

GAHC010212392019



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

Case No. : CrI.A./350/2019

GOBIND SINGHAL
S/O- SHRI RADHESHYAM SINGHAL, R/O- 119, J.P. AGARWALA ROAD,
KAMRUP, GUWAHATI. (PRESENTLY LODGED AT GUWAHATI CENTRAL
JAIL).

VERSUS

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

2:JAGDISH AGARWAL
S/O- SHRI B.P. AGARWAL
R/O- KAMALDEEP BUILDING
BIJULEE MILL
MANIPUR BASTI
KAMRUP
GUWAHATI

Advocate for the Petitioner : DR Y M CHOUDHURY

Advocate for the Respondent : A BHATTACHARJEE,SPECIAL PP ASSAM

Linked Case : Death Sentence Ref./3/2019

THE STATE OF ASSAM
REP. BY P.P.
ASSAM.

VERSUS

SRI GOBIND SINGHAL
KAMRUP (METRO)
GUWAHATI.

Advocate for : MR. A BHATTACHARJEE
SPL. PP
ASSAM
Advocate for : MR D K BHATTACHARYYA appearing for SRI GOBIND SINGHAL

Linked Case : CrI.A./396/2019

KAMALA DEVI SINGHAL AND ANR
W/O- SHRI RADHESHYAM SINGHAL
R/O- 119
J.P. AGARWALA ROAD
KAMRUP
GUWAHATI.

2: BHABANI SINGHAL
D/O- SHRI RADHESHYAM SINGHAL
R/O- 119
J.P. AGARWALA ROAD
KAMRUP
GUWAHATI.
VERSUS

STATE OF ASSAM AND ANR
REP. BY THE PUBLIC PROSECUTOR
GAUHATI HIGH COURT.

2:JAGDISH AGARWAL
S/O- SHRI B. P. AGARWAL
R/O- KAMALDEEP BUILDING
BUJILEE MILL
MANIPURI BASTI
KAMRUP
GUWAHATI.

Advocate for : MR D K BHATTACHARYYA
Advocate for : SPECIAL PP ASSAM appearing for STATE OF ASSAM AND ANR

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MRS. JUSTICE MALASRI NANDI**

Dates of hearing : 14.03.2022, 15.03.2022, 21.03.2022 & 22.03.2022.

Date of judgment : **08.04.2022**

JUDGMENT & ORDER (CAV)

(Suman Shyam, J)

Heard Dr. Y. M. Choudhury assisted by Mr. D. K. Bhattacharyya and Ms. R. Gonsalvez, learned counsel appearing for the appellants. Also heard Mr. M. Phukan, learned Public Prosecutor, Assam appearing for the State. Ms. R. D. Mazumdar, learned Legal Aid Counsel is present on behalf of the informant.

1. By the impugned judgment dated 30.07.2019 passed by the learned Sessions Judge, Kamrup (M), Guwahati in Sessions Case No.69/2018 the three appellants viz., Gobind Singhal (A-1), Kamali Devi Singhal (A-2) and Bhabani Singhal (A-3) were convicted under Sections 120(B)/201/302 of the Indian Penal Code for committing the murder of deceased Sweta Agarwal based on a conspiracy hatched by them and also for destroying evidence. The A-1 Gobind Singhal, who is the appellant in Crl. Appeal No.350/2019, was awarded death sentence for committing the offence under section 302 IPC and also to pay fine of Rs 10,000/-. Death Sentence Reference No.3/2019 has been preferred by the State for confirmation of the death sentence. The A-1 has also been sentenced to undergo imprisonment for life and to pay fine of

Rs 5000/-for committing the offence under section 120-B of the IPC and also to undergo rigorous imprisonment for three years and to pay fine of Rs 5000/- for committing offence under section 201 of IPC.

2. The A-2 and A-3 were awarded imprisonment for life and also to pay fine of Rs 10,000/- each for committing the offence under section 302 IPC ; for committing the offence under section 120-B IPC, A-2 and A-3 were sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs 10,000/- each. For the offence committed under section 201 of IPC, A-1 and A-2 were sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs 5,000/- each with default stipulations. Assailing the impugned judgment, A-2 and A-3 have jointly preferred Criminal Appeal No.396/2019.

3. Briefly stated, the prosecution case is that on 14.12.2017 the A-1 had criminally conspired with his mother A-2 and sister A-3 and called the victim over phone asking her to wait after finishing her examination. Accordingly, A-1 went to K. C. Das Commerce College, Guwahati, picked up the victim in his motorcycle and returned to their house located at J. P. Agarwal Road at Bharalumukh. The accused persons then brutally stabbed the victim inside the house and thereafter, burnt her by pouring kerosene thereby committing a gruesome act of murder of the deceased Sweta Agarwal.

4. On 04.12.2017 Sri Jagdish Agarwal i.e. the uncle of deceased Sweta Agarwal lodged an ejahar before the Officer-in-Charge of Bharalumukh Police Station reporting that his niece Sweta Agarwal had gone to K.C. Das Commerce College to

write her exam at around 8:30 a.m. Her exam was over at around 12:30 p.m. Although she usually returns home at around 1:00 p.m. to 1:30 p.m, yet, on that day Sweta did not come back home till about 2:00 p.m. There was also no response to calls made in her mobile phone. At around 3:30 p.m. the mobile was found switched off. Around 5:50 to 6:00 p.m. he had received a call from No.9401829797 whereby a lady had informed him that his niece was lying dead in a naked and burnt condition. The unknown lady had also given him her address. On reaching the address, the lady took him to her bathroom where he found his niece was lying dead in a naked and burnt condition. At that time, the mother of the accused Gobind was present along with a girl. He suspected that the A-1 had raped his niece and brutally murdered her with the help of his mother (A-2) and sister (A-3). Based on the aforesaid ejahar, BMK P.S. Case No.805/2017 was registered under Sections 302/376/120(B) of the IPC and the matter was entrusted to S.I. Sudip Chaudhury to carry out the investigation. On completion of investigation, charge-sheet was submitted against all the three accused persons.

5. On committal of the matter for trial before the Sessions Court formal charge under Sections 120(B)/201/302 IPC was framed against all the three accused persons. However, since the accused persons had pleaded not guilty and claimed to be tried, the matter went up for trial.

6. The prosecution case is based on circumstantial evidence. During the course of trial, the prosecution had examined as many as 20 witnesses including the doctors who had conducted the post-mortem examinations viz., PWs-9, 10 and 11, the

Scientific Officer in the Directorate of Forensic Science Laboratory (FSL) i.e. PW-17 and the Investigating Officer (I.O.) PW-20. On conclusion of trial the accused persons were examined under Section 313 of the Cr.P.C. and their statements were recorded by the learned court below. The accused persons had also adduced evidence by examining three witnesses as DWs-1, 2 and 3. On conclusion of trial, the learned Sessions Judge had passed the impugned judgment dated 30.07.2019 convicting all the three accused persons and sentencing them in the manner indicated herein above.

7. Dr. Y. M. Choudhury, learned counsel appearing for the appellants, has submitted that save and except PWs-1, 2, 5 and 6 all other witnesses examined by the prosecution side are either seizure witnesses or official witnesses. Although the prosecution has brought charges of criminal conspiracy and murder against the accused persons, none of those charges could be proved by the prosecution side by adducing circumstantial evidence. Mr. Choudhury has argued that, save and except establishing that the victim had died a homicidal death and her dead body was found in the bathroom of the house of the accused persons, the prosecution has not been able to establish any other circumstances to complete the chain of circumstances establishing the guilt of the accused persons. According to Mr. Choudhury, the A-2 and A-3 had themselves informed the family members of the victim, the police and also called for the ambulance soon after the incident and therefore, the fact that the victim's body was found in a critically injured condition inside the bathroom of the house of the accused persons was automatically established by their own showing. Requesting the court to draw serious adverse

presumption against the prosecution for their deliberate failure to exhibit the Call Details Record (CDR) of the mobile phones of the accused persons and the victim as well as the record of SMS and other electronic transactions that took place between them, Dr. Choudhury has argued that had such materials been placed on record by the prosecution the same would have totally exonerated the accused persons from the charge of criminal conspiracy and murder. The learned counsel for the appellants has also invited our attention to the serious lapses on the part of the learned Sessions Judge in his failure not only to put all incriminating materials before the accused persons while recording their statements under Section 313 of the Cr.P.C. but also by pointing out that the learned Sessions Judge has practically interrogated the accused persons and made serious accusations on the A-1 during his examination under Section 313 Cr.P.C. thereby acting with a high degree of bias against the accused even before the conclusion of trial. On such ground Mr. Choudhury submits that serious prejudice has been caused to the accused and the same would inevitably have a vitiating affect on the trial itself.

8. Responding to the above arguments, Mr. M. Phukan, learned Public Prosecutor, Assam has submitted by referring to the post-mortem report (Ext-10) that the fact that the victim had died homicidal death due to deep incised injuries found in her body as well as the burnt condition is firmly established by the medical evidence brought on record. That apart, it is also fully established that the body of the victim was recovered inside the bathroom of the accused persons. Mr. Phukan further submits that the fact that the A-1 was having a love affair with the victim girl and he had threatened the girl of dire consequences if she did not maintain proper

relationship with him stood established from M. Exts- 20 and 21. Notwithstanding the same, the accused persons have failed to discharge their burden cast under Section 106 of the Evidence Act by failing to offer proper and acceptable explanation as to the circumstances under which the victim had sustained such grievous injuries inside the house of the accused persons leading to her homicidal death. Viewed from that angle, submits Mr. Phukan, the charges brought against the accused persons, more particularly the A-1 and A-2, stood fully established based on circumstantial evidence.

9. In so far as the several lapses on the part of the investigation as pointed out by Mr. Choudhury as well as the failure on the part of the learned Sessions Judge to put all the incriminating circumstances to the accused persons while examining them under Section 313 Cr.P.C., Mr. Phukan has fairly submitted that there are some lapses in investigation which are noticeable on the face of the record. The learned Public Prosecutor has, however, argued that considering the facts and circumstances of the case and also the heinous nature of the crime involved in this case, where a young lady with brilliant academic career has been brutally murdered, the benefit of such lapses, if any, should not go to the accused persons. If necessary, the case can be sent for re-trial from the stage of recording the statement of the accused persons under Section 313 of the Cr.P.C.

10. We have considered the arguments advanced by learned counsel for both the sides and have gone through the materials available on record. There is no doubt or dispute about the fact that there is no direct evidence and the prosecution case is

entirely based on circumstantial evidence. Pursuant to his conviction the A-1 has been awarded death sentence whereas the A-2 and A-3 have been awarded life imprisonment by the learned court below. Therefore, it would be necessary to meticulously examine the evidence available on record so as to arrive at a conclusion as to whether the prosecution has succeeded in proving the charge brought against the accused persons beyond reasonable doubt.

11. Sri Jagdish Agarwal, who is the uncle of the deceased and the informant in this case, was examined as PW-1. This witness has stated that on 04.12.2017, he was working at the I-Tech Plaza, Raymond Showroom situated near Rajib Bhawan, ABC, G.S. Road. Deceased Sweta Agarwal was his niece. On the day of the incident, at about 8:30 a.m., Sweta went out of the house for going to K.C. Das Commerce College so as to appear in her examination. After that, they also went out for their job. Sweta Agarwal used to return back home at about 1:00/1:30 p.m. Her exam used to finish at around 12:30 p.m. But on 04.12.2017 when Sweta did not come back home even till 2:00 p.m., his sister-in-law Sunita Agarwal called up and informed him about the same. He then came back home and talked to his sister-in-law. She also tried to establish contact with his niece over phone but her mobile was ringing out and no one picked up. At that, his sister-in-law become anxious but to console her he had said that Sweta must be with her friends with the mobile inside the bag. At first he did not take it seriously. Since Sweta was doing her C.A. internship she used to regularly go to the chamber of Sri O.P. Chandak. As such, he thought that Sweta might have gone to the chamber of the C.A. and accordingly, he tried to contact the chamber over phone but came to know that she had not gone there. At about

3:00/3:30 p.m. he once again tried to contact Sweta but at that time her phone was found to be switched off. Then they started looking for Sweta on the probable locations. He also went in search of his niece in the nearby areas of K.C. Das Commerce College but did not find her. Again he tried to contact her over phone but all the time the phone was found to be switched off. At around 5:00/5:30 p.m. he had received a call from a lady who had asked him whether he was a relation of Sweta Agarwal and he replied in the positive. Then she informed him that his niece Sweta had died by burning in her house. He asked the lady as to how she had gone to her house and where the house was situated. At that the lady gave the address of her house as House No.119 at J. P. Agarwala Path, near Bharalu Sluice Gate. After hearing the same he was puzzled and therefore, without informing the members of his family he had directly rushed to the given address. On his way, he had received another call from his niece Payal Bedia informing him that a similar phone call was received by his sister-in-law Sunita Agarwal regarding the death of Sweta. Then he informed his elder brother Om Prakash Agarwal about the information received from the unknown lady and asked him also to proceed to House No.119. As soon as he turned towards J.P. Agarwala Path, he had seen a gathering in front of the house. On reaching there he had asked the people as to what had happened and then one lady came out and took him inside the house. As soon as he had entered the room, the lady had shown him the dead body of Sweta Agarwal in a toilet. At that time, there was one boy, one lady and one girl inside the house. By that time, his elder brother Om Prakash Agarwal arrived there. When he went near Sweta he could see that by the side of her neck there was cut injury and blood was oozing out. He had

also seen injury marks in the forehead near her eyes. There was no cloth in her lower portion. The lady, the girl and the man he had seen were present in the dock and he could easily identify them. He again questioned the lady as to how Sweta who had come out for appearing in the exam had reached their house and as to who had killed her. In reply, the lady told him that they had killed her and also told him that they had already called an ambulance and directed him to remove the body from there. She had also indicated that the father of the boy was outside. In the meantime, the ambulance arrived and the police patrol van also came. The police personnel had instructed him to lodge an F.I.R. at the Police Station. Ext-1 is the F.I.R. lodged by him and Ext-1(1) was his signature. PW-1 has further stated that the dead body was taken to Bharalumukh Police Station by the ambulance and he had accompanied the dead body. After lodging the ejahar he was informed that the dead body would be sent to Guwahati Medical College & Hospital (GMCH) morgue for post-mortem examination in the next morning and accordingly he was instructed to go to GMCH on the next morning at about 9:00/9:30 a.m. PW-1 has further stated that his niece stood 1st in HSLC exam and also in her H.S. 2nd year. She was a brilliant student and was never interested in anything else except studies.

12. During his cross-examination, PW-1 has stated that on 04.12.2017 he saw the A-1 for the first time. He also stated that he did not ask the lady as to how she could come to know about his phone number because he was not in a mood to ask all these things at that moment. The witness, however, admitted that he had not stated in the F.I.R. that the lady had told him that they had killed his niece.

13. Sri Om Prakash Agarwal is the father of the deceased Sweta and he was examined as PW-2. This witness has also stated that on 04.12.2017, at about 8:30 a.m. his daughter Sweta went to K. C. Das Commerce College for appearing in her 5th Semester B. Com. Examination. After that, at about 10:00 a.m., he went out for his job. Usually he used to come back home for taking lunch at about 2:00/2:30 p.m. and that day also he came home around the same time. On returning home he came to know that his daughter Sweta had not reached home till then. After completing his lunch he again went back to his office but before that he tried to contact his daughter over phone but did not get any response. After reaching the office he tried to contact the chamber of O.P. Chandak, Chartered Accountant, where his daughter used to go for article-ship but on his enquiry he came to know that Sweta did not go to the chamber on that day. When he tried to contact her again at around 3:30 p.m. he found her mobile switched off. At around 5:00/5:30, a phone call came to his wife from a lady who had intimated that her daughter had died due to burning and was lying there at Sluice Gate in J. P. Agarwala Road. In the meantime, another phone call came from his brother who had also intimated him about the phone call he had received from that lady informing the death of his daughter due to burning. His brother asked him to rush to House No.119, J. P. Agarwala Road, Bharalumukh. After reaching Bharalumukh he enquired from the local people about the house and they showed him a crowd and asked him to go there. He had seen that an ambulance was also going there and the local people told him to follow the ambulance. Accordingly, he went to that place and as he entered the house, his brother PW-1 was already there. He had seen that his daughter

was lying dead in the toilet and she had no cloth on the lower portion. She had long cut injury in her neck which appeared to be caused by sharp object and there was also injury marks on her forehead. PW-2 has further stated that there was indication that her legs were kept tied and he could guess that she was first tied and thereafter burnt. There were blood stains on the entire floor of the toilet and there were also marks of dragging the body from one place to another. Seeing that he was totally puzzled. His brother (PW-1) started enquiring from the two ladies and one young man present in the house. When they asked the lady as to who killed his daughter, the lady replied that they had killed her. She had also asked them to remove the dead body immediately by informing them that she had already called the ambulance. In a threatening tone the lady also told them that they did not know the father of the boy and that they would not be able to do anything to them. The lady also told them that the father of the boy was not at home and hence asked them to leave immediately. After that, the police arrived. In the meantime, he had called his wife to come there and see the dead body. His wife came and started crying and almost collapsed. Thereafter, they went to the Police Station and his brother accompanied the dead body. At the Police Station they submitted the F.I.R. PW-2 has deposed that Mat. Ext-4 is the ladies handbag of his daughter Sweta. Inside the bag there was one admit card. Mat. Ext-4(1) is the admit card and Mat. Ext-4(2) is the examination board of his daughter Sweta. Mat. Ext-4(3) is her calculator and Mat. Ext-4(4) is her water bottle. Mat. Ext-4(5) is the plastic scale used by his daughter and Mat. Ext-4(6) is the handkerchief of his daughter. Mat. Ext-4(7) is the key ring and the key of his daughter and Mat. Ext-4(8) is her wrist watch. This witness has further identified that Mat. Ext-7 is

the pair of lady shoes belonging to his daughter and Mat. Ext-24 is her churni. On the day of the incident Sweta went out wearing the same. Mat. Ext-25 is the long exercise book of his daughter Sweta with her handwriting. Before the dead body of his daughter was removed from the house his wife had enquired as to where were the clothes below her waist and he had shown the kerosene bottle and the match box and told that they had burnt all these. Mat. Ext-22 is the kerosene bottle and Mat. Ext-23 is the match box which were there in the toilet by the side of the dead body. PW-2 has further deposed that his daughter was a brilliant student and she stood 1st in H.S. Commerce and done exceedingly well in the H.S.L.C. exam as well. Sweta was doing well in C.A. and she had received awards from the Chief Minister and the Governor of Assam.

14. During his cross-examination, PW-2 had remained firm in his testimony and has stated that his wife received the phone call from an unknown lady in between 5:30/6:00 p.m. The witness has stated that he had reached the place of occurrence at around 6:15 p.m. and when he reached there he did not see any police but there was a large gathering. After going inside the house, he had seen his brother standing by the side of the door and the three accused persons were inside the house. His brother took him to the toilet where the dead body of his daughter was lying with injuries. The PW-2 has further stated that his statement was recorded by the police after 4/5 days of the incident but as he was busy with the shraddha ceremony of his daughter he cannot remember what he told to the police. PW-2 had maintained that he did not know whether the A-1 was also taking tuition in the same place as his

daughter as he never saw him there. On his query the lady had told that they had killed his daughter. The witness has denied that his daughter had informed him that she had a love affair with the accused A-1 and she would like to marry him. He has stated that he did not know the family of the accused prior to the incident and that it is not a fact that Sweta had committed suicide but despite being aware of the same it was given the colour of murder. PW-2 has also denied the suggestion that he had falsely implicated the A-1.

15. PW-3, Sri Dhananjay Roy is a seizure witness. He is also an independent witness. PW-3 has stated that he has a shop of electronic goods at Lakhtokia. On 08.12.2017, at about 12:00/12:30 p.m. he had received a call from the Bharalumukh Police Station asking him to go to the Police Station. Accordingly, he had reached the Bharalumukh P.S. within 10/15 minutes being accompanied by Sri Hemen Sarma, who is the Secretary of Old Ward No.12. In the Police Station he had met another person called Gostu Biswas. From the Police Station, they were taken to the residence of Gobind Singhal (A-1). The house was under lock and key. Police had opened the same in their presence. Accused Gobind Singhal had accompanied the police and on being led by him police recovered one folding knife which was light green in colour. Police had also recovered the ladies chappal of Sweta Agarwal as well as a pair of hand gloves, one nylon rope and one cloth for clearing the floor. It had blood stains. The police had seized those articles vide seizure-list Ext-3 which contains his signature Ext-3(1). PW-3 has also stated that Mat. Ext-1 corresponding to MR No.298/17 is the folding knife; Mat. Ext-2 is the black jeans pant corresponding to MR No.298/17; Mat. Ext-3 is the pair of hand gloves corresponding to MR No.298/17; Mat.

Ext-4 is the ladies handbag containing the admit card of Sweta Agarwal, one calculator, one ladies watch, a key and one plastic water bottle which was half filled with water. PW-3 has also deposed that Mat. Ext-4 corresponding to MR No.298/17 is the seized hand bag. On the next day i.e. on 09.12.2017, he was again summoned by the police to the Police Station. On that day, at about 11:00 a.m., again they were taken to the house of Gobind Singhal who had also accompanied the police. On that day, on being led by Gobind Singhal, police had recovered another knife with aluminium handle. Police had also recovered one Hero Honda Splender, one nylon rope and ladies shoes belonging to the victim Sweta Agarwal. Ext-4 was the seizure-list by means of which police had seized 5 nos. of articles from the house of Gobind Singhal. Ext-4 seizure-list bears his signature. Mat. Ext-5 corresponding to MR No.299/17 is the knife, Mat. Ext-6 is the yellow colour nylon rope corresponding to MR No.299/17; Mat. Ext-7 is the ladies shoe corresponding to MR No.299/17 and Mat. Ext-8 is the floor cleaning cloth corresponding to MR No.299/17. On 10.12.2017, he was again asked to visit Bharalumukh Police Station. On that day also police had visited the house of accused Gobind Singhal on being accompanied by the accused at about 11:00/11:30 a.m. He was asked by the police to accompany them. On that day, police had seized 10 articles vide seizure-list Ext-5 which contains his signature. The witness has stated that Mat. Ext-9 is the pen drive; Mat. Ext-10 is the Lenovo Laptop; Mat. Ext-10 is the compact disc; Mat. Ext-12 is the Levis money bag; Mat. Ext-13 is the cash amount of Rs.1,02,500/-; Mat. Ext-14 is the long exercise book bearing Roll No.0063; Mat. Ext-15 is the non-judicial stamp paper executed by Radhe Shyam Singhal regarding application for trade mark; Mat. Ext-16 is the packet of rat killer

medicine; Mat. Exts-17, 18 and 19 are the three mobile handsets seized on 08.12.2017; Mat. Ext-20 and Mat. Ext-21 are the hand-written notes which were recovered and seized in his presence from the house of Gobind Singhal on 08.12.2017; Mat. Ext-22 is the plastic bottle containing kerosene oil and Mat. Ext-23 is the match box. PW-3 has deposed that Mat. Exts-9 to 23 had been seized by the police corresponding to MR No.300/17. During his cross-examination, the testimony of this witness could not be shaken.

16. PW-4, Hemen Sarma is another seizure witness. He is not related to the victim or the accused person. PW-4 has stated that he is a businessman by profession. He has confirmed that he had accompanied the police to the house of Gobind Singhal on 08.12.2017 at about 2:00 p.m. Accused Gobind Singhal had also accompanied the police party. Upon entering the house they were taken to the toilet. In the toilet there were blood stains everywhere in the ceramic tiles. He learnt that Sweta Agarwal was killed. Police had recovered some articles from inside the house on being shown by the accuse Gobind Singhal. Such articles were seized vide seizure-list Ext-3 which contains his signature Ext-3(2). This witness has further stated that Mat. Ext-17, 18 and 19 were seized by the police in his presence. Police also seized Mat. Exts-20 and 21 in his presence which had hand-written notes on a napkin of Cafe Coffee Day. On the next day i.e. on 09.12.2017 at around 10:00/10:30 a.m. they were again asked to accompany the police to the house of Gobind Singhal. Accused Gobind Singhal had also accompanied the police party. Dhananjay (PW-3) was also there. There were one or two other persons also whose name he could not recollect. On that day, the police had seized about 5 articles from the house of the accused vide seizure-list Ext-4

which bears his signature Ext-4(2). This witness has stated that on that day, police had seized one motorcycle with blood stains near the rear seat. Police had also seized one knife from inside the house. Mat. Ext-5 is the said knife. The nylon rope was also seized by the police. PW-4 has further deposed that according to accused Gobind Singhal, the dead body was tied with the motorcycle with that rope. So far he could recollect, the rope was found inside the house. Mat. Ext-6 is the said nylon rope. The witness has stated that police also recovered and seized one pair of lady shoes vide Mat. Ext-7 and also seized floor cleaning cloth with blood stains. Accused Gobind Singhal told the police that on that day the victim girl had accompanied him to the house and there she was offered tea. During the consumption of tea, a quarrel broke out between them and then, being enraged, he pushed the girl towards the wall. The victim girl received injury at the back of her head and she became unconscious. Blood was oozing out and seeing the same he became nervous and put her inside a bag and thereafter tied the same with his motorcycle. He then took the body near the R.G. Baruah College at Fatashil Ambari and dumped the same in the dustbin. But subsequently he again brought back the body to his house. After bringing the body to the house had had cleared the body, removed the blood stains. According to PW-4, accused Gobind Singhal had also said that he threw the bag over the boundary fencing into Bharalu river. However, the accused had told that he did not set the body on fire and the body was set on fire near R.G.Baruah College near the dustbin. He in fact told that the dustbin was set on fire by someone but on being led by Gobind Singhal when they went there they did not find any signs of burning of garbage at that place.

17. During his cross-examination, this witness had remained firm that the seizures were made in his presence and that on 08.12.2017 accused Gobind Singhal had led them near R. G. Baruah College at around 6:00 p.m. to the place where he had first dumped the dead body. When they went near the R.G. Baruah College, the Officer-in-Charge, Bharalumukh P.S. was there along with other police personnel and one Mr. Pradeep Khandelwal was also there. Gobind Singhal told them that he took the dead body inside a bag and carried it in his motorcycle near R.G. Baruah College, dumped the body in the dustbin and again he brought the same back in the bag to his house. Thereafter, he threw the bag to Bharalu river which was flowing by the side of his house.

18. PW-5, Sri Pankaj Kumar is a barber by profession and has a saloon at the J. P. Agarwala Road where the house of the accused persons are situated. PW-5 has deposed that on 04.02.2017, at about 3:00 p.m. when he was coming back to his saloon after taking lunch, he saw accused Gobind tying up a big bag to his motorcycle. He had seen blood was oozing out from the bag and brought it to the notice of accused Gobind and asked him as to why blood was coming out from the bag. In reply, Gobind told him that it was not blood but some colour. PW-5 has further stated that accused Gobind used to reside in that house along with his mother, father and sister. By identifying accused Gobind Singhal in the dock PW-5 has also stated that the mother and sister of the accused were also present in the court. In his cross-examination, the testimony of this witness could not be shaken. PW-5 had, however, stated that the bag was tied in a horizontal position and since he saw from a distance he could not say the exact measurement but it appeared to him to be about 1 ½ /2

ft.

19. PW-6, Sri Pradeep Khandelwal is a transporter by profession. He has deposed that on 04.12.2017, at around 5:00/5:30 p.m. in the evening, he was going to a nearby PG to meet the daughter of his friend. At that time, he saw crowd in front of House No.119 of J.P. Agarwala Road. On seeing the crowd he stopped there and asked the people as to what had happened. He had heard them only saying that someone has been killed by burning. By that time police came and took the names of people gathered there and asked others to leave. So he had left the place. Police noted his mobile number. On 09.12.2017 he had received a phone call from the Bharalumukh P.S. at about 8:30/9:00 a.m. The police asked him to go to the Police Station and he reached there at about 9:30 a.m. On reaching there he saw one boy present who was accused Gobind Singhal and he was present in court. The police said that they would go to the house of the boy and asked him to accompany them. He had also seen Dhananjay and Hemen Sarma who he had met on the road. Thereafter, they accompanied the police to the house of Gobind Singhal. This witness has corroborated the evidence adduced by PWs-3 and 4 regarding the seizure made by the police vide seizure-list Ext-4 and has further stated that on the previous day also the police took him to Fatashil Ambari near a College and took his assistance to speak to the accused Gobind Singhal in his own language. Accused Gobind Singhal had also accompanied the police team. Upon reaching there accused Gobind Singhal had told him that he thought that the victim was dead and accordingly he had brought the dead body in his motorcycle and dumped it in the dustbin near the College but later on, on a rethinking he took it back to his house. The testimony of this

witness also could not be shaken during his cross-examination.

20. PW-7, Smti Sunita Agarwal is the mother of the victim. She has also deposed that on 04.12.2017 her daughter had gone to K.C. Das Commerce College to appear on the 1st day of her 5th Semester B. Com. Examination. She went out at around 8:30 a.m. Sweta used to come back around 1:00/1:30 p.m. but on that day she did not return. She had tried to contact her husband but since his phone was not responding she contacted her brother-in-law PW-1 and told him that Sweta did not return home in the usual time. This witness has also corroborated the version given by PWs-1 and 2 by saying that her husband had tried to contact Sweta and searched for her in the C.A. Firm of O. P. Chandak but could not find her. She was also continuously trying to contact her daughter over phone but nobody responded to her phone call. After some time, her husband came back to the house and told her that Sweta's mobile was found in switched off mode. While they were searching for Sweta, one phone call came from a lady and she informed her that her daughter was lying dead completely burnt near the Sluice Gate, at J.P. Agarwala Road, House No.119. She intimated the same to her husband over phone and her brother-in-law, Jagdish Agarwal (PW-1) had also called her husband over phone giving him the same information asking him to proceed to J. P. Agarwala Road. On reaching the house she saw that the dead body of her daughter was being brought out from the house. She had seen that the lower garments of her daughter was not there. In the forehead above the eyes, there were injury mark and injury mark was also there in her neck. There were injury marks in her legs also. Both the legs carried burn injuries and there

were some scratches. Burn injuries were there even on the face and the side of the body. She came to know from her husband that the dead body of her daughter was lying in the toilet above the Comode. Her husband (PW-2) told her that the three accused persons viz., Kamala Devi Singhal, Bhavani Singhal and Gobind Singhal had killed her daughter. Her husband told her to go back home as he would go to the Police Station. PW-7 has also stated that as told by her husband, the accused persons had told him that they would not be able to do anything to them. Thereafter, she returned home in an auto rickshaw. In her cross-examination, PW-7 has replied that she did not know accused Gobind Singhal from before and she did not know if the application for her PAN Card was filled up by Gobind Singhal. As a matter of fact, this witness had denied any knowledge either about accused Gobind Singhal or the alleged love affair between Gobind Singhal and Sweta Agarwal. She has also denied the suggestion that Gobind Singhal was not ready to marry her daughter and that is the reason why her daughter had committed suicide.

21. PW-8, Vijay Kumar Agarwal is another uncle of the victim. He is the cousin of PW-2. This witness has deposed that on 27.12.2017 at about 7:00/7:30 p.m. when he was sitting in the house of his cousin at Manipuri Basti at that time the I.O. of the case along with one Rosy Kalita, Addl. DCP, Crime Branch and one more junior Officer came to their house. They collected and seized one College Exercise Book of deceased Sweta Agarwal and her resume for conducting investigation vide seizure-list Ext-7 which contains his signature. Mat. Ext-25 is the exercise book seized by the police.

22. The post-mortem examination on the dead body of the deceased was conducted on 05.12.2017 in the Department of Forensic Medicine, GMCH at around 2:20 p.m. During the post-mortem examination, three doctors viz., Dr. Raktim Pratim Tamuli, Dr. Himangshu Das and Dr. Mrinal Haloi were present. These three doctors had been examined by the prosecution as PWs-9, 10 and 11 respectively. The doctors have proved the post-mortem report Ext-10. According to the post-mortem report, the following injuries were found in the dead body :-

“1. Burn injury of dermo epidermal depth were present at places over the body. Burnt areas were separated from normal healthy tissues by a line of redness at places and at places it was absent. (mixed ante-mortem and post-mortem injuries). Burn injuries were present over following parts –

- (a) Right side of the face.*
- (b) Front of neck.*
- (c) Front of chest and abdomen.*
- (d) Perinium.*
- (e) Back of abdomen.*
- (f) Front of right arm.*
- (g) Back of right forearm.*
- (h) Front of both thighs and both legs.*

2. A ligature mark of size 28cm x 2cm was present just below the level of thyroid cartilage which was continuous and horizontal. On dissection, neck tissues underneath the ligature mark were pale.

3. A fresh laceration of size 2.3cm x 0.4cm x bone deep was present at the lateral end of left eye brow which lies 7cm left of midline. Margins were found contused.

4. Red coloured contusion of size 10cm x 4cm was present around left eye and also at lateral end of left eye over left cheek; multiple scratch abrasions were present over the contusion.
5. Incised wound of size 4cm x 0.5cm x skin deep was present over right side of front of neck which lies 10cm below the level of right ear and 5.5cm right of midline.
6. Incised wound of size 2.3cm x 0.8cm x skin and subcutaneous tissue deep was present at the medial end of Injury No.5 which lies 9cm below the level of right ear and 3cm right of midline. Direction of the wound was right to left, above to downward and front to back.
7. Incised wound of size 7.5cm x 4.5cm x vertebrae deep was present over right side of front of neck which lies 1.2 cm below the level of injury No.6 and 3cm above suprasternal notch. Underneath, neck muscles, jugular vessels, part of thyroid cartilage were cut. C5 vertebral body was also partially cut.
8. Red coloured abraded contusion of size 4cm x 2cm was present over front of left thigh which lies 13cm above the level of left knee.
9. Graze abrasion of size 3cm x 2cm was present over front of right knee (fresh).
10. Scalp on dissection, showed that contusion over left parital eminence.

NB-

1. Two numbers of vaginal smears were prepared on glass slides, examination of which did not show presence of any spermatozoa and gonococci.
2. Uterus was put in 10% formal saline and sent to the department of Pathology, GMCH to rule out pregnancy.
3. Blood, viscera and relevant paper documents were sealed, packed, labeled and handed over to escorting police for

chemical analysis at Directorate of Forensic Science, Kahilipara.

4. *Videography of the post mortem examination was done as per request of the IO by Mr. Biki Basak, memory card of which was handed over to the escorting police in a sealed envelope."*

The PW-9 had opined as follows :-

“Opinion-

Death was due to haemorrhage and shock following incised injury sustained over the neck which was caused by sharp cutting weapon and was homicidal in nature. Injury No.2, 4, 8 and 9 as mentioned herein above, scalp contusion described were caused by blunt force impact. Injury No.5, 6 and 7 as aforesaid were caused by sharp cutting weapon during life and were homicidal in nature.

1. *There was no evidence of recent sexual intercourse detected on her person at the time of examination.*
2. *No evidence of violation of sexual offence.*
3. *Total area of body surface burnt approximately 40% - 50% and both ante mortem and post mortem.*
4. *No evidence of pregnancy detected at the time of autopsy examination, however, uterus was preserved and sent for histopathological examination.*
5. *Injuries as described in the text and time since death was 12-24 hrs approximately.*
6. *Kerosene like smell was present over the wearing garment and body.*

The injuries, especially incised injury No.7 and the ligature mark described over the neck, the burn injury described can also cause death even if proper treatment was provided."

The opinion of the other two doctors viz., PWs-10 and 11 are also on similar lines.

23. PW-12, Sanjay Kumar Kabra is the seizure witness of Mat. Ext-25. PW-13, Damodar Barman is one of the inquest witnesses. PW-14, Ponjit Dowarah is the ACP of Jalukbari Police Station in whose presence specimen signature of accused Gobind Singhal was obtained vide Ext-11 which contains his signature. PW-14 has proved Ext-12 which is the specimen signature of Gobind Singhal.

24. PW-15, Sri Sankar Chandra Rabha was the Junior Scientific Officer on duty at the Directorate of Forensic Science, Assam on 20.12.2017 when he had received a parcel sent through the Director, DFS, Kahilipara for serological examination. PW-15 has stated that the parcel was in a sealed carton box covered with cloth and on opening the box he had found four separate packets consisting six exhibits, the description of which are as follows :-

“Description of articles –

1. *2 ml blood sample of victim girl in a EDTA vial marked as Ext.A(1). My examination no.Sero 3904/A.*
2. *Blood collection from the motor cycle in cotton gauge bearing registration No.AS01 BT 6977 of accused Gobind Singhal, marked as Ext.B. My examination No.Sero 3904/B.*
3. *Blood collection from Place of Occurrence, the toilet of the accused person, in a cotton gauge, marked as Ext.C. My examination No.Sero 3904/C.*
4. *One yellow colour plastic rope contained stain of suspected blood, marked as Ext.D. My examination No.Sero 3904/D.*
5. *One torn and half burnt cloth contains stain of suspected blood.*

The exhibit was found in wet condition and growth of fungus, marked as Ext.E. My examination No.Sero 3904/E.

6. *One black colour jeans long pant contains stain of suspected blood, marked as Ext.F. My examination No.Sero 3904/F."*

25. PW-15 has stated that he had also visited the scene of crime and during his visit he had collected blood stains from the motor cycle and handed over the same to the I.O. After careful examination of the specimen he found the following results :-

"1. Ext.No.Sero 3904/A, Sero 3904/C, Sero 3904/D and Sero 3904/F gave positive test for human blood of group B.

1. Ext.No. Sero 3904/B gave positive test for human blood only. But its group could not be determined due to insufficient test material.

2. Ext. No.Sero 3904/E gave negative test for blood."

26. PW-16, Sri Umesh Chandra Medhi is a resident of J. P. Agarwala Road and is one of the seizure witnesses. PW-16 has stated that on 07.12.2017 when he was returning home from Chandmari he saw a number of vehicles were parked in front of the house of P. C. Mazumder where Gobind Singhal reside. His house is just after the house of P.C. Mazumder. Two police persons came to him and requested him to go there and as he went to the house of P.C. Mazumder the senior police officer told him that they would open the lock of the house in presence of local persons and requested him to be a witness. Thereafter, in his presence, police had opened the lock and entered the room but he did not enter the room and waited outside. After sometime the police had seized some articles vide Ext-19 which contains his signature Ext-19(1). During his cross-examination, PW-16 has stated that about 15/20 persons including the 8/9 police personnel and media persons had entered the room along

with general public but he could not remember who those persons were.

27. PW-17, Dr. Rupali Bhattacharya was another Scientific Officer on duty at the Directorate of Forensic Science Laboratory (DFSL), Kahilipara and she has deposed that she had received a plastic bottle with liquid for examination in connection with Bharalumukh P.S. Case No.805/2017. She had received one sealed carton box with clothed cover containing one plastic bottle having 70 ml blue colour liquid marked as Ext-B. In the laboratory they had marked it as Ext.C-92/17 which gave positive test for kerosene oil which is inflammable. Mat. Ext-22 is the said bottle which contained liquid; Mat. Ext-22(1) is the Forensic tag and Ext-22(2) is her initials and seal. During her cross-examination, PW-17 has stated that she had received 70 ml of kerosene and on the date of her deposition about 50 ml was left in the bottle. The rest was used by her for examination.

28. Mr. Atang Singson is another Scientific Officer posted at the DFSL, Kahilipara, who was examined as PW-18. PW-18 has stated that he had received a parcel consisting of one exhibit enclosed in a sealed paper envelope. The parcel was received from a messenger in the office of the Director of Forensic Science on 21.12.2017. According to PW-18, the description of the articles are as follows :-

“One sealed envelope containing hair strands, suspected to belong to human, marked as Ext.A and we marked it in our laboratory as Bio.3166. After physical, ultra structure and histological examination, it was revealed that the hair under Ext.Bio.3166 is scalp hair of human being. I submitted the report on 03.01.2018. Ext.22 is my report and Ext.22(1) is my signature with seal. The report was forwarded to DCP, Crime vide forwarding letter dated 04.01.2018. Ext.23 is the forwarding letter and Ext.23(1) is the signature of Sri G. N. Deka, Joint

Director, DFS, Khilipara."

29. PW-19, Sri Bapukan Choudhury is a also a Scientific Assistant posted at the DFSL, Kahilipara, who has deposed that on 21.12.2017 the office of the DFS, Kahilipara had received a parcel for examination and opinion. The parcel was in sealed envelope and was received in connection with Bharalumukh P.S. Case No.805/17. After opening the sealed envelope, he had found one long note book (Mat. Ext-14), two laminated sheets (Mat. Exts-20 and 21) and one sheet containing specimen hand-writing and signature of accused Gobind Singhal (Ext-11). After going through the Material exhibits he went through the forwarding letter to know about the queries made by the police. The queries made by the police and the opinion of PW-19, as deposed by him before the Court, are extracted herein below for ready reference :-

"The queries were :

- i. Whether the handwriting of Ext.A, B and C match with each other or not?*
- ii. Any other point which can help in the investigation?*

In Material Ext.14 (long exercise book), I marked Ext.A1 to A15 as the admitted handwriting of accused Gobind Singhal. I compared those admitted handwriting with Ext.11 and Material Ext.20 and 21.

Opinion

- 1. The document in connection with Bharalumukh P.S. Case No.805/17 u/s 120(B)/302/376 IPC have been carefully and thoroughly examined and comparing disputed writings with the supplied standard writings and signatures in all aspects of handwriting identification and detection of forgery with necessary scientific aids like stereozoom microscope, Docucenter 3000 and VSC 6000 available in this Directorate.*

2. *The person who wrote the blue enclosed writings and signatures stamped and marked S1 to S8 and A1 to A15 also wrote the red enclosed writings similarly stamped and marked as Q1 to Q3"*

This witness has proved his report Ext-24 by identifying his signature and has also confirmed that Ext-25 is the forwarding letter. Mat. Ext-Q2 and Q3 were marked Mat. Ext-20(1) and Mat. Ext-Q1 was marked as Mat. Ext-21(1).

30. PW-20, Sri Sudip Choudhury had conducted the investigation in connection with Bharalumukh P.S. Case No.805/2017. This witness has deposed before the court the steps taken by him during investigation of the case. He has also deposed the manner in which the seizure of various articles and the material exhibits as earlier deposed by PWs-3 and 4 were made. The I.O. has further deposed that on 15.12.2017 the seized mobile phones were sent to DFS, Kahilipara for examination. He had also sent the extracts of the whatsapp message and deleted whatsapp message but nothing incriminating was found. During investigation he had collected specimen handwriting and signature of accused Gobind Singhal in presence of ACP, Jalukbari Division viz., Sri Pranjit Duwarah. Mat. Exts-20 and 21 were those seized articles. PW-20 has also deposed that in Mat. Ext-20 it was written in English alphabet but in Hindi language as follows :-

ij) rehna hai ya nahin? For the final time soch lo. Baad mei ye nahi hai kit um bono ii) if you don't want me.... Say it now. lii) if you don't want me to get close to you, clear it now. I don't want you to get any other thoughts after getting close cause otherwise you will regret later ... that's it."

The I.O. has further stated that in Mat. Ext-21 it was written that "I will surrender myself to you on bed."

31. PW-20 has further deposed that in order to verify the handwriting, he had sent Mat. Exts-20 and 21 along with long exercise book of accused Gobind Singhal (Mat. Ext-14) and his specimen handwriting and signature to the FSL, Kahilipara and the FSL report dated 05.01.2018 indicated that the results were positive and match the handwriting of Gobind Singhal. PW-20 has also deposed that he had investigated the case from 04.12.2017 till the filing of the charge-sheet and during investigation he had found that it was not a sudden occurrence but a case of pre-planned murder. All the three accused persons viz., Gobind Singhal, Kamala Devi Singhal and Bhavani Singhal had conspired with each other to commit the murder of Sweta Agarwal. On the date of occurrence Gobind Singhal himself had brought Sweta Agarwal to his house from her College i.e. K. C. Das Commerce College in his motor cycle. At around 1:00 p.m. they reached the house of Gobind Singhal and thereafter, Gobind Singhal killed Sweta Agarwal with the help of the other two accused persons, he packed the dead body in a sack and took the same in his motor cycle to the R. G. Baruah College at Fatashil. Earlier the plan was to dump the body there but subsequently the mother of the accused viz., Kamala Devi told him over phone not to dump the body as otherwise it would become a clear case of murder. As per her instruction, Gobind Singhal brought back the dead body to the house of the accused to show that it was a case of suicide. The I.O. has further stated that all the three accused persons had sprinkled kerosene over the dead body of the victim and set her on fire. Not only that, the mother of accused Gobind had also informed the mother of Sweta Agarwal that her daughter had committed suicide. However, according to PW-20, it cannot be a case of suicide since the dead body had as many as 13 injuries as per the post-

mortem report. He has stated that when he first saw the dead body in the toilet it was not in normal shape but the body was quizzed. There was also attempt to destroy the evidence after commission of murder. The accused persons first tried to remove the dead body and thereafter put the same on fire; they washed the toilet and poured water on the floor so as to wash the blood stains. However, the belongings of the deceased were found in the house of the accused persons. After completion of investigation, he had found sufficient materials against all the three accused persons and submitted charge-sheet against them under Sections 120(B)/302/201 of the IPC. Ext-28 is the charge-sheet which bears his signature.

32. During cross-examination of the I.O. his testimony could not be shaken. However, PW-20 had admitted that he did not visit the campus of K.C. Das Commerce College wherefrom accused Gobind Singhal had reportedly lifted deceased Sweta Agarwal in his motor bike. He also did not get any witness who had heard Kamala Devi Singhal speaking to Gobind Singhal asking him to come back as otherwise it would turn into a case of murder. PW-20 had also admitted that he had collected the Call Detail Record (CDR) but did not exhibit the same in this case nor did he examine the friends of Sweta Agarwal to find out whether she consumes tea or not. The I.O. has further admitted that he did not seize any glass as mentioned in paragraph 4 of the charge-sheet. He did not find any material to show that the dead body of Sweta Agarwal was first dumped into the dustbin and again it was brought back. PW-20 had stated that they had made searches in the bank of river Bharalu but did not make any search inside the river nor did they call the NDRF. They also did not use sniffer dog during investigation.

33. From the evidence adduced by the prosecution side it is apparent that PWs-1, 2, 5, 6 and 7 are the material witnesses in this case. The remaining witnesses are either seizure/inquest witnesses or the official witnesses who had taken part in investigation, scientific examination of the specimen and in conducting post-mortem examination on the dead body. Taking note of the evidence brought on record by the prosecution side, the learned trial court had convicted the accused persons under Sections 120(B)/302/201 of the IPC and sentenced them as aforesaid.

34. In so far as the charge of criminal conspiracy brought against the A-2 and A-3 u/s 120-B of IPC is concerned, we find that there is not even an iota of evidence available on record to implicate the accused A-2 and A-3 in the occurrence. The only evidence available against A-2 and A-3 was to the effect that they were present inside the house along with A-1 when the PW-1 and PW-2 had reached the house and had seen the body of the deceased lying inside the toilet of their house in a half burnt condition without any clothes in the lower part of the body. In so far as A-2 Smt. Kamala Devi Singhal is concerned, PW-1 and PW-7 have stated that it was A-2 who had called them up and informed about the death of the deceased and by providing them the residential address of the accused, she had called them to come there. Although the PWs-1 and 2 had deposed that the lady A-2 had told them that all the three of them had killed the deceased, yet, the said fact is neither mentioned in the ejahar nor was any such statement made by the PWs-1 and 2 before the I.O. Therefore, these are material improvements in the testimony of PWs 1 and 2 and hence, such statement of these witnesses is not found to be believable.

35. What would also be significant to note here-in that it has come out from the evidence adduced by the prosecution witnesses that it was A-2 who had not only informed the family members of the victim about the incident and had given them her residential address asking them to come there but she was the one who, along with the A-3 had called the police and the ambulance. If the A-2 and A-3 had any role to play in the incident, then in all likelihood they would have tried to remove the body of the victim rather than calling the police. Under the circumstance, it would be difficult to believe that A-2 would make an extra-judicial confession, that too, before the family members of the victim, admitting her guilt. As a matter of fact, if the A-2 was really keen on making a confession, she could have either said so before the police or before any other independent witness instead of making such a statement before the family members of the victim. Therefore, the alleged extra-judicial confession of A-2 brought on record by the PWs-1 and 2 is not found to be credible enough for being relied upon by this court. There is clear improvement in the version of PWs-1 and 2 in far as the extrajudicial confession of A-2 is concerned and therefore, the same is not found to be believable.

36. It is no doubt correct that the accused persons have admitted the relationship of A-1 with the victim Sweta Agarwal and the fact that the body of the victim was found inside the toilet of the accused persons with burn and other injuries is also not in dispute. An attempt has been made by the A-2 and A-3 to project that it was a case of suicide. However, the post-mortem report and the ocular evidence of PWs-1, 2, 7 and 20 belies such a projection and clearly establishes the fact that the victim Sweta Agarwal had suffered homicidal death. The question is whether the evidence on

record is sufficient to establish the charge brought against A-1, A-2 and A-3 beyond reasonable doubt. However, from a careful analysis of the evidence on record, we find that there is nothing to show that the accused persons had hatched a criminal conspiracy to murder the deceased Sweta Agarwal in pre-planned manner. Therefore, we are of the unhesitant opinion that the prosecution has failed to establish the charge brought against the accused persons under section 120-B of the IPC.

37. In so far as the charge brought under sections 302/ 201 of the IPC is concerned, here also, there is no evidence to establish that the accused A-2 and A-3 had any direct role to play in committing the murder of Sweta Agarwal. There is also no material brought on record by the prosecution to indicate that the A-2 and A-3 had destroyed any evidence to screen the actual offender. There is also nothing to show that the accused persons had acted with a common intention to murder the deceased and that there was meeting of mind between the accused persons to commit any offence chargeable under sections 302/201 IPC so as to convict them with the assistance of section 34 IPC. The learned trial court has also not individually convicted the A-2 and A-3 under Section 302/ 201 of the IPC by ascribing specific roles to them in commissioning offence under the said penal provisions. Therefore, we are, of the considered opinion that the prosecution has failed to prove the charge brought against A-2 and A-3 under sections 302 / 201 of IPC by adducing circumstantial evidence. The mere fact that the A-2 and A-3 were present inside the house when the body of the victim was seen by the PWs-1 and 2 cannot be the sole basis to convict them under section 302/201 of IPC. The above observations may not,

however, be true in case of the other accused i.e. A-1.

38. Evidence brought on record *prima facie* goes to show that the accused A-1 and the victim were known to each other and had a love affair between them. There is also evidence available on record to indicate that on the day of the occurrence, around the time when the incident took place, the A-1 and the victim were together. PW-4 is an independent witness and he has brought on record the extra-judicial confession of A-1. From the testimony of A-1, it is seen that the victim had accompanied the A-1 to his house and later on, there was a quarrel between them which had led to the unfortunate incident resulting in the death of the victim. Her homicidal death has been established by the medical evidence. PW-5 had seen the A-1 tie a sack to his motor cycle from which, blood like substance was seen to be dripping. The evidence of PW-5 apparently matches the testimony of PW-4 in so far as the extrajudicial confession of the accused A-1 is concerned. There is evidence to show that the body of the victim was found in the house of the A-1 and he was also present in his house on the day of the occurrence. The IO (PW-20) has deposed about the seizure of several incriminating materials from the house of the victim and the seizure witness have also been examined to prove the seizure lists. There is credible forensic evidence available on record, which connects the A-1 with some of the incriminating materials seized by the I.O. Therefore, there are sufficient materials available on record which *prima facie* goes to show that the accused A-1 had a role to play in the incident. However, what actually happened inside the house of the accused on the day of the incident and how the victim had reached there, are facts, which are within the special knowledge of the accused (A-1) and therefore,

the prosecution cannot be expected to lead evidence to prove those facts. Notwithstanding the same, in his statement recorded under section 313 Cr.P.C, the A-1 has failed to offer any plausible explanation as to the circumstances under which the victim had reached his house or how her body was found in his house in an injured condition. The failure on the part of the A-1 to offer plausible explanation, viewed in the light of the evidence available on record, is capable of being viewed as an additional link in the chain of circumstances proved against the accused.

39. During the course of hearing the appeals and the Death Sentence Reference Case, Dr. Choudhury has vociferously argued that the prosecution has failed prove the charges brought against the A-1 by adducing circumstantial evidence. However, submits Dr. Choudhury, even if it is held otherwise, even then, proper opportunity was not given to the A-1 to explain his stand during his examination under section 313 Cr.P.C. causing serious prejudice to the interest of his client. According to the learned counsel for the appellants, unless the accused is afforded a proper opportunity to offer explanation, it cannot be said that A-1 has failed to discharge his burden under section 106 of the Evidence Act.

40. The above argument of the learned counsel for the A-1 has been premised on the grounds that the learned Sessions Judge has not only failed to put all the incriminating circumstances before the accused person during his examination under section 313 Cr.P.C but the questions were even put to the accused in the form of interrogatories, which were very long and arduous and therefore, beyond the comprehension of his client so as to elicit a proper response.

41. In order to examine the aforesaid submission made by the learned counsel for the appellants, we have gone through the statement of the accused (A-1) recorded by the learned Sessions Judge under Section 313 Cr.P.C. and are surprised to note that not only long and bulky questions, running into several hundreds of words, were put to the accused A-1 during his examination u/s 313 Cr.P.C but even the evidence adduced by PW-12 was not at all put to the accused although, it appears that the learned Sessions Judge had relied upon the evidence adduced by PW-12 for convicting the A-1. It also appears that the replies of the accused elicited while examining him under Section 313 Cr.P.C. were also not properly dealt with by the learned trial Judge in the impugned judgment. Ordinarily, we would not burden this judgment by quoting the questions put by the learned trial Judge and the reply of the accused recorded under Section 313 Cr.P.C. However, in order to evaluate the question of prejudice, if any, caused to the accused and if so, to assess the degree of such prejudice, we deem it appropriate to reproduce the statement of accused A-1 recorded under Section 313 Cr.P.C. herein under :-

“Form of Recording Examination of Accused

Examination of Accused person

(Section 313 Cr.P.C.)

Examination of accused Shri Govind Singhal, aged about 22 years, of Sessions Case No. 69 of 2018, recorded by Shri A. Chakrabarty, Sessions Judge, Kamrup (M), Guwahati on this the 12th day of February, 2019, in the English language.

My name Govind Singhal, Son of Shri Radheshyam Singhal, Occupation – Student of Chartered Accountancy, resident of House No. 119, J.P. Agarwala

Road, Sluice Gate, Police Station- Bharalumukh, District: Kamrup (M), Guwahati.

Question No. 1. - On 04.12.2017, in between 9:45 am and 5:30 pm, in the House No. 119 at J.P. Agarwala Road, under Bharalumukh P.S., you entered into a conspiracy with the co-accused Smt. Kamala Devi Singhal and Smt. Bhabani Singhal, who happen to be your mother and sister respectively, to commit an illegal act, that is, to murder Sweta Agarwal and pursuant to the said conspiracy, intentionally caused the death of Sweta Agarwal by sharp cutting weapon and set her on fire while she was still alive. What do you have to say on the same?

Answer:- These are false and baseless allegations. I am innocent.

Question No. 2:- After committing the murder of Sweta Agarwal, you tried to conceal the evidence of the crime. What do you have to say on the same?

Answer:- This is a false and baseless allegation. I am innocent.

Question No. 3:- PW-1 Jagdish Agarwal has identified you and the co-accused Smt. Kamala Devi Singhal and Smt. Bhabani Singhal as the persons who had committed the murder of Sweta Agarwal. He has deposed that you had confessed before him that you and the co-accused Govind Singhal and Smt. Bhavani Singhal had committed the murder of Sweta Agarwal. What do you have to say on his said deposition?

Answer:- He has deposed falsely and tried to colour a suicidal case into a murder case.

Question No. 4:- PW-1 Jagdish Agarwal has deposed that the deceased Sweta Agarwal was his niece. On 04.12.2017, at around 8:30 am, Sweta Agarwal went to K.C. Das Commerce College for appearing in an examination. Sweta Agarwal used to return home at around 1:00/ 1:30 pm. But, on 04.12.2017, when Sweta Agarwal did not return home till 2:00 pm, his sister-in-law Sunita Agarwal called him over phone and informed him about the same. She also

tried to contact Sweta Agarwal over phone. Her mobile was ringing but no one picked up the mobile. His sister-in-law was anxious and he consoled her by saying that after the examination probably Sweta Agarwal was with her friends and the mobile must be inside the bag. Sweta Agarwal was also doing CA internship with O.P. Chandak. She used to go to his chamber regularly. He thought that she might have gone to the chamber directly and tried to contact the Chamber over phone. But, he received the reply that she had not gone there also. At around 3:00/ 3:30 pm, when he again tried to contact Sweta Agarwal on her phone, her phone was found switched off. Thereafter, they started searching for her on probable locations. He also went to search her in the nearby areas of K.C. Das Commerce College at Chatribari, near Goshala. But, he did not find her. At around 5:00/ 5:30 pm, he received a phone call from a lady. The lady asked him whether he is a relation of Sweta Agarwal and when he replied in the affirmative, she told him that his niece Sweta had died due to burning in her house. He asked the lady how she had gone to her house and where her house was situated. The lady gave the address of her house as House No. 119 at J.P. Agarwala Path, near Bharalu Sluice Gate. Hearing the same, he became puzzled and could not think anything properly and without informing the member of his family, rushed to the given address. On his way, he received another call from his niece Payal Bedia informing him that similar phone call was received by Sunita Agarwal regarding the death of Sweta. Then he informed his elder brother Om Prakash Agarwal about the information he received from the unknown lady and also asked him to proceed to the house No. 119. As soon as he turned towards J.P. Agarwala Path, he saw a gathering in front of a house. He asked the people what had happened there and then a lady came out and took him inside the house. As soon as he entered into the room, the lady showed him the dead body of Sweta Agarwal in a toilet. At that time, one boy and one girl were also present inside the house. He enquired from the lady how she had come to that house and to whom the house belonged. By that time, his elder brother Om

Prakash Agarwal also arrived there. When he went near Sweta, he saw that by the side of her neck, there was cut injuries and blood was oozing out. He also saw injury marks at her forehead and near her eyes. In her lower portion, there was no cloth. The lady, the girl and the man are present in the court in the dock and he can easily identify them. Again he questioned that lady that Sweta went out for appearing in the examination and how she had gone there and who had killed her. In reply the lady told him that they had killed her and also told him that they had already called an ambulance and directed him to remove the body. She also indicated the body and in a threatening tune, told him that the father of the boy was outside and he did not know him. As they were questioning one after another, one person came from outside and asked them why they were shouting and creating noise. In the meantime, a police patrol van also arrived there. Police personnel instructed him to lodge an FIR at the Police Station. Ext. 1 is the FIR and Ext. 1(1) is my signature. Ext. 2 is the printed form of the FIR and Ext. 2(1) is his signature. The dead body was taken to the Bharalumukh Police Station by the ambulance and he accompanied the dead body. After lodging the FIR, he was told that the dead body would be send to the GMCH Morgue and Postmortem examination would be done on the next morning and accordingly, he was instructed to go to the GMCH on the next morning at around 9:00/ 10:00 am. His niece stood 1st in the HSLC examination and also in the H.S. 2nd year. She was a brilliant student and never considered any other thing, save and except her study. What do you have to say on his depositions?

Answer:- He has deposed falsely to make out a false case against me.

Question No. 5:- PW-2 Om Prakash Agarwal deposed that the deceased Sweta Agarwal was his daughter. She was a student of K.C. Das Commerce College, Guwahati and was studying in B.Com, 5th Semester. On 04.12.2017, at around 8:30 am, she went to the college for appearing in an examination. As she did not return home after the examination, he tried to contact her over phone, but

did not get any response. He also tried to contact Mr. O.P. Chandak, Chartered Accountant, in whose office/ chamber, she used to work for Articleship of Chartered Accountant. But, he came to know that Sweta did not go to the chamber on that day. When he tried to contact her again at around 3:30 pm, he found that her mobile phone was switched off. At around 5:30/ 6:00 pm, a lady called his wife and told her that his daughter had died due to burning and was lying near the Sluice Gate at J.P. Agarwal Road. In the meantime, another phone call came from his brother and he also told him that he had received a phone call from a lady that his daughter had died by burning and asked him to go to House No. 119, J.P. Agarwal Road, Bharalumukh. He then went to the J.P. Agarwal Road by his scooter. After reaching Bharalumukh, he enquired from the local people about J.P. Agarwal Road and they showed him a crowd and told him to go there. An ambulance was also going that direction and the local people told him to follow the ambulance. Accordingly, he went to the place. As he entered the house, he saw his brother Jagdish Prasad Agarwal there and asked him what had happened. He indicated towards the toilet and told him to see for himself. He saw his daughter was lying dead in the toilet. She had no cloth on the lower portion. She had a long cut injury on her neck, appeared to be caused by sharp object and had injury mark on her forehead. There was indication that her legs were kept tied and he could guess that she was first tied and thereafter set on fire. There were blood stains on the entire floor of the toilet. There were also marks of dragging the body from one place to another. He was totally puzzled. His brother started to inquire from the two ladies and one young man present there. He can still recognize the lady, the girl and the young man and they are present in the dock. They asked the lady who had killed his daughter and the lady replied that they had killed her. She also asked us to remove the dead body immediately. She told that she had already called the ambulance and further told them they did not know the father of the boy and also told them that they would not be able to do anything to

them. She also told that the father of the boy was not in the home and as such, asked them to leave early. After that, the police came. In the meantime he also called his wife to come there to see the dead body. After arrival of his wife, she started crying and was almost collapsed. Thereafter, they went to the Police Station. His brother accompanied the dead body and he went there in his bike. At the Police Station, they submitted an FIR. Earlier, he had deposed in this court partly and his examination was not completed because the Exhibits were not before the court. M.Ext. 4 is the hand bag of his daughter Sweta Agarwal. Inside the bag, one admit card of his daughter is there. M.Ext. 4(1) is the said Admit card. M.Ext. 4(2) is the board used by his daughter Sweta Agarwal. M.Ext. 4(3) is the calculator of his daughter Sweta Agarwal. M.Ext. 4(4) is the water bottle of his daughter Sweta Agarwal. M.Ext. 4(5) is the measuring scale of his daughter. M.Ext. 4(6) is the handkerchief of his daughter. M.Ext. 4(7) is the key ring with keys of his daughter. M.Ext. 4(8) is the wrist watch of his daughter Sweta Agarwal. M.Ext. 7 is the shoes of his daughter, which she used to wear often. M.Ext. 24 is the churni of his daughter Sweta Agarwal. She went out on that day, wearing the same. M.Ext. 25 is the exercise book of his daughter Sweta Agarwal with her handwriting. Before the dead body of his daughter was removed from the house, his wife had arrived and she asked him where her cloths below waist were. He had shown her the kerosene bottle and the match box and told her that they had burnt the same. M.Ext. 22 is the said kerosene bottle and M.Ext. 23 is the matchbox, which were there in the toilet by the side of the dead body. His daughter was a brilliant student and she stood first in the H.S. Commerce examination. She also passed HSLC examination with brilliant result. She was doing well in CA. She received awards from the Chief Minister and Governor of Assam. What do you have to say on his said depositions?

Answer:- He has deposed falsely to make out a false case against me.

Question No. 6:- PW-3 Dhananjay Roy has deposed that on 08.12.2017, he accompanied the Bharalumukh police to your house, which was under lock

and key. The Police opened the house and recovered one light green colour folding knife. Police also recovered one pair of ladies chapel, one pair of hand glove, a nylon rope and a piece of cloth used for cleaning the floor of the house and blood stains and seized the same vide Ext. 3 seizure list. Ext. 3(1) is his signature therein. Material Ext. 1 is the said seized folding knife. Material Ext. 2 is the black jeans pant. Material Ext. 3 is the hand gloves and Material Ext. 4 is the ladies handbag containing Admit Card of Sweta Agarwal, one call letter, a ladies watch, one key and one half-full plastic water bottle. Next day, at around 11:00 am, you led the police to your house. Sri Hemen Sarma, Secretary Old Ward No. 12, also accompanied them. On that day also, as per your disclosure, the police recovered another knife with aluminum handle. Police also recovered one Hero Splendor motorcycle. Police also recovered the nylon rope and ladies shoe of the victim Sweta Agarwal. Ext. 4 is the seizure list, by which the police seized five articles from your house. Ext. 4(1) is his signature. M.Ext. 5 corresponding to MR No. 299/17 is the knife. M.Ext. 6 is the yellow coloured nylon rope, corresponding to MR No. 299/17. M.Ext. 7 is the ladies shoes, corresponding to MR No. 299/17. M.Ext. 8 is the floor cleaning cloth, corresponding to MR No. 299/17. On 10.12.2017, also he was asked to visit Bharalumukh PS. On that day too, police visited your house, being led by you, at around 11:00/ 11:30 am. He was asked by the police to accompany them. The witness Gostu Biswas was also there. On that day, the police seized 10 articles in his presence. Ext. 5 is the seizure list and Ext. 5(1) is his signature. M.Ext. 9 is the pen drive corresponding to MR No. 300/17. M.Ext. 10 is the Lenovo Laptop, seized by police, corresponding to MR No. 300/17. M.Ext. 11 is the Compact Disk, corresponding to MR No. 300/17. M.Ext. 12 is the Levis money bag, corresponding to MR No. 300/17. M.Ext. 13 is the cash amount of Rs. 1,02,500/- corresponding to MR No. 300/17. M.Ext. 14 is the Long exercise book of Roll No. 0063, in your name, corresponding to MR No. 300/17. M.Ext. 15 is the non-judicial stamp paper, executed by Radhe Shyam Sigal regarding application for trade mark, corresponding to MR No. 300/17. M. Ext. 16 is the

packet of Rat Killer medicine, corresponding to MR No. 300/17. M.Ext. 17, M.Ext. 18 and M.Ext. 19 are three mobile handsets, seized on 08.12.2017, corresponding to MR No. 298/17. M.Ext. 20 and M.Ext. 21 are the hand written notes, recovered and seized in his presence, from your house on 08.12.2017, corresponding to MR No. 298/17. M.Ext. 22 is the plastic bottle containing kerosene oil. He saw the same in your house. One match box was also there and M.Ext. 23 is the said match box. What do you have to say on his said deposition?

Answer:- He has deposed falsely to make out a false case against me.

Question No. 7:- PW-4 Hemen Hazarika, Secretary of all the Nagarik Samity of the Ward No. 12, has deposed that he is businessman. He is also the Secretary of the Joint Committee of the five Nagarik Samities of five Wards under Bharalumukh PS. Secretary of the Nagarik Samity, on 08.12.2017, at around 02:00 pm, he accompanied the police party to your house. You were also accompanying the police party. After entering the house, you took them to the toilet. There were blood stains everywhere in the toilet. He learnt that Sweta Agarwal was killed there. Inside the house, you showed the police some articles and the police seized the same vide Ext. 3 seizure list. Ext. 3(2) is his signature. In my presence, M.Ext. 17. M.Ext. 18 and M.Ext. 19 mobile handsets were seized by the police. The police also seized the M.Ext. 3 hand gloves in his presence. The police also seized in his presence the M.Ext. 1 green colour folding knife. The Police also recovered one jeans pant and M.Ext. 2 is the said jeans pant. M.Ext. 4 is the ladies handbag, which was recovered by police in his presence. Inside the bag, there were one admit card, one plastic water bottle, scale etc., as far as he can remember. Police also seized M.Ext. 20 and M.Ext. 21 in his presence, which are hand written notes on napkin of Café Coffee Day. On the next day also, i.e. on 09.12.2017, at around 10:00/ 10:30 am, he accompanied the police party and you to your house. One Dhananjay was also present there. There were 1/2 other persons whom, he cannot recollect. On that day, the police seized about 5 articles from the said house and seized the same vide Ext. 4

seizure list. Ext. 4(2) is his signature. On that day, the police seized one motorcycle with blood stains near the rear seat. The Police also seized one knife from inside the house. M.Ext. 5 is the said knife. A nylon rope was also seized by police. According to you, the dead body was tied with the motorcycle by the said nylon rope. So far he recollect, it was found inside the house. M.Ext. 6 is the said nylon rope. Police also recovered and seized one pair of ladies shoe from inside the house. M.Ext. 7 is the said pair of shoe. Further, the police seized one floor cleaning cloth with blood stains. M.Ext. 8 is the said floor cleaning cloth. He has further deposed that you told the police that on that day, the victim girl accompanied you to the house and there you offered her tea. During the consumption of tea, a quarrel broke out in between you and her and enraged at the same, your pushed her towards the wall. The victim girl received injury on the back of her head and she became unconscious. Blood was oozing out and seeing the same, you became afraid and put her inside a bag and thereafter by tying the body in the motorcycle, you took the body near the R.G. Baruah College at Fatashil Ambari. You dumped the body near a dustbin. But, subsequently, you again brought back the body to your house. After bringing the body to your house, first of all, you cleaned the body and removed the blood stains. You also told the police that you threw the bag over the boundary fencing in the river Bharalu. You also told that you did not set the body on fire and the body was set to fire near R.G. Baruah College near the dustbin. He told that the dustbin was set into fire by somebody else. But on being led by you, when they went there, they did not find any sign of burning of the garbage at that place. What do you have to say on his said deposition?

Answer :- He has deposed falsely to make out a false case against me.

Question No. 8:- PW-5 Pankaj Kumar has deposed that he is a Barbar by profession and I have a saloon at J.P. Agarwal Road. On 04.02.2017, at around 03:00 pm, while he was coming back to his salon after taking lunch, he saw that you (the witness identified the accused Govind Singhal in the dock) were

tying a big stag in your motorcycle. He saw that blood was oozing out from the bag and he brought it to your notice of and asked him why blood was coming out from the bag. In reply, you told him that it was not blood, it was some colour. Along with your mother, sister and father, you were residing in the said house. Your mother and sister were also present in the Court on that day. Prior to coming to the Court on that day, once he went to the Court in connection with this case and his statement was recorded in the Court on oath. Ext. 6 is his statement, recorded on oath before the Court. Ext. 6(1), 6(2) and 6(3) are his signature. What do you have to say on his said depositions?

Answer:- He has deposed falsely at the instigation of informant side. On that day during morning hours I was at my factory.

Question No. 9:- PW-6 Pradip Khandelwal has deposed that he is a transporter by profession. On 04.12.2017, at around 5:00/ 5:30 pm, he was going to a nearby PG to meet the daughter of his friend. The PG was at the JP Agarwal Road. At that time, he saw a crowd in front of the house No. 119 of JP Agarwal Road. On seeing the crowd, he stopped there and asked the people about what had happened. They said that someone had been killed by burning. By that time the police came out and took the names of the people assembled there and asked them to leave. Accordingly, he left the place. Police noted his name and mobile No. along with others. On 09.12.2017, he received a phone call from Bharalumukh PS. It was around 8:30/9:00 am. He was in his residence at that time. Police asked him to go to the police station a little bit early. He reached there at around 09:30 am. In the police station he saw a boy. The police told them that they would go to the house of that boy and asked them to accompany. He saw on Dhananjay there and Hemant Sharma ji, whom he met on the road. You were the said boy and he identified you in the court. Thereafter, they accompanied the police to your. You also accompanied them. We went to the house on foot by crossing the railway line. At that time of entering into the house, they saw some blood stains on the floor. They also saw a cloth with blood stains. After entering into the house they were taken straight

to the bathroom. In the entire bathroom, there were blood stains and also the signs of burning. On that day, the police seized 5 articles in his presence. Ext. 4 is the seizure list. Ext. 4(3) is his signature. Ext. 5 is the sharp knife, which was seized by the police on that day from the house. Police also seized one nylon rope from nearby the bike. M.Ext. 6 is the said nylon rope. A pair of ladies shoe was also seized by the police, which was shown by the accused as the shoes of the deceased. M.Ext. 7 is the said pair of shoes. Police also seized the floor cleaning cloth with blood stains. M.Ext. 8 is the said cleaning cloth. On the previous day evening, the police took him to Fatashil Ambari, near a college. On that day, the police took his assistance to speak to accused you in your own language. You had accompanied the police team. There, you told him that you had thought that the victim had expired and accordingly, you took the dead body in your motorcycle and dumped it at the dustbin near the college, but later, on re-thought, you brought back the dead body to your house. What do you have to say on his said depositions?

Answer:- He has deposed falsely to make out a false case against me.

Question No. 10:- PW-7 Sunita Agarwal has deposed that the deceased Sweta Agarwal was her daughter. On 04.12.2017, Sweta Agarwal went to appear in the 5th Semester examination of B.Com at K.C. Das Commerce College. She went there around 8:30 pm. She used to come back around 1:00/ 1:30 pm. On that day she did not come by that time. As such, she felt anxious and tried to contact her over phone repeatedly. The phone was ringing but she was not picking up the phone. Thereafter, she tried to contact her husband, but his phone was not responding and so she contacted her brother in law Jagdish Agarwal over phone. She told him that Sweta did not return to house at her usual time. Hearing the same, Jagdish went to their flat. In the meantime, her brother in law also arrived there. It was around 2:00/ 2:30 pm. Her husband also enquired about Sweta and she told him that she did not come back to the house till that time. Her husband also tried to contact her over phone. The

phone was ringing, but no one picked up. Then her husband consoled her and told her not to think because she might have gone to the Chamber of O.P. Chandak, CA after the examination was over. Her husband took his lunch and went back to his office, asking her not to take any tension. As she was feeling tense, she requested her brother in law to stay there till her return. She was continuously trying to contact her over phone and all the time it was ringing, but nobody responded. After sometime, her husband came back to the house and told her that Sweta's mobile was found switched off mode. She again tried to contact her, but she also found that it was switched off. She asked her husband as to why he had come back. He told me that he had contacted the Chamber of O.P. Chandak, but he was informed that Sweta did not go there. After sometime, some of her friends also started to enquire about Sweta and she told all of them that Sweta did not return. As we were tense about her, my brother in law told us that he was going to enquire nearby K.C. Das Commerce College. She and her husband stayed in the house and were worshipping before the God. By that time, one phone call came from a lady. She informed her that her daughter was lying dead completely burnt near Sluice Gate, J.P. Agarwal Road, House No. 119. As she intimated her husband about the phone call, Jagdish Agarwal also called her husband over phone giving the same information and asked him to proceed to J.P. Agarwal Road. Her husband told him to remain in the house and also told him that he was going to the place to see what had happened. After sometime, her husband called her over phone and told him to proceed to J.P. Agarwal Road, House No. 119 immediately, in whatever condition she was. Hence, she proceeded by an Auto-rickshaw. When she reached there, she saw that the dead body of her daughter was being brought out from the house. She saw that the lower garments of my daughter were not there. At her forehead above the eye, there was injury marks and on her neck also there was a cloth stained with blood. At her leg also, there was injury mark. On both the legs also, there was burn injuries. There were also some scratches. In her face and side of the body also there were

burn injuries. She came to know from her husband that the dead body of her daughter was lying in the toilet above the commode. Her husband told her that the three accused persons, namely, Kamala Devi Singhal, Bhavani Singhal and you, had killed Sweta Agarwal. Her husband told her to go back to the house and he would go to the Police Station. That accused persons told her husband that we would not be able to do anything to them. Thereafter, she returned to her home in an Auto rickshaw. Her husband and brother in law went to the Police Station and she returned to home. The blood group of her daughter was B positive. What do you have to say on his depositions?

Answer:- Falsely deposed to cover a suicidal case and project it as a murder case. My mother is a lunatic person who most of the time remain unstable. Hence, it is a false story.

Question No. 11:- PW-8 Vijay Kumar Agarwal has deposed that the deceased Sweta Agarwal was his related niece. Her father is his cousin. On 27.12.2017, at around 7:00/ 7:30 pm, while he was sitting in the house of his cousin at Manipuri Basti, the investigating officer of the case along with Rosy Kalita, Addl. DCP, Crime Branch and one more Junior Officer came to the said house. They collected and seized one College Exercise Book of the deceased Sweta Agarwal and one Resume of Sweta Agarwal for the purpose of investigation. At that time, one more gentleman was present in the house of Om Prakash Agarwal and so far he recollect, his name was Sanjay Kabra. The investigating officer obtained his signature as a seizure witness. Ext. 7 is the seizure memo and Ext. 7(1) is his signature. By Ext. 7, M.Ext. 25 (Exercise Book) was seized by the Police. It was seized from the room of Sweta Agarwal. What do you have to say on his said depositions?

Answer:- He has deposed falsely by being an interested witness.

Question No. 12:- PW-9 Dr. Raktim Pratim Tamuli, who has performed the post-mortem examination on the body of the deceased Sweta Agarwal has deposed that the death was due to hemorrhage and shock following incised

injury sustained over the neck which was caused by sharp cutting weapon and was homicidal in nature. Injury Nos. 2, 4, 8 and 9 as mentioned in the post-mortem report, scalp contusion were caused by blunt force impact. Injury Nos. 5, 6 and 7 were caused by sharp cutting weapon during life and were homicidal in nature. Total area of body surface burnt approximately was 40%-50% and both ante-mortem and post-mortem. No evidence of pregnancy detected at the time of autopsy examination, however, uterus was preserved and sent for histopathological examination. Injuries as described in the text and time since death was 12-24 hours, approximately. Kerosene like smell was present over the wearing garment and body. The injuries, especially incised injury No. 7 and the ligature mark described over the neck, the burn injury described can also cause death even if proper treatment was provided. Ext. 10 is the post-mortem report and Ext. 10(1) is his signature with seal. Ext. 10(2) is the signature of Dr. H. Das and Ext. 10(3) is the signature and seal of Dr. Mrinal Haloi, which he can indentify. What do you have to say on his said depositions?

Answer:- In PM report different doctors said in different manner and they contradicted inquest report as such cause of death can't be ascertained because the body of Sweta remained at P.S. for longer hours without any authority/ permission.

Question No. 13:- PW-10 Dr. Himangshu Das deposed that on 05.12.2017, he was working as an Associate Professor in the Department of Forensic Medicine at GMCH, conducted post-mortem examination on the body of the deceased Sweta Agarwal, a female of 20 years old, daughter of Sri Om Prakash Agarwal. The post-mortem examination was done on the requisition in connection with Bharalumukh P.S. Case No. 805/17. Dr. Mrinal Haloi and he was the team of doctors who assisted Dr. Raktim Pratim Tamuli in conducting the post-mortem examination. Ext. 8 is the dead body challan and Ext. 8(2) is his signature with seal. Ext. 9 is the inquest report and Ext. 9(2) is his signature with seal. Dr. Raktim Pratim Tamuli prepared the post-mortem report and Ext. 10 is the said post-mortem report. Ext. 10(2) is his signature with seal. The findings regarding the

injuries over the dead body of Sweta Agarwal, as stated in Ext. 10, are correct and he concurred with the report. In his opinion, the death was due to hemorrhage and shock following incised injury sustained over the neck which was cause by sharp cutting weapon and homicidal in nature. Injury Nos. 1, 2, 6 and 7 as per post-mortem report, and scalp contusions were caused by blunt force impact and injury Nos. 3, 4 and 5 as per post-mortem report were caused by sharp cutting weapon during life and homicidal in nature. Total area of body surface burnt was approximately 40% to 50% and both ante-mortem and post-mortem burn. No evidence of pregnancy was detected at the time of autopsy, however, we preserved the uterus and sent for histopathological examination. Time since death was 12-24 hrs from the time of examination. Kerosene like smell was present over the wearing garments and body. What do you have to say on his depositions?

Answer:- On the said kerosene bottle, finger print of Sweta Agarwal was there and police deliberately concealed the report and never submitted to court. She might have died out of burn injuries.

Question No. 14:- PW-11 Dr. Mrinal Haloi has deposed that on 05.12.2017, he was working as Demonstrator, Department of Forensic Medicine, GMCH. On that day, Dr. Raktim Pratim Tamuli, Demonstrator, Department of Forensic Medicine, GMCH conducted post-mortem examination on the dead body of a 20 years old female, namely, Sweta Agarwal, daughter of Shri Om Prakash Agarwal. The post-mortem examination was done on the requisition in connection with Bharalumukh PS Case No. 805/17. Dr. Himangshu Das and he was also in the team of doctors who assisted Dr. Raktim Pratim Tamuli in conducting the post-mortem examination. Ext. 8 is the dead body challan and Ext. 8(3) is his signature with seal. Ext. 9 is the inquest report and Ext. 9(3) is his signature with seal. Dr. Raktim Pratim Tamuli prepared the post-mortem report and Ext. 10 is the said post-mortem report. Ext. 10(3) is his signature with seal. The findings regarding the injuries over the dead body of Sweta Agarwal, as stated in Ext. 10, are correct and he concur with the report. In his opinion, the

death was due to hemorrhage and shock following incised injury sustained over the neck which was caused by sharp cutting weapon and homicidal in nature. Injury Nos. 1, 2, 6 and 7 as per post-mortem report, and scalp contusions were caused by blunt force impact and injury Nos. 3, 4 and 5 as per post-mortem report were caused by sharp cutting weapon during life and homicidal in nature. Total area of body surface burnt was approximately 40% to 50% and both of ante-mortem and post-mortem burn. No evidence of pregnancy was detected at the time of autopsy, however, we preserved the uterus and sent for histopathological examination. Time since death was 12-24 hours, from the time of examination. Kerosene like smell was present over the wearing garments and body. What do you have to say on his said depositions?

Answer:- In PM report different doctors said in different manner and they contradicted inquest report as such cause of death can't be ascertained because the body of Sweta remained at P.S. for longer hours without any authority/ permission.

Question No. 16:- PW-13 Damodar Barman has deposed that on 05.12.2017, he was working as the Circle Officer, Guwahati Sadar Circle and Executive Magistrate, Guwahati. On that day, an inquest was done by him in connection with Bharalumukh PS Case No. 805/17 u/s 302/376/120(B)/34 of the IPC. The inquest was done at 10:30 am in the premises of Bharalumukh PS. One Police Officer Mr. Choudhury was present at the time of inquest. The informant Jagdish Prasad Agarwal identified the deceased. He found burn injuries throughout the body of the deceased. There were also other injuries. He also noticed injury at her right thigh and there were marks of bleeding. The injuries were found at head and face and the burn injuries were found at chest and stomach area. He noticed that burn injuries and the wounds were all over the body of the deceased, which according to him might have been the cause of death. Ext. 9 is the inquest report and Ext. 9(3) is his signature with official seal. What do you have to say on his said depositions?

Answer:- There is no justification for causing inquest at P.S. The inquest report was prepared by I.O. in his own handwriting. There is doubt as to when and how IO called the executive magistrate for the inquest and there is doubt where the inquest was done.

Question No. 17:- PW-14 Ponjit Dowarah has deposed that since 22.02.2017, he has been serving as ACP Jalukbari. On 04.12.2017 and 05.12.2017, he was working in the same capacity. In connection with Bharalumukh PS Case No. 805/17, your specimen signatures were collected in his presence. Ext. 11 is your said specimen writing and signature of Ext. 11(1) is his signature with official seal. Ext. 12 is also the same copy of your specimen writing and specimen signature. Ext. 12(1) is his signature. He has identified you in the court. What do you have to say on his depositions?

Answer:- No specimen signature/ handwriting was taken by any police officer from me, and as such the deposition is false.

Question No. 18:- PW-15 Sankar Chandra Rabha has deposed that he has been serving at the Directorate of Forensic Science, Assam since 1995. First of all, he was a Junior Scientific Officer and since 2014, he has been serving as Scientific Officer. From the beginning, he has been working in the Serology Division. He visited the scene of crime in connection with Bharalumukh PS Case No. 805/17. Thereafter, on 20.12.2017, he received a parcel through Director, DFS, Kahilipara for serological examination. The parcel was in a sealed carton box covered with cloth. After opening the box, he found 4 separate packets containing sic exhibits. Description of article- 2 ml blood sample of victim girl in an EDTA vial marked at Ext. A(1). His examination No. sero3904/A. Blood collection from the motor cycle in cotton gauge bearing registration No. AS01 BT 6977 of accused Govind Singhal, marked as Ext. B. His examination No. Sero 3904/B. Blood collection from the place of occurrence, the toilet of the accused person, in a cotton gauge, marked as Ext. C. His examination No. Sero 3904/C. One yellow colour plastic rope containing stain of suspected blood,

marked as Ext. D. his examination No. Sero 3904/D. One torn and half burn cloth containing stain of suspected blood. The exhibit was found in wet condition and growth of fungus, marked as Ext. E. his examination No. Sero 3904/E. One black colour jeans long pant contains stain of suspected blood, marked as Ext. F. his examination No. Sero 3904/F. During his visit at the scene of crime, blood stain was collected from the motor cycle in the cotton gauge and thereafter, he handed over the same to the IO. After careful examination, he found the following result- Ext. No. Sero 3904/A, Sero 3904/C, Sero 3904/D and Sero 3904/F gave positive test for human blood of group B. Ext. No. Sero 3904/B gave positive test for human blood only. But its group could not be determined due to insufficient test material. Ext. No. Sero 3904/E gave negative test for blood. As per the ABO system, there are 4 groups of human blood and those are- A, B, AB and O. Ext. 13 is his report, consisting of 2 pages and Ext. 13(1) is his signature with official seal. What do you have to say on his said depositions?

Answer:- The FSL report contained different methods. However report doesn't indicate in support of prosecution.

Question No. 19:- PW-16 Utpal Medhi has deposed that he resides at Bharalumukh J.P. Agarwal Road. On 07.12.2017, while he was coming back to his house from Chandmari, he saw many vehicles in front of the house of P.C. Mazumder, where you were residing. His house is just after the house of P.C. Mazumder. As he was looking at the vehicles, the police persons and media persons in front of his house, two police persons came to him and told him that the Senior Police Officer requested him to go there. As he went to the house of P.C. Mazumder, the Sr. Police Officer told him that they would open the lock in the presence of local persons and requested him to witness the same. In his presence, the police opened the lock and entered into the room. He did not enter into the room and waited outside. Police were there for 20/25 mins. Once he asked whether he could leave, but they requested him to stay and he stayed there. After sometime the Police told him that they had seized some

articles from inside the room and then they read over and shown the articles to him and obtained his signature in the seizure list. Ext. 19 is the seizure list and Ext. 19(1) is his signature therein. What do you have to say on his said deposition?

Answer:- He has deposed falsely to make out a false case against me.

Question No. 20:- PW-17 Dr. Rupali Bhattacharya, a Scientific Officer at the Directorate of Forensic Science Laboratory has deposed that she received a plastic bottle with liquid contains for examination in connection with Bharalumukh PS Case No. 805/17. She received one sealed carton box with cloth cover containing one plastic bottle having 70 ml blue colour liquid, marked as Ext. B. They marked it in the laboratory as Ext. C-92/17. Ext. C-92/17 gave positive tests for kerosene oil which is inflammable. Material Ext. 22 is the said bottle with liquid contains and Material Ext. 22(1) is their forensic tag. Ext. 22(2) is her initial with seal. The test was conducted by her on 25.12.2017. Ext. 20 is her report. Ext. 20(1) is her signature. Ext. 21 is the forwarding letter and Ext. 21(1) is the signature of Sri G.N. Deka, Joint Director, DFS, Kahilipara which she can identify. What do you have to say on her said depositions?

Answer:- At our residence we don't use kerosene. The bottle might had been brought by deceased wherein bottle had sot finger print of Sweta which police deliberately didn't submit in Court.

Question No. 21:- PW-18 Mr. Athang Singson, a Scientific Officer of the Directorate of Forensic Science, Kahilipara, has deposed that he received a parcel consisting of one exhibit enclosed in a sealed paper envelope which was sealed with the impression of the seal corresponding with the seal impression forwarded. The parcel was received from the messenger in the office of the Directorate of Forensic Science on 21.12.2017, in connection with Bharalumukh PS Case No. 805/17 u/s 120(B)/302/376 of the IPC. The descriptions of the articles are as follows: One sealed envelope containing hair strands, suspected to belong to human, marked as Ext. A and they marked the same in their laboratory as Bio. 3166. After physical, ultra structure and histological

examination, it was revealed that the hair under Ext. Bio.3166 is scalp hair of human being. He submitted the report on 03.01.2018. Ext. 22 is his report and Ext. 22(1) is his signature with seal. The report was forwarded to DCP, Crime vide forwarding letter dated 04.01.2018. Ext. 23 is the forwarding letter and Ext. 23(1) is the signature of Sri G.N. Deka, Joint Director, DFS, Kahilipara. What do you have to say on his said depositions?

Answer:- No comment.

Question No. 22:- PW-19 Bapukan Choudhury has deposed that he has been working in the Questioned Document Division of DFS, Kahilipara as a Junior Scientist Officer. On 21.12.2017, the officer of the DFS, Kahilipara received a parcel for examination and opinion. It was received from DCP (Crime), Guwahati, Assam. The parcel was in sealed envelope and it was received in connection with Bharalumukh PS Case No. 805/17 u/s 120(B)/302/376 of the IPC. After opening the sealed envelope, he found one long note book (Material Ext. 14), two laminated sheets (Material Ext. 20 and 21) and one sheet containing specimen handwriting and signature of the accused Gobind Singhal (Ext. 11 is the said sheet). After going through the material exhibits, he went through the forwarding letter to know about the queries made by the police. The queries were: Whether the handwriting of Ext. A, B and C match with each other or not? Any other point which can help in investigation? In Material Ext. 14 (long exercise book), he marked Ext. A1 to A15 as the admitted handwriting of the accused Gobind Singhal. He compared those admitted handwriting with Ext. 11 and Material Ext. 20 and 21. The document in connection with Bharalumukh PS Case No. 805/17 u/s 120(B)/302/376 IPC have been carefully and thoroughly examined and comparing disputed writing with the supplied standard writings and signatures in all aspects of handwriting identification and detection of forgery with necessary scientific aids like stereo zoom microscope, Documenter 3000 and VSC 6000 available in the Directorate. The person who wrote the blue enclosed writings and signatures stamped and marked S1 to S8 and A1 to A15 also wrote the red enclosed

writings similarly stamped and marked as Q1 to Q3. Ext. 24 is his report. Ext. 24(1) is his signature. His report was forwarded by the Joint Director, DFS, Kahilipara to DCP Crime. Ext. 25 is the forwarding letter and Ext. 25(1) is the signature of Sri G.N. Deka, Joint Director which he can identify. Material Ext. Q2 and Q3 is marked in Material Ext. 20(1) and Material Ext. Q1 is marked in Material Ext. 21 (1). What do you have to say on his depositions?

Answer:- No specimen signature/ handwriting was taken by any police officer from me, and as such the deposition is false.

Question No. 23:- PW-20 SI Sudip Choudhury has deposed that he has been serving in the Assam Police since 2008. From May/ June 2016 till February, 2018 he was posted at Bharalumukh Police Station. On 04.12.2017, around 06:00 pm, a telephone call was received by the O/C, Bharalumukh PS to effect that at House No. 119, JP Agarwala Road, a girl had attempted to commit suicide by setting her on fire pouring kerosene oil. Immediately, the O/C, Bharalumukh PS instructed the Incharge PAPA 22, namely, Mahesh Baishya to go to the Place of occurrence. At 06:10 pm, he was informed by O/C, Bharalumukh PS the same fact which he had received and instructed him to rush to the P.O. along with staffs. At around 06:15 pm, I proceeded to the said house No. 119 at JP Agarwala Road. He reached there at around 6:25 pm and saw a large gathering inside and outside house No. 119. He heard the people to saying that you had killed Sweta Agarwal inside the house. He found you and the members of your family inside the house. The family members of Sweta Agarwal were also present there. An ambulance was also awaiting outside the house. As he entered into the room, some people led him towards the toilet of the house and there, he saw the dead body of a girl. He saw that the dead body was naked below the waist and was half burnt below the waist. He also noticed a red colour cloth covering the dead body from neck to waist. He saw blood stain in the toilet where the dead body was lying. He saw a plastic bottle there with a little bit of kerosene. He also noticed one plastic bucket, without any water and one match box. The kerosene bottle was in open condition and

the cap/ lead was lying by its side. Then he took photographs of the entire scene. He informed the dead body carrying van to come to the P.O. He prepared the sketch map of the P.O. Ext. 26 is the sketch map prepared by him. He also enclosed the photographs of the dead body, which he had taken, with the sketch map. As there was a large crowd and there was possibility of law and order situation, he did not wait for the dead body carrying van and sent the dead body in the 108 Ambulance which was already there. As the people were about to lynch you, he did not wait any further and sent you with the incharge of PAPA 22 Mr. M. Baishya. As the situation became worse, he talked to O/C Bharalumukh PS and reported him about the incident and as per his instruction, he also took the accused Kamala Devi Singhal and Bhabani Singhal in his custody and took them to the Bharalumukh PS. Before going there, he locked the premises. The house was kept under lock and key as of the inmates were taken into custody. After reaching the PS, he came to know from the O/C Bharalumukh that on his requisition, the personnel of the State Finger Print Bureau, CID, Assam were on the way to the P.O. and O/C instructed him to accompany them. After their arrival, he accompanied them to the P.O. He had shown the team the place where the dead body was found and thereafter, they did the investigation and tried to collect finger prints. After their investigation, again he locked the room and came back to the PS with the team members. As Kamala Devi Singhal and Bhabani Singhal were there, as per the instruction of the O/C, Bharalumukh PS, he did their medical examination and took them to Women Shelter Home, Gold, Noonmati for their night shelter. The dead body was kept at the PS for night in the government dead body carrying van. At 09:45 pm on that night, Jagadish Agawal lodged the FIR. Ext. 2 is the said FIR. The case was registered as Bharalumukh PS Case No. 805/17 and after that, it was formally endorsed to him for investigation. He recorded the statement of the informant Jagadish Agarwal at the PS on that very day. He also recorded your statement on that very night. The Circle Officer Damodar Barman was requested to come

to the PS for inquest over the dead body and accordingly, he came to the PS at around 8:30 am on 05.12.2017. He did inquest in his presence. Ext. 9 is the inquest report. Ext. 9(5) is his signature with seal. At around 8:40 am, the accused Kamala Devi Singhal and Bhabani Singhal were brought to the PS from Women Shelter, Gold, Noonmati. He recorded their statements too. After recording their statements, he arrested them. At around 10 am, he forwarded the dead body to the GMCH for post-mortem examination. The dead body forwarding was signed by the O/C with his seal and signature. Ext. 8 is the said dead body forwarding. Ext. 8(4) is the signature of the O/C Bharalumukh PS along with his official seal. He made a prayer before the DCP, Crime, for collecting the CDR analysis of the telephone number of deceased Sweta Agarwal and the three accused persons. On that very day, he produced the accused persons before the Ld. CJM, Kamrup (M), Guwahati with a prayer to take them under police custody. He was granted five days police remand of the three accused persons. After bringing them back to the PS, he interrogated them thoroughly. After recording their statements, you were kept in the custody of the Bharalumukh PS and the other two accused persons were sent to All Women PS, Panbazar. On 07.12.2017, at around 9:10 am, he again proceed to the PO with you to find out clues regarding the offence. He reached there at around 9:20 am. On that day, at around 9:30 am, he seized one plastic bottle with a little amount of kerosene, one match box, two burned pieces of linen cloth with blood stains and one half-burned cloth with some blood stains. He also collected sample of blood in two cottons by wiping the blood from the floor, a few pieces of hair, which he suspected to be the hair of the deceased victim and one locket. You were present at that time and two other witnesses, namely, Utpal Medhi and Ashok Kr. Deka were also present at that time. Ext. 19 is the said seizure list and Ext. 19(2) is his signature. Material Ext. 22 is the plastic bottle containing kerosene. Material Ext. 24 is the burned pieces of linen cloth with blood stains. Material Ext. 23 is the match box. He recorded the statements of the witnesses Utpal Medhi and Ashok Kr. Deka.

After that, he went to the PS keeping the door under lock and key. At around 11 am, he received the P.M. examination report. As per the PM report, the death was due to hemorrhage and shock following incised injuries sustained over the neck which was caused by sharp cutting weapon and the same was homicidal in nature. The injuries were marked in the PM report and he noted the injuries in the case diary. As per PM report, there were both ante-mortem and post-mortem burn. On 08.12.2017, at around 10:15 am, he went to the house of the complainant for recording the statement of the inmates of the house of Sweta Agarwal. He came back to the PS at around 1 pm and then at around 1:50 pm, along with you, he again went to the house No. 119 at JP Agarwala Road. On that day, at around 2 pm, he seized one mobile phone (mi CE1317) belonging to you, one Samsung mobile phone of the accused Bhabani Singhal, one HTC mobile phone of accused Kamala Devi Singhal, one gents new hand gloves of red and black colour, one green colour small knife with suspected blood stains, one black jeans containing blood stains in the lower portion, which was worn by you at the time of occurrence, one ladies hand bag, grey in colour containing Admit card, spectacles, identity card, water bottle and watch of the deceased Sweta Agarwal, two pieces of English writings on two napkins of café coffee day were also seized. Ext. 3 is the said seizure list and Ext. 3(3) is his signature. Material Ext. 17 is the mi CE1317 mobile phone, Material Ext. 18 is the HTC mobile phone and Material Ext. 19 is the Samsung mobile phone, that belongs to you and the accused Kamala Devi Singhal and Bhabani Singhal, respectively. Material Ext. 3 are your hand gloves. Material Ext. 2 is your black colour jeans. Material Ext. 4 is the ladies handbag of Sweta Agarwal containing Admit card [Material Ext. 4(1)], ladies watch [Material Ext. 498]]. Material Ext. 4(6) is the water bottle also found in the ladies hand bag. Material Ext. 20 and 21 are the two pieces of English writings in tow napkins of café coffee day. He recorded the statements of the seizure witnesses, namely, Dhananjay Roy, Hemanta Sarma and Gosto Biswas. On that afternoon, again the accused Bhabani Singhal was brought from the All

Women PS, Panbazar and once again, he recorded the statements of the accused Govind Singhal and Bhabani Singhal. He recorded the statements of the accused persons many a times and on every occasions, and they gave different statements. On 09.12.2017, at around 9:40 am, again he proceeded to the P.O. along with you and reached there at 9:50 am. Again, he made certain seizure in the said house at around 10 am. On that day, he seized one hero Super Splendor motorcycle, bearing registration No. AS01-BT-6977, one sharp knife with suspected blood stains, 4 pieces of nylon yellow colour rope having blood stains, one pair of ladies shoe of victim Sweta Agarwal as indentified by you, one floor cleaning cloth with blood stains. Ext. 4 is the said seizure list and Ext. 4(4) is his signature. Material Ext. 5 is the said sharp knife. Material Ext. 6 is the envelope containing the pieces of nylon rope. Material Ext. 7 is the pair of ladies shoe. Material Ext. 8 is the floor cleaning cloth with blood stains. He recorded the statements of the seizure witnesses, namely, Dhananjay Roy, Hemanta Sarma and Pradip Kandelwal. The knife, floor cleaning cloth and the pair of ladies shoe were seized from the drawing room. The motorcycle and the piece of nylon rope were seized from outside the house, approximately two meters away from the house. He made searches may a times for the mobile handset of victim Sweta Agarwal, but could not trace it out. You told him that you carried the dead body of Sweta Agarwal in a bag in your motorcycle and again brought it back and thereafter you had thrown the bag at the Bharalumukh River. He searched for the bag many a times, but could not find it out. He could not find the uniform of Sweta Agarwal, although he tried to search it out many a times. On 10.12.2017, at around 10:40 am, he again proceeded to the P.O. along with staffs and two independent witnesses, namely, Dhananjay Roy and Gosto Biswas. He called them to the PS. He reached there at 10:50 am and seized certain things by 11 am. He seized 3 nos. of pen drives (one HP, one Kingston and one Proxkey), one Lenovo laptop, hard disk, one date cord, your driving license, your purse, cash amount of Rs. 1,02,500/-, one long exercise book belonging to you, one Indian Non-Judicial

Stamp paper of Radheshyam Singhal containing 3 pages, one rat killer medicine packet. Ext. 5 is the said seizure list and Ext. 5(2) is his signature. Material Ext. 10 is the said Lenovo laptop. Material Ext. 13 is the cash amount of Rs. 1,02,500/-. Material Ext. 26 is the data cord. Material Ext. 27 is the external hard disk. Material Ext. 14 is the long exercise book of Gobind Singhal. Material Ext. 9 are the three pen drives. Material Ext. 16 is the rat killer. Material Ext. 12 is your seized purse. Material Ext. 15 is the said stamp paper. He recorded the statements of the seizure witnesses. On 12.12.2017, he recorded the statement of one Pankaj Kumar. He also got his statement recorded through Court u/s 164 Cr.P.C. Ext. 16 is the said statement of Pankaj Kumar recorded u/s 164 Cr.P.C. Said Pankaj Kumar is the resident of the said house of PC Mazumder where the accused persons used to stay. On 04.12.2017, he came from his salon to take his meal and after taking his meal when he was going back to his salon, he saw Gobind Singhal tying one bag with his Splendor motorcycle and he also noticed that the bag was partially red and red drops were pouring from the said bag. On being asked by him, you told him it was paint. During investigation, he collected your specimen handwriting and signature in presence of ACP, Jalukbari division. Sri Pranjit Dewrah was the then ACP of Jalukbari division. I noticed the contents of Material Ext. 20 and 21 is the case diary. The material Ext. 20, in English letter it was written in hindi as follows:

“i) rehna hai ya nahin? For the final time soch lo. Baad mei ye nahi hai kit um bono.....ii)if you don't want me say it now. iii) if you don't want me to get close to you, clear it now. I don't want you to get any other thoughts after getting close cause otherwise you will regret later... that's it. In Material Ext. 21, it is written that:- “I will surrender myself to you on bed.”

To know, as to whose handwriting are there on Material Exts. 20 and 21, he sent those two material Exhibits along with your long exercise book (Material Ext. 14) and your specimen handwriting and signature to FSL, Kahilipara. He also sent the Material Ext. 20 and 21 to FSL to ascertain whether the handwritings matched with each other. He received the report on 05.01.2018

and the report opined that all the handwritings were of one and the same person that is you. What do you have to say on his said depositions?

Answer:- The I.O. didn't follow the prescribed procedure of law and without authority he send the victim on the day of alleged occurrence to PS instead of sending her to hospital. For keeping her in the PS she died there.

Why victim was sent by ambulance to PS instead of govt. van and this in itself create doubt. Alleged sketch map doesn't have detailed specification for identification of spot.

House was locked and key by police himself and the same remained in their custody even after C.C.

In the PS dead body was shifted from ambulance to govt. dead body carrying van.

Since the police official is his cross clearly stated actual fact who doesn't even know procedure and CRPC.

Entire episode of alleged investigation is nullity of law. The case of suicidal was tried to be coloured as murder case which required to be discarded.

Question No. 24:- PW-20 S.I. Sudip Choudhury has further deposed at the time of interrogation, you confessed that once he carried the dead body near R.G. Baruah College, Fatashil for dumping the dead body. You also led them near the R.G. Baruah College to show the place. He was accompanied us ACP Jalukbari, one Pradip Khandelwal and other PS staffs. They did not get any material there to show that there was any burning or like that. You also told them that, later on, you took away the body to your house. You kept changing your statement from time to time. He recorded your statement many times and on every occasion, you gave different statements. All your recorded statements are in the case diary. Along with you, he also arrested Kamala Devi Singhal and Bhavani Singhal. On 12.02.2018, he seized the birth certificate and a laboratory report of the deceased Sweta Agarwal. Ext. 26 is the seizure list

and Ext. 26(1) is his signature. The seizure were made from Shri Om Prakash Agarwal, the father of the deceased Sweta Agarwal. Ext. 27 is the said laboratory report. From the laboratory report it appeared that the blood group of Sweta Agarwal was 'B' positive. On 12.12.2017, he collected the blood sample from the motorcycle of Gobind Singhal, in presence of Shri Shankar Chandra Rabha, Scientific Officer, Serology Division. On 15.12.2017, he forwarded the blood sample to the FSL Kahilipara through DCP, Crime. He received the report from the Serology Division of the FSL through DCP, Crime on 06.02.2018. The blood sample which was swept from the motorcycle, on examination, was found to group 'B'. Along with the said blood sample, he also forwarded 2ml. blood sample of the deceased Sweta Agarwal, which had been collected and preserved. Blood collected from the toilet of your house, which was collected in cotton gauge, one yellow colour plastic rope containing stain of suspected blood, one torn and half-burned cloth containing stain of suspected blood, one black coloured jeans pant containing stain of suspected blood. The report disclosed that the blood collected from the PO, the 2ml. blood collected from deceased Sweta Agarwal, the blood stain found in the yellow colour plastic rope and also the blood stains found on the black colour jeans pant, all gave positive test for human blood of the group 'B'. During investigation, the jeans pant was found of your and he seized the same. He investigated the case from 4.12.2017 till filing of the charge sheet. During investigation, he found that it was not a sudden accidental occurrence and was a pre-planned murder. All the three accused, that is you, Kamala Devi Singhal and Bhavani Singhal conspired with each other to commit the murder of Sweta Agarwal. On the date of occurrence, you took Sweta Agarwal to your house from her college, i.e. K.C. Das Commerce College. You took her in your motorcycle at around 12:40/ 12:45 pm. You reached the house, you killed Sweta Agarwal and with the help of the accused Kamala Devi Singhal and Bhavani Singhal, who happened to be your mother and sister respectively, took the dead body in a sack and

thereafter the dead body was taken in a motorcycle to near R.G. Baruah College, Fatashil. Earlier, the plan was to dump the dead body there. But, subsequently, the accused, Kamala Devi told you over phone not to dump the dead body there otherwise, it would be a clear case of murder. As per her instruction, you took back the dead body to your house and to make it a case of suicide, all of you poured kerosene all over the dead body and set the dead body on fire. Your mother also informed the mother of Sweta Agarwal that, Sweta Agarwal had committed suicide in her house. When he first saw the dead body at the toilet, it was not in normal shape, but the body was squeezed. There was also attempt to destroy the evidence after commission of the murder. You first tried to remove the dead body from your house, but, brought it back and set the same on fire. All of you had washed the toilet and poured water on the floor to wash the blood stains from the floor. The belongings of the deceased were found in your house. What do you have to say on his said depositions?

Answer:- The I.O. didn't follow the prescribed procedure of law and without authority he send the victim on the day of alleged occurrence to PS instead of sending her to hospital. For keeping her in PS she died there.

Why victim was sent by ambulance to PS instead of govt. van and this is itself create doubt. Alleged sketch map doesn't have detailed specification for identification of spot.

House was locked and key by police himself and the same remained in their custody even after C.C.

In the PS dead body was shifted from ambulance to govt. dead body carrying van.

Since the police official in his cross clearly stated actual fact who doesn't even know procedure and CRPC.

Entire episode of alleged investigation is nullity of law. The case of suicidal was tried to be coloured as murder case which required to be discarded.

Question No. 25:- The testimonies of PW-4 and PW-5 proves beyond all reasonable doubt that you led the Investigating Officer and witnesses to the house where you had committed the murder of Sweta Agarwal and also showