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	Date of Proceeding	Order or other proceeding	Signature of Court	Office action taken on order with date and dated signature of pleaders of parties when necessary
	18.07.2019	Accused Kutu Telipathar has been produced from judicial custody. Ld. Counsel for the accused is also present. Judgment is pronounced in the open court. The prosecution has been able to bring home the charge against the accused u/s 302 IPC beyond reasonable doubt. Accordingly the accused Kutu Telipathar is convicted u/s 302 IPC. As the minimum sentence prescribed by section 302 IPC is imprisonment for life and fine and I propose to sentence the accused Kutu Telipathar to the minimum sentence prescribed u/s 302 of the IPC, sentence hearing is dispensed with. The accused is sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- (Rupees Ten Thousands) only, in default, to undergo further simple imprisonment for three months. Fine amount, if realized, shall be given to the victim's children as compensation. The period of detention undergone by the accused during the investigation and trial be set off under section 428 of Cr. PC. The evidence on record reveals that deceased Baby Telipathar left behind her		

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		mother Smt. Asha Kurmi. Though it has not come on the evidence on record, Ld. Counsel for the accused has submitted copies of birth certificates of four children of the deceased along with the written argument. Hence, the office is directed to send a copy of the judgment to the Ld. Secretary, DLSA, Dima Hasao for making an enquiry and to act in accordance with the victim compensation scheme. The convicted accused is told that he has the right to appeal against the judgment and order of this court before Hon'ble High court through the jail authority or independently of his own. Convicted accused is further informed that he is entitled to free legal aid to prefer appeal before the Hon'ble High court. The accused person namely Kutu Telipathar be given a copy of the judgment free of cost immediately U/S 363 of Cr. PC. A copy of the judgment be sent to the District Magistrate U/S 365 of Cr. PC. Issue a warrant of commitment in respect of the convict on the sentence imposed to the Asst. Jailor, Sub – Jail, Dima Hasao, Haflong. The case is disposed of on contest.		

IN THE COURT OF SESSIONS JUDGE :::: DIMA HASAO, HAFLONG.

SESSIONS CASE NO. 01/2017

(Under Section 302 IPC)

The State of Assam

Vs

Kutu Telipathar

..... Accused,



PRESENT:-

Shri. Abhijit Bhattacharyya, AJS
Sessions Judge, Dima Hasao.

COUNSELS:-

Sri A. Chakravarty, Ld. PP for the State.
Shri. Ali Akbar Laskar, Ld. Advocate for the
accused.

Date of Argument: 10.06.2019

Date of Judgment: 18.07.2019

JUDGMENT

The prosecution case, in brief, is that on 31.10.2016 at about 12:00 noon, one Smt. Asha Kurmi, who is the mother of the deceased Baby Telipathar, lodged an FIR before the OC Maibang PS alleging that on

30.10.2016 at about 10:00 pm the accused Kutu Telipathar tortured inhumanly her daughter Baby Telipathar who is the wife of the accused and injured her in her head and other parts of her body by means of a wooden stick. Though the informant's daughter was shifted to Maibang Civil Hospital, she expired in the said hospital on 31.10.2016 at about 3:00 am during the course of her treatment.

Upon receipt of the aforesaid FIR Maibang PS Case No. 24/2016 u/s 302 IPC was registered. On completion of investigation Police filed charge sheet against the accused Kutu Telipathar u/s 302 IPC.

After committal of the case charge was framed against the accused u/s 302 IPC by my Ld. Predecessor in office.

The charge had been read over, interpreted and explained to the accused to which the accused pleaded not guilty and claimed to be tried. The Prosecution examined as many as 9 (nine) witnesses including the MO and the IO. The defence examined none. The accused was generally examined on the circumstances coming up in the evidence of the PWs. The accused pleaded denial and declined to adduce any evidence in defence.

POINTS FOR DETERMINATION:

Whether the accused person namely, Kutu Telipathar caused the death of his wife Baby Telipathar by doing an act with the intention of causing death or with the intention of causing such bodily injury as the accused knew to be likely to cause her death and thereby committed the offence of murder u/s 302 IPC?

