at around 7/8 PM he received a telephone call from one Rimiz Kujur regarding the murder committed to Joyram Tigga at his

house. On getting the telephonic information he rushed to the place of occurrence where he found the dead body of Joyram Tigga lying inside the house of Agastosh Kerkata with deep cut mark injuries on the neck and head. Nearby him a blood stained axe was lying. Then he informed the matter over phone to Dimakuchi PS. In the meantime police came to the place of occurrence and police also disclosed before him that the accused had surrendered before Dimakuchi PS. Later on, the dead body was removed to hospital and the blood stained axe was seized by the police in his presence and in presence of other local witnesses. When he reached the place of occurrence at that time Bernard Tirki, his wife and one Rimiz Tirki etc. were present. He has proved the seizure list as Exhibit 2 and the blood stained axe which has been identified by him as Mat. Ext.1

23. During the cross-examination, PW7 has disclosed that when he reached the place of occurrence the person namely, Rimiz Kujur was found present there. The blood stained axe was lying near the dead body of Joyram Tigga inside the room. The house of the accused consists of only one room including a kitchen.

24. PW8, Philimon Tigga has deposed that he knew both the accused and the informant as informant was his daughter-in-law. The incident occurred about 2 years back. On the day of occurrence he was sleeping at his residence. At around 6/7 PM he heard hue and cry outside his house.

On hearing the hue and cry he woke up and came out of his house and saw people who were rushing towards the house of Agastosh Kerekata which was about 25/30 feet away from his house. He also followed the neighbouring people to the house of Agastosh Kerekata. He saw the dead body of his son which was lying with injuries on his head and neck at the front door of the house of Agastosh Kerekata. The head portion of the deceased was outside the home and remaining portion was inside the room. He also saw one blood stained axe lying by the side of the dead body. He came to know from the neighbouring people that Agastosh Kerekata after the committing murder of his son had fled away and later he surrendered before the police. At the time of occurrence Agastosh Kerekata was alone at his house as his family members were residing in separate house situated at Badlapara. Police came to the place of occurrence and seized the blood stained axe.

25. During the cross-examination, PW8 has disclosed that the seized axe was lying by the side of the dead body and leaning against the wall. Police took his signature on the seizure list on the spot.

26. PW9 is the investigating officer SI Powal Hazarika. He has deposed that on 24.04.2016 he was posted as 2<sup>nd</sup> officer at Dimakuchi PS. On that day one Babul Paik informed the O/C, Dimakuchi PS over phone that a man had been killed by giving axe blow at Nalapara village. On the basis of such

information the O/C, Dimakucni PS prepared the GD entry vide Dimakuhi PS GDE No. 414 dated 24.04.16. He was also instructed to visit the place of occurrence. Immediately he rushed to the place of occurrence along with his staff and found a man was lying dead with pool of blood inside the house of the accused Agastus Kerketa and one blood stained axe was also lying by the side of dead body. He also came to know from the gathering people at the place of occurrence about the name of the deceased. He recorded the statement of witnesses there and prepared a sketch map of the place of occurrence. He seized the blood stained axe in presence of witnesses. The dead body was also brought to Dimakuchi PS and kept there as it became dark. In the next morning, inquest was conducted by Executive Magistrate and then the dead body was sent for post mortem examination to Udalguri Civil Hospital. On the very day of visiting the place of occurrence, the accused surrendered at the Dimakuchi PS at night and accordingly he was arrested and forwarded to court. On 25.04.16 Saru Tigga, the wife of the deceased Jayram Tigga, lodged the FIR as regards to the occurrence. On the basis of the FIR the Dimakuchi PS case No. 32/16 U/S 302 IPC was registered by the O/C and the case was endorsed to him for investigation. He had already initiated the preliminary investigation of the case on the basis of GD entry. He collected the post-mortem report of the deceased. On completion of the investigation, he laid the charge-sheet against the accused Agastus Kerketa U/S 302 IPC. He has proved the seizure list as Ext. 2. He has also proved and

identified the seized axe as Mat. Ext.1, which has been produced before him in the court. He has proved the extract copy of GD entry as Ext. 3. He has proved the sketch map as Ext.4. He has proved the FIR as Ext.5 and the charge-sheet as Ext.6.

27. During the cross-examination, PW9 has disclosed that the house of the informant was not near the place of occurrence and as such the same is not shown in the sketch map. The blood stained axe was kept against the wall in the kitchen. The dead body was also found inside the kitchen. The house of one Walter Kujur was situated on the North of the place of occurrence. In the South the house of Barna kujur, on the West there was the cultivation land of accused and in the East the village path was situated. As he could not find Walter Kujur at the time of investigation of the case, and as such, he could not record his statement U/S 161 CrPC. The house of informant was about 50 meters away from the place of occurrence.

28. The sum and substance of the evidence of PWs is that PW1 is the informant. She lodged the FIR after getting the information from Barna Tirky. PW2, Sunita Tigga, whose residence was near the residence of accused disclosed that after hearing the loud cry she went to the residence of accused and found the dead body of deceased. She also saw the axe lying near the dead body. PW3, Barna Tirky, whose house was situated adjacent to the residence of accused has

also disclosed in his evidence that immediately before the occurrence the accused had directed his wife to bring some cooked articles. After some time they heard a loud sound from the house of accused and then he immediately went to the house of the accused and found the dead body of Joyram Tigga which lying on the ground. Blood was coming at that time. At that time he also found that the accused had already fled away from the spot. PW5, Bhadeswar Hazarika has also disclosed that after getting the information by a person of Nepali community he went to the residence of accused where the dead body of victim was found. At that time co-villagers also arrived at the spot. He was present when the police seized the axe which was used for inflicting the fatal blow. PW6, Indra Rajbangshi has also stated that after getting the information from Madan Paik over phone he went to the house of accused where he found the dead body of victim lying on the courtyard of the accused. At that time Bhadeswar Hazarika was also with him. When he was at the residence of accused police came and police seized the axe which was found near the dead body. He is also one of the seizure witness. PW7 has also disclosed that after getting the information regarding the murder of victim from one Rimiz Kujur he went to the residence of accused and found the dead body of Joyram Tigga lying in the house of Agastosh Kerketa. He also immediately informed the police about the occurrence. Police came and seized the axe in his presence. PW8, Philimon Tigga is another witness who also arrived at the place of occurrence immediately after the

occurrence. PW9, the investigating officer has disclosed that initially on the basis of GD Entry the investigation was launched. Thereafter, the FIR was received at the police station on the next day. Then the case was registered and the case was endorsed to him for investigation. He also seized the axe which was used by the accused for causing fatal blow from the spot. He has also identified the axe which was produced before him in the court and which was used at the relevant time for inflicting fatal blow.

29. So, on close scrutiny of the evidence, it is found that there was no eye witness of the occurrence. Because, it has been brought on record that only the deceased and the accused were present at the place of occurrence at the relevant point of time and when the people gathered, then accused had already fled away by leaving the dead body of the victim. At that time the neighbouring people arrived at the place and witnessed the injuries on the head and face of the victim when blood was also oozing out. After arrival of witnesses the accused had already fled away and surrendered before Dimakuchi PS. The axe which was used by the accused for causing fatal blow was seized by the investigating officer from the place of occurrence immediately after the occurrence.

