

GAHC010046282018



2026:GAU-AS:7211

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

**Case No. : CrI.A./74/2018**

JITEN ENGTI AND 3 ORS  
R/O VILL. PAKLANGSO, P.O. BOKAJAN, DIST. KARBI ANGLONG, ASSAM.

2: CHANDRA RONGPHAR  
R/O VILL. PAKLANGSO  
P.O. BOKAJAN  
DIST. KARBI ANGLONG  
ASSAM.

3: JAYSING ENGTI  
R/O VILL. PAKLANGSO  
P.O. BOKAJAN  
DIST. KARBI ANGLONG  
ASSAM.

4: BIDYASING TISSO  
R/O VILL. PAKLANGSO  
P.O. BOKAJAN  
DIST. KARBI ANGLONG  
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR  
REPRESENTED BY PP. ASSAM.

2:LONGKI TAMUNG  
R/O VILL. PAKLANGCHO  
P.S. BOKAJAN  
DIST. KARBI ANGLON

Advocate for the appellant Nos.1 & 4 : Mr. T. Kalita, Adv.

Advocate for the appellant Nos.2 & 3 : Mr. G. Rahul, Adv.

Advocate for the respondents : Ms. B. Bhuyan, Sr. Adv. & Addl. P.P., Assam,

**:::BEFORE:::**

**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**  
**HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA**

Date of hearing : 25/05/2026

Date of Judgment : 25/05/2026

**JUDGMENT & ORDER (ORAL)**

*(M. Zothankhuma, J)*

1. Heard Mr. G. Rahul, learned counsel for the appellant nos. 2 & 3, i.e., Chandra Rongphar and Jaysing Engti and Mr. T. Kalita, learned counsel for the appellant nos.1 & 4, i.e., Jiten Engti and Bidyasing Tisso. Also heard Ms. B. Bhuyan, learned Senior Counsel and Additional Public Prosecutor, Assam assisted by Ms. R. Das, learned counsel.

2. The appellants have put to challenge the impugned Judgment dated 19/01/2018, passed by the learned Sessions Judge, Karbi Anglong at Diphu, in Sessions Case No.9/1993, by which the appellant Nos.2, 3 and 4, i.e., Chandra Rongphar, Jaysing Engti and Bidyasing Tisso respectively have been convicted under Sections 302/34 IPC, on the charge of having killed one person.

3. The appellants' counsel submits that initially the 4 appellants had been

convicted. However, as the appellant no. 1 was found to be a juvenile, he was sent to the Juvenile Justice Board during the pendency of the present appeal, vide order dated 11/12/2019 passed in I.A.(Crl.) No.377/2019.

4. The appellants' counsel submits that the only reason for convicting the appellants under Sections 302/34 IPC by the learned Trial Court, is on the basis of the confessional statements made under Section 164 Cr.P.C by the appellant nos.1 (juvenile), 2 and 3. He also submits that the conviction of the appellant no.4 had also been made only on the basis of the confessional statements. He submits that while the appellant no.4 did not make any confessional statement, appellant no.4 has been convicted on the basis of the confessional statements made by the appellants nos.2 and 3, inasmuch as, he was named as a co-perpetrator of the crime. The appellants counsel submits that the confessional statements made by the appellants under Section 164 Cr.PC, cannot be said to have been properly recorded in terms of the judgment of the Hon'ble Supreme Court in the case of ***Rabindra Kumar Pal Alias Dara Singh Vs. Republic of India***, reported in **(2011) 2 SCC 490** and the decision of a Coordinate Bench of this Court in the case of ***Khagen Buragohain Vs. State of Assam***, reported in **(2014) 4 GLR 277**. As such, the confessional statements made by the appellants could not have been used for convicting the appellant nos. 2 to 4 in this case. He accordingly submits that the appellants should be acquitted of the charges framed against them and they should be released from judicial custody immediately.

5. Ms. B. Bhuyan, the learned Addl. PP, on the other hand, submits that all the procedures required for recording the statement of an accused under

Section 164 Cr.PC had been followed by the Magistrate in terms of the judgment of the Supreme Court in the case of ***Rabindra Kumar Pal (supra)***, except for one condition, i.e, a police personnel was present in the courtroom at the time of recording the confessional statements of the appellants. He also submits that the extra-judicial confession made by the appellants before PWs.1 and 2, is to the effect that they confessed to having killed the deceased. Thus, there was no infirmity in the conviction of the appellants on the basis of the extra-judicial confessions and the confessional statements made by the appellant nos.1, 2 and 3.

6. We have heard the learned counsels for the parties.

7. The learned Trial Court has convicted the appellants under Sections 302/34 IPC solely on the basis of the confessional statements made by the appellant nos.1, 2 and 3 under Section 164 Cr.PC. Though the appellants have made confessional statements under Section 164 Cr.PC, we find that the recording Magistrate has clearly recorded the fact that the appellants were brought by Sub-Inspector of Police Salil Ahmed and that the said police officer was present at the time the confessional statements of the appellants were recorded.

8. The above being said, we have also noticed that the learned recording Magistrate, prior to recording the confessional statements of the appellant nos. 2 and 3 under Section 164 Cr.PC, had given them reflection time and had placed them in charge of an armed police constable. The placing of the appellants with the police constable during the time given for reflection by the recording

Magistrate, will only be applicable to the appellant nos.2 and 3 and not to the appellant no.1, who has been placed in charge of the peon of the recording Magistrate.

9. It is an admitted fact that besides the confessional statements made by the appellant nos.1, 2 and 3 and the alleged extra-judicial confessions made by the appellants to the PW-1 and PW-2, there is no other evidence, direct or otherwise against the appellants, pointing to the guilt of the appellants in the killing of the deceased person.

10. The question that has to be decided is whether the confessional statements made under Section 164 Cr.PC have been recorded, after following all the safeguards required to be followed by the recording Magistrate.

11. In the case of ***Rabindra Kumar Pal (supra)***, the Hon'ble Supreme Court has given a list of 11 principles to be followed, with regard to the recording of a confessional statement under Section 164 Cr.PC. The Supreme Court has further held that the provision of Section 164 Cr.PC must be complied with not only in form, but in essence. Principle no.(ix) stated by the Hon'ble Supreme Court with regard to recording of a confessional statement under Section 164 Cr.PC, states that at the time of recording the statement of the accused, no police or police official shall be present in the open Court. Para 64 of the judgment of the Supreme Court in the case of ***Rabindra Kumar Pal (supra)*** is reproduced hereinbelow as follows:-

***“64. The following principles emerge with regard to Section 164 CrPC:***

***(i) The provisions of Section 164 CrPC must be complied with not only in***

*form, but in essence.*

*(ii) Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.*

*(iii) A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.*

*(iv) The maker should be granted sufficient time for reflection.*

*(v) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.*

*(vi) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.*

*(vii) Non-compliance with Section 164 CrPC goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.*

*(viii) During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.*

*(ix) At the time of recording the statement of the accused, no police or police official shall be present in the open court.*

*(x) Confession of a co-accused is a weak type of evidence.*

*(xi) Usually the court requires some corroboration from the confessional statement before convicting the accused person on such a statement."*

12. In the present case, the confessional statements of the appellants have been made in the presence of a police officer, who was present in the room where the confession was being recorded. The above is accordingly hit by principle no.(ix) framed by the Hon'ble Supreme Court. As such, the

confessional statements cannot be said to have been properly recorded and as such, they are inadmissible as evidence. The same, thus, cannot be used as evidence to convict the appellants in the absence of any other evidence. Accordingly, the conviction of the appellants on the basis of the defective confessional statements made in violation of the principles provided in ***Rabindra Kumar Pal (supra)*** is liable to be set aside.

13. The above being said, the further question that has to be decided is whether the appellants had made extra-judicial confessions to PWs-1 and 2, who are the sons of the deceased.

14. In the case of ***Kushal Toppo Vs. State of Jharkhand***, reported in ***(2019) 13 SCC 676***, the Supreme Court has held that an extra-judicial confession is a weak piece of evidence and an accused cannot be convicted on it's basis, in the absence of other reliable evidence establishing the guilt of the accused. An extra-judicial confession cannot be treated as a substantive piece of evidence against the co-accused, holding that the proper judicial approach is to use it only to strengthen the opinion formed by the Court after perusing other evidence placed on record. An extra-judicial confession should not be relied upon in the absence of corroborative evidence. In the case of ***State of Punjab Vs. Kewal Krishan***, reported in ***(2023) 13 SCC 695***, the Supreme Court has held that an extra-judicial confession is a very weak piece of evidence and a conviction is not ordinarily to be recorded solely on it's basis. In the case of ***Nikhil Chandra Mondal Vs. State of West Bengal***, reported in ***(2023) 6 SCC 605***, the Supreme Court has held that where an extra-judicial confession is surrounded by suspicious circumstances, it's credibility becomes doubtful and it loses its importance. It is well-settled that it is a rule of caution that a Court

would generally look for independent reliable corroboration, before placing any reliance upon an extra-judicial confession. It also held that there is no doubt that conviction can be based on an extra-judicial confession, but in the very nature of things, it is a weak piece of evidence.

15. In his evidence, PW-1 has stated as follows:-

*“On S/A*

*I know the accused persons. They may same area. The deceased is my father faithful day. Then Kathar had called my father to a meeting at his place as priest. As he did not return from the meeting, he went to search for him. No found him lying dead in a nearby field and had injury on both eye & mouth. Then he informed Bokajan P.S. and filed ejahar. Ext 1 is ejahar & 1 (2) is my signature. Police came & held inquest due the dead body. Police tok charge of body & returned after completing formalities. After 1 1/2 months accd persons came & confessed that they had killed my father. Police examined me. Accd persons were Jealous of my father as he was functioning as priest of the local community.*

*Accd had confessed at an house in morning Accd confessed in presence of Kitan Toksi, Puta Tissoo, Man Kathar, Key Engti & my brother and my wives. It is not a fact that accd persons did not confess of their crime before us.”*

16. The evidence of PW-2 is reproduced hereinbelow as follows:-

*“On S/A*

*I know the accused persons. The deceased was my father. In Dec, 1989 Man Kathar came to the house of my father to call him to the meeting. My father went to the meeting in the night alongwith Man Kathar to his place. He did not came back to house. When we went to search for him, we found him lying dead in a nearby field. His both eyes & mouth were injured. We brought the body home and filed an ejahar in the Bokajan PS. Ext-1 is the ejahar and 1 (1) is my signature. Pahi Timung, my brother, was also with me and he also put his signature an ejahar. Police came and held inquest one dead body. Ext-2 is inquest report and 2 (1) is my*

*signature. Police take charge of dead body and returned after completing formalities. I came to know that accd persons killed my father out of Jealousy as he functioned as a priest to the community in our village. The accd persons came to my house and confessed to have killed my father.*

*Distance between my father's house and the venue of meeting is 1 ½ illegible I did not witness the killing. At the time of conquest an apart from my wife my brother Pahi Timung and his wife were also present. Confession was made after 1 ½ months. It is not a fact that accd persons did not confess of this crime to me."*

17. As can be seen from the evidence of PWs-1 & 2, the extra-judicial confessions had allegedly been made by the appellants in the presence of one Kitan Toksi, Puta Tisoo, PW-1, PW-5, PW-8 and the wives of PW-1 and PW-2. However, Kitan Toksi, Puta Tisoo and the wives of PW-1 and PW-2 have not been made Prosecution witnesses and have not given any evidence, to the effect that any confessional statement had been made by the appellants. Similarly, PW-5 and PW-8 have also not corroborated the testimonies of PW-1 and PW-2, to the effect that extra-judicial confession had been made by the appellants, confessing that they had killed the deceased. The learned Trial Court had also observed that PW-1 and PW-2 had not told the police that the appellants had come to their house and confessed that they had killed the deceased. The learned Trial Court, thereafter, was of the view that there was a doubt as to whether any extra-judicial confession had been made by appellants.

18. On considering the above facts, we also do not find any reason to deviate from the observations and findings of the learned Trial Court, with regard to the alleged extra-judicial confessions made by the appellants, as there is no corroboration of the evidence of PW-1 and PW-2, who are the sons of the

deceased.

19. In the case of ***Khagen Buragohain (supra)***, a Coordinate Bench of this Court had held that it is settled law that a statement cannot be said to be properly recorded under Section 164 of the Code of Criminal Procedure, if a police officer is present or allowed to be present at the time when the confession is recorded.

20. In the case of ***State of Maharashtra Vs. Damu***, reported in **(2000) 6 SCC 269**, the Supreme Court held that even otherwise, a Magistrate who proposed to record the confession has to ensure that the confession is free from police interference.

21. On considering the fact that the alleged confessions of the appellants had been made in the presence of a police officer, in the room where the confessions were being recorded, we hold that the said confessions cannot be said to be voluntary and as such, cannot be relied as substantive admissible evidence, for coming to a verdict of guilt against the appellants. Consequently, we hold that the conviction of the appellants under Sections 302/34 IPC, only on the basis of the defective confessional statements, which has not been recorded by following all the principles required to be followed under Section 164 Cr.PC, cannot be allowed to be the basis for convicting the appellants, without there being any other attending evidence which is absent in the present case.

22. With regard to the conviction of the appellant No.4, which has been

made on the basis of the confessional statement made by the appellant nos.2 & 3, we are of the view that as the defective confessional statements could not be the basis for convicting the appellant nos.2 & 3, there is no question of using the said confessional statements for convicting the appellant No.4. In this regard, it would be profitable to refer to the judgment of the Coordinate Bench of this Court in the case of ***Bogai Bouri Vs. State of Assam & Ors.***, reported in ***2017 (2) GLT 1***, where it has been held that the provision of Section 30 of the Evidence Act provides that when more persons than one are being jointly tried for the same offence and a confession made by one such person implicates himself and another, the Court may take into consideration such confession as against any such other person, only after the Court first finds that a conviction can be based on the basis of the evidence against the other person. When the Trial Court is satisfied that the evidence can be relied upon for proving the Prosecution case, then only can the confession made by the co-accused implicating the accused, can be used to lend assurance to the other evidence against the co-accused, who is implicated in the said confessional statement. In this respect, the Coordinate Bench has relied upon the judgment of a Constitution Bench of the Supreme Court in the case of ***Haricharan Kurmi Vs. State of Bihar***, reported in ***AIR 1964 SC 1184***, where it has been held that in a criminal case where the Prosecution relies upon the confession of one accused person against another accused person, the proper approach to be adopted is to first consider the other evidence against such an accused person. If the said evidence appears to be satisfactory and the Court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the Court can then turn to the confession, to assure itself that the conclusion which it is inclined to draw from the other evidence is right.

23. In view of the decision of the coordinate bench in ***Bogai Bouri (Supra)*** and the Supreme Court in the case of ***Haricharan Kurmi (Supra)***, the conviction of the appellants under Sections 302/34 IPC is not sustainable, as there is no other evidence besides the confessional statements of the appellant nos.2 and 3, implicating the appellant no.4 as one of the perpetrators of the crime.

24. For all the reasons stated above, we find the conviction of the appellants under Sections 302/34 IPC to be unsustainable. We accordingly set aside the impugned Judgment dated 19/01/2018, convicting the appellants under Sections 302/34 IPC. Consequently, the respondent No.1 shall ensure that the appellants are released from judicial custody immediately, provided they are not wanted in any other case.

25. The appeal is accordingly allowed.

26. Send back the TCR.

**JUDGE**

**JUDGE**

**Comparing Assistant**