DISCUSSIONS ON THE POINTS FOR DETERMINATION AND THE DECISION ARRIVED THEREON WITH REASON:

PW – 1 is Smt. Asha Kurmi who is the mother of the deceased as well as the informant of the case. During her deposition PW – 1 stated that the accused Kutu Telipathar is her son-in-law. PW – 1 further

stated that on the day of occurrence, a year back, at about 10:00 pm the accused administered several blows on her daughter Baby Kurmi @Telipathar by means of a wooden post. PW – 1 stated that her daughter sustained serious injuries on her head and on different parts of her body. PW – 1's daughter was taken to Maibang Civil Hospital the following morning and in the early morning hours her daughter had died of the injuries sustained by her. PW – 1 stated that the incident had taken place in the house of her son-in-law, the present accused. She also stated she had lodged the FIR at Maibang PS on the following day.

In her cross examination PW-1 stated that she had lodged the FIR where she had put her thumb impression. Someone at the PS had drafted the FIR. She stated that she did not remember what was written in the FIR. She also stated that her daughter was taken to the hospital in an ambulance and that she was not present at the time of the alleged occurrence. She had gone to the PO after the incident had already occurred. She denied the suggestion that the accused had not assaulted her daughter and that her daughter did not die due to the injuries sustained. She also denied the suggestion that the accused had found the victim already unconscious by the time he had come to the house. She also denied the suggestion that the accused was not involved in the killing of his wife. PW – 1 also denied the suggestion that she had not seen the injuries on the body of her daughter.

PW – 2 is Shri. Pran Kurmi who is the Village Headman of Siding Part – I village under Maibang PS. PW – 2 stated that he knew the accused present in the court. He further stated that the incident had taken place on the day of Kali Puja and that he was busy at the Puja. He had gone to the house of the accused and asked him not to assault his wife. The accused took no heed of his advice and continued to assault his wife. Thereafter PW – 2 came back to the Puja. The following morning at about 6:00 am Asha Kurmi (PW – 1) the mother of the deceased told PW – 2 that the accused had killed his wife. PW – 2 with the help of VDP party handed over the accused to the Police.



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PW – 2 proved and exhibited the seizure memo by which Police had seized one wooden stick measuring 2 Feet and 5 ½ inch from the house of the accused on being led by the accused.

During his cross examination, PW – 2 stated that he was on his way to the place where Puja was being performed when he heard commotion at the house of the accused. On the way he had warned the accused not to create any disturbance at his house. However the accused did not pay any heed to his advice. PW – 2 stated that however at the relevant point of time he had not seen the accused resorting to any violence. PW – 2 stated that the following morning he had heard that the wife of the accused had died. He denied the suggestion that he had not seen the accused at the place of Puja. PW – 2 reiterated that he along with VDP had handed over the accused to the Police and that he had accompanied the Police to the PO. However PW – 2 stated that he had not stated before the Police about seeing the accused engaged in a quarrel with his wife and that he had asked the accused to stop quarrelling with his wife.

PW – 3 is Shri. Sanjay Gowala who only stated that he had heard that the accused had killed his wife. At the relevant point of time PW – 3 was at the Puja mandap. PW – 3 also stated that the wife of the accused died at the hospital due to injuries sustained by her.

PW – 4 is Smt. Sabita Kurmi who is an immediate neighbour of the accused. PW – 4 stated that she had heard that the accused had assaulted his wife and fled away and that the incident occurred in the night. PW – 4 also stated that she heard that the wife of the accused had died of her injuries the following morning.

During her cross examination PW – 4 stated that on the date of occurrence she was lying sick on the bed. She also stated that she had gone to the hospital to see the deceased and found her dead.

PW – 5 is Smt. Nisha Kurmi who is the sister of the deceased. PW – 5 is a very vital and important witness in the present case. PW – 5 stated that on the date of occurrence after taking meals she along with her children went to bed. Then suddenly in the night she had heard commotion at the house of the accused and learnt that the accused was



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beating his wife. PW – 5 had gone to the house of the accused and when she tried to intervene the accused also assaulted her. PW – 5 stated that her sister had sustained injuries all over her body. She was taken to Maibang Civil Hospital in an ambulance but the following morning in the early hours her sister had expired.

During her cross examination PW – 5 stated that she had gone to the house of the accused on hearing the accused beating his wife. PW – 5 further stated that the accused had assaulted his wife by dragging her to the veranda of the house. She denied the suggestion that at the time of the alleged occurrence she was sleeping with her children in her house and that she had not seen the occurrence/ incident.

PW – 6 is Smt. Helen Kurmi, a resident of village Siding Part – 1 and an immediate neighbour of the accused. PW – 6 stated that she was the immediate neighbour of the accused and had heard that the accused had beaten his wife and that the accused's wife was brought to the hospital. PW- 6 had gone to the hospital and had seen the dead body of the wife of the accused.

However during her cross examination PW - 6 stated that she had not seen the alleged occurrence and that she did not know how it happened.

PW – 7 is Shri. Bikky Kurmi who is the brother of the deceased and the accused is his brother-in-law. PW – 7 stated that on the date of occurrence having heard commotion at the house of the accused he had gone to his house and found the accused assaulting his wife. PW – 7 further stated that he had seen profuse bleeding on the head of his sister. He had asked his elder brother to take their sister to the hospital immediately. PW – 7 further stated that the following morning he learnt that his sister died because of the injuries sustained by her. PW – 7 also stated that Police had come to the PO and had seized one wooden stick at the PO and that he had put his thumb impression on the seizure list.

During his cross examination PW – 7 stated that he had put his thumb impression on the seizure list at the PS. He denied the suggestion that he was sleeping in his house at the relevant point of time. He



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stated that his sister was pregnant at the time of her death. PW – 7 also stated that he and his brother had taken their sister to the hospital. However during the last sentence of his cross examination PW – 7 stated that he had not seen the alleged occurrence.

It may be noted herein that all the witnesses were examined before my Ld. Predecessor in office. The last sentence of the cross examination of PW – 7 seems to me to be a typographical error and actually it ought to have been a denied suggestion. However, taking the evidence of PW – 7 as it is, the benefit of typographical error, if any, is given to the accused.

PW – 8 is Dr. Kaushik Kachari who conducted post mortem examination over the dead body of the deceased on 31.10.2016 at about 3:20 pm at Haflong Civil Hospital. Upon PM examination PW – 8 recorded the following observations:

1. 7cm x 2 cm x 2 cm lacerated injury noted on left frontal parietal region of the scalp, 56' from left heel.
2. 1 cm x 1 cm abrasion on left forehead just above the eyebrow, 53' from left heel.
3. 2 cm x 2cm abrasion on left maxillary prominence, 50' from left heel.
4. Graze abrasion, 4 cm x 4 cm noted on left cheek region, 48' from left heel.
5. 3 cm x 2 cm x 1 cm laceration noted on chin, 45' from left heel.
6. Blood clot, approx. 10mm, noted in left external auditory canal.
7. Approx. 500 ml of clotted blood noted in left fronto parietal sub – dural region of the brain.

PW – 8 opined that the cause of death was due to left fronto parietal sub-dural haemorrhage as inferred from signs which are ante – mortem in nature and that the injuries had been caused by means of heavy sharp weapon. PW – 8 proved and exhibited the PM report as Ext – 2.

During his short cross examination PW – 8 stated that no X – Ray or Sonography had been done in respect of the injuries sustained. He further stated that lacerated injuries and abrasions may result from a fall on a hard substance.



PW – 9 is Shri. Shankar Das, the then OC of Maibang PS who is the IO of the case.

In the instant case the PM report of deceased Baby Telipathar which was proved by PW – 8 Dr. Kaushik Kachari reveals that the deceased sustained severe head injuries leading to her death, more particularly, due to left fronto *parietal sub-dural haemorrhage which are ante - mortem in nature.

Among the prosecution witnesses, PW – 1 Asha Kurmi, PW – 3 Sanjay Gowala, PW – 4 Sabita Kurmi, PW – 6 Helen Kurmi and PW – 7 Bikky Kurmi stated that they had not seen the occurrence.

However, the evidence of PW – 2 Pran Kurmi and PW – 5 Nisha Kurmi are very material, germane and important in the present case.

Section 134 of the Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact. Conviction can be based on the testimony of a single witness if he is wholly reliable. Corroboration may be necessary when he is only partially reliable. If the evidence is unblemished and beyond criticism and the Court is satisfied that the victim was speaking the truth then on his evidence alone conviction can be maintained. Evidence has to be weighed and not counted. If a witness is otherwise reliable and trustworthy, the facts sought to be proved by the witness need not be further proved through other witnesses.

Now, in the touchstone of the aforesaid principles, the evidence of PW – 2 and PW – 5 shall have to be carefully examined, scrutinized and tested.

As aforesaid, PW – 2 Pran Kurmi who is a Village Headman categorically stated that on the day of Kali Puja, he had gone to the house of the accused and asked him not to assault his wife. However the accused did not pay any heed to his advice and continued to assault his wife. The following morning at about 6:00 am, PW – 1 Asha Kurmi who is the mother of the deceased told PW – 2 that the accused had killed his wife. Police also seized the wooden stick from the house of the accused on being led by the accused vide Ext – 1 Seizure List in the presence of PW – 2.



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During his cross examination also PW – 2 stood to his ground as a witness and amongst others, he reiterated that when he heard commotion in the house of the accused, he warned the accused not to create any disturbance but the accused did not pay any heed to his advice. PW – 2 also handed over the accused to the Police.

PW – 5 Smt. Nisha Kurmi, resident of Village – Siding Part – 1 and sister of the deceased also stated that on the night of occurrence she had heard commotion at the house of the accused and learnt that the accused was beating his wife. Accordingly PW – 5 went to the house of the accused and when she tried to intervene, the accused also assaulted her. PW – 5 stated that her sister (deceased) had sustained injuries all over her body. Though the deceased was taken to Maibang Civil Hospital in an ambulance in injured condition, the following morning she expired in the early hours.

During her cross examination PW – 5 clearly and categorically stated that when she went to the house of the accused on hearing the accused beating his wife, the accused had assaulted his wife by dragging her to the veranda of the house.

Shri. Ajoy Chakraborty, Ld. PP, Dima Hasao has submitted that the evidence on record brought through the prosecution witnesses has proved the case/ offence against the accused beyond reasonable doubt and as such the accused ought to be convicted and sentenced u/s 302 IPC.

On the other hand Shri. A.A. Laskar, Ld. Counsel for the accused has vehemently argued and submitted apart from submitting his written argument that there are several flaws in the prosecution case for which the accused should get the benefit of doubt and he ought to be acquitted. Amongst others, the submissions made by Shri. A.A. Laskar, Ld. Counsel for the accused are that.....PW – 1 Asha Kurmi who had put thumb impression in the FIR admitted that someone at the Police Station had drafted the FIR and she did not remember the contents thereof; that PW – 2 Pran Kurmi admitted during his cross examination that at the relevant point of time he had not seen the accused resorting to any violence; that the wooden



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stick which was seized vide Ext – 1 Seizure memo was not sent to FSL for chemical analysis or for examination as to reveal stains of blood and further that the said wooden stick was never produced before the court during trial; that the evidence of PW – 3 Sanjoy Gowala and PW – 4 Smt. Sabita Kurmi are hearsay evidence; that PW – 5 Smt. Nisha Kurmi is a resident of Village – Siding Part – I whereas the house of accused is at Village – Siding Part – II and as such it is unbelievable that PW – 5 had heard commotion from the house of the accused etc.

In the case of **Trimukh Maroti Kirkan Vs – State of Maharashtra**, reported in **(2006) 10 SCC 681**, which was a case of Dowry death with no eye witnesses and the case being based on circumstantial evidence against the accused for murdering his wife, the Hon'ble Apex Court held that these crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished. It was further held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case.

In the instant case out of 7 (seven) independent witnesses 5 (five) witnesses admitted during cross examination that they had not seen the occurrence. However the evidence of PW – 2 Pran Kurmi and PW – 5 Nisha Kurmi would reveal that the accused in fact had severely assaulted his wife for which she had to be taken to Maibang Civil Hospital where she expired in the early hours of the following morning.

The accused who was examined u/s 313 Cr. PC did not deny his presence in the house on the fateful date of occurrence but he took the plea that his wife accidentally hit her head against the wall and sustained injuries. However he admitted that he was involved in a scuffle with his wife.



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At this juncture it is necessary and apposite to keep in mind section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In the present case the alleged offence took place inside the house of the accused and the evidence on record reveals that the accused and his wife were inside the house before other witnesses including PW – 2 Pran Kurmi and PW – 5 Nisha Kurmi came to the house of the accused.

As held by the Hon'ble Apex Court in the case of **Trimukh Maroti Kirkan – Vs – State of Maharashtra** (Supra), where an offence of murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer explanation.

Now dealing with the submission of the Ld. Counsel for the accused who has mainly argued that the weapon of crime (wooden stick) was not produced during the trial and marked as a Material Exhibit, this court is of the opinion that as the evidence of PW – 2 and PW – 5 clearly reveal that the accused had assaulted his wife leading to her death the following morning in the hospital, the non - production of the wooden stick would not come in the way as the seizure memo Ext – 1 was duly proved. There are many cases and instances of murder also where the body (corpus delicti) was not found but courts have based and maintained conviction.

Now coming to the second limb of argument that PW – 5 Nisha Kurmi is a resident of Village – Siding Part – I whereas the occurrence took place in the house of the accused in Village – Siding Part – II, I have gone through the sketch map prepared by the IO and marked as Ext – 4. The



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said sketch map reveals that the house of PW – 5 Nisha Kurmi and that of the accused are adjacent to each other. The defence did not object to this during the trial and as such the submissions of Ld. Counsel for the accused are not sustainable.

It is no longer res-integra that conviction can be based upon circumstantial evidence also. It is a well settled principle of law that in case where the evidence is of a circumstantial nature, the circumstances from which conclusion of guilt is to be drawn should in first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances should be of conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. There must be chain of evidence so complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

Some of the leading cases though there are many on this point have laid down the principles on which courts can convict an accused based on circumstantial evidence. Some of them are quoted herein below. In the case of **Sharad Birdhichand Sarda –versus- State of Maharashtra, [1984] 4 SCC 116**, the Apex Court discussed the conditions which must be fully established before conviction can be based on circumstantial evidence. These are:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;
2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;



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3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

In **Padala Veera Reddy –versus- State of Andhra Pradesh [1989] Supp (2) SCC 706**, the Apex Court again held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

1. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
2. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
3. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

It is noteworthy to mention herein that the incriminating evidence against the accused could not be explained by him during the recording of his statement under Section 313 of Cr. P.C. The circumstances



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and evidence as stated above could have only been explained by the accused and nobody else as they were personally and exclusively within his knowledge.

The accused had taken the stand that his wife accidentally hit her head on the wall and injured herself. Though the accused attempted to offer this explanation, the said explanation is not believable and consistent with the injuries sustained by the deceased as revealed from the PM report. It has now been laid down in a number of decisions that when a fact is explainable and within the special knowledge of the accused facing trial, and the accused chooses not to offer any explanation or offers an explanation which is found to be untrue or unbelievable it becomes an additional link in the circumstances in the sense that the omission to explain is a missing link which may be treated to have been supplied for arriving at the answer, which the circumstantial evidence makes one reach.

The provision of Section 106 of Evidence Act are unambiguous and categorical in laying down that when a fact is especially within the knowledge of the person the burden of proving that fact is upon him. He must furnish an explanation which appears to the court to be believable and satisfactory.

Considering all the aforesaid facts and circumstances of the case and in view of the above discussion, it is held that the prosecution has been able to bring home the charge against the accused u/s 302 IPC beyond reasonable doubt. Accordingly the accused Kutu Telipathar is convicted u/s 302 IPC.

As the minimum sentence prescribed by section 302 IPC is imprisonment for life and fine and I propose to sentence the accused Kutu Telipathar to the minimum sentence prescribed u/s 302 of the IPC, sentence hearing is dispensed with.

The accused is sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- (Rupees Ten



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Thousands) only, in default, to undergo further simple imprisonment for three months.

Fine amount, if realized, shall be given to the victim's children as compensation.

The period of detention undergone by the accused during the investigation and trial be set off under section 428 of Cr. PC.

The evidence on record reveals that deceased Baby Telipathar left behind her mother Smt. Asha Kurmi. Though it has not come on the evidence on record, Ld. Counsel for the accused has submitted copies of birth certificates of four children of the deceased along with the written argument. Hence, the office is directed to send a copy of the judgment to the Ld. Secretary, DLSA, Dima Hasao for making an enquiry and to act in accordance with the victim compensation scheme.

The convicted accused is told that he has the right to appeal against the judgment and order of this court before Hon'ble High court through the jail authority or independently of his own. Convicted accused is further informed that he is entitled to free legal aid to prefer appeal before the Hon'ble High court.

The accused person namely Kutu Telipathar be given a copy of the judgment free of cost immediately U/S 363 of Cr. PC. A copy of the judgment be sent to the District Magistrate U/S 365 of Cr. PC.

Judgment is pronounced in the open court.

The case is disposed of on contest.

Given under my hand and seal of this court on this the **18th** day of **July, 2019** at Haflong, Dima Hasao.



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APPENDIX:-**PROSECUTION WITNESSES :-**

PW – 1, Smt. Asha Kurmi, PW – 2 Shri. Pran Kurmi, PW – 3 Shri. Sanjay Gowala, PW – 4, Smt. Sabita Kurmi, PW – 5 Smt. Nisha Kurmi PW – 6 Smt. Helen Kurmi, PW – 7 Shri. Bikky Kurmi, PW – 8 Dr. Kaushik Kachari, MO and PW – 9 Shri. Shankar Das, I.O.

PROSECUTION EXHIBITS :

1. Ext – 1 Seizure Memo
2. Ext – 2 Post Mortem Report
3. Ext – 3 FIR
4. Ext – 4 Sketch Map
5. Ext – 5 Charge Sheet.


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