30. Another important fact which has been brought forward by the prosecution is that the accused immediately after committing the crime surrendered before the police

station. The I.O. PW9 has categorically asserted that on the very day of the visiting the place of occurrence the accused surrendered before the police station at night and accordingly the accused was forwarded to the court after arrest. On perusal of the statement of accused recorded by the investigating officer, it is found that the accused himself admitted that he surrendered before the police. He also admitted the fact regarding commission of crime by him. He clearly narrated before the investigating officer how he had inflicted the injury on the head of the victim by the axe which was left by him at his residence. Though the statement made by the accused before the investigating officer is not reliable piece of evidence but in view of supportive evidence of investigating officer and other witnesses regarding the surrender of the accused it can be held that the prosecution has established with the cogent and consistent evidence that the accused surrendered before Dimakuchi PS immediately after committing the crime. The evidence of other PWs has been corroborated by the evidence of investigating officer in regard to the surrender before the police station after fleeing away immediately after committing crime. There is no any inconsistency in the evidence of PWs in this regard.

31. On close scrutiny of the evidence on record, it is found that the following circumstances have been brought on record:-

(i) Both accused and deceased were found immediately before the occurrence. No third person came there at the time of occurrence.

(ii) Immediately after the committing the crime the accused fled away from the place of occurrence and surrendered before the police station;

(iii) Before committing the crime the quarrel broke out between the deceased and the accused on question of money;

(iv) The victim disappeared just after the occurrence;

(v) The dead body was recovered from the house of the accused. The weapon (axe) was also recovered by investigating officer near the dead body at the instance of the witnesses;

(vi) Accused confessed his guilt just after surrendering before the police.

31. In the case is hand, basically the prosecution has relied on the circumstantial evidence to prove the guilt of accused. Moreover, the defence version is that the circumstantial evidence on record is not credible one to come to the definite conclusion regarding guilt of accused.

32. In this context, I find it necessary to cite the observation made by Hon'ble Gauhati High Court in the case of **Ganesh Bhomij Vs State of Assam, reported in (2021) 3 GLR 731** for proper appreciation of evidence on

record and evaluation of circumstantial evidence of the case in hand.

33. Though regarding the evaluation of circumstantial evidence the Hon'ble Gauhati High Court has given observation in various cases but in this context, I deem it suitable to cite the observation made by the Hon'ble Gauhati High Court in this case of **Ganesh Bhomij Vs State of Assam**. In paragraph 28, the Hon'ble Gauhati High Court observed as:-

**"28. In this regard, we may recollect the law governing circumstantial evidence as recapitulated in Pattu Rajan v. State of T.N., (2019) 4 SCC 771 : (2019) 2 SCC (Cri) 354, in the following words,**

**"31. As mentioned supra, the circumstances relied upon by the prosecution should be of a conclusive nature and they should be such as to exclude every other hypothesis except the one to be proved by the prosecution regarding the guilt of the accused. There must be a chain of evidence proving the circumstances so complete so as to not leave any reasonable ground for a conclusion of innocence of the accused. Although it is not necessary for this Court to refer to decisions concerning this legal proposition, we prefer to quote the following observations made in Sharad Birdhichand Sarda v. State of Maharashtra<sup>9</sup>: (SCC p. 185, paras 153-54)**

**"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:**

**(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.**

**It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may [2]be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra<sup>10</sup> where the observations were made: (SCC p. 807, para 19)**

**'19. ... Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.'**

**(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,**

**(3) the circumstances should be of a conclusive nature and tendency,**

**(4) they should exclude every possible hypothesis except the one to be proved, and**

**(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.**

**154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."**

34. So, on appreciation of evidence of above PWs, it is found that the occurrence took place at the house of the accused himself. The accused was found at that time at the residence and he immediately surrendered before the police station after committing the crime. The axe which was used at the time of occurrence for causing fatal blow was also found near the dead body which was duly seized by the I.O. So, apparently it is found that there is no any eye witness of the occurrence. The prosecution has examined the witnesses by producing some circumstantial evidence to establish the link between the act of accused and the death of victim. It is also evident from the record that accused is the uncle of the deceased.

35. The learned defence counsel while arguing the case has submitted that there is no direct evidence. Prosecution has only tried to establish the case by circumstantial evidence only. Moreover, the circumstantial evidence is found not credible one. No step was taken by the investigating officer to examine the seized axe and its thumb impression.

