

GAHC010012572018



2026:GAU-AS:10147

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

Case No. : CRL.A(J)/6/2018

SIBESWAR MASLAI
S/O. LT. SUJAI MASLAI, VILL. DABSAL, P.S. BAITHALANGSO, KARBI-
ANGLONG.

VERSUS

THE STATE OF ASSAM
GHC, GHY.

2:INFORMANT
INFORMAN

Advocate for the Petitioner : MR. S K TALUKDAR, AMICUS CURIAE,

Advocate for the Respondent : MS. A. BEGUM, ADDL. P.P., ASSAM.

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Date on which judgment is reserved : **21.07.2026**

Date of pronouncement of judgment : **24.07.2026**

Whether the pronouncement is of the : N/A
operative part of the judgment ?

Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

1. Heard Mr. S.K. Talukdar, learned Amicus Curiae appearing for the appellant and Ms. A. Begum, learned Addl. Public Prosecutor, Assam, appearing for the State.
2. This is an appeal against the impugned Judgment dated 04/12/2017 passed by the learned Sessions Judge, Diphu, Karbi Anglong in Sessions Case No.18/2007, by which the appellant has been convicted under Section 302 IPC and Section 436 IPC. The appellant was accordingly sentenced to undergo Rigorous Imprisonment for life with a fine of Rs.25,000/-, in default, to undergo Rigorous Imprisonment for 2(two) years under Section 302 IPC for each of the three murdered persons. He was also sentenced to undergo Rigorous Imprisonment for 5 years with a fine of Rs.25,000/-, in default, to undergo Rigorous Imprisonment for 2(two) years under Section 436 IPC. The sentences were to run concurrently.
3. Being aggrieved with his conviction and sentence, the appellant has filed the present appeal, stating that there was no evidence given by the Prosecution witnesses, proving that the appellant had killed the Gaonburah or the appellant's own two daughters, even though the appellant during the time of framing of charge under Sections 302/324/436 IPC, had pleaded guilty to the charges.

4. During the proceedings of the present appeal, this Court had noticed that besides the appellant having stood trial for the murder of three persons, a number of persons had sustained grievous injuries, namely Jinaram Amsi, Noldoi Amsi, Homen Mithi, Shankar Methi and Lokhim Maslai. This Court also observed that one Bhanu Maslai was an eyewitness to the murder of the Gaonburah Talbor Amsi, as per the evidence of the other Prosecution witnesses. Though the learned Public Prosecutor, Assam had made an application before the learned Trial Court for examining Bhanu Maslai, she was not examined. This Court also found that no endeavour had been made by the Prosecution for examining the injured witnesses mentioned above, who could throw light on the crime. This court also found that the learned Trial Court had remained a silent spectator regarding the above witnesses. Keeping in view the fact that Judges cannot take the role of Prosecution or defence, and as Judges could also not afford to be a mute spectator, this Court felt that fair trial demanded that Judges must take a participatory role to secure the ends of justice. In view of the above reasons and keeping in view Sections 311/391 Cr.P.C and Section 165 of the Evidence Act, this Court directed that additional evidence of the 5 witnesses mentioned above should be recorded, besides the evidence of Bhanu Maslai. The same was accordingly ordered by this Court vide order dated 30/01/2020.

5. In terms of the order dated 30/01/2020 passed by this Court, the Trial Court records were sent back. However, the learned Trial Court sent the Trial Court records back to this Court along with an order dated 27/10/2021, wherein it stated that Smti. Bhanu Maslai had expired. This Court thereafter passed a subsequent order dated 01/08/2024, holding that the Trial Court had not spoken of recording the evidence of 5 other persons whose names had been mentioned

in the order dated 30/01/2020 and who had sustained grievous injuries. This Court thus directed the learned Trial Court to record the additional evidence of the 5 other persons mentioned in the order dated 30/01/2020. Pursuant to the order dated 01/08/2024 passed by this Court for recording the additional evidence of the other 5 persons mentioned in the order dated 30/01/2020, the learned Trial Court recorded the additional evidence of (Court Witness) CW-1 Jinaram Amsi, CW-2 Lokhim Maslai, CW-3 Shankar Methi and CW-4 Homen Mithi.

6. Thus, the present case has to be decided on the basis of the evidence given by 8 Prosecution witnesses and the 4 Court witnesses, relating to the death of the Gaonburah and the two daughters of the appellant, who have all been apparently killed by the appellant, besides the appellant setting fire to a number of houses and a school in the village.

7. The case of the appellant is to the effect that though the appellant had pleaded guilty to the charges under Sections 302/324/436 IPC for killing the Gaonburah and the appellant's own two daughters, besides setting fire to houses and the primary school building of the village during framing of charge, the learned Trial Court recorded the evidence of the witnesses, thereby making the admission of guilt by the appellant during framing of charge no longer useable, as the basis for coming to a finding that the appellant was guilty of the offences against which he was charged at the end of trial. Further, though the appellant had made a confessional statement under Section 164 Cr.P.C, the same not having been done by the Recording Magistrate, by taking into account the safeguards provided under Section 164 Cr.P.C, prior to recording the

statement of the appellant under Section 164 Cr.P.C, the same could not be used as substantive evidence for convicting the appellant. The appellant's further case is also to the effect that though the appellant in his examination under Section 313 Cr.P.C, had admitted to killing the Gaonburah and his two daughters, besides burning dwelling houses and the primary school building of the village, the explanation of the accused under Section 313 Cr.P.C could not be used as substantive evidence for convicting the appellant.

8. The learned counsel for the appellant submits that as there is no evidence recorded by the learned Trial Court, proving the guilt of the appellant in the killing of the Gaonburah and the appellant's own two daughters, the conviction and sentence of the appellant on the above three charges should be set aside.

9. The learned Addl. Public Prosecutor, on the other hand, submits that the appellant having admitted to his guilt during framing of charge, his confessional statement under section 164 Cr.P.C and his admission of his guilt during his examination under Section 313 Cr.P.C, clearly proves that there was no infirmity with the conviction of the appellant for having murdered the Gaonburah and his own two daughters. The learned Addl. Public Prosecutor also submits that the evidence of CW-1, shows that CW-1 was an eyewitness to the appellant hitting the head of his father (Gaonburah) with a dao, which caused the head of the Gaonburah to split into two. Further, CW-1 was the youngest son, out of the 3 sons of the deceased Gaonburah, who had seen the incident. The learned Addl. Public Prosecutor also submits that though the Section 164 Cr.P.C confessional statement of the appellant speaks of the appellant hacking

the Gaonburah and his daughter with a dao, the daughter mentioned therein has to be construed to be the two daughters of the appellant, inasmuch as, the Gaonburah did not have any daughter. Further, the appellant believed his two daughters to be the illegitimate daughters of the Gaonburah, due to the appellant stating in his confessional statement that he had seen the Gaonburah having sexual intercourse with the appellant's wife. The learned Addl. Public Prosecutor submits that the facts of the case, as a whole, shows that it was the appellant who was guilty of having killed the Gaonburah and his own two daughters, besides setting fire to houses and the primary school building of the village. As such, there was no infirmity with the conviction of the appellant by the learned Trial Court.

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

11. As can be seen from the records, the learned Trial Court had examined 8(eight) Prosecution witnesses and 4(four) Court Witnesses.

12. The first issue to be decided is whether the appellant had, during framing of charge, admitted to the charge of having killed the Gaonburah and his own two daughters, besides burning houses and the primary school building of the village. It is seen that the Learned Trial Court has recorded that the appellant had pleaded guilty to the same. However, the learned Trial Court has not recorded the exact statement made by the appellant, except stating that he pleaded guilty. In any event, it is not disputed by the appellant that he had admitted his guilt before the learned Trial Court at the time of framing of charge.

13. The contents of the confessional statement made by the appellant under Section 164 Cr.P.C is to the following effect-

"My name is Sibeswar Maslai. The name of my village is Tapsal. I always offer prayers in the Kali temple in my house. Two persons, who reside a little away from my house, threw blood of black cow in my Kali temple. I was told about it by a neighbouring woman who is older than me (Here addresses as 'Baideu'). Thereafter I went mad/insane and hacked the aforementioned woman. The Gaonburha (Village head) of our village hatched a conspiracy with the said two persons and committed this evil deed in my temple. Therefore, going to the house of our Gaonburha (Village head), I took a dao from his house and hacked him and his daughter with that dao. Then I tried to commit suicide by cutting my neck. On a day I saw the Gaonburha having sexual intercourse with my wife on bed. I have this much to say."

A perusal of the above clearly shows that nowhere has the appellant confessed to having killed his two daughters. Surprisingly, the Officer who had recorded the appellant's statement under Section 164 Cr.P.C has, in his evidence, stated that the appellant had confessed to killing the Gaonburah and his (appellant's) two daughters, namely, Smt. Jun Maslai and Manjula Maslai. However, as can be seen from the above confessional statement, no such confession has been made by the appellant. The appellant has however admitted to hacking the Gaonburah and his daughter, which could be implied to be the appellant's own daughter.

14. As stated earlier, during the present appeal proceedings, this Court, vide order dated 01/08/2024, had directed that additional evidence should be taken by the learned Trial Court in terms of Section 391 Cr.P.C, as some injured

witnesses to the crime had not been examined. Pursuant to the direction passed by this Court, vide order dated 01/08/2024, the learned Trial Court examined the four Court witnesses :-

"CW-1- Shri Jinaram Amsi

CW-2- Sri Lokhim Maslai

CW-3- Shri Shankar Methi

CW-4- Shri Homen Mithi"

15. Paragraph 25 of the impugned judgment of the learned Trial Court is to the effect that the appellant, in his confessional statement, had stated that he had attacked the deceased Talibor Amsi with a dao on his head, as a result of which he died and that he had killed his own daughters, namely Junu Maslai and Manjula Maslai, by causing injuries with a dao. This observation/finding made by the learned Trial Court with regard to the appellant stating that he had killed his own daughters has been deduced from the appellant's statement made under section 164 Cr.P.C. The reference to the word "daughter" in the appellant's statement made under Section 164 Cr.P.C has been implied to mean the appellant's daughter, inasmuch as, the appellant had stated that he had seen the Gaonburah having sexual intercourse with his wife. Thus, he believed his own daughters to be the daughters of the Gaonburah. However, as we cannot put words into the statement of the appellant under Section 164 Cr.P.C which are not there, it would not be safe to conclude that the appellant's statement under section 164 Cr.P.C amounted to the appellant confessing to killing his two daughters, though the implication appears to be present.

16. As stated earlier, there is no denial with the fact that the appellant had admitted to killing the Gaonburah and his two daughters during framing of charge and with the killing of the Gaonburah in his Section 164 Cr.P.C statement. There is also an admission made by the appellant in his examination under Section 313 Cr.P.C that he had killed the Gaonburah and his own two daughters. The admission made by the appellant in his examination under Section 313 Cr.P.C thus corroborates his admission of guilt before the learned Trial Court, during framing of charge, that he had killed the Gaonburah and his two daughters.

17. A perusal of the evidence of CW-1, who is the son of the deceased Gaonburah, is to the effect that he saw the appellant hitting his father's head with a dao, which split the head of his father into two. There is no evidence given by any of the Prosecution Witnesses or Court Witnesses, stating that they had seen the appellant killing his two daughters.

18. The evidence of Anupam Deka, ACS, is to the effect that he had recorded the confessional statement of the appellant under Section 164 Cr.P.C. He had asked the appellant whether he would confess to his guilt, to which the appellant agreed. Anupam Deka also informed the appellant that he was a Magistrate and not a Police Officer and that he was not compelled to confess his guilt. He also asked the appellant as to whether he would give his confessional statement voluntarily and that the same could be used against him. The appellant had agreed to the same. Thereafter, Mr. Anupam Deka gave reflection time to the appellant. The appellant was thereafter asked again whether he would give his confessional statement voluntarily, to which he gave a positive answer. The confessional statement was thereafter recorded under Section 164

Cr.PC in the vernacular. In his confessional statement, the appellant stated that he had killed Talbor Amsi (Gaonburah), by hitting his head with a dao and that he had also killed his daughters with a dao. In addition to the above, the appellant had also stated that he attacked Smt. Naldai Amsi and Jinaram Amsai. Thereafter the appellant had put his thumb impression on the form where his statement was recorded.

19. The evidence of Mr. Dulen Ch. Deka, the Deputy S.P., Kamrup (City), Guwahati, is to the effect on hearing the news about the incident, he went to the village, where he saw the dead body of the Gaonburah and conducted inquest over the same. Dulen Ch. Deka also came to know that the two minor daughters of the appellant were killed by the appellant, which were lying 25 yards away from the house of the Gaonburah. Rakesh Kumar also came to know that the appellant had been tied with a rope by the villagers. He untied the appellant and took him into custody. He also stated that the appellant gave his confessional statement and on finding that the appellant had burnt about 10 houses including his own house, he submitted the charge sheet against the appellant.

20. The evidence of Dr. Rekha Bhuyan, who was working in Jagiroad, Nakhola Subsidiary Health Centre as Medical and Health Officer-1, is to the effect that she had examined 5 persons who had simple injuries on their persons.

21. The evidence of Dr. Ratul Thakur, is to the effect that he conducted post-mortem examination over the body of Manjuli Maslai, Jun Maslai and Talbor Amsi.

The Post-Mortem report of Manjuli Maslai (appellant's daughter) is to the effect that there was one sharp cut wound noticed over the front of upper part of neck about 4" and transverse deep to cut open the larynx. Both the carotid sheath are transected at the wound. The neck wound was ante mortem in nature and caused by sharp cutting weapon. Further, in the opinion of the Doctor, death was due to severe hemorrhagic shock and laryngeal injury.

The post-mortem report of Jun Maslai (appellant's daughter) is to the effect that one transverse sharp cut could be seen along the upper part of front of neck about 4" long. The cut deepens to cut the larynx completely. The carotid vessels on both sides were also completely transected. The more detailed description of injury shows that there was a sharp cut over the front of the neck, which transected the larynx and the carotid vessels leading to severe haemorrhage and shock. In the opinion of the Doctor, death was due to the combined effect of hemorrhagic shock and wind pipe injury.

The Post Mortem report of the Gaonburah Talbor Amsi, is to the effect that there was one longitudinal sharp cut wound over the vertex of skull about 5 inch long (anteroposterior) of Talbor Amsi. The injury on the cranium and spinal canal were as follows :

"Scalp, skull vertebrae, membrane, Brain and spinal cord _ Scalp wound as described. The skull along the wound is fractured (cut through both tables). The cut on deeper aspect extends to membranes and then to substance of brain which is protapschal. The cranial cavity is partially empty due to loss of brain matter."

The head injury was caused by a sharp weapon and was ante mortem in nature. In his view, death was caused by sharp cut injury to the skull and due to serious brain injury.

22. The evidence of Sri Pilon Mithi, is to the effect that the Gaonburah was killed by the appellant. He further stated that while cutting bamboo along with co-villagers, the wife of Sibeswar Maslai (Bhanu Maslai) came running and told them that their house was burning and that a man had been killed. She then told them that the appellant had cut the Gaonburah and his elder sister, besides the appellant's own two daughters. He was told that the appellant had cut Noldoi Amsi and Jinaram Amsi, whom they saw lying injured in the courtyard of the Gaonburah. He also saw the dead bodies of the two daughters of the appellant lying in the paddy field near the house of the Gaonburah. The witness Pilon Mithi further stated that the appellant had set fire to his house and the houses of his co-villagers Ramesh, Homen Mithi, Sankar Mithi, Lakhim Maslai and a school building. He also stated that the appellant had also set fire to his own house. They later found the appellant inside the house of Ramesh. The appellant was thereafter tied with a rope against a half-burnt post at around 5 pm. The police were informed and on the Police arriving, the appellant was handed over to them. The witness Pilon Mithi further stated that he filed the FIR.

23. The evidence of Birbal Maslai is to the effect that he did not see the incident. However, he came to know from the village children that the appellant had hacked the Gaonburah and his two daughters with a dao, besides injuring Noldoi and Jinaram Amsi. The dao was recovered by the villagers, though he did not see it in the Court.

24. The evidence of Fibi Sing Mithi, is to the effect that the wife of Sibeshwar Maslai, namely Bhanu Maslai, told him and others that the appellant had cut her brother Talbor Amsi and the Gaonburah's elder sister and son, namely Naldoi Maslai and Jinaram Amsi respectively, besides his own two daughters. On rushing to the house of Talbor Amsi they saw the dead body of Talbor Amsi with cut injuries on his head. They also saw Jinaram Amsi and Noldoi Maslai with injuries, lying in the courtyard of Talbor Amsi. He also saw the dead bodies of the two daughters of the appellant lying near a stream. Fibi Singh Mithi further stated that he came to know from the wife of the appellant that the appellant had chased his two daughters and hacked them with a knife causing death. The appellant had also set fire to his own house and the houses of Pilon Mithi, Ramesh Amsi, Bipul Maslai, Arjun Maslai, Homen Maslai, Sankar Mithi and the school building of their village. The appellant was then found lying on a jute bag inside the burnt house of Ramesh Amsi. He was then tied up by the villagers with a rope onto a half burnt post. When the police arrived, the appellant was handed over to the police. Fibi Singh Mithi stated that he did not see the incident.

25. The evidence of Ramesh Amsi, is to the effect that he did not see incident though he heard from others, namely the wife of the appellant, that the appellant had killed the Gaonburah and his own two daughters with a dao.

26. The examination of the appellant under Section 313 Cr.P.C shows that he has admitted to killing the Gaonburah and his two daughters. He has also admitted to causing voluntary hurt to Noldoi Maslai and Jinaram Amsi. He has also admitted to setting fire to some houses. On being asked as to whether he had pleaded guilty at the time of framing of charge under Section 302/324/436

IPC and whether the same was done voluntarily, the appellant stated that he had pleaded guilty voluntarily. When asked as to whether he had anything more to say relating to the present case, the appellant in his examination under Section 313 Cr.P.C stated as follows:

"Ans : - I have something to say. Prior to the day of incident, a case of theft took place at my house. I called on Talbor Amsi since he is Gaonburah and requested him hold 'bichar' but he did not pay any heed to my request. Moreover, the said Talbor Amsi and some other villagers did not like me and my family. They even tortured me and my other family members both physically and mentally. For these hidden tragedies, my mind and brain became upset and being beyond control, I committed the offence as described to me today. Now, I am repenting for my said act"

27. In the case of ***Jai Prakash Tiwari vs. State of Madhya Pradesh***, reported in ***2022 SCC OnLine SC 966***, the Supreme Court has held that the purpose of Section 313 Cr.P.C is to provide the accused a reasonable opportunity to explain the adverse circumstances that have emerged against him during the course of trial. Further, when an accused sets up a defence and offers an explanation, the accused is not required to prove his defence beyond a reasonable doubt, but only by preponderance of probabilities.

28. In the case of ***Parminder Kaur vs. State of Punjab***, reported in ***(2020) 8 SCC 811***, the Supreme Court held that once a plausible version has been put forth in defence during examination under Section 313 Cr.P.C, then it is for the prosecution to negate such a defence plea.

29. What can be gathered from the above decisions of the Supreme Court, is that an accused has to be informed of the adverse evidence recorded against

him, to provide a reasonable opportunity to the accused to explain the same. Thereafter, it is the duty of the Court to consider the explanation given by the accused, whether it creates a doubt by way of preponderance of probability or whether it corroborates the evidence adduced against him.

30. As can be seen from the above facts, the appellant had admitted his guilt in killing the Gaonburah and his two daughters, besides burning houses and the school in his village during framing of charge under Section 302/324/436 IPC. He has also admitted in his statement made under Section 164 Cr.P.C that he had killed the Gaonburah and his daughter. The statement made by the appellant under Section 164 Cr.P.C cannot be considered to mean that he had admitted to killing his two daughters in the absence of any clarification as to whether he had killed his two daughters. However the appellant in his examination under Section 313 Cr.P.C has admitted to killing the Gaonburah and his daughter, besides injuring two other persons and setting fire to houses and the school in his village. The evidence of CW-1, who is the eyewitness to the crime, shows that he had had seen the appellant hitting the head of the Gaonburah with a dao. In fact, CW-1 (Jinaram Amsi) is an injured eyewitness and as such there is nothing to doubt his evidence. CW-2, 3 and 4 did not see the incident though they saw the burning houses.

31. In the case of ***Shahaja @ Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra***, reported in ***2022 LiveLaw (SC) 596***, the Supreme Court has held that the appreciation of ocular evidence is a hard task and there is no fixed or strait-jacket formula for appreciation of ocular evidence. The Supreme Court then enumerated various judicially evolved principles for appreciation of ocular evidence, one of them being that while appreciating the evidence of a

witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is necessary for the Court to scrutinize the evidence, more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the same is shaken, as to render it unworthy of belief. In the present case, there is nothing to shake the ring of truth surrounding the evidence given by CW-1. Further, the appellant has also not confronted CW-1 during cross-examination, with regard to any alleged deficiencies, drawbacks and infirmities in the evidence adduced by him. Further, CW-1 is an injured witness, whose evidence sets a higher pedestal than an ordinary witness.

32. In the case of ***Ravasaheb @ Ravasahebgouda etc. vs. State of Karnataka***, reported in ***2023 LiveLaw (SC) 225***, the Supreme Court held that that it did not find favour with the submissions of the counsel appearing for the accused persons, that conviction based on the solitary evidence was not justified, especially when there was no vagueness in the testimony of the solitary witness. Keeping the above two judgments in view, we do not find any ground to doubt the conviction of the appellant by the learned Trial Court in the killing of the Gaonburah, as the evidence of CW-1 is not shaken and which we find to be worthy of belief.

33. The learned counsel for the appellant has made a submission that when the Trial Court had continued with the trial by recording the evidence of the witnesses, instead of convicting the appellant, after he had admitted to his guilt during the framing of charge, the same amounted to the Trial Court not being

convinced about the guilt of the appellant. We do not accept the said submission and view of the learned counsel for the appellant, inasmuch as, the learned Trial Court has recorded the appellant's plea of guilt during the stage of framing of charge and the subsequent trial proceedings has only been made to be doubly sure of the guilt of the appellant.

34. Section 229 Cr.P.C provides that if the accused pleads guilty during framing of charge, the Judge shall record the plea and may, in his discretion, convict him thereon. The above provision nowhere provides that if a trial is held despite pleading guilty, the same implied that the Sessions Court was not convinced of the guilt of the accused. The said assumption could only be made if the Trial Court did not record the plea of guilt of the accused. However, in the present case, the learned Trial Court has recorded the plea of guilt of the accused and as such, it cannot be said that his plea of guilt cannot be considered, along with the other evidence by the learned Trial Court, in coming to a finding as to whether the appellant was guilty of having committed the offence in terms of the charges framed against him.

35. One other aspect of the matter which needs to be decided, is whether the safeguards required to be taken by the learned Recording Magistrate recording the confessional statement of an accused under Section 164 Cr.P.C and the rules made by the concerned High Court, had been taken.

36. In the case of ***Shivappa vs. State of Karnataka***, reported in **(1995) 2 SCC 76,,** the Supreme Court has held that the statutory provisions dealing with the recording of confessional statements by Metropolitan Magistrates and Judicial Magistrates are contained in Section 164 Cr.P.C and the rules framed by

the concerned High Courts containing guidelines for recording of confessions. Unless the Court is satisfied that the confession is voluntary in nature, it cannot be acted upon and no further enquiry as to whether it is true and trustworthy need to be made.

37. In the present case, the appellant had been asked twice as to whether his confession was going to be voluntary, to which he replied in the positive. Reflection time was also given to the appellant, besides other questions being asked from the appellant. The question that remains to be seen is whether the safeguards provided under Section 164 Cr.P.C and as per the concerned High Court Rules had been met by the Officer, recording the confessional statement of the appellant, prior to recording the confessional statement. Confessional statements are recorded under Section 164 Cr.P.C in the Gauhati High Court in terms of the Gauhati High Court Criminal Rules and Orders, Form No. (M) 34 as per the notification issued by the Gauhati High Court in the year 2006. On perusing the contents of the Form No. (M) 34 used for recording the confessional statement of the appellant, we find that the requirements prior to recording the confessional statement of the appellant in terms of Form No. (M) 34 have been met. As such, we are of the view that the confessional statement of the appellant under Section 164 Cr.P.C does not suffer from any infirmity and can be acted upon. We accordingly find that the Prosecution has been able to prove the guilt of the appellant beyond all reasonable doubt under Section 302 and 436 IPC

38. In view of the reasons stated above, we do not find any ground to interfere with the learned Trial Court convicting the appellant under Section 302 and 436 IPC.

39. The appeal is accordingly dismissed.

40. Send back the TCR.

41. In appreciation of the assistance provided by learned Amicus Curiae for the appellant, his fees should be paid by the High Court Legal Services Committee.

JUDGE

JUDGE

Comparing Assistant

**Kuntal
Datta**  Digitally signed
by Kuntal Datta
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