GAHC010211922019

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

Case No. : CRL.A(J)/59/2019

LENA BASUMATARY @ LENA GAYARI

VERSUS

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

2:SRI SWARANG BASUMATARY

Advocate for the Petitioner : MR. P GOSWAMI, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER (CAV)

Date : 28-07-2023
(Malasri Nandi, J)

Heard Mr. R. Dhar, learned counsel for the appellant. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor for the State.

2. This appeal is directed against the judgment and order dated 14.02.2019 passed by the learned Additional Sessions Judge, Bijni in Sessions Case No. 62(B)/2018, whereby the accused/appellant was convicted under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default simple imprisonment for two months.

3. The case of the prosecution is that the informant lodged an FIR on 03.09.2009 stating *inter alia* that on that day at around 5 p.m. while his father and the appellant were roaming around together and thereafter, they went to the house of the accused/appellant, where an altercation took place followed by a quarrel between them. Then the accused/appellant suddenly stabbed his father on various parts of his body with a dagger causing grievous injury on his person as a result of which his father became unconscious and was kept lying in the house of the accused. The accused fled away from the place of occurrence after stabbing his father. Later on, the villagers took his father to Swagat Hospital, Bongaigaon but he died after his arrival at the hospital.

4. On receipt of the complaint, a case was registered vide Bijni P.S. Case No. 216/2019 under Section 302 IPC and the investigation was commenced. During investigation, the investigating officer visited the place of occurrence, examined the witnesses and seized one dagger. The inquest was done on the dead body of the deceased by the investigating officer and thereafter, the dead body was sent to RNB Civil Hospital, Kokrajhar for postmortem examination. After completion of investigation, charge-sheet was submitted against the accused/appellant under Section 302 IPC before the court of JMFC, Bijni. As the offence under Section 302 IPC is exclusively triable by the court of Sessions, the case was committed accordingly.

5. During trial, charge was framed under Section 302 IPC which was read over and explained to the accused/appellant to which he pleaded not guilty and claimed to be tried.

6. To prove the guilt of the accused, prosecution examined 12(twelve) witnesses and

exhibited six documents and marked one material exhibit i.e a dagger. The appellant did not adduce any witness in support of his case. After completion of the trial, statement of the accused was recorded under Section 313 Cr.P.C., wherein incriminating materials found in the evidence of the witnesses were put to him to which he denied the same and pleaded his innocence. After hearing the arguments advanced by the learned counsel for the parties, the learned trial court convicted the accused/appellant as aforesaid. Hence, the appellant has preferred this appeal.

7. Mr. R. Dhar, learned counsel for the appellant has argued that there is no eye witness to the incident. The case is based on circumstantial evidence and the chain of circumstance is not complete to convict the accused/appellant under Section 302 IPC. It is also submitted that the evidence on record reveals that none of the prosecution witnesses had seen the occurrence but the learned trial court did not give a finding as to why P.W. 9 was declared hostile although only, it was she who found the victim in a speaking condition but within a period of less than one minute, he could not be able to speak. But the learned trial court relied upon the evidence of P.W.6 and P.W.7 and convicted the accused/appellant only on their evidence holding the statement of the deceased before them as oral dying declaration.

8. By referring the judgment of Hon'ble Supreme Court in State of Uttar Pradesh vs. Veerpal & Anr. reported in (2022) vol.4 SCC 741, the learned counsel for the accused/appellant has further submitted that there is neither rule of law nor of prudence to the effect that a dying declaration cannot be acted upon without corroboration, thus, a dying declaration if found true and voluntary can be made basis for convicting accused without any corroboration. This will depend on the facts of each case.

9. According to the learned counsel for the appellant, as per the settled principles laid down by the Hon'ble Supreme Court, the so called dying declaration before P.W.6 and P.W.7 cannot be accepted as dying declaration of the deceased and therefore, the conviction of the accused/appellant on the basis of such declaration is not sustainable in law and is liable to be interfered.

10. It is also the submission of learned counsel for the appellant that the dying declaration can be the sole basis of conviction if the same is found to have been recorded in accordance with law and appears to be truthful and voluntary. The learned counsel for the appellant has relied on the case of Jayamma & Anr. vs. State of Karnatake reported in (2021) vol.6 SCC 213.

11. The learned counsel for the appellant also referred the case of Balak Ram vs. State of UP reported in (1975) vol.3 SCC 219 and submitted that the Hon'ble Supreme Court has cautioned that it is not prudent to base conviction on the dying declaration made to the investigating officer. The learned counsel for the appellant also submitted that as it has been alleged to have been made before P.W.6 and P.W.7, more so, P.W.7 being the mother of the deceased, as such, the conviction of the appellant ought not to have been made on the basis of their evidence who are interested witnesses. It is further submitted that the learned trial court has not treated with caution while analyzing and accepting the evidence of P.W.6 and P.W.7 as such, the benefit of doubt goes in favour of the accused/appellant.

12. The learned counsel for the appellant also submitted that there are lots of contradictions in the evidence of the witnesses. The witnesses examined by the prosecution while deposed before the court stated that whatever they stated before the learned trial court did not state before the investigating officer while their statements were recorded under Section 161 Cr.P.C. Such contradiction was confronted by the investigating officer while he was examined before the learned trial court.

13. The learned counsel for the appellant also relied on some case laws-

(i) (2007) vol. 9 SCC 151 Mohan Lal & Ors. vs. State of Haryana.

(ii) (2016) vol. 14 SCC 151 State of Gujarat vs. Jayrajbhai Punjabhai Varu.

(iii) (2019) vol. 6 SCC 145 Poonam Bai vs. state of Chhattisgarh.

14. *Per contra,* Ms. B. Bhuyan, learned Additional Public Prosecutor for the State has supported the judgment of the learned trial court. She refuted the submissions of learned counsel for the appellant that oral dying declaration which was made before P.W. 6 and P.W. 7 can be taken into consideration. The learned Addl.P.P. contended that the evidence of P.W. 6 and P.W.7 along with other materials available in the record would be relied upon to the extent that they supported the prosecution case.

15. The learned Addl.P.P. would further contend that the appreciation of the evidence by the learned trial court was proper and the way the learned trial court discussed the materials on record, does not call for any interference by this Court. In support of her submissions, learned Addl.P.P. has placed reliance on the following case laws-

(i) (2007) Vol. 13 SCC 31 Ramappa Halappa Pujar & Ors. vs. State of Karnataka.

(ii) (2011) vol. 2 SCC 36 Himanshu @ Chintu vs. State (NCT of Delhi).

(iii) (2013) vol. 2 SCC 81 Parbin Ali & Anr. vs. State of Assam.

(iv) (2014) vol. 13 SCC 90 Paulmeli & Anr. vs. State of Tamil Nadu

(v) (2015) vol. 9 SCC 588 V.K. Mishra & Anr. vs. State of Uttarakhand & Anr.

16. The discrepancy in the statement made by the witnesses under Section 161 Cr.P.C. before the learned trial court was also put to the investigating officer during recording of his statement. According to the learned counsel for the appellant which is fatal to the prosecution case.

17. We have considered the submissions made by the learned counsel for the parties.

18. It is an admitted fact that there is no eye witness to the incident. The prosecution may

be relied upon the oral dying declaration made before the P.W.6 and P.W.7. That cannot be in dispute that a dying declaration can be the sole basis for convicting the accused. However, such a dying declaration should be trustworthy, voluntary and reliable. In case, a person recording the dying declaration is satisfied that the declarant is a fit medical condition to make the statement and if there are no suspicious circumstances, the dying declaration may not be invalid solely on the ground that it was not certified by the doctor. The real test is as to whether the dying declaration is truthful and voluntary. Here in this case, the dying declaration was not recorded by any person either the doctor or the Magistrate. Under such backdrop, the oral dying declaration is the only circumstance relied upon by the prosecution to convict the accused/appellant.

19. In order to satisfy our conscience with the considered material on record keeping in mind the well established principles regarding the acceptability of dying declarations, we have to look into the evidence of the witnesses recorded by the learned trial court.

20. P.W.1 is the son of deceased. He deposed in his evidence that the incident took place on 03.09.2009. On that day, at about 5 p.m., his mother Sujala Basumatary(P.W.9) informed him over telephone that accused Lena Basumatary had stabbed his father with dagger. He came to his house but by that time his father had been taken to Swagat Hospital, Bongaigaon. Later, he came to know that his father died. Then, he lodged the FIR vide Ext. 1. P.W. 1 also stated that the accused stabbed his father in his house.

21. In his cross-examination, P.W.1 replied that he was not present when the incident occurred. He did not remember the time when his mother called him and when he reached home after receiving information. He noticed injuries in 2/3 places of his father's body including chest. He could not say if there was a fight between his father and the accused.

22. P.W.2 is Gajen Basumatary, Gaonburah of Basbari village. He deposed in his evidence that on the date of incident, he was at Kokrajhar. On the next morning, Gogo, the mother of the deceased called him to their house. When he went there, she told him that Ganesh had

been taken to Swagat Hospital, Bongaigaon and he died. He came to know from mother of the deceased that a quarrel had taken place between Ganesh and accused Lena. It was suggested that Lena had stabbed Ganesh with a dagger.

23. In his cross-examination, P.W.2 replied that he did not witness the incident. He heard about the incident from other and he did not go to the place where the dead body was found.

24. P.W.3 stated that son of the deceased(P.W.1) informed him that the appellant had stabbed his father with a dagger and he had been taken to Swagat Hospital, Bongaigaon. He was present when the inquest on the dead body of the deceased was conducted and he put his signature on the inquest report.

25. According to P.W.4, he came to know from his mother that the appellant had stabbed the deceased(Ganesh) with a dagger. He went to the residence of the deceased and found his dead body. Later, he was taken to Swagat Hospital.

26. P.W.5 is the seizure witness. He deposed in his evidence that when police came to their village, he came to know that Ganesh Basumatary had died. The police took him to the residence of the appellant and seized one dagger from his house.

27. In his cross-examination, P.W.5 replied that the dagger was found on the road in front of his house. He did not know as to whom the said dagger belonged to.

28. From the evidence of P.W.6, it reveals that one Samram Barumatary, brother of the deceased informed him regarding death of the deceased. On receipt of the information, he immediately came to the residence of the deceased and saw the deceased lying on injured condition. He noticed cut injury on his chest and blood was oozing out from his injury. On being asked, the deceased replied that the appellant had stabbed him with a knife. At that time, many people were also present. Though, the injured was taken to the hospital and he died on the way.

29. In his cross-examination, P.W.6 replied that he did not witness the incident. The police interrogated him in connection with the incident. In his statement before police, he did not say that Samram informed him that the appellant had stabbed the deceased with knife.

30. P.W.7 is the mother of the deceased. From her deposition, it discloses that on the date of incident at about ¾ p.m., she went to Lakhibazar for shopping. While she was in the market, one Sumitra informed her that her son Ganesh had been stabbed by the appellant. On receipt of the information, she immediately came home and found his son lying in the courtyard in an injured condition. She had noticed injury on his chest and both hands. At that time, the deceased was in a position to speak. On being asked, Ganesh told that appellant had stabbed him. Her son died while he was being taken to hospital.

31. In her cross-examination, P.W.7 replied that she did not witness the incident and it was confronted that she did not say before the police that Sumitra informed her that the appellant had stabbed her son with dagger.

32. P.W.8 is the seizure witness. According to him, police seized one dagger from the house of Thega Narzary(P.W.5). At that time, he saw the appellant in the hosue of Thega Narzary.

33. P.W.9 is the wife of the deceased. She deposed in her evidence that on the date of incident at about 4/5 p.m., she went to the nearby river to take bath. While she came back after taking bath, she saw her husband in a serious injured condition in nearby house. She did not find anyone nearby the place of occurrence. When she came nearer to the body to her husband, he was still alive and asked her to give him water. But when she came back with water, her husband was not in a position to speak. She asked her husband about the assailant but he was unable to speak. When he was taken to Swagat Hospital, Bongaigaon he was alive, but not able to speak. Immediately, on arrival at the hospital, he expired. The witness was declared hostile as she did not support the prosecution case.

34. P.W.10 is the witness of inquest on the dead body of the deceased.

35. P.W.11 is the investigating officer. He deposed in his evidence that on 03.09.2009, he was working as an attached officer at Bijni Police Station. On that day, on receipt of a written FIR, the O/C, Binji P.S. registered a case vide Bijni P.S. Case No. 216/2009 and entrusted him the charge of investigation. On 04.09.2009, he visited Swagat Hospital, Bongaigaon and found the dead body there. He conducted inquest on the dead body of the deceased in the hospital and sent the dead body to RNB Civil Hospital, Kokrajhar for post-mortem examination. Thereafter, he visited the place of occurrence and prepared a sketch map and examined the witnesses. On 07.09.2009, he arrested the accused/appellant. When he was interrogated, the appellant stated that he would show the dagger with which he had committed the incident. Thereafter, he went to the house of Thega Narzary along with the accused/appellant and on being shown by the accused, he seized the dagger from the house of Thega Narzary in presence of the witnesses. After collecting the post-mortem report, he submitted the charge-sheet against the accused/appellant under Section 302 IPC vide Ext. 4.

36. P.W. 12 is the Ward Master of RNB Civil Hospital, Kokrajhar. He deposed in his evidence that he had been working at RNB Civil Hospital since 1989. He was attached with Dr. Abani Kalita who was working at RNB Civil Hospital and he knew his signature. P.W.12 also proved the post-mortem examination report prepared by Dr. Abani Kalita. According to P.W.12, as per direction of the Superintendent of RNB Civil Hospital, Kokrajhar, he deposed in connection with the post-mortem examination report prepared by Dr. Abani Kalita.

37. In his cross-examination, P.W. 12 replied that Dr. Abani Kalita had been working at RNB Civil Hospital since 2006 but he could not remember when he left the hospital.

38. In the case in hand, admittedly there is no eye witness to the incident. The appellant was convicted on the basis of oral dying declaration made before P.W.6 and P.W.7 by the deceased. Though P.W.6 and P.W.7 deposed before the court that when they reached the house of the deceased, they found the deceased in an injured condition but he was able to speak and on being asked, the deceased disclosed that the accused had stabbed him with knife. According to P.W.6, he was informed by Samram Basumatary, brother of the deceased

that the appellant had stabbed the deceased with knife but Samram Basumatary was not examined in this case.

39. Similarly, P.W.7 stated that one Sumitra informed her that the accused/appellant stabbed the deceased and Sumitra was also not examined by the prosecution. It is interesting to note that the wife of the deceased did not support the case of the prosecution. Though P.W.6 and P.W.7 stated that when they came to the house of the deceased, the deceased was able to speak but P.W.9 stated that when she came back home, she saw her husband in injured condition nearby her house. Though, he was alive but he was not in a position to speak.

40. Regarding hostile witness, the Hon'ble Supreme Court has stated in the case of ***Prithi vs State of Haryana*** reported in ***2010 vol. 3 SCC (Criminal) 960,*** that "Section 154 of the Evidence Act, 1872 enables the court in its discretion to permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. Some High Courts had earlier taken the view that when a witness is cross-examined by the party calling him, his evidence cannot be believed in part and disbelieved in part, but must be excluded altogether. However this view has not found acceptance in later decisions. As a matter of fact, the decisions of this Court are to the contrary. In Khujji @ Surendra Tiwari v. State of Madhya Pradesh reported in 1991 vol. 3 SCC 627, a 3-Judge Bench of this Court relying upon earlier decisions of this Court in Bhagwan Singh v. State of Haryana, reported in 1976 vol. 1 SCC 381, Sri Rabindra Kumar Dey v. State of Orissa reported in 1976 vl. 4 SCC 233 and Syad Akbar v. State of Karnataka reported in 1980 vol.1 SCC 30, reiterated the legal position that……the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof."

41. In the case of ***Koli Lakhmanbhai Chanabhai vs. State of Gujarat*** reported in

1998 v. 8 SCC 624, the Hon'ble Supreme Court again reiterated that testimony of a hostile witness is useful to the extent to which it supports the prosecution case. It is worth noticing that in Bhagwan Singh (supra), the Hon'ble Supreme Court held when a witness declared hostile and cross-examined with the permission of the court his evidence remains admissible and there is no legal bar to have a conviction upon his testimony if corroborated by other reliable evidence.

42. The aforesaid legal position has no manner of doubt that the evidence of a hostile witness remains admissible in evidence and it is open to the court to rely upon the dependable part of that evidence which is found to be acceptable and duly corroborated by some other reliable evidence available on record. Under such circumstances, the evidence of P.W.9 that her husband was alive when she returned back after taking bath is admissible and taken into consideration in this case. Though she(P.W.9) denied the fact that her husband was unable to speak at that time but P.W. 6 and P.W.7 supported the fact that the deceased was alive and able to speak.

43. Materials available on record, discloses that in this case, doctor has not been examined who conducted autopsy, though post mortem report has been brought on record and proved by P.W.12, who proved the handwriting and signature of the doctor and the court below has also found the postmortem report admissible under Section 32(2) of the Indian Evidence Act. However, he is not a doctor or expert nor there is any evidence that he was present at the time of postmortem.

44. Learned counsel for the appellant has vehemently argued that even if the doctor, who conducted post mortem examination was not examined, prosecution ought to have examined any specialist in the medical field to get the postmortem report proved/examined so that the defence might got a chance to cross-examine him on the actual cause and nature of injuries and denial of the same has caused serious prejudice to the defence.

45. In the case of *Rajeev* ***Singh @ Rajeev Kumar vs. State of Bihar,*** reported in

Criminal Appeal (DB) No. 1310 of 2017 dated 02.03.2017, in which, aforesaid question was discussed in para-44, which is being reproduced henceforth:-

"In the case of Sowam Kisku & Ors v. The Stae of Bihar, reported in 2006 Cri. L.J.2526, the Jharkhand High Court noticed that the post mortem report was proved by a Compounder attached to the hospital. Declining such practice, the Jharkhand High Court observed that the contents of the post mortem report cannot be used by examining the compounder of the hospital, who had no knowledge about the opinion expressed by the Doctor. Furthermore, the post mortem report is not document which falls under section 293(4) Cr.P.C. nor the prosecution has taken recourse to Section 294 Cr.P.C. However, the Division bench of Jharkhand High Court observed that if any other Doctor had been examined who knew the signature of the Doctor who conducted autopsy, and who had given evidence as to the nature of post mortem done and the injuries found by the Doctor on the dead body, then in such circumstances the appellants would have had an opportunity to cross-examine the said Doctor to profess their case that injury suffered was not fatal in nature or that the said injuries are not sufficient in the ordinary course of nature to cause the death of the deceased or that the said injuries are likely to cause death. The prosecution by not examining the Doctor in fact had denied the opportunity to the accused appellant as they were prevented from cross-examining the competent person, who would be well equipped in medical science."

It would be apt to quote paragraphs 8 and 9 of the judgment which are reproduced below:-

"8. We are unable to understand as to why the prosecution did not choose to examine the doctor. It is no doubt true that in spite of the steps taken, the prosecution could not procure the attendance of the doctor who conducted autopsy over the dead body, but that could not have precluded the prosecution from examining some other doctor from the same hospital who knew the handwriting and signature of the doctor who

conducted autopsy. If any other doctor had been examined who knew the signature of the doctor who conducted the autopsy and if he had given evidence as to the nature of post mortem done and the injuries found by the doctor on the dead body, then the appellants could have had an opportunity of cross- examining the said doctor to say that the injuries suffered by the deceased are not fatal in nature and even if the deceased died on account of such injuries, the accused- appellants could have taken a defence to say that the said injuries are not sufficient in the ordinary course of nature to cause the death of the deceased or that the said injuries are only likely to cause the death. The prosecution by not examining the doctor denied the opportunity to the accused-appellants as they were prevented from cross- examining the doctor. Therefore, in absence of any evidence that Dugu Ram Kisku died due to homicidal violence, we cannot find the appellants guilty of murder.

9. A perusal of Section 60 of the Evidence Act shows that in all cases wherever it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on this ground and the prosecution having not examined the doctor and not giving an opportunity to the accused to cross-examine him, cannot reply upon the evidence of P.W.11 and mark Ext.5, the post mortem certificate through him. It is needless to mention that the doctor who conducted autopsy and expressed opinion in the post mortem certificate, was not examined and therefore the compounder, P.W.11, is not a competent witness to speak about the cause of death; more so when he has admitted in his cross-examination that he was not present at the time of post mortem and that he also did not know about the opinion expressed by the doctor who conducted autopsy. At this stage, we wish to make an useful reference to Section293, Cr.P.C. which contemplates that any document purporting to be a report under the hand of a Government Scientific Expert to whom the Section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding, may be used as evidence in any inquiry, trial or other proceeding. Sub-section (4) of Section 293 classified the reports of the Scientific Experts. Post-mortem report is not one of

those documents which falls under sub-section section (4) of Section 293, Cr.P.C."

46. From perusal of the above judgment, it can safely be said that prosecution by not examining any doctor has denied the opportunity to the defence as they were prevented from cross-examining the competent person, who will be well equipped in medical science.

47. In the case of ***Rajeev Kumar(supra)***, it was also held that:-

"48. The right and liberty of an individual, guaranteed under Article 21 of the Constitution of India, if any prejudice is caused to the accused in a criminal trial, the benefit will be given to him and not to the prosecution and that is why the Court observed as to what would be the probative value of the document which is admissible under section 32 of the Evidence Act but proved by a person who is incompetent to understand the contents of the documents.

49. The Orissa High Court has raised the issue in the case of Hadi Kirsani vs State (supra) and the Rajasthan High Court in the case of Mathura Lal Tara Chand (supra). The Jharkhand High Court too observed in case of Sowam Kisku (supra) that in absence of the doctor, if any other doctor has been examined, who knew the signature of the doctor who conducted autopsy, and if he had given evidence as to the nature of post mortem done and the injury found by the doctor on the dead body, then the appellant could have had the opportunity to cross-examine the said doctor to opine, that the injuries suffered by the deceased are not fatal in nature or that even if the deceased died on account of such injury, the same was not sufficient in ordinary course to cause death of the deceased or that the said injury are likely to cause death.

50. In our considered view, the non-examination of a competent doctor, in absence of the doctor who authored the document, even if admissible under section 32 of the Evidence Act, so proved by a Compounder merely someone conversant with his handwriting, would virtually amounts to denial of an opportunity to the accused as

they are prevented from cross-examining the doctor who could have addressed the intricacies of the report, for no fault of their own. Being conscious of such situation, the Hon"ble Apex Court in the case of Vijender (supra) held that in exceptional cases where any of the prerequisites of Section 32 of the Evidence Act are fulfilled, the post mortem report can be admitted in evidence as the relevant fact in sub-section (2) thereof by proving the same through some other competent witness which obviously is referred to a doctor with equipped in medical science to answer the question with respect to contents of the report. It also goes to show that even under section 32 of the Evidence Act, the post mortem report though admissible would be relevant when a competent witness come and depose about the same otherwise it will shake the very edifice of criminal jurisprudence that if any prejudice is caused, the benefit would be given to him and not to the prosecution.

51. We, accordingly, hold that if a post mortem report or injury report is proved by a witness in terms of any of the circumstances enumerated under section 32 of the Evidence Act, such evidence would be admissible in evidence. However, such evidence would not have any probative value unless and until the same is proved by any other doctor who is well equipped in medical science and competent to answer the question on the merits of the report as the defence would be deprived of cross-examination on the contents of the report, which would be prejudicial to its interest. We answer this situation accordingly."

48. In view of the aforesaid proposition of law, though the postmortem report is admissible under Section 32(2) of the Indian Evidence Act, however, prosecution has certainly caused serious prejudice to the defence by not examining any competent person of medical science and the appellant is entitled for benefit of the same.

49. Considering the infirmities discussed above, in totality, we find that the learned trial court has not considered the infirmities discussed above and failed to consider that the prosecution has failed to prove the manner, motive of occurrence and cause of death beyond

all reasonable doubts. Hence, the accused/appellant is acquitted on benefit of doubt.

50. In the light of the above, the instant appeal is allowed. The appellant is acquitted and set at liberty forthwith. The conviction and sentence recorded by the learned Additional Sessions Judge, Bijni against the accused/appellant in connection with Sessions Case No. 62(B)/2018 under Section 302 IPC is hereby set aside. Consequently, the appellant shall be released from custody forthwith, if not required in any other case.

51. LCR be returned back.

JUDGE **JUDGE**

Comparing Assistant