36. To fortify his submissions, the learned defence counsel has relied on the following decisions:-

**(i) Himachal Pradesh Administration Vs Shri Om Prakash, reported in 1972 AIR 975;**

**(ii) Jaspal Singh Vs State of Punjab, reported in AIR 1979 SC 1708;**

37. I have perused the above decisions. I have given due consideration to the submission of learned defence counsel. But the plea raised by defence counsel is found not sustainable as the evidence of PWs is found very much consistent, trustworthy and convincing. At the time of occurrence the accused was found inside the house where the victim was lying in injured condition. The weapon (axe) which was used to give the blow was also found near the dead body. Immediately after the occurrence the accused was surrendered before the police station. So, all such fact has established that the fatal injury was caused by the accused at the relevant point of time.

38. Regarding the plea raised by Ld. Defence Counsel in respect to the admissibility of G.D. Entry as FIR. I find it necessary to cite the observation made by Hon'ble Gauhati High Court in the case of **Tahir Ali @ Sanu -V/S-State of Assam** reported in Gauhati High Court **2017 (3) GLT 680**. In Para No. 10, 11 and 12 Hon'ble High Court observed as follows:-

**"Para 10. The record reveals that the FIR was filed with the In Charge of Sumonigaon Police Outpost on 24/03/09 at about 6 P.M. but from the evidence on record it transpires that before filing of the FIR a telephonic information was received by Sumonigaon Police Outpost on the basis of which Sumonigaon Police Outpost GD Entry No. 308 dated 24/3/09 was**

made at about 12 noon. The telephonic information was given by one Nurul Rahman, VDP Secretary about the commission of the crime which has been examined as P.W. 9 as well as by the Investigating Officer (P.W. 12).

Para 11. Having gone through the Ext. 19 the GD Entry No. 308 we find that the same reveals commission of a cognizable offence and it was the first information report given to police soon after the occurrence. It is also found that the investigation of the case commenced pursuant to the G.D. Entry No. 308 which was registered on the basis of the telephonic information and as such, the said telephonic information and the G.D. Entry No. 308 is to be treated as the First Information Report of the case within the meaning of section 154 of the Cr.P.C. The written FIR Ext. 2 lost its significance in view of the telephonic information earlier given being hit by section 162 of the Cr.P.C. and can only be treated as a previous statement.

Para 12. We have gone through the relevant G.D. Entry No. 308 dated 24/3/09 and it is found that in the said telephonic information the informant had telephonically informed that the deceased was attacked by the accused appellant with a dao causing injuries on his head. The telephonic information was promptly given by the informant and there is nothing

**to suspect embellishment or after through. In the written information also (not treated as FIR), the date, time and manner of commission of the crime has been clearly spelt out, including the name of the accused. Though P.W. 2 has not seen the accused appellant causing injuries to her husband, but she saw the accused appellant with a dao in his hand and at the time of leaving that place he had informed her that he had finished off her husband and he would go to the police station to surrender. The accused made the aforesaid confession immediately after the occurrence and there is no doubt about the voluntariness of the statement."**

39. So in view of above observation made by Hon'ble Gauhati High Court the plea raised by the Ld. Defence Counsel regarding the admissibility of FIR is not acceptable. Because the Investigating Officer (P.W. 9) has made it clear that the O/C had received the verbal information regarding the occurrence and prepared the G.D. Entry and he initiated the investigation on the basis of said G.D. Entry.

40. If the evidence of PWs is scrutinized, it is found that the defence has failed to bring any major contradiction in the cross-examination. Moreover, during the recording of statement of accused U/S 313 Cr.P.C. the accused has only denied the allegations. Except such denial the accused has not explained the facts in support of such denial nor he has

succeeded to bring out other story in regards to the cause of death of Joyram Tigga by examining any DW. There was no any plausible explanation in the statement of the accused regarding the death of Joyram Tigga. Though it has been vividly narrated by the PWs that the accused was present in the same compound at the time of occurrence.

41. The materials on record clearly reflects that the PWs are the neighbours of accused and all of them arrived at the place of occurrence just after hearing the hue and cry at the residence of accused and found the victim lying dead. Accused was not found in the same compound as he was surrendered before Dimakuchi PS. During the cross-examination of PWs not a single contradiction could be brought forward by the defence to discard the reliability of evidence of PWs. Thus, it has been proved with credible and convincing evidence that the accused inflicted the blow by the axe on the head and face which are the vital part of the body. From the medical evidence it is also very much clear that such injury is sufficient in ordinary course of nature to cause the death of victim. Thus, it has also proved with the evidence beyond reasonable doubt that the accused intentionally cause the said injury on the person of deceased with his knowledge that such injury would cause the death of the deceased.

42. The defence version is only that the seized axe was not sent for FSL examination. But, such minor discrepancy

cannot be the ground to disbelieve the whole prosecution case as the prosecution has succeeded to bring the circumstances upon which it has been conclusively believed that the fatal blow was given to the deceased by none other than accused at the relevant point of time.

43. To send the seized article for FSL examination it was the duty of Investigating Officer. But, during cross-examination of the Investigating Officer, the defence has not put any question on such fact. So, on the basis of such minor contradiction/omission the whole prosecution case cannot be disbelieved.

44. In the case of **Mallikarjun and others V. State of Karnataka, reported in [2019] 11 S.C.R. 609** the Hon'ble Supreme Court has observed in paragraph 14 as :-

**"14. Observing that minor discrepancies and inconsistent version do not necessarily demolish the prosecution case if it is otherwise found to be creditworthy, in [Bakhshish Singh v. State of Punjab and another \(2013\) 12 SCC 187](#), it was held as under:-**

**32. In [Sunil Kumar Sambhudayal Gupta v. State of Maharashtra \(2010\) 13 SCC 657](#) this Court observed as follows: (SCC p. 671, para 30) "30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial**

**matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide State v. Saravanan (2008) 17 SCC 587.)”**

**33. .... this Court in [Raj Kumar Singh v. State of Rajasthan](#) (2013) 5 SCC 722 has observed as under: (SCC p. 740, para**

**43) “43. ... It is a settled legal proposition that, while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence thus provided, in its entirety. The irrelevant details which do not in any way corrode the credibility of a witness, cannot be labelled as omissions or contradictions. Therefore, the courts must be cautious and very particular in their exercise of appreciating evidence. The approach to be adopted is, if the evidence of a witness is read in its entirety, and the same appears to have in it, a ring of truth, then it may become necessary for the court to scrutinise the evidence more particularly, keeping in mind the deficiencies, drawbacks and infirmities pointed out in the said evidence as a whole, and evaluate them separately, to determine whether the same are completely against the nature of the evidence provided by the witnesses, and whether the validity of such evidence is shaken by virtue of such evaluation, rendering it unworthy of belief.”**

45. But by taking the note of observation made the Hon'ble Supreme Court, as cited above and after

appreciation of the evidence on record, in the light of above decision, my considered opinion is that in the case in hand the prosecution has succeeded to prove the guilt of accused by convincing and credible evidence. There is no any inconsistency of the facts which can negate the culpability of accused. There is no any material on record to hold the opinion otherwise.

46. The circumstantial evidence brought on record by prosecution has fulfilled the five golden principles regarding the proof of a case based on circumstantial evidence as laid down in the case of **Ganesh Bhomij Vs State of Assam**. On the other hand, though the learned defence counsel has raised some minor discrepancies such as the seized weapon was not sent for FSL examination. But in view of evaluation of the evidence on record in its entirety, I find that the whole prosecution case cannot be discarded on the basis of such minor discrepancies as no missing of facts could be brought forward by the defence during the trial.

47. For the reason stated above, my considered view is that the facts and circumstances of the case points out that the fatal injuries were caused by accused on the vital organs of the victim like head with a sharp weapon like axe. He inflicted the blow on the head of the unarmed man with the knowledge that the blows would likely caused death and he had taken undue advantage. Accused intentionally inflicted

fatal injuries. Therefore, the offence committed by him was that of murder. So, the accused is found guilty for committing offence u/s 302 IPC. Hence, the accused is liable for conviction under said section of law.

48. Taking the note of above discussion and the reasons thereon with the discussion, I am of the opinion that there is no infirmity in the evidence on record to hold the opinion otherwise. Moreover, the material on record also does not justify to allow the benefit of Section 3/4 of Probation of Offenders Act or the benefit of Section 360 Cr.P.C. as the accused committed heinous crime by causing death of Joyram Tigga. Rather he is deserved to be convicted with sufficient sentence.

49. Heard the accused on point of sentence, after giving sufficient time to accused to prepare the reply. But accused has only pleaded that he is ignorant about the occurrence and he is quite innocent. The accused has also mentioned that his present age is 75 years and he is sole earning member of family having minor child. But in physical appearance the approximate age of the accused may be 55 to 60 years. Hence the plea raised by accused cannot be acceptable in view of nature of crime committed by the accused. Accordingly, the accused is convicted with sentence of rigorous imprisonment and fine.

ORDER

50. As the prosecution has proved the case with material of beyond reasonable doubt against accused Agastosh Kerketa for committing the offence U/S 302 I.P.C., so accused Agastosh Kerketa is convicted with sentence to undergo rigorous imprisonment for life and to pay fine of Rs. 5,000/- (Rupees five thousand) only and in default of payment of fine to undergo simple imprisonment for another six months for the offence committed u/s 302 I.P.C. The period of detention shall be set off from the period of imprisonment.

51. Seized article shall be destroyed in due course of time.

52. The period of detention, if any, undergone by accused person during the investigation, enquiry or trial shall be set off against the term of imprisonment as provided u/s 428 Cr.P.C.

53. Let a copy of the judgment be furnished immediately to accused free of cost as provided in section 363 Cr.P.C.

54. Let a copy of the judgment be forwarded to the learned District Magistrate, Udalguri as provided in section 365 Cr.P.C.

55. By invoking the provisions of Section 357-A(2)&(3) Cr.P.C. the District Legal Services Authority, Udalguri is directed to make an inquiry for awarding of adequate compensation to victim's wife for the loss suffered by the family due to death of victim as provided under **Victim Compensation Scheme of the Govt.of Assam.** Accordingly, the copy of judgment alongwith relevant documents be sent to DLSA, Udalguri.

56. Let the case record be consigned to record room after completing the formalities.

57. Given under my hand and seal of this court on 21<sup>st</sup> day of December,2021.

Dictated & Corrected by me

(M.Kalita)  
Sessions Judge,  
Udalguri.

(M. Kalita)  
Sessions Judge,  
Udalguri.

**APPENDIX:**

A)Prosecution witnesses:

- |         |                    |
|---------|--------------------|
| i) PW1  | Saru Tigga         |
| ii)PW2  | Sunita Tigga       |
| iii)PW3 | Barna Tirky        |
| iv)PW4  | Dr. Arindom Bora   |
| v)PW5   | Bhadeswar Hazarika |
| vi) PW6 | Indra Rajbangshi   |

- vii) PW7 Babul Paik
- viii) PW8 Philimon Tigga
- ix) PW9 Powal Hazarika

B)Defence witness:

NIL

C)Exhibits:

- i) Ext.1 Post-mortem report.
- ii) Ext.2 Seizure list
- iii) Ext.3 Extract copy of GDE
- iv) Ext.4 Sketch map
- v) Ext.5 FIR
- vi) Ext.6 Charge-sheet

D) Material Exhibit:- 1 Axe.

Dictated and corrected by me.

Sessions Judge,  
Udalguri