

GAHC010136342020



2026:GAU-AS:12388

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

Case No. : Crl.A./191/2020

SUMAY HEMBRAM @ SUMAI HEMBRAM AND 4 ORS.
S/O- BAICHIAM HEMBRAM, R/O- VILL.- PHACHIM LARUGAON P.O. AND
P.S. BIJNI, DIST.- CHIRANG (B.T.A.D), ASSAM, PIN- 783390.

2: SONI HAMBRAM @ SANIRAM HEMBRAM
S/O- SUMAI HEMBRAM
R/O- VILL.- PHACHIM LARUGAON P.O. AND P.S. BIJNI
DIST.- CHIRANG (B.T.A.D)
ASSAM
PIN- 783390.

3: SUBASH MURMU
S/O- BAGIRAY MURMU
R/O- VILL.- PHACHIM LARUGAON P.O. AND P.S. BIJNI
DIST.- CHIRANG (B.T.A.D)
ASSAM
PIN- 783390.

4: SONJOY MURMU
S/O- BAGIRAY MURM
R/O- VILL.- PHACHIM LARUGAON P.O. AND P.S. BIJNI
DIST.- CHIRANG (B.T.A.D)
ASSAM
PIN- 783390.

5: BABU RAM MURMU
S/O- KANDINA MURMU
R/O- VILL.- PHACHIM LARUGAON P.O. AND P.S. BIJNI
DIST.- CHIRANG (B.T.A.D)
ASSAM
PIN- 783390

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY P.P., ASSAM.

2:JHETHA MURMU
S/O- LATE DIBIA MURMU
R/O- VILL.- PHACHIM LARUGAON P.O. AND P.S. BIJNI
DIST.- CHIRANG (B.T.A.D)
ASSAM
PIN- 783390

Advocate for the appellants : Mr. M. A. Mondal
Advocate for the respondents : Ms. B. Bhuyan, Addl. P.P.

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE ANJAN MONI KALITA

Date on which judgment is reserved : **25.08.2026**
Date of pronouncement of judgment : **28.08.2026**
Whether the pronouncement is of the : No.
operative part of the judgment ?
Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

- 1.** Heard Mr. M. A. Mondal, learned counsel for the appellants. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam.
- 2.** This appeal has been filed against the impugned judgment dated 11.02.2022, passed by the learned Additional Session Judge, Bijni, in Sessions

Case No. 3(B)/2018, by which the appellants have been convicted under Sections 302, 367, 201/147 IPC. They have accordingly been sentenced to undergo rigorous imprisonment for life with a fine of Rs.3,000/- each, in default, simple imprisonment for six months under Section 302 IPC. They have also been sentenced to undergo rigorous imprisonment for five years with a fine of Rs.2,000/- each, in default, simple imprisonment for three months under Section 367 IPC. They have also been sentenced to undergo rigorous imprisonment for 1 year each under Section 201 IPC and sentenced to undergo simple imprisonment for six months under Section 147 IPC. The appellants have been convicted for having abducted, murdered and buried the deceased lady on the charge that she was a witch.

3. The prosecution case in brief is that an FIR dated 28.06.2006 had been submitted by the husband (PW-2) of the deceased on 28.06.2006, stating that the five appellants along with one co-accused Luthuru Murmu, had entered their house on 23.06.2006 at 6.30 pm and assaulted his family. Unable to bear the torture, the informant (PW-2) ran away. However, the appellants and the said co-accused had dragged his wife (deceased) away. Though he searched for her, PW-2 could not find his wife.

4. Pursuant to the FIR filed by PW-2, Bijni P.S. Case No. 66/2006 was registered under Sections 147/448/325/366 IPC.

5. During investigation, the body of the wife of PW-2 was found buried. The body was thereafter taken out and inquest was done on the same on 29.06.2006 at about 1.45 pm, where the body was found to be decomposed.

The dead body was thereafter sent for post-mortem examination and the same was done on 30.06.2006 by the doctor, wherein as per the opinion of the doctor, death was due to shock and hemorrhage, following right lung injury, which was anti-mortem in nature.

6. After investigation was completed, the Investigative Officer handed over the case diary to PW-10, who submitted the charge sheet, on having found a *prima facie* case established against the appellants and the co-accused Luthuru Murmu, under Sections 147/448/366/302/201 IPC.

7. The learned Trial Court thereafter framed charges under Sections 147, 448/34, 302/34, 201/34 and 367 IPC, to which the 6 (six) accused persons, including the appellants pleaded not guilty and claimed to be tried.

8. The learned Trial Court thereafter examined 10 Prosecution Witnesses and after examining the appellants under Section 313 Cr.PC, the learned Trial Court came to a finding that the Prosecution had been able to prove the guilt of the appellants under Sections 201/147/302/367 IPC and convicted them accordingly.

9. It may be stated here that during the criminal trial, the co-accused Luthuru Murmu had expired.

10. The appellant's counsel submits that the impugned judgment and order should be set aside and the appellants should be acquitted of the charges framed against them, in view of the fact that there were no eye witnesses to the

abduction or the killing of the deceased. He further submits that there was contradiction in the testimonies of PW Nos. 2, 4 and 6, He also submits that the evidence of the doctor (PW-9) and the post-mortem report did not mention the time and date of the death of the deceased, to make a connection between the alleged abduction of the deceased by the appellants and the death of the deceased. He submits that there is no circumstantial evidence or last seen theory to have connected the death of the deceased with the appellants.

11. The learned Addl. PP submits that the appellants had a common object to kill the deceased, in view of the evidence of PW Nos. 4 and 6, which was to the effect that the appellants had come to their house armed with *dao*, dagger and other weapons with which they had damaged the trees and walls of their house. The appellants had also stated that they were looking for the deceased and stated that they wanted to kill her, as she was a witch. She thus submits that, in view of the evidence of PW Nos. 4 and 6, which show the intent of the appellants to kill the deceased, who was eventually found buried with injuries, it could have been none other than the appellants, who had killed the deceased. She thus submits that the impugned judgment should not be interfered with.

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

13. As stated earlier, 10(ten) Prosecution Witnesses were examined by the learned Trial Court. The evidence of PW-1, who is the son-in-law of the deceased and PW-2, is to the effect that the dead body of his mother-in-law was buried in an agricultural field about 2 kms away from his father-in-law's house. PW-1 and his father-in-law (PW-2) dug up a certain spot in the land and

found the dead body. PW-1 stated that he did not see any injury on the dead body, as the skin had come off. The Police and the Magistrate arrived thereafter, whereupon the Police obtained his signature on the Inquest Report. He also stated that he was informed by PW-2 that the accused persons present in the dock had killed his mother-in-law.

14. The evidence of PW-2, who is the husband of the deceased, is to the effect that the appellants had abducted his wife, suspecting her to be a witch and as they had made an attempt to kill him, he had fled the scene. He further stated that the co-accused Luthuru, had asked him not to lodge any FIR. Further, when the Police was informed of the incident, they had come and recovered the dead body of his wife, by digging up a spot which was 4 kms away from his house.

In his cross-examination, PW-2 stated that he did not see the accused persons taking away his wife.

15. The evidence of PW-3 is to the effect that he knew the appellants and PW-2. He however could not say who had killed the deceased.

16. The evidence of PW-4, who is the daughter of PW-2 and the deceased, is to the effect that while her father went to the market and her mother was working in the field, she was in the house, when the accused persons armed with *dagger* and *dao* came to their house. Her elder sister (PW-6), brother-in-law and younger brother Jibia were in the house. When they saw the appellants with weapons in their house, the four of them ran away. When her mother

returned from the field, the appellants abducted her mother. PW-4 further stated that 3(three) days after the incident, Police recovered the dead body. She also stated that she spent the whole night in the jungle and met her father the day after.

17. The evidence of PW-5, who is the Doctor, who conducted the post-mortem examination on the body of the deceased on 30/06/2006, is to the effect that the Rigor Mortis was absent and there was no external injury seen on the body of the deceased. After dissection, it was found that the 2nd and 3rd ribs and the right lung were fractured. There was blood collection in the right pleural cavity. However, the other organs were healthy. In his opinion, death was due to shock and haemorrhage following injury to the right lung, which was ante-mortem in nature. There is nothing in the evidence of PW-5 or the Post Mortem examination report to show that the right lung injury or the fracture of the 2nd and 3rd ribs were caused by any weapon.

18. The evidence of PW-6 is to the effect that while she was at home, the appellants armed with *arrows*, *dao* and *axe* came to their house and cut the trees and walls of the house. They asked for her mother, suspecting her to be a witch and stating that they were there to cut her and kill her. The appellants were running here and there and her mother returned home about 4 p.m, whereupon the appellants abducted her mother from their house. Thereafter, PW-6 left the house out of fear and spent the whole night in the jungle located in the back of their house. Four days after the occurrence, her mother's dead body was recovered from the village where it was kept buried. PW-6 further stated that her two younger brothers went to a different jungle and that they

did not go along with her. PW-6 further stated that she raised an alarm when the appellants came, but no villagers turned up to their house. It is interesting to note that PW-6 has not spoken of PW-4 at the time the appellants entered the house of the victim.

19. The evidence of PW-7 is to the effect that on 28/06/2006, PW-2 had told him that the appellants had assaulted PW-2 and dragged away his wife from the house, due to which he wrote the FIR, as dictated by PW-2.

20. The evidence of PW-8 is to the effect that PW-2 was his father-in-law and that he learnt from PW-2 that the appellants had killed his mother-in-law and buried her body.

21. The evidence of PW-9 is to the effect that he conducted Inquest over the body of the deceased at 1.45 pm on 29/06/2006.

22. The evidence of PW-10 is to the effect that on 14/07/2007, he was posted as 2nd Officer in the Bijni Police Station. On 14/07/2007, the Officer-in-Charge of the Bijni Police Station handed him the Case Diary with regard to the present case and asking him to complete the investigation. Since the investigation was already completed, he collected the post-mortem report and on finding a *prima facie* case against the appellants and the co-accused under section 147/448/366/302/201 IPC, he submitted the charge sheet.

23. The examination of the appellants under section 313 Cr.P.C shows that they have given a blanket denial to the adverse evidence that had been

adduced against them. They have also denied being in the house of the deceased and cutting the trees and walls of the house.

24. What is discernible from the evidence of the Prosecution Witnesses is that there were no eyewitnesses to the abduction of the deceased by the appellants. Though it can be implied that the appellants were the ones who had abducted the victim, inasmuch as, they had come to the house of the deceased looking for her and calling her a witch, no one had seen the deceased with the appellants. The evidence of PW-6 is to the effect that after the appellants had abducted her mother from their house, she left the house out of fear and spent the whole night in the jungle located in the back of the house. Though the said evidence appears to imply and prove that she was an eyewitness to the said abduction, the evidence of her sister (PW-4) is to the effect that PW-6, her brother-in-law, her younger brother Jibia and herself (PW-4), had run away on seeing the appellants with their weapons, coming to their house. In her cross-examination, PW-6 has also stated that her two younger brothers went to a different jungle than the one she went to. She was also confronted with a suggestion that she did not tell the Police that the appellants had abducted her mother in her presence, which she denied.

25. Thus, though an attempt had been made to contradict the evidence given by PW-6 that she had been present at the time her mother was abducted by the appellants, the testimony of PW-6 could not be contradicted in terms of Section 145 of the Evidence Act, in view of the fact that the Investigating Officer who had recorded the statements of the witnesses under Section 161 Cr.P.C, did not appear as a witness before the learned Trial Court. This has caused

prejudice to the appellants, inasmuch as, they have not been given a chance to contradict the testimony of PW-6, vis-à-vis her statement given under Section 161 Cr.P.C, where there is nothing stated therein that PW-6 had seen the appellants abducting the deceased. As such, it may not be safe to conclude that there was proof of there being an eyewitness (PW-6), who saw the appellants abducting the deceased.

26. It is settled law that non-examination of the Investigating Officer as a Prosecution Witness may not vitiate the Prosecution case or the trial. However, if the same causes prejudice to an accused, the non-examination of the Investigating Officer can be said to vitiate the trial and/or the Prosecution case. In the case of ***Behari Prasad Vs. State of Bihar***, reported in ***(1996) 2 SCC 317***, the Supreme Court has held that non-examination of the Investigating Officer in the trial is not fatal to the Prosecution case, especially when no prejudice was likely to be suffered by the accused. In the present case, we find that the non examination of the Investigating Officer as a Prosecution Witness has caused prejudice to the appellants, as they had not been given the opportunity to contradict the statements of the witnesses, by confronting the Investigating Officer with the statements made by them under Section 161 Cr.P.C. vis-à-vis their testimony in Court.

