

**APPENDIX-12**

**IN THE COURT OF SESSIONS JUDGE,  
SIVASAGAR.**

**Present:** *Sri L. Kr. Saikia, (M.Com., LL.M, AJS)*  
*Sessions Judge,*  
*Sivasagar.*

Date of Judgment : 21.08.2023

**Case No. Session 148 (S-S) of 2017**

Under Demow PS Case No. 87 of 2015

<b>Complainant</b>	<b>State of Assam</b>
<b>Represented by</b>	<b>Sri B. Dhanuka, Addl. PP</b>
<b>Accused person</b>	<b>Sri Mangal Praja</b> <b>Sri Pagha Praja</b>
<b>Represented by</b>	<b>Sri Aditya Kr. Borah, Ld. Legal Aid Defence Counsel</b>

(L. Kr. Saikia)  
Sessions Judge, Sivasagar

### **APPENDIX-13**

Date of offence	05.04.2015
Date of FIR	06.04.2015
Date of filing Charge-Sheet	30.10.2015
Date of commitment	08.06.2017
Date of framing charge	05.03.2018
Date of commencement of evidence	21.06.2019
Date of argument	21.01.2023, 31.07.2023 & 14.08.2023
Date on which judgment is reserved	
Date of Judgment	21.08.2023
Date of Sentencing order, if any	

### **ACCUSED DETAILS:**

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of Sec.428 Cr.P.C.
A-1	Sri Mangal Praja	06.04.2015	Both the A-1 and A-2 are in judicial custody.	U/S – 302/34, IPC	Convicted	Both the A-1 and A-2 are sentenced to <b>DEATH</b> for committing offence u/s 302/34, IPC.	Not required.
A-2	Sri Pagha Praja	06.04.2015		U/S – 302/34, IPC	Convicted		

(L. Kr. Saikia)  
Sessions Judge, Sivasagar

**APPENDIX – 14**

**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES**

**A. Prosecution Witnesses:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
PW-1	<b>Smti. Tikmai Praja</b>	<b>Other Witness</b>
PW-2	<b>Sri Karan @ Karam Praja</b>	<b>Eye Witness</b>
PW-3	<b>Smti. Jonmoni Praja</b>	<b>Eye Witness</b>
PW-4	<b>Sri Ram Praja</b>	<b>Eye Witness</b>
PW-5	<b>Sri Narayan Dutta</b>	<b>Other Witness</b>
PW-6	<b>Sri Tinku Gowala</b>	<b>Other Witness</b>
PW-7	<b>Sri Harakanta Gogoi</b>	<b>Other Witness</b>
PW-8	<b>Sri Rohini Sensuwa</b>	<b>Other Witness</b>
PW-9	<b>Sri Biju Praja</b>	<b>Other Witness</b>
PW-10	<b>Sri Horen Gogoi</b>	<b>Other Witness</b>
PW-11	<b>Sri Prabin Changmai</b>	<b>Other Witness</b>
PW-12	<b>Sri Jadumoni Borah</b>	<b>Other Witness</b>
PW-13	<b>Sri Juran Proja</b>	<b>Other Witness</b>
PW-14	<b>Dr. Brojen Saikia</b>	<b>Medical Witness</b>
PW-15	<b>Sri Prahlad Dutta</b>	<b>Other Witness</b>
PW-16	<b>Sri Sankar Ch. Rabha</b>	<b>Expert Witness</b>
PW-17	<b>Sri Moni Mohan Konch</b>	<b>Police Witness</b>
PW-18	<b>Sri Ratul Gogoi</b>	<b>Official Witness</b>

(L. Kr. Saikia)  
Sessions Judge, Sivasagar

**B. Defence Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

**C. Court Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

(L. Kr. Saikia)  
Sessions Judge, Sivasagar

## **LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

### **A. Prosecution Exhibits:**

Sl. No.	Exhibit Number	Description
1	Ext.1	Seizure List
2	Ext.2	Seizure List
3	Ext.3	Seizure List
4	Ext.4	Inquest Report
5	Ext.5	Inquest Report
6	Ext.6	Inquest Report
7	Ext.7	Inquest Report
8	Ext.8	Sketch Map
9	Ext.9	FIR
10	Ext.10	PM Report of Santosh Praja
11	Ext.11	PM Report of Lilawati Praja
12	Ext.12	FSL Report
13	Ext.13	Forwarding report of Add. SP, Sivasagar
14	Ext.14	Detail of Exhibits containing 3 (three) pages
15	Ext.15	Charge-Sheet
16	Ext.16	164 Cr.P.C. Statement of witness Karam Praja @ Karan.

(L. Kr. Saikia)  
Sessions Judge, Sivasagar

**B. Defence Exhibits, if any:**

Sl. No.	Exhibit Number	Description
	Nil	

**C. Court Exhibits, if any:**

Sl. No.	Exhibit Number	Description
	Nil	

**C. Material Objects, if any:**

Sl. No.	Exhibit Number	Description
1	M.Ext.1	Seized Shirt of Pagha Praja
2	M.Ext.2	Seized Sweater
3	M.Ext.3	Seized Track Suit
4	M.Ext.4	Seized Dao

(L. Kr. Saikia)  
Sessions Judge, Sivasagar

## **JUDGMENT**

1. Prosecution case, in brief, is that on 06.04.2015, the informant Smti Tikmai Proja lodged an FIR with O/C, Demow Police Station alleging, inter alia, that on 05.04.2015 at night, accused persons namely, Sri Mangal Proja, who is the resident of Kacharipathar Gaon and Sri Pagha Proja of Laguabari Proja Line had murdered her brother-in-law Santosh Proja and his wife Lilabati Proja by attacking them with a "Dao". Hence this case.

2. On receipt of the aforesaid Ejahar, Demow PS Case No. 87/2015 u/s 302/34 of IPC was registered and investigated into. During investigation, IO (PW 17) arrested the accused Mangal Proja and Pagha Proja and forwarded the accused persons to Court for judicial custody after police remand. On completion of investigation, I.O. has submitted the Charge Sheet against the accused persons u/s 302/34 of IPC.

3. Upon taking cognizance on the Charge-Sheet and after furnishing copy to the accused persons u/s 207 of Cr.P.C. and notifying the Public Prosecutor, vide order dated 08.06.2017, the then learned Judicial Magistrate 1st Class, Sivasagar, by complying the provision of Section 209 Cr.P.C. has committed the case for trial of the above named accused persons before the court of Sessions.

4. On receipt of the case record of GR Case No. 603/2015, the case was registered as a Sessions Case and vide order dated 19.02.2018, the case was transferred to the Court of learned Addl.

Sessions Judge (FTC), Sivasagar for disposal. Accordingly, the accused were appeared before the Court of Addl. Sessions Judge, Sivasagar to face the trial.

5. It appears that vide order dated 05.03.2018 the learned Addl. Sessions Judge, Sivasagar had framed the charge against the accused persons u/s 302/34 IPC. The accused had pleaded not guilty to the charge and claimed to stand trial. During trial, prosecution examined as many as eighteen witnesses including MO and IO. Defence cross examined the said witnesses but adduced no evidence.

6. Upon completion of the prosecution evidence, accused were examined u/s 313 Cr.P.C. Defence case is of total denial and false implication. After hearing both the sides u/s 232 Cr.P.C, and observing that it was not a case of no-evidence, accused were called upon to enter into defence to which they declined to adduce evidence in defence.

7. It may be mentioned here that as the Court of Addl. Sessions Judge (FTC), Sivasagar was lying vacant due to transfer of PO, vide order dated 21.10.2022 passed by this Court, the case was withdrawn from the Court of Addl. Sessions Judge (FTC), Sivasagar and taken up by this Court for disposal.

8. It may further be noted here that vide order dated 06.07.2015, learned Addl. CJM Sivasgar allowed both the accused persons to go on bail and accordingly, accused were enlarged on bail since 27.07.2015, but subsequently, i.e. On July 20, 2019, both of the



accused persons were absent without any steps. However, later on the same day, at 03:00 pm, they appeared. Following their appearance, they were taken into judicial custody, and from that point onwards, they have been undergoing trial as under trial prisoners.

9. The initial portion of the prosecution's argument was put forth by the learned Additional Public Prosecutor, B. Dhanuka. Following his retirement, the remaining and subsequent argument was presented on 31.07.2023 and 14.08.2023 by the learned Public Prosecutor D. Dutta. Also heard strenuous arguments put forwarded by the learned defence counsel Mr. A.K. Borah and gone through the entire evidence on record.

#### **POINTS FOR DETERMINATION -**

10. Considering the oral argument of both parties and the evidence on record the following points stems out for determination:

- (i) Whether the deceased persons Santosh Proja and Lilawati Proja met with homicidal death?
- (ii) If so, homicidal deaths amounted to murder;
- (iii) Whether the murders were committed by the accused Mangal Praja and Pragha Praja?

#### **EVIDENCE OF THE WITNESSES:**

11. PW-1, Tikmai Proja deposed that she is the informant of this case. She knows the accused persons Mangal Proja and Pagha Proja. The deceased Santosh Proja is her brother-in-law and deceased

Lilabati Praja was his wife. On 05.04.2015, at night, she was sleeping in her house. Next day at about 6.30 am Junmoni Proja and Param Proja who are the son and daughter of the deceased came to her house and informed her that Mangal Proja and Pagha Proja had murdered their parents Santosh Proja and Lilawati Proja by an inflicting cut injury by Dao. She immediately went to the house of Santosh Proja. She saw the dead body of Santosh Proja lying in the veranda with injuries on his body. The dead body of Lilawati Proja was lying in the back side of the house with injuries on her body. She immediately informed Prahlad Dutta and went to Police Station and lodged the FIR. The FIR was written by Gaonburah Jadumoni Bora. She put her thumb impression in the said FIR.

11(i) During cross examination by defence PW-1 admitted that she does not have any personal knowledge about the incident. The children of the victim were 8 to 10 years old. The house of Mangal Proja is near to the house of the victim. The house of Pagha Proja is about one kilometer. She came to know about the incident in the morning. Her house is at a distance of 30 minutes on foot. Santosh Proja her brother-in-law. She did not see anybody when she reached the place of occurrence. The accused persons were apprehended thereafter. Mangal and Pragha are friends. She denied the defence suggestion that Pragha is not connected with this incident. The incident occurred for a missing cow. There is a bamboo orchard near the house of Santosh. Cows generally go to the orchard and sometimes remain there. She denied the defence suggestion that on the day of occurrence Mangal Proja was searching his cows in the

bamboo orchard and Santosh thought that Mangal has come to take his cow and so he chased Mangal with a Dao and inflicted blow and his wife obstructed and the blow fell on her hand and suffered cut injury and her hand was severed and at that time Mangal Proja grabbed Santosh and cut him with the Dao. The Dao which is available in the Court is not of Santosh Proja.

12. PW-2 Sri Karam @ Karan Proja in his deposition dated 21.06.2019 stated that the informant Tikmai Proja is his aunt (Barma). He knows the accused persons Mangal Proja and Pagha Proja. On 05.04.2015, at 9.30 pm (night), he, along with his sister Junmoni, elder brother, and parents, was at home. He mentioned that he attended 1 No. Lukabari Shah Janajati School in the past. During that time, Mangal Proja and Pagha Proja called his father, and when his father went outside, both the accused assaulted him with a Dao, causing him to fall down in an injured state in the veranda. Upon hearing his father's cries, his mother tried to escape to the backside, but Mangal Proja and Pagha Proja also attacked her with a Dao, causing injuries, and she fell as well. His elder brother, Ram Proja, fled away from the scene, while he and his sister hid under the bed for the entire night. PW-2 (Sri Karam) further deposed that a prior quarrel had occurred between his father and the accused individuals concerning tying of cows. The following day, he and his sister informed their aunt (Barma) about the incident. His brother had not yet returned. Barma then reported the matter to someone and later lodged the case at the Police Station. The police arrived and took the dead bodies of his parents. During the police investigation, he was

interrogated, and his statement was recorded in the Court. As he was illiterate and unable to write his name, he placed his thumb impression on the statement. He woke up from sleep upon hearing the commotion and distressing sounds during the incident.

12(i) During his cross-examination, PW-2 deposed that Santosh had a bamboo orchard near their house. They owned a pair of cows, which had gone missing the day before the incident. His father was unable to find the cows, and sometimes they would be found in the thick bamboo orchard. Their house was about 500 meters away from Santosh's house. Santosh owned cows and had tied them to a tree after purchasing them on Sunday. The cows were tied approximately 50 meters away from their house. Mangal was observed cutting the rope of the cows in the daytime, around 04:00 pm, as witnessed by PW 2. Subsequently, his father went to Mangal's house to inquire about the cow-tying matter, but Mangal remained silent. Santosh had a pair of cows, and he had tied them in the paddy field near the bamboo orchard. During the time of the incident, they were asleep. Their house consisted of three rooms used as the kitchen, bedroom, and drawing room, but there was no electricity in their house, nor was there any provision of electricity on the road. PW 2, his younger sister, and Ram Proja were sleeping, and there was a bamboo door from which they could exit. They had gone to sleep around 7.30 pm. His mother and father were in the kitchen, and a candle (Chaki) was burning in their room. On waking up, he saw his father injured in the room, and he raised an alarm. His mother was found injured at the back of the house. PW 2 did not witness Mangal and Pagha during the

incident. A quarrel had occurred regarding the cows, and his father had been searching for them. However, PW 2 was unaware of what his father did after they went to sleep. His father suspected that Mangal had stolen the cows and mentioned that Mangal had hidden them. There was a Dao in their house, as his father worked at a factory, but Kalam Katary was not kept there. PW 2 stated that he could not recognize their Dao upon seeing it. PW 2 refuted the defense's suggestion that he had falsely testified about Mangal Proja and Pagha Proja injuring his parents. He maintained that he had witnessed the actual incident. The defense suggested that his father had chased Mangal with a Dao and that Mangal ran towards their house. As his mother attempted to obstruct Mangal, she inadvertently suffered a Dao blow to her hand, resulting in an injury. It was further suggested that Mangal then attacked his father with the same Dao. However, PW 2 denied this version of events. Out of fear, PW 2 and his sister hid under the bed upon witnessing the dead bodies of their mother and father. The wick (Chaki) was burning, and there was no Chaki outside the house.

13. PW-3 Smti Junmoni Proja in her deposition dated 21.06.2019 stated that the name of the person whom she has seen is Pagha. She used to call Pagha as 'mama' and Mangal Proja as 'kaka'. At night she had heard shouting and screaming. When her father went to the veranda at the front of their house, Pagha and Mangal struck him with a blow from a Dao (a traditional weapon). Her mother fled to the backside, and then they attacked and injured her. She and her elder brother Karan witnessed the incident through a window. Another

brother managed to escape. To stay safe, she and Karan hid under the bed throughout the night. The next morning, they went to their aunt's (Barma's) house. Karan informed his Borma about the assault on their parents.

13(i) During cross-examination, PW-3 reaffirmed that on the day of the incident, she, Ram Proja, and Karan Proja were present in the house. Their house lacked electricity, so they used a 'Chaki' (Wick). Inside their room, the 'Chaki' (Wick) was not lit. While they were on the bed, her parents were attacked and injured outside the house. The exterior of their house had no lighting. Upon hearing the commotion outside, they hid under the bed. In the morning, their aunt (Barma) found and rescued them from under the bed. When daylight came, they discovered their mother and father lying injured. On the night of the incident, they did not see any other person involved in the attack.

14. PW-4 Ram Proja deposed that the informant is his mother. He knows the accused persons Mangal Proja and Pagha Proja. On the night of occurrence he was in the house of his uncle Santosh Proja. At about 8.30/9.00 pm, the accused persons Mangal Proja and Pagha Proja came to the house of Santosh Proja and quarreled with him in connection with the matter of cow. Then both the accused persons inflicted blows with 'Kalom dao' upon Santosh Proja. Santosh Proja fell down on the veranda sustaining serious injuries. When Lilawati (his aunt) tried to run away from backside, the accused persons also attacked her and inflicted blows with Dao and then she fell down on the backside of the house. Out of fear he ran away from the house

and reached his house in the morning after hiding for the night. Junmoni and Karan saw the incident and he left them in the house. In the morning Karan and Junmoni came to their house and informed his mother. He also told his mother about the incident. Then his mother went to Prahlad's house and from there went to Police Station.

14(i) In his cross-examination, PW-4 deposed that he was in the house of his uncle. He was not sleeping but lying on the bed. The earthen lamp was burning. His uncle and aunt were in the kitchen. He knows the difference between 'Kalom Katari' and a 'Dao'. He denied the defence suggestion that after the incident hearing hue and cry, he woke up. He saw the body of his uncle and aunt lying. He fled away out of fear. Karan and Junmoni remained inside the house. He denied that he has deposed falsely that the accuseds cut his uncle and aunt with 'Kalom Katari'. The cows of his uncle went missing. He did not see who had cut the rope of the cows. He denied the defence suggestion that he saw the accuseds quarreling with Santosh Proja in connection with missing of cows. He denied that while Santosh inflicted a blow with 'Da' on Mangal, it fell on the hand of Lilawati and her hand was cut.

15. PW-5, Sri Narayan Dutta deposed that he knows the accused persons Mangal Proja and Pagha Proja. On 05.04.2015 at night he was at his home which is situated at a distance of about 1 Km from the house of the informant. On the next day morning, he came to know about the incident from the villagers and went to the place of occurrence. He saw the dead body of one male person and one female

person. He cannot recall their names but he knew them. He saw the dead body of the male person in the veranda of his house and the dead body of the female was lying in the backside of the house. He saw cut injuries on both the bodies. He saw the hand of female which was cut and severed from the body of the female which was lying near the dead body of the male person. When he reached the place of occurrence he saw police personnel. Police took the dead bodies for post mortem examination. Exhibits 4, 5, 6 and 7 are the inquest report wherein 4(2), 5(2), 6(2) and 7(2) are his signatures. (The statement recorded u/s 161 Cr.P.C. is read over to the witness to which he resiled. The witness is declared hostile).

15(i) In his cross by prosecution he denied that he stated before the I.O. that he came to know from Karan Proja, son of Santosh that last night their neighbour Mangal Proja and Pagha Proja had murdered his parents. On being asked, the accused persons confessed their guilt in presence of police personnel and villagers. He denied that at the time of seizure he was present. Ext. 1 is the seizure list wherein Ext. 1(1) is his signature. He denied that he was present at the time of seizure of the shirt. Ext. 2 is another seizure list wherein Ext. 2(1) is his signature. He denied that he was present at the time of seizure of the clothes vide Exhibit. He denied that the "Dao" was seized in his presence. He denied that he has stated before the I.O. that the "Dao" by which Mangal had killed the victims was shown and recovered by him from a pond situated in the backside. He denied that he has stated before the I.O. that one blood stain shirt with checks was seized in his presence and he put his signature in the seizure list. He



denied that he has stated before the I.O. that later on from the house of Pagha Proja one blood stain cream colour sweater and one blue colour trackpant were seized. Ext. 3 is the seizure list wherein Ext. 3(1) is his signature. He denied that he has deposed falsely suppressing the truth. In his cross by defence PW 5 stated that during investigation I.O. did not record his statement.

16. PW-6 Tinku Guwala in his evidence deposed that he knows the accused persons Mangal Proja and Pagha Proja. On 05.04.2015 at night he was at his home which is situated at a distance of about 1/2 Km from the place of occurrence. On the next day morning, he came to know about the incident from the villagers and went to the place of occurrence. He saw the dead body of Santosh Proja and Lilawati. He saw the dead body of Santosh Proja in the veranda of his house and the dead body of Lilawati in the backside of the house. He saw cut injuries on both the bodies. He saw the hand of female which was cut and severed from the body of Lilawati, which was lying near the dead body of Santosh Proja. When he reached the place of occurrence he saw police personnel. Police took the dead bodies for post mortem examination. In their presence police interrogated both the accused persons and they admitted that they had killed Santosh Proja and Lilawati. Mangal Proja had given the "Dao" after bringing it out from a pond. During investigation police seized some blood stain clothes and took his signature in the seizure list. He can identify those. He can also identify the "Dao" which was handed over to police by Mangal Proja. Police took his signature in the inquest report. Ext. 4 is the inquest report wherein Ext.4(1) is his signature. Ext. 5 is the another inquest

report wherein Ext.5(1) is his signature. Ext.6 is the inquest report wherein Ext.6(1) is his signature. Ext.7 is the inquest report wherein Ext.7(1) is his signature. Ext.1(2), Ext.2(2) and Ext.3(2) are his signatures in the seizure list. Material Ext. 1 is the blood stain full shirt, Material Ext.2 is the blood stain cream colour full sweater, Material Ext.3 is the blue colour tracksuit and Material Ext.4 is the "Dao". The son of the deceased namely Karan Proja stated that the accused persons had killed his parents last night.

16(i) In his cross by defence PW-6 stated that he saw injury on the head of Santosh Proja. He saw injury on the abdomen and hand of Lilawati. He did not see the I/O matching the cut hand with the dead body of Lilawati. Karan Proja did not state before him that the accused persons had killed his parents last night. He stated so before the police. The pond is situated near the house. He was present near the pond when the "Dao" was brought out. The pond is easily accessible and visible. The accused Mangal Proja brought out the "Dao" from the pond. Only one "Dao" was recovered. Police could not recover any other "Dao".

17. PW-7 Sri Harakanta Gogoi deposed that on 06.04.2015, he was at his home. He knows the informant of this case. He also knows the accused persons. On 06.04.2015 at about 9.00 am, he came to know from the O/C of Demow PS about the incident. He went to the place of occurrence and saw the dead body of Santosh Proja in the veranda of the house. He also saw one hand lying near the said body which was cut. He saw the dead body of the wife of Santosh Proja

lying in the backside of the house with one hand which was cut and missing from the body. When he reached the place of occurrence he saw the accused persons who were tied with rope. The accused persons admitted that they had killed the victims on being asked by the O/C in his presence. Then the O/C asked the accused persons about the weapon of offence and the accused persons stated that they have killed the victims with "Kolom Katari". Then the accused persons were asked to hand over the weapon. They were untied. Then the accused Mangal Proja brought one "Kolom Katari" from the nearby pond and handed over to the police. He saw blood stain on the said "Kolom Katari". The seized article which is available in the Court today is not the said "Kolom Katari" which was recovered in the place of occurrence. Police took his signature in the seizure list which is marked as Ext.4, wherein Ext.4(2) is his signature. By Ext. 4 one blood stained blouse with cut mark of light pink colour, one full shirt with black and white stripes were seized. Police seized one Dao and took his signature which is marked as Ext.3(3). The said Dao is not available in the Court today. Material Ext. 4 and 5 are the blouse and shirt. Police seized another sky blue & white shirt by Ext.1 and Ext.1(3) is his signature. M.Ext.1 is the said shirt. Police seized one tracksuit and one full sweater and took his signature in the seizure list which is marked as Ext.2(3). Police took his signature in the sketch map, which is marked as Ext.8 wherein Ext. 8(1) is his signature.

17(i) During cross by defence PW-7 stated that he knows the difference between "Kolom Katari" and "Dao". His signature in the seizure lists were taken in the place of occurrence. The seized clothes

were lying in the veranda. The seizure lists were not read over to him. There is no Seal, signature of the O/C or any witness in the seized Dao. He does not know if the "Kolom Katari" belonged to Santosh Proja. Near the house of Santosh Proja there is a bamboo orchard. Police did not record the statement of the accused persons in his presence. He cannot say who was wearing which of the clothes. The seized shirts do not have any cut mark. The deceased Santosh was lying in the veranda and his wife was lying in the backside of the house. The size of the pond is 10 X 10 feet. The seized clothes were not packed and sealed.

18. PW-8 Rohini Sensuwa deposed that he knows the informant of this case. He knows the accused persons. He also knows the deceased persons. On 06.04.2015 he came to know about the incident and went to the place of occurrence. The dead body of Santosh Proja was lying in the veranda and the dead body of Lilawati Proja was lying on the backside of the house. The accused persons confessed their guilt in presence of the public. Police seized one Dao from a nearby pond on being recovered and produced by Mangal Proja. The Dao which is available in the Court is the seized Dao which was recovered and produced by Mangal Proja. Material Ext. 4 is the seized Dao. In his cross by defence PW 8 stated that accused persons confessed their guilt before the police and the public. The accused Mongal Proja himself brought the Dao from the pond. At that time police and public were also present there.

19. PW-9 Sri Biju Proja deposed that he knows the informant

of this case. He knows the accused persons. He knows the deceased Santosh Proja and Lilawati Proja. On 06.04.2015 he was at his home. He came to know about the incident from the villagers. He went to the place of occurrence and saw a large gathering. He saw the dead body of Santosh Proja and Lilawati Proja.

20. PW-10 Sri Haren Gogoi deposed that he knows the informant of this case. He knows the accused persons. He knows the deceased Santosh Proja and Lilawati Proja. On 06.04.105 he was at his home. He came to know about the incident from the villagers. He went to the place of occurrence and saw a large gathering. He saw the dead body of Santosh Proja and Lilawati Proja. The accused persons admitted their guilt before the public after being apprehended by police.

21. PW-11 Sri Prabin Changmai deposed that he knows the informant of this case. He knows the accused persons, also the deceased Santosh Proja and Lilawati Proja. On 06.04.105 he was at his home. He came to know about the incident from the villagers. He went to the place of occurrence and saw a large gathering. He saw the dead body pf Santosh Proja and Lilawati Proja.

22. PW-12 Sri Jadumoni Borah deposed that he knows the informant Tikmai Proja after the incident. Ext.9 Ejahar was written by him. Ext.9(1) is his signature. Being a reporter by profession after getting information about the incident, he went to the place of occurrence to collect news. He saw two dead bodies lying in the place of occurrence and he accordingly scribed the Ejahar. In his cross by

defence he stated that he got the information in the morning and after reaching the place of occurrence, so far as he remember the FIR was lodged at about 09.00 am.

23. PW-13 Sri Juran Proja deposed that the informant Tikmai Proja is his sister. He knew Santosh Proja and Lilawati Proja. He knows the accused persons. On 05.04.2015 he was at his home which is situated at a distance of about 300 meters from the place of occurrence. On the next morning hearing hue and cry he went to the place of occurrence and saw the dead body of Santosh Proja in a front side of veranda of the house and the dead body of Lilawati Proja was lying in the backside of the house. He saw cut injury on the body of Santosh Proja. He did not notice the body of Lilawati Proja as she was laying upside down. Police took his signature in the inquest report, marked as Ext.4(3), 5(3), 6(3) and 7(3). The accused persons confessed their guilt and he was present there. During cross by defence he stated that the accused persons confessed their guilt before the public after arrival of police. He did not see the hand of Lilawati Proja which was cut and separated from her body and at the time of matching the said cut hand with her body.

24. PW-14 Dr. Brojen Saikia, the Medical Officer in his evidence deposed that on 06.04.2015 he was working at Sivasagar Civil Hospital as Senior Medical & Health Officer. On that day, on police requisition, he did the post-mortem examination on the dead body of Santosh Proja, male, 30 years of No. 1 Kacharipathar Gaon under Demow PS in connection with Demow PS Case No. 87/2015 on being identified and

escorted by I.C./428 Jogen Gogoi and relative Sri Tileswar Proja and Sri Dona Proja and found as follows :

1. External appearance:

Conditions of subject stout emaciated, decomposed etc. The deceased is of average built male body of 30 years of age. Rigor mortise present.

2. Injuries:

1. Crush injury involving right side of forehead and right eyeball with underlying bones fractured brain matter exposed & lacerated. Size 3 cm X 1&1/2 cm X 1& 1/2 cm.

2. Lacerated injury on parietal region of scalp on right side with underlying bone fractured. Size 2 cm in length.

3. Lacerated injury on occipital region of scalp. Size 3 cm in length.

4. Bleeding from right ear present.

3. Cranium and spinal canal :

Scalp, Skull and vertebrae – crush injury on forehead with underlying bones fractured and brain matter exposed & lacerated CLW on parietal and occipital region of scalp.

Membrane – ruptured.

Brain & spinal cord – right frontal lobe of cerebral

hemisphere exposed lacerated with severe intra-cranial haemorrhage.

4. Thorax :

Walls, ribs and cartilages – healthy.

Pleurae – intact. Larynx & trachea – healthy.

Lung – both lungs are healthy.

Pericardium –intact. Heart – healthy.

Vessels – healthy.

5. Abdomen : Walls – healthy. Peritoneum - intact.

Mouth, pharynx, oesophagus – healthy.

Stomach and its contents - healthy.

Small intestine and its contents – healthy.

Large intestine and its contents – healthy.

Liver, Spleen and kidney - healthy.

Bladder – normal.

Organs of generation (external & internal) –

Normal and healthy.

6. Muscles, bones and joints :

Injury/disease or deformity/fracture/dislocation -



None.

7. More detailed description of injury or disease.

The deceased Santosh Proja of 30 years male from Nol 1 Kacharipathar Gaon, Demow to whom rigor mortise is present. On PM examination, the deceased sustained severe head injury as already described.

8. Opinion: In his opinion the cause of death of the deceased is coma following severe head injury. Ext.10 is the post-mortem examination report and Ext.10(1) is his signature.

On the same day, he also conducted the post mortem examination on the dead body of Lilawati Proja @ Chit Mai Proja, female, 25 years, wife of Late Santosh Proja of No. 1 Kacharipathar Gaon under Demow PS in connection with Demow PS Case No. 87/2015 on being identified and escorted by I.C./428 Jogen Gogoi and relative Sri Tileswar Proja and Sri Dona Proja and found as follows :

1. External appearance:

Condition of subject stout emaciated, decomposed etc. An average built female body of 25 years of age. Rigor mortise present.

2. Injuries:

1. Cut injury involving the base of nose, right cheek and right upper lip with separation of external nose.

2. Cut injury on frontal region of scalp with underlying bone cut. Size 2 & ½ cm X ½ cm.
3. Cut injury on right parietal region of scalp with underlying bone cut. Size 2 cm X ½ cm.
4. Cut injury on left side of neck. Size 2cm X 1cm.
5. Tran-section of right upper limb just below the elbow.
6. Cut injury left side shoulder. Size 3cmX 1cm.
7. Cut injury left lower chest and ribs transected on antero lateral aspect. Stomach comes out to the exterior.

3. Cranium and spinal canal :

Scalp, Skull and vertebrae – Two cut injuries on frontal and parietal region of scalp with under-lying bone cut.

Membrane – intact.

Brain & spinal cord – intact and healthy.

4. Thorax :

Walls, ribs and cartilages – cut injury on left anterior and external chest wall with underlying ribs transected.

Pleurae – ruptured on left side.

Larynx & trachea – healthy.

Lung (right) – healthy.

Lung (left) – left lobe of lung lacerated.

Pericardium –intact. Heart – healthy.

Vessels – healthy.

5. Abdomen : Walls – Peritoneum – lacerated.

Mouth, pharynx, oesophagus – healthy. Stomach and its contents - stomach comes out to the exterior through the cut injury on lower chest wall.

Small intestine and its contents – healthy.

Large intestine and its contents – healthy.

Liver, Spleen and kidney - healthy.

Bladder – normal.

Organs of generation (extrema & internal) –

Normal and healthy.

6. Muscles, bones and joints :

Injury – (1) complete tran-section of right upper limb just below the elbow joint, (2) one cut injury on left shoulder, size 3 cm X 1 cm.

Disease or deformity/fracture/dislocation – None.

7. More detailed description of injury or disease.

The deceased Lilawati Proja of 25 years female to whom rigor mortise is present. On PM examination, the deceased sustained severe scale and skull injuries, chest & multiple muscle skeletal injuries as already described.

8. Opinion : In his opinion the cause of death of the deceased is due to shock following severe haemorrhage. Ext.11 is the post-mortem examination report and Ext.11(1) is his signature.

24(i) In his cross the Medical Officer (PW-14) stated that injury found on the head of Lilawati Proja may be caused while trying to save somebody. The deceased Santosh Proja sustained multiple injuries but No. 1 was serious in nature for which he died. The injury was in the front side of the face on the right eyeball and forehead. As the injury inflicted caused laceration of the brain, the person died.

25. PW-15 Sri Prahland Dutta deposed that he knows the informant of this case. He knows the accused persons. On 06.04.2015, in the morning Tikmai Proja came to his house and requested him to write the FIR. She informed him that the accused persons Mangal Proja and Pagha Proja had killed Santosh Proja and his wife. He told her that he cannot write the FIR but he took her in his vehicle to the house of Jadumoni Bora and he wrote the FIR. Then he took her to the Police Station where she lodged the FIR. After returning from Police Station he went to the place of occurrence and saw the dead body of Santosh Proja lying in the front side of the house and the dead body of his wife was lying in the backside of the house. He did not notice the dead bodies from near. He saw large gathering including

police in the place of occurrence.

26. PW 16 Sri Sankar Ch. Rabha deposed that on 23.04.2015 he was posted as scientific officer, Serology Division at FSL, Kahilipara. On that day, Addl. Supdt. of Police (HQ), Sivasagar forwarded certain exhibits for examination which were seized in connection with Demow PS Case No. 87/2015 u/s 302/34 IPC. On 24.04.2015, the Director of FSL, Kahilipara entrusted exhibits to him for examination. The 6 Nos of exhibits were sealed in a wooden box by cloth. After opening the parcel, he found the following articles :

- (i) One wooden handle Dao with contains stains of suspected blood. Total length of Dao with handle is 63.5cm approx. The blade of the Dao is moderately rusted. Marked as "A" MR No. 45/15. His examination Sero-3498/A.
- (ii) One cream coloured full sweater contains stain of suspected blood. Marked as "B". His examination No. Sero-3498/B.
- (iii) One blue coloured tracksuit contains stain of suspected blood. Marked as "C". His examination No. Sero-3498/C.
- (iv) One multi coloured full open check shirt contains stain of suspected blood. Marked as "D". His examination No. Sero-3498/D.
- (v) One pink coloured blouse cut piece contains stain of suspected blood. Marked as "E". His examination No. Sero-3498/E.

(vi) One multi coloured full open full shirt contains stain of suspected blood. Marked as "F". His examination No. Sero-3498/F.

**Result of examination**

- i) Exhibit No. Sero-3498/A, Sero-3498/B and Sero- 3498/E gave positive test for human blood group 'AB'
- ii) Exhibit No.Sero-3498/Fgave positive test for human blood group 'A'
- iii) Exhibit No.Sero-3498/C Sero-3498/D gave positive test for human blood only but its group could not be given due to insufficient test material.

Ext.12 is his report and Ext.12(1) is his signature. Ext.13 is the forwarding report of Addl. Supdt. of Police, Sivasagar.Ext.14 is the detail of Exhibits containing 3(three) pages.

27. PW-17 Sri Moni Mohan Koch, I.O. of this case in his evidence deposed that on 06.04.2015, while he was posted as O/C of Demow PS, on that day Smti Tikmai Proja lodged an Ejahar at the PS and after registration of the same, he took up the investigation. He then proceeded to the place of occurrence at Kacharipathar at the house of the deceased. He prepared the sketch map of the PO and recorded the statement of Karan Proja. The accused persons were found among the public on 06.04.2015 and he apprehended them. The two dead bodies were found in the house of Santosh Proja and conducted the

inquest. He seized the blood stained clothes of the deceased persons. He also seized the wearing shirt of accused Mangal Proja. He searched the house of Pagha Proja and seized sweater from his house. On being shown by accused Mangal Proja, he seized a dao from his house in presence of witness. He recorded the statement of witnesses. He sent the dead bodies for post mortem examination. He arrested the accused persons and after forwarding them to Court took them for two days police remand. On 07.04.2015 he recorded statement of further witnesses. On 08.04.2015 he forwarded the accused persons to Court after police remand. He got the statement of Karan Proja recorded u/s 164 Cr.P.C. He collected the PM report of the deceased. He sent the seized items for forensic examination. He collected the FSL report. On completion of investigation he submitted the Charge-Sheet against the accused persons. Ext. 8 is the sketch map and Ext.8(1) is his signature. Ext.9 is the FIR and Ext.9(1) is his signature. Ext.4,5,6 & 7 are the inquest reports wherein Ext. 4(4), 5(4), 6(4) and 7(4) are his signature. When the accused persons were found among the public at the place of occurrence, they confessed their guilt in presence of all. Ext. 1, 2 and 3 are the seizure lists wherein Ext. 1(4), 2(4) and 3(4) are his signatures. M.Ext.1 is the shirt of Pagha Proja seized by him. M.Ext.2 is the sweater, M.Ext.3 is the tracksuit, M.Ext.4 is the Dao seized by him. Ext. 15 is the Charge-Sheet wherein the hand writings are PW 17. However he forgot to put his signature on Ext.15.

27(i) In cross examination he stated that the Dao was recovered from the pond of accused Mangal Proja located behind his house. The said pond was not enclosed and it was easily accessible to all. The

statement of accused Mangal Proja was recorded after recovery of the Dao. He recorded the statement of Ruhini Proja and Harakanta Gogoi, Prabin Changmai and Biju Proja as shown in the sketch map. There is no entry in his Case Diary whether there was water or not in the pond. Whether there is any provision of light in the house of the deceased has not been mentioned in the sketch map. He denied that he did not investigate the case as per law.

28. PW-18 Sri Ratul Gogoi deposed that on 08.04.2015 he was working as Bench Assistant in the Court of the then Judicial Magistrate First Class Jharna Saikia at Sivasagar. On that day, witness Koran Proja, a minor of about 6 years of age, was brought to the Court of Judicial Magistrate First Class, Jharna Saikia for recording of his statement u/s 164 Cr.P.C. Accordingly his statement was recorded by the JMFC Jharna Saikia. The minor witness Karan Proja being illiterate and being unable to write his name, put his thumb impression on his statement after the same was recorded. He obtained the right hand thumb impression of said minor witness Karan Proja and after obtaining his thumb impression on page No. 1, 2 and 3 of the statement recorded u/s 164 Cr.P.C. (Ext.16). He wrote "RTI Karan Proja" in his own handwriting. Ext. 16(1), Ext.16(2) & Ext.16(3) are the thumb impression of Karan Proja which he obtained. Ext. 16(4), Ext. 16(5) and Ext. 16(6) are the signatures of Judicial Magistrate First Class Jharna Saikia which is known to him. During cross examination by defence he denied the defence suggestion that as his signature is not there on Ext.16(1), Ext.16(2) and Ext.16(3), he cannot say whose thumb impressions he had taken. He denied that the words "RTI Karan



Proja" is not written in his own handwriting.

29. Above are the evidence led by the prosecution to prove its case against the accused persons. Basing on the evidence on record let us decide the point formulated for just decision of this case.

**DISCUSSION, DECISION AND REASONS THEREOF:**

30. **Point No. (i): Whether the death of Santosh Praja and Lilawati Praja were homicidal?**

It is the consistent case of the prosecution that Santosh Proja and Lilawati Proja were done to death by assaulting them with sharp cutting weapon like dao. During inquest also the Investigating Officer found cut wounds on the vital organs of the dead bodies.

**Ext. 4, inquest report,** reveals that –

1. Place and time where dead body found/traced – on the varanda of the deceased date. 06.04.2015, time – 8.30 am.
2. Was the dead body cold/warm when found – cold
3. Person who showed/traced the dead body – Sri Juron Proja, S/O – Lt. Sunu Proja. Age 35 years, Sex – Male, Village – No. 1 Kasaripathar Gaon, P.S. Demow, Dist. Sivasagar
4. Person who identified the body: Sri Juron Proja, S/O – Lt. Sunu Proja, Village – No. 1 Kasaripathar gaon, P.S. Demow, Dist. Sivasagar.
5. Name/Address of dead body : Santosh Proja, S/O – Sri Sunu Proja of No. 1 Kasari Pathar, P.S. Demow, Dist. Sivasagar.

6. Position of dead body – lying on ground.
7. Description of dead body: Sex-male, approx. age – 30 years, approx date & time 06.04.2015, time – 8.30 am. Built – Medium. Height – 5 feet 2 inch approx. Complexion – sworthy, identification mark – nil, Deformity – nil, hairs – short, eye – left eye closed, right eye disappeared due to injury. Dress – full shirt (Black colour with blue & white stripe), Black Ganji & Blue half pant, Lace mark – nil, Mole – nil, Sear – nil, tatto – nil, other feature – nil.
8. Description of injuries found on the body (if any)
  - a) Head: Nil
  - b) Face: Cut injuries on right forehead & right eye.
  - c) In case of hanging the ligature mark to be noted whether circular (homicidal) or oblique (suicidal) – nil
  - d) Chest: nil
  - e) Stomach : nil
  - f) Limbs : nil
  - g) Left hand : nil
  - h) Right hand : nil
  - i) Right leg : nil
  - j) Left leg : nil
  - k) Private parts : nil
  - l) Back : nil
  - m) Other identification mark like wound, bruise & marks of injuries/bleeding if any: Injury on forehead, right eye (eye disappeared)
  - n) Whether the limbs/body is stiff or loose : stiff
9. a) Whether request made to medical officer to preserve fingerprint of dead body (if unknown) yes/no: No.

- b) Photograph/video of the dead body both from near/long distance should be taken. (I/O to be with the all necessary tools) : yes.
  - c) Whether the dead body sent to P.M. yes/no : Yes
  - d) Dead body sent to which hospital/place : Joysagar Civil Hospital (Sivasagar)
  - e) Dead body sent to P.M. through whom Name: Jugen Gogoi, UBC 428 posting in Demow PS.
  - f) Viscera (in case of suspected poisoning, IO to be requested to preserve viscera)
10. Opinion of witness & police about cause of death & weapon or instrument used thereof (if any) : Murder.
11. More information/suspicion if any: One cutting piece of hand (Arm) is found lying near the dead body. One ladies chain (Silver Colour) is found wearing.

**Ext. 5, inquest report,** reveals that –

- 1) Place and time where dead body found/traced – on the back courtyard of deceased's house date. 06.04.2015, time – 8.30 am.
- 2) Was the dead body cold/warm when found – cold
- 3) Person who showed/traced the dead body – Sri Juron Proja, S/O – Lt. Sunu Proja. Age 35 years, Sex – Male, Village – No. 1 Kasaripathar gaon, P.S. Demow, Dist. Sivasagar
- 4) Person who identified the body: Sri Juron Proja, S/O – Lt. Sunu Proja, Village – No. 1 Kasaripathar gaon, P.S. Demow, Dist. Sivasagar.
- 5) Name/Address of dead body : Lilawati Proja, W/O – Santosh Proja of No. 1 Kasari Pathar, P.S. Demow, Dist. Sivasagar.
- 6) Position of dead body – found lying on ground in bent position without having half portion of right hand.

7) Description of dead body: Sex-female, approx. age – 25 years, approx date & time : last night built – Medium. Height – 4 feet approx. Complexion – sworthy, identification mark – nil, Deformity – nil, hairs – long (black), eye – open. Dress – Coloured saree with yellow, sky and red print and light pink colour blouse, Lace mark – nil, Mole – nil, Sear – nil, tatto – nil, other feature – nil.

8) Description of injuries found on the body (if any)

a. Head: Cut injury on right head.

b. Face: Cut injuries on right chick and nose.

c. In case of hanging the ligature mark to be noted whether circular (homicidal) or oblique (suicidal) – nil

d. Chest: nil

e. Stomach : Cut injury on left side Abdomen

f. Limbs : nil

g. Left hand : nil

h. Right hand : Cut injury (half portion of right hand found separate from the body by cutting).

i. Right leg : nil

j. Left leg : nil

k. Private parts : nil

l. Back : nil

m. Other identification mark like wound, bruise & marks of injuries/bleeding if any: Bleeding on abdomen, right head, right chick, nose and right hand.

n. Whether the limbs/body is stiff or loose : stiff

9) a) Whether request made to medical officer to preserve fingerprint of dead body (if unknown) yes/no: No.

b) Photograph/video of the dead body both from near/long

distance should be taken. (I/O to be with the all necessary tools) : Yes.

c) Whether the dead body sent to P.M. yes/no : Yes

d) Dead body sent to which hospital/place : Joysagar Civil Hospital (Sivasagar)

e) Dead body sent to P.M. through whom Name: Jugen Gogoi, UBC 428 posting in Demow PS.

f) Viscera (in case of suspected poisoning, IO to be requested to preserve viscera)

10) Opinion of witness & police about cause of death & weapon or instrument used thereof (if any) : Murder. By sharp cutting weapon.

11) More information/suspicion if any: Inquest has been done after joining the cutting piece of right hand with the body which is identified as the organ of the deceased Lilawati Proja.

**Ext. 6, inquest report,** reveals that –

1) Place and time where cutting organ found/traced – on the varanda of deceased Santosh Praja. 06.04.2015, time – 8.30 am.

2) Was it cold/warm when found – cold

3) Person who showed/traced the cutting organ – Sri Juron Proja, S/O – Lt. Sunu Proja. Age 35 years, Sex – Male, Village – No. 1 Kasaripathar gaon, P.S. Demow, Dist. Sivasagar

4) Person who identified the body: Sri Juron Proja, S/O – Lt. Sunu Proja, Village – No. 1 Kasaripathar gaon, P.S. Demow, Dist. Sivasagar.

5) Name/Address of dead body : The cutting organ (a prtion of hand with palm) is identified as the organ of deceased Lilawati Proja.

6) Position of cutting organ – found on the ground of varandah of

the house of deceased Santosh Proja

- 7) Description of cutting organ: - One Bengel (chain) in silver colour is found on the cutting part of the hand.
- 8) Description of injuries found on the body (if any)
  - a) Head: nil
  - b) Face: nil
  - c) In case of hanging the ligature mark to be noted whether circular (homicidal) or oblique (suicidal) – nil
  - d) Chest: nil
  - e) Stomach : nil
  - f) Limbs : nil
  - g) Left hand : nil
  - h) Right hand : nil
  - i) Right leg : nil
  - j) Left leg : nil
  - k) Private parts : nil
  - l) Back : nil
  - m) Other identification mark like wound, bruise & marks of injuries/bleeding if any: nil
  - n) Whether the limbs/body is stiff or loose : stiff
- 9) a) Whether request made to medical officer to preserve fingerprint of dead body (if unknown) yes/no: No.  
b) Photograph/video of the dead body both from near/long distance should be taken. (I/O to be with the all necessary tools) : Yes.  
c) Whether the dead body sent to P.M. yes/no : Yes  
d) Dead body sent to which hospital/place : Joysagar Civil Hospital (Sivasagar)

- e) Dead body sent to P.M. through whom Name: Jugen Gogoi, UBC 428 posting in Demow PS.
  - f) Viscera (in case of suspected poisoning, IO to be requested to preserve viscera)
- 10) Opinion of witness & police about cause of death & weapon or instrument used thereof (if any) : Cutting by Sharp cutting weapon.
  - 11) More information/suspicion if any: the cutting piece of organ (hand with palm) is sent along with the dead body of deceased Lilawati Proja.

**Ext. 7, inquest report,** reveals that –

- 1) Place and time where dead body found/traced – on the back courtyard of deceased's, date. 06.04.2015, time – 8.30 am.
- 2) Was the dead body cold/warm when found – cold
- 3) Person who showed/traced the dead body – Sri Juron Proja, S/O – Lt. Sunu Proja. Age 35 years, Sex – Male, Village – No. 1 Kasaripathar gaon, P.S. Demow, Dist. Sivasagar
- 4) Person who identified the body: Sri Juron Proja, S/O – Lt. Sunu Proja, Village – No. 1 Kasaripathar gaon, P.S. Demow, Dist. Sivasagar.
- 5) Name/Address of dead body : Lilawati Proja, W/O – Santosh Praja of No. 1 Kasari Pathar, P.S. Demow, Dist. Sivasagar.
- 6) Position of dead body – found lying on ground in bent position without having half portion of right hand.
- 7) Description of dead body: Sex-female, approx. age – 25 years, approx date & time : last night, built – Medium. Height – 4 feet approx. Complexion – sworthy, identification mark – nil, Deformity – nil, hairs – long (black), eye – open. Dress – Coloured saree with yellow, sky and red print and light pink colour blouse, Lace mark – nil, Mole – nil, Sear – nil, tatto – nil, other feature – Half portion of right hand found disappear from

the body by cutting.

- 8) Description of injuries found on the body (if any)
- a) Head: Cut injury on right head.
  - b) Face: Cut injuries on right cheek and nose.
  - c) In case of hanging the ligature mark to be noted whether circular (homicidal) or oblique (suicidal) – nil
  - d) Chest: nil
  - e) Stomach : Cut injury on left side Abdomen
  - f) Limbs : nil
  - g) Left hand : nil
  - h) Right hand : Cut injury (half portion of right hand disappeared).
  - i) Right leg : nil
  - j) Left leg : nil
  - k) Private parts : nil
  - l) Back : nil
  - m) Other identification mark like wound, bruise & marks of injuries/bleeding if any: Bleeding on abdomen, right head, right cheek, nose and right hand.
  - n) Whether the limbs/body is stiff or loose : stiff
- 9) a) Whether request made to medical officer to preserve fingerprint of dead body (if unknown) yes/no: No.
- b) Photograph/video of the dead body both from near/long distance should be taken. (I/O to be with the all necessary tools) : Yes.
- c) Whether the dead body sent to P.M. yes/no : Yes
- d) Dead body sent to which hospital/place : Joysagar Civil Hospital (Sivasagar)



- e) Dead body sent to P.M. through whom Name: Jugen Gogoi, UBC 428 posting in Demow PS.
- f) Viscera (in case of suspected poisoning, IO to be requested to preserve viscera)
- 10) Opinion of witness & police about cause of death & weapon or instrument used thereof (if any) : Murder by sharp cutting weapon.
- 11) More information/suspicion if any: The inquest has been done without having half portion of right hand.

31. From the inquest reports, it appears that the hand of the deceased, namely Lilawati Proja was chopped off completely. During necropsy also the doctor (PW-14) found fatal cut wounds on both the dead bodies. In the opinion of the doctor, all the injuries were ante mortem and homicidal in nature. It is also pertinent to mention here that there was an extra-judicial confession from the part of the accused persons that they had killed the deceased Santosh Praja and Lilawati Praja by attacking with a dao. There is no dispute from the defence side that deceased were met with culpable homicide. Hence, I find no difficulty to hold that the death of the above persons were the act of culpable homicide.

32. **Point No. (ii) : Whether murder:** "Culpable Homicide" has been defined u/s 299 of the Indian Penal Code (I.P.C. in short) whereas the offence of "murder" has been defined u/s 300. The basic difference in between the culpable homicide and murder lies in the gravity and severity of the offence. The distinction between these two offences has been lucidly enunciated by the Hon'ble Gauhati High Court in the case of **Ripunjay Borgohain –Vs- State of Assam, Sessions Case No. 148 (S-S) of 2017**

reported in 1998(4) GLT 502. The relevant observations of the Hon'ble Gauhati High Court can be fruitfully extracted below :-

“Culpable homicide and murder both involve causing of death of human being by another human being. Culpable homicide is genus whereas murder is specie. All murder is culpable homicide but not vice-versa. Presence of special mens-rea is the distinguishing mark. It consists of four intellectual dispositions mentioned in Section 300 of the I.P.C. (subject to the exceptions indicated). Punishment is to be inflicted proportionate to the gravity of the generic offence. Murder is the first degree of culpable homicide cited in Section 300. The second degree of culpable homicide is punishable under the first part of Section 304. The third degree of culpable homicide in the reduced form is punishable under the second part of Section 304.”

33. It is difficult to get direct evidence about the intention and knowledge of the assailant to perpetrate the offence of murder. These ingredients of law are to be ascertained by drawing and deducing an inference from a series of facts and circumstances like nature of the weapon used in the crime, number of wounds inflicted upon the deceased person(s), situs of the wounds, place and time of committing the offence, pre and post crime conduct of the assailant, and amongst others.

34. With regard to the nature of weapon, from the case record, it is found that a weapon like dao which was 24½ inch (The

iron portion's length is 8½ inchs approximately & the wooden portion's length is 16 inch approximately) long was used in the crime. With regard to the place and time of the offence it is already stated at the beginning of the judgment that the accused persons had killed by hacking them off with Dao at the house of the deceased at around 9.30 pm.

35. As far as the nature of wounds inflicted upon the deceased, namely, Santosh Praja and Lilawati Praja respectively are concerned, it would be suffice to extract the fatal wounds found during necropsy by Dr. Brojen Saikia (P.W. 14) -

**The injuries found on the dead body of Santosh Praja**

1. Crush injury involving right side of forehead and right eyeball with underlying bones fractured brain matter exposed & lacerated. Size 3 cm X 1½ cm X 1½ cm.
2. Lacerated injury on parietal region of scalp on right side with underlying bone fractured. Size 2 cm in length.
3. Lacerated injury on occipital region of scalp. Size 3 cm in length.
4. Bleeding from right ear present.
5. Crush injury on forehead with underlying bones fractured and brain matter exposed & lacerated CLW on parietal and occipital region of scalp.
6. Right frontal lobe of cerebral hemisphere exposed lacerated

with severe intra-cranial haemorrhage.

**The injuries found on the dead body of Lilawati Praja**

1. Cut injury involving the base of nose, right cheek and right upper lip with separation of external nose.
2. Cut injury on frontal region of scalp with underlying bone cut. Size 2½ cm X ½ cm.
3. Cut injury on right parietal region of scalp with underlying bone cut. Size 2 cm X ½ cm.
4. Cut injury on left side of neck. Size 2 cm X 1 cm.
5. Tran-section of right upper limb just below the elbow.
6. Cut injury left side shoulder. Size 3cm X 1cm.
7. Cut injury left lower chest and ribs transected on antero lateral aspect. Stomach comes out to the exterior.
8. Two cut injuries on frontal and parietal region of scalp with underlying bone cut.
9. Cut injury on left anterior and external chest wall with underlying ribs transected.
10. Stomach comes out to the exterior through the cut injury on lower chest wall.

36. Besides the medical evidence, I also found from the testimonies of P.W.s 2, PW 3, and PW 4 that the accused had killed

the deceased by using a dao. The post-mortem reports further confirm that the dao blows were inflicted on the head and other parts of the bodies of both deceased. These blows were so severe that the victims could not survive for more than a few minutes. In other words, it is evident that each blow from the assailant clearly demonstrated their intent to commit murder beyond any doubt.

37. Based on these evidence, I conclude that the offence committed by the accused persons is culpable homicide falling under the First category of Clause Section 300 IPC, which is punishable under Section 302 of the Indian Penal Code.

38. **Point No. (iii) : Complicity:**

Regarding the point No. III, which pertains to whether the accused Mangal Praja and Pragha Praja committed the murders, the evidence on record in the present case reveals that PW-1 did not personally witness the incident. Instead, she was informed about the incident by the son and daughter of the deceased, namely Junmoni Praja and Karam Praja (also known as Karan). They informed her in the morning after the incident that Mangal Praja and Pragha Praja had murdered their parents, Santosh Praja and Lilawati Praja, by inflicting cut injuries with a dao (a type of knife). Upon hearing this information, PW-1 immediately went to the house of Santosh Praja and observed that the dead body of Santosh Praja was lying in the Veranda with cut marks on his body. Besides, the dead body of Lilawati Praja was lying in the backside of the house with injuries on her body. Having witnessed the scene, PW-1 promptly proceeded to the police station

and lodged the First Information Report (FIR).

39. Learned defence counsel did not even put any suggestion that PW-2 and PW-3 did not state before PW-1 about the incident but during the argument it was contended that the evidence of PW-1 cannot be taken into consideration since it was hearsay. Though evidence of PW-1 is indeed considered hearsay, her evidence cannot be ruled out as she has projected the fact properly as mentioned above.

40. Although PW-2 and PW-3 were minor, a rationality test was conducted before recording their evidence and upon finding no infirmity their testimonies were recorded. In this case, PW-2 and PW-3 are crucial and vital material witnesses.

41. PW-2 specifically stated that on 05.04.2015, at approximately 05.30 pm, he was in the house with his sister Junmoni, elder brother, and parents. At that time, the accused individuals, Mangal Praja and Pragma Praja, called his father outside. Upon hearing their call, his father went out, and both the accused attacked him with a dao, causing him to sustain injuries and collapse on the veranda. Out of fear of the cries of his father, his mother tried to flee but was also attacked by the accused and in consequence, she fell down. Witnessing the horrifying incident, his elder brother, Ram Praja, out of fear fled away. In fear, he and his sister hid themselves under the bed for the entire night. He further mentioned that there had been a previous quarrel between his father and the accused regarding the tying up of cows.

42. The next morning, he and his sister went to their 'Borma' (PW1) and informed her about the incident right from the previous night. His Borma then informed others about the incident and lodged the FIR. The police arrived, and they interrogated him. At that time, he did not know how to sign, so he put his thumb impression. However, during cross-examination by the defense, he stated that at 07.30 pm, while he was asleep, his parents were in the kitchen, and their rooms were illuminated by a wick (chaki). Upon waking up, he found his injured father in the room and cried. Then, he saw his mother lying at the back of the house, but he did not see the accused at that time. He also mentioned that the accused had a quarrel with his father over their bullocks, and his father suspected that Mangal Praja had hidden the bullocks. During cross-examination, the defense suggested the plea of private defense, claiming that his father had attacked Mangal Praja with a dao, and in response, Mangal Praja injured his mother's hand. Then, Mangal Praja attacked his father. However, the defense did not adduce any evidence in support of this claim, making the witness's account indisputable.

43. PW-2 also stated that he was brought before the court after the incident, where the magistrate recorded his statement (Ext. 16), and his thumb impressions (Ext. 16(i), Ext. 16(ii), and Ext. 16(iii)) were taken by PW 18. PW 18 also proved that Ext. 16(iv), Ext. 16(v), and Ext. 16(vi) were the signatures of the then JMFC, J. Saikia. It was found that his evidence nicely and accurately corroborated with his statement recorded under Section 164 Cr.P.C. Thus, no infirmity could be found to consider the witness unreliable.

44. On the other hand, PW-3 testified that on the night of the incident, she heard hue and cry coming at their house. She also witnessed her father going towards the front side veranda of their house, where the accused persons, Pragma and Mangal, attacked him with a dao. When her mother attempted to escape through the backside, they also attacked her. Both she and PW-2 saw the incident through the window, and their elder brother fled away in fear. They were frightened so hid themselves under the bed for the entire night. The following morning, they went to their "borma's" house and informed her that the accused persons had attacked their parents. The defense failed to challenge or disprove PW-3's testimony on this point.

45. During the argument, the learned defense counsel contended that the evidence of PW-2 and PW-3 cannot be considered as reliable and trustworthy since they are minors, and their testimonies are not identical on the crucial aspects of the incident. The Supreme Court, **in State of Madhya Pradesh vs Ramesh & Anr., (2011) 4 SCC 786**, after considering a large number of its judgments came to the conclusion that the deposition of a child witness may require corroboration. But if his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated carefully with great caution as he is susceptible to tutoring easily. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, whether child has been tutored or not, can be drawn from the contents of his deposition.



It is well-settled that the evidence of a child witness must find adequate corroboration, before it is relied upon. The rule of corroboration is mostly of practical wisdom than of law.

46. In **Mangoo & Anr. v. State of Madhya Pradesh (AIR 1995 SC 959)** the Supreme Court while dealing with the evidence of a child witness observed that there was always scope to tutor the child. However, it cannot be a ground to come to the conclusion that the child witness must have been tutored. Therefore, the trial court must find out whether the child has been tutored or not. It can be found out by examining the contents of deposition whether there are any traces of tutoring.

47. Considering the fact that the accused confessed their guilt both before the police and in public, and also taking into account that the dao used in the commission of the offense was recovered after being shown by the accused, I am of the opinion that the testimonies of PW-2 and PW-3 have not been influenced or tutored, making them reliable in proving the instant case.

48. Corroborating the testimonies of PW-2 and PW-3, PW-4 also stated that on the night of the incident, he was at the house of his late uncle, Santosh Praja. At around 8.30-9.00 pm, the accused individuals, Mangal Praja and Pragma Praja, arrived at Santosh Praja's house and engaged in an argument related to a cow. During the altercation, both accused attacked Santosh Praja with a "kolom dao" (a cutting weapon), causing him to sustain severe injuries and collapse. As Lilawati (his aunt) tried to escape through the backside of

the house, the accused persons also struck her with a dao, causing her to fall at the back of the house. In fear, PW-4 fled and hid for the night, eventually returned to his own house. Janmoni and Karan, who had witnessed the incident, stayed at Santosh Praja's house. The following morning, Janmoni and Karan went to PW-4's house and informed his mother about the events. During cross-examination, the defense failed to challenge or refute PW-4's testimony, leading to the conclusion that his evidence is reliable.

49. Ld. Counsel for the accused persons contended that there are crucial discrepancies in the testimonies provided by PW-2, PW-3 and PW-4 concerning the incident in question. But, on perusal of the testimonies of these witnesses, we did not find any major discrepancy in the statements of the above named prosecution witnesses on material points. If some deviation in narration of facts are found, those are at the fringe and that too are bound to occur due to the reason that there was time gap in recording the evidence of witnesses, and the mental capacity/mentality of witnesses, who are illiterate and rustic. By perusal of evidence of witnesses PW-2, PW-3 and PW-4 as a whole it depicts that despite some minor discrepancies, the witnesses have substantially supported the case of prosecution as mentioned in FIR. In the case of **Subodh Nath And Another Vs. State of Tripura (2013) 4 SCC 122**, the Apex Court has held in para 16 that:-

*"16. Once we find that the eye witness account of PW-13 is corroborated by material particulars and is reliable, we cannot*

*discard his evidence only on the ground that there are some discrepancies in the evidence of PW-1, PW- 2, PW-13 and PW-19. As has been held by this Court in **State of Rajasthan v. Smt. Kalki and Another**, in the deposition of witnesses there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition of the witnesses and the like. Unless, therefore, the discrepancies are "material discrepancies" so as to create a reasonable doubt about the credibility of the witnesses, the Court will not discard the evidence of the witnesses. Learned counsel for the appellants is right that the prosecution has not been able to establish the motive of the appellant no.1 to kill the deceased but as there is direct evidence of the accused having committed the offence, motive becomes irrelevant. Motive becomes relevant as an additional circumstance in a case where prosecution seeks to prove the guilt by circumstantial evidence only."*

50. In the case of **Shivappa & Others Vs. State of Karnataka (Supra)**, the Hon'ble Supreme Court has held that some discrepancies are bound to occur in the oral statements of witnesses because of the sociological background of the witnesses as also the time gap between the date of occurrence and the date on which they give their depositions in court.

51. On careful assessment of the other prosecution witnesses, along with the documentary evidence on record and medical evidence of PW-14, it becomes evident that their evidence is natural, credible

and reliable.

52. In addition, it is pertinent to note that PW-5, PW-6, PW-7, PW-8, PW-10, PW-13, and PW-17 are all considered hearsay witnesses, having arrived at the scene of the incident after its occurrence. Nevertheless, their collective testimonies assert that the accused individuals openly admitted their culpability in front of both the public and the police.

53. The crucial issue that arises from their depositions is whether a confession made before the public can be deemed admissible as evidence. This question demands careful consideration and evaluation at this juncture.

54. Dealing with the issue of extra - judicial confession, the Supreme Court in the case of **Narayan Singh –V- State of Rajasthan [2014 SCC OnLine Raj 6694 : 2014 Cri LJ 4630]** held as follows:-

- i) It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence.
- ii) It would depend on the nature of the circumstances, the time when the confession was made and the creditability of the witnesses who speak to such a confession;

55. The Supreme Court in the case of **Mulk Raj v. State of U.P. [AIR 1959 SC 902 : 1959 Cri LJ 1219]** further laid down as follows:-

- i) An extra- Judicial confession, if voluntary can be relied upon by the court along with other evidence in convicting the accused;
- ii) The confession will have to be proved just like any other fact;
- iii) The value of the evidence as to the confession just like any other evidence, depends upon the veracity of the witnesses to whom it is made;
- iv) It is true that the court requires the witness to give the actual words used by the accused as nearly as possible,
- v) but it is not an invariable rule that the court should not accept the evidence, if not the actual words used by the accused as nearly as possible, but it is an invariable rule that the court should accept the evidence, if not the actual words but substance were given. If the rule is inflexible that the court should insist only on the exact words, more often as not, this kind of evidence, some times more reliable and useful, will have to be excluded for, except perhaps in the case of a person of good memory, many witnesses cannot repeat the exact words of the accused;
- vi) It is for the court having regard to the creditability of the witnesses, his capacity to understand the language in which the accused made the confession, to accept the evidence or not;

- vii) In the circumstances, if the evidence of the witnesses is acceptable, there is no reason why the extra-judicial confession made by the accused could not be acted upon.

56. In a series of decisions, the Supreme Court laid down as follows:-

- i) Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and loses its importance;
- ii) It is a rule of caution, where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession;
- iii) An extra-judicial confession, if voluntary and true and made in a fit state of mind can be relied upon by the court. Such a confession can be relied upon and conviction can be founded thereon, if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out, which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.
- iv) In the case of extra-judicial confession, the court has to satisfy in regard to
  - a. Voluntariness of the confession
  - b. Truthfulness of the confession
  - c. Corroboration

- v) Main features of a confession are required to be verified;
- vi) There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated;
- vii) In the case of retracted confession, there is no inflexible rule that the court must invariably accept the retraction. But at the same time, it is unsafe for the court to rely on the retracted confession, unless the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true;
- viii) The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it.

57. On perusal of case record, it also appears that the accused persons Mangal Praja in his statement u/s 161 Cr.P.C. confessed before the police and public that *"I killed Santosh Praja and Lilawati Praja and the dao by which I cut Mangal and Lilawati is my own and it was kept hidden in the pond and I showed the dao to the public by picking up from the pond. The dao was seized by police in presence of public. I put my signature in the seizure list. It is also true that I cut them by the said dao."* As discussed earlier, the testimonies of witnesses PW-2, PW-3, and PW-4 carry significant credibility in this case, and as such there is no apparent reason to question the reliability of the extra-judicial confessions made by the accused individuals. Although their evidence may not be entirely sufficient to conclusively establish the deaths of Santosh Praja and Lilawati Praja, it

still holds value, as the extra-judicial confessions made before the prosecution witnesses corroborate the accounts given by the eye witnesses, namely PW-2, PW-3, and PW-4.

58. From the testimonies of PW-6, PW-7 and PW-8, it is evident that after confessing the guilt, accused Mangal Praja brought one "Kolom Kotari/Dao" from the nearby pond of the place of occurrence and handed over to the police. PW-17 (IO) stated that he had seized the "dao" as shown by the accused and recorded the statement of accused Mangal Praja after recovering the dao (M.Ext.4). The investigating officer (PW-17) also seized various articles of clothing from the accused persons' residence. PW-16 confirmed that upon examination of these materials, the dao (M. Ext. 4) seized from the pond, the cream-colored full sweater (M. Ext. 2) seized from Pragma Praja's house (vide Ext. 2), and the pink-colored blouse seized from the body of deceased Lilawati Praja (vide Ext. 4) all yielded a positive test for human blood of group "AB". PW-16 also examined a multi-colored open full shirt, which also tested positive for human blood of group "A". However, one blue-colored track suit (M. Ext. 3) seized from Pragma Praja's house (vide Ext. 2) and one multi-colored full open check shirt were examined and found to yield a positive test for human blood, but their group could not be determined due to insufficient test materials. Based on the testimonies of PW-16 and PW-17, as well as the extra-judicial confessions made before the investigating officer and other witnesses, it can be reasonably concluded that the "dao" (M. Ext. 4) seized by the police was indeed used in the commission of the offense, and the cloths seized from the



accused persons' house were worn by them at the time of the incident. Consequently, the recovery of the 'dao' and the positive blood samples provide compelling evidence supporting the prosecution's case.

59. To sum up, from the oral testimonies of all the witnesses and other evidences available on record, the following evidences appear against the accused to complete the chain of circumstances: -

- i. Before the incident, a quarrel took place between the deceased, Santosh Praja and the accused, Mangal Praja. The dispute centered around tying of a cow and cutting a rope.
- ii. Both accused individuals were present at the house of the deceased, Santosh Praja, on the night of 05.04.2015. Their presence was confirmed by the testimonies of witnesses PW-2, PW-3, and PW-4.
- iii. A few hours before the incident occurred, the accused, Mangal Praja, and Pragma Praja, went to Santosh Praja's house. They called him outside, and when he came out, they cut him. Witnessing the incident, Lilawati Praja when tried to flee away in fear, but the accused persons also inflicted dao blow on her.
- iv. After committing the offense, the weapon used, the dao, was thrown into a pond by Mangal Praja. Later on, Mangal Praja himself handed over the dao to the police by picking up from the pond.

- v. Led by accused Mangal Praja, the police recovered the dao in the presence of witnesses.
- vi. The dao was found to have human blood stains, as indicated by Ext.12.
- vii. Blood-stained clothes were discovered in the house of accused Mangal Praja and Pragma Praja. These clothes included one full shirt with a sky and white square check pattern, with one pocket having a red border marked as XL MINAR Dresses. Additionally, a cream-colored full sweater with suspected blood stains on the backside and a pair of blue track suits were found. The blood on these clothes was ascertained to be human blood, as shown in Ext. 12.
- viii. The accused persons confessed their guilt before the public & police after the incident.

60. So, in my opinion, all the above incriminating evidence has completed the chain from which an irresistible conclusion can be drawn that it was the accused persons who had committed the murder and none else. The circumstances are conclusive and consistent with the hypothesis of guilt of the accused.

61. In addition to the circumstantial evidence, the prosecution has also substantiated the facts through the testimonies of PW-2, PW-3, and PW-4, who witnessed the murder of Santosh Praja and Lilawati Praja. This ocular testimony further supports the circumstantial evidence and the extra-judicial confession.

62. The next question to be decided is whether the accused persons can be held responsible for their involvement in the act of causing injury as described in Section 34 of the Indian Penal Code (IPC). Witnesses PW-2, PW-3, and PW-4 have testified that the accused persons are their neighbors. From the facts and circumstances and evidence of witnesses, it is proved that with a premeditated understanding, the accused persons approached the deceased and when deceased Santosh Praja came out of his house, acting in accordance with their shared intention, inflicted severe cut injuries on both victims using a 'dao'. Witnesses PW-2, PW-3, and PW-4 also stated that following the act of killing, both accused persons went away from the scene.

63. It can also be inferred that had there not been a prior meeting between the accused individuals to harm the deceased using a 'dao', accused Pragma Praja would have either remained at the place of the incident or attempted to prevent accused Mangal Praja from committing the offence of assault at the time of occurrence. It also appears from the case record that there was a quarrel between the deceased, Santosh Praja, and the accused, Mangal Praja. The quarrel centered on tying of a cow and cutting of a rope. From the above and the evidence adduced in the records is sufficient to establish that accused Mangal Praja shared a 'common intention' with accused Pragma Praja to cause harm to the victim using a 'dao'.

64. Considering the above aspect and evidence on record, it is proved that the accused, Mangal Praja and Pragma Praja, intentionally

and knowingly caused the death of Santosh Praja and Lilawati Praja. There is no doubt whatsoever that the accused, Mangal Praja and Pragha Praja, were responsible for the deaths of the deceased persons.

### **CONCLUSION:**

65. In the result, I hold that prosecution has proved beyond all shadow of doubt that the accused Sri Mangal Praja and Sri Pragha Praja have committed the murders Santosh Praja and Lilawati Praja. Accordingly, accused Sri Mangal Praja and Sri Pragha Praja are hereby convicted u/s 302/34 of the Indian Penal Code.

### **SENTENCE:**

66. Convicts Mangal Praja and Pragha Praja are heard on the quantum of sentence as required u/s 235 of the code of Criminal Procedure. It is made clear to the accused that the conviction may invite death penalty of convicts Mangal Praja and Pragha Praja also. On giving opportunities to show reasons for commuting the sentence from death penalty to life imprisonment, both the accused Mangal Praja and Pragha Praja stated that they are innocent and did not commit the offence as alleged.

67. Thereafter, I also heard Shri D. Dutta, learned Public Prosecutor for the state and Shri Aditya Bora, learned legal aid defence counsel for the accused on the quantum of sentence.

68. Sentencing a convict is a sensitive issue. Awarding appropriate sentence is as important component of the justice delivery

system as is the passing of order of conviction. It is also a delicate task which should not be disposed of in a mechanical manner.

69. Sometimes back there appeared to be difference of opinion whether crime alone should be relevant factor for determination of adequate punishment. However in the modern penology both the crime and the criminal are considered equally relevant factors, when quantum of sentence is decided. The Court has to maintain equilibrium. As pithily stated in the case of **B.C. Goswami – V – Delhi Administration (AIR 1973 SC 1457)** both lenient as well as too harsh sentence lose their efficaciousness.

70. The Hon'ble Supreme Court the justification of awarding death penalty for the offence of murder has been discussed at length after making a survey of all the leading authorities on the point. **In the case of State of Rajasthan –V – Kheraj Ram, reported in (2003) 8 SCC 224** Their Lordships of the Apex court, after encapsulating the relevant provisions of law and different authorities has given the following thematic observation:

“Proportion between crime and punishment is a goal respected in principle, and inspite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now a single grave infraction is thought to call for uniformly drastic measures. Anything less than a penalty of greatest severity for any serious crime

is though then to be a measure of toleration that is unwarranted and unwise”.

71. In the case of **Machi Singh –V- State of Punjab, reported in (1983) 3 SCC 470** and in the case of **Bachan Sing – V- State of Punjab, reported in (1980) 2 SCC 684**, the Hon’ble Apex Court has laid down basic guidelines for awarding the capital sentence, referred to in the case of Kheraj Ram (supra) are respectively extracted below:

**(Machi Singh’s case)**

*“(a) Is there something uncommon about the crime which renders sentence or imprisonment for life inadequate and calls for a death sentence? (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?”*

**(Bachan Singh’s case)**

*(i) The extreme penalty of death need to be inflicted except in gravest cases of extreme culpability.*

*(ii) Before opting for the death penalty the circumstances of the “offender” also require to be taken into consideration along with the circumstances of the “crime”.*

*(iii) Life imprisonment is the rule and death sentence is exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of*

*imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.*

*(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.'*

72. In the case of **Kheraj Ram (supra)** the convict had committed quadruple murder of his kith and kin, which included his wife and children, suspecting infidelity of his wife. Even after killing four persons the convict projected a false story before the villagers suggesting the hand of out-side person. The convict went beyond that. When the co-villagers were anxious to find out the offender the accused was found smoking 'chilam' in the courtyard with all calmness. This post offences conduct was taken to be another aggravating circumstance, along with the facts that four persons were murdered in a dastardly and calculated manner to bring the offence within the parameters of 'rarest of rare case'. Finding that the accused had acted in most cruel and inhuman manner and the offence was a diabolical one the death penalty was upheld.

73. Similarly, in the case of **Dayanidhi Bisnoi –V- State of Orissa, reported in 2003(3) Crimes 167(SC) the Hon'ble Supreme Court** was considering the case of an accused who had killed all the three persons of a family, which included husband, wife and their 3 year old daughter. The convict was related to them and

often enjoyed the hospitality of the victim family but all the members were murdered when they were sleeping just to gain some monetary benefit. Their Lordships held that the murders were cold blooded and were the result of premeditated approach of the accused, which deserved the death sentence.

74. Adumbrating a large number of authorities on the question **of awarding death penalty the Hon'ble Supreme Court in the case of Gurdev Singh & anr. –V- State of Punjab**, reported in 2003 (3) Crimes 242(SC), again echoed similar views and opined that when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist for awarding the capital punishment. In this case a group of five accused persons had fired gun shots indiscriminately at a marriage venue and two other places in quick succession killing as many as 15 persons. While affirming death sentences of four accused persons the Hon'ble Supreme Court made wide survey of authorities on the issue of awarding death penalty and the requirements of law. Upholding the extreme sentence Their Lordships held that the entire incident was extremely revolting and shocked the collective conscience of the community. It was further held that the acts of murder committed by the appellants were so gruesome, merciless and brutal that the aggravating circumstances far outweighed the mitigating circumstances. Rejecting the plea that the convicts are given an opportunity to reform as they will not be menace to the society in future Their Lordships observed that "we cannot say that they would



be further menace to the society or not as we live as creatures saddled with an imperfect ability to predict future.”

75. Keeping in view of the ratio of the aforementioned judgments and the guidelines laid down by the Hon'ble Supreme Court and other superior courts I would now draw the balance sheet of aggravating and mitigating circumstances.

76. **Aggravating Circumstances:**

(i) The accused persons, namely, Mangal Praja and Pragha Praja, have committed a double murder in a horrendous manner, with the deceased being Santosh Praja and Lilawati Praja.

(ii) Based on the medical evidence, it is evident that the murders of the deceased persons were extremely brutal. Deceased Lilawati Praja's hand was severed, and the injuries inflicted on both victims were deeply terrifying.

(iii) During the Confessional Statement provided to the police and made public, the accused persons admitted to killing Santosh Praja and Lilawati Praja. Throughout the trial, they displayed no remorse or repentance for their brutal acts of murder.

(iv) The testimony of the prosecution witnesses indicates that the accused persons killed Santosh Praja and Lilawati Praja over a petty matter, such as the disappearance of a cow. Their actions demonstrate that they pose a serious threat to society, and there is no guarantee that they will not commit similar offenses in the future.

(v) The facts and intervening circumstances of the case proved that had the accused persons seen and found the son and daughter of the deceased at the place of occurrence on that particular night, they would have also murdered them.

77. **Mitigating Factors:**

(i) The defense legal aid counsel argued that the accused persons have been falsely implicated in the case. According to the submission, prior to the incident, there was a quarrel between accused Mangal Praja and the deceased Santosh Praja concerning a missing cow.

(ii) Another argument presented was that the accused persons are innocent and have no previous criminal history. Accused persons also claimed that they are innocent.

78. After carefully scanning of all the factors I have come to the conclusion that the aggravating circumstances grossly outweigh the so-called mitigating circumstances. Hence, it is a case of 'rarest of rare nature' in which the convict deserves the awarding of capital sentence. In the case of **Bachan Singh (supra)** the Hon'ble Supreme Court has held that "in rarest of rare cases when collective conscience of the community is shocked that it will expect the holders of the judicial power centre to inflict death penalty".

79. In the result, the convict Mangal Praja and Pragma Praja are hereby sentenced to DEATH for committing the offence punishable under section 302/34 of the Indian Penal Code. The convict Mangal Praja and Pragma Praja are to be hanged by neck till they are dead. In

view of awarding of death penalty, sentence of fine is not imposed on the convicts Mangal Praja and Pragma Praja.

80. Convicts Sri Mangal Praja and Pragma Praja are remanded to District Jail, Sivasagar. Death Sentence is subject to confirmation by Hon'ble Gauhati High Court.

81. Let the seized weapons, cloths and other articles be destroyed in due course of law.

### **VICTIM COMPENSATION**

82. Under the facts and circumstances of the case, I find it prudent to recommend the case to the District Legal Service & Authority for awarding compensation to the legal heirs of the deceased Santosh Praja and Lilawati Praja as per the prevailing Victim's Compensation Scheme 2012.

83. Considering the facts and circumstances of the case, I am referring the matter to DLSA for exploring the possibility of granting compensation u/s 357A Cr.P.C. to the next of kin of the deceased, from the Victim's Compensation Scheme, Assam.

84. Let a copy of the judgment be furnished to the accused free of cost.

85. Convicts are informed about their right of appeal against the judgment and order of conviction and sentence before Hon'ble Gauhati High Court within 30 (thirty) days either by appointing his own advocate or through legal aid panel advocate or by way of Jail Appeal.

86. Issue warrant of commitment under sentence of death against the convict Sri Mangal Praja and Pragma Praja.

87. Submit the proceeding to the Hon'ble Gauhati High Court for confirmation of death sentence as per the provisions of Section 366 Cr.P.C. along with all record filed and original case diary.
88. Send a copy of the judgment to learned District Magistrate, Sivasagar u/s 365 Cr.P.C.
89. Judgment is pronounced in open court. The case is disposed of on contest.
90. Given under my hand and seal of this Court on this the 21<sup>st</sup> day of August, 2023.

(L.K. Saikia)  
Sessions Judge,  
Sivasagar