27. Though PW-4 and PW-6 have stated that they had seen the appellants with *dao*, *dagger* and *axe* etc., there has been no seizure of the same by the Police. We also find that there is no explanation given by any of the witnesses, as to how and by whom, the place where the body was hidden, was discovered and as to how it was PW-1 and PW-2, who had first come to know where the

body of the victim had been buried. In fact the evidence of PW-1 is to the effect that the Police and Magistrate arrived only after PW-1 and PW-2 had found and dug up the dead body.

28. We find that there is contradiction in the evidence given by PWs- 2, 4 and 6, inasmuch as, PW-2 had stated that the appellants had abducted his wife in the evening hours and that they had made an attempt to kill him, due to which he had fled from the place of occurrence. He, however, has denied seeing the appellants taking his wife, during his cross-examination. The fact that PW-2 was not present during the time the appellants had come to his house has been clarified by PW-4, who stated that her father (PW-2), had gone to the market while her mother was working in the field, at the relevant point of time. As such, PW-2 could not have seen the appellants in his house, at the relevant point of time.

29. Another fact which needs clarification is that PW-4 stated in her testimony when the appellants came to their house with weapons, her elder sister (PW-6), her brother-in-law and younger brother Jibia were at home. Seeing the appellants armed with weapons, the four of them ran away. The above fact clearly goes to show that PW-4 & PW-6 could not have seen the appellants abducting her mother (deceased).

30. There is a discrepancy in the evidence of PW-4 and PW-6, on account of PW-4 stating that she and PW-6 had run away. The evidence of PW-6 does not state that she had seen the actual abduction of her mother by the appellants. However, her testimony implies that she was present at the time of abduction of her mother by the appellants. A reading of the evidence of PW-4, when

juxtaposed with the evidence of PW-6, shows that two interpretations/views are possible, as to whether the PW-6 had seen the abduction of her mother by the appellants. One view is that prior to PW-6 running away, she had seen the abduction of her mother. This is however contradicted by the evidence of PW-6 herself in her examination-in-chief, when she stated that her mother had gone to harvest paddy. The other view is that PW-6 could not have seen the abduction due to her running away to the jungle along with PW-4. It is thus quite apparent that the evidence of PW-6 does not appear to be reliable in respect of abduction of her mother by the appellants, though there is no doubt that the appellants had gone to the victim's house. It is also be remembered that when two views are possible with regard to the result that can be culled out from the evidence, the view in favour of the accused has to be accepted/taken.

31. The discrepancy in the evidence of PWs- 2, 4 and 6 goes to the root of the problem, inasmuch as, the very abduction and the death of the deceased at the hand of the appellants, has to be proved. In the present case, the evidence of PWs- 2, 4 and 6 not being in sync with one another, the discrepancies appear to be major discrepancies.

32. As can be seen from the evidence, the FIR had been filed on 28/06/2006, wherein it has been stated that the deceased had been taken away on 23/06/2006. The body was found only on 29/06/2006 and the Post-Mortem examination was done on 30/06/2006. We find that there is an inordinate delay in filing the FIR, keeping in view the fact that PW-2, PW-4 and PW-6 have stated that the appellants had come to their house on 23/06/2006.

33. When a Court is presented with a delayed FIR, the most important thing

it must decide, is whether the reason given for the delay is satisfactory or plausible. In ***P. Rajagopal and Ors. Etc. vs The State Of Tamil Nadu***, reported in **(2019) 4 SCC 771**, the Supreme Court held that the Court is obligated to ascertain if the provided explanation is sufficiently credible in light of the facts and circumstances of the case. If the complainant seems trustworthy and has no reason to falsely accuse the accused, the delay must be excused.

34. In the case of ***Apren Joseph alias Current Kunjunju and Ors. Vs. The State of Kerala***, reported in **(1973) 3 SCC 114**, the Hon'ble Supreme Court has held that an FIR is very useful, if recorded before there is time and opportunity to embellish it, or before the informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to suspicion which put the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. Thus, in terms of the above judgment, FIR should normally be lodged at the earliest possible opportunity.

35. In the present case, no reason has been provided by any of the Prosecution Witnesses, as to why there has been a delay of 5 days in filing the FIR, especially when PWs- 4 and 6 had seen the appellants armed with weapons coming into their house, besides the fact that their mother was not seen subsequent to 23/06/2006. The delay of 5 days in filing the FIR gives rise to a suspicion that there has been embellishment in the case due to the unexplained delay in lodging the FIR. The FIR should have been filed immediately after the day of the incident, at the latest.

36. One other aspect of the matter is with regard to recovery of the body of the deceased. PW-1 had stated that the body of the deceased had been recovered by him and his father-in-law (PW-2), which was dug up by PW-1 and PW-2, after which the Police and the Magistrate arrived. While PWs- 1 and 2 have not stated as to when the body was dug up after 23/06/2006. PW-4 stated that the dead body was recovered 3 days after the incident, which would be around 26/06/2006. PW-6, on the other hand, stated that the body was recovered 4 days after the occurrence, which would make the date of recovery as 27/06/2006.

37. As stated in the foregoing paragraphs, inquest was held over the dead body on 29/06/2006, while post-mortem examination was done on 30/06/2006. Thus, there are many discrepancies in the evidence of the Prosecution Witnesses, even with regard to the date of recovery of the body and the manner in which it was recovered.

38. In the case of ***State of Rajasthan Vs. Smt. Kalki & Anr***, reported in ***(1981) 2 SCC 752***, the Supreme Court has held that contradictions affecting the core of the Prosecution case are fatal.

39. On considering all the above facts, we are of the view that when there is no eyewitness to the abduction and the killing of the deceased, the issue of whether the circumstantial evidence forms a complete chain, which firmly establishes that the deceased had died only due to the acts of the appellants, would have to be proved. The learned Trial Court came to a finding that the appellants had gone to the house of the informant, while PW-6 was alone in the

house and had made enquiries about the deceased, while stating that she was a witch and that they intended to kill her. The learned Trial Court also held that when the deceased returned from the field at around 4:00 p.m, the appellants abducted the deceased, after which the deceased was never seen. Further, the dead body of the deceased was buried in the paddy field. In this respect, we find that the learned Trial Court has erred in coming to the above said finding, especially when there is no clear evidence to the effect that PW-6 had seen the abduction of her mother by the appellants. The testimony of PW-6 is not corroborated by the evidence of PW-4, who stated that all of them including PW-6 had run away on seeing the appellants. It is also not understood as to how PW-1 and PW-2 were able to locate the buried body of the deceased and dig out the same prior to the police and the Magistrate arriving at the burial site.

40. In the case of ***Sharad Birdhi Chand Sarda Vs. State of Maharashtra***, reported in ***AIR 1984 SC 1622***, the Hon'ble Supreme Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established, which is consistent only with the hypothesis of the guilt of the accused and it should exclude every other possible hypothesis except the one to be proved. There is no evidence showing that the deceased was last seen with the appellants, though it could be speculated that the appellants had abducted the deceased when they had come to the house of the deceased. However, as held by the Supreme Court, suspicion, howsoever grave, cannot take the place of proof. We are accordingly of the view that the Prosecution has failed to prove their case beyond reasonable doubt.

41. The above being said, the State Government has passed the Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015, to curb the menace of witch hunting by villagers in the State of Assam. Witch hunting violence is a result of deep rooted superstitions which has led to the loss of many lives in the State. There can be many reasons for witch hunting, which could be diseases, crop failures, calamities and can also be used as an excuse for land grabbing etc. Suffice to say that the issue of witch hunting is a serious problem in the state, which has necessitated a statutory law to be made to prohibit and prevent witch hunting.

42. In the present case, when we consider all the facts, we find that the evidence adduced by the Prosecution witnesses do not prove the case of the Prosecution beyond reasonable doubt, to the effect that the appellants had killed the deceased. The circumstantial evidence also does not form a complete chain showing that their alleged action, if any, was the cause of death of the deceased. There is nothing beyond their presence in the house of the deceased, to link them with the death of the deceased. There was no weapon seized by the police and the exact time of death of the deceased could not be known. Further, due to the date and time of death of the deceased not being known, there was nothing to show that there was a short time period between the appellants going into the house of the deceased and the abduction and eventual death of the deceased. The appellants are accordingly acquitted of the charges framed against them, by giving them the benefit of doubt. Consequently, the impugned judgment dated 11.02.2022, passed by the learned Additional Session Judge, Bijni, in Sessions Case No. 3(B)/2018 is hereby set aside. The respondents are directed to release the appellants from judicial custody

immediately, if not wanted in any other case.

43. The appeal is accordingly allowed.

44. Send back the TCR.

JUDGE

JUDGE

Comparing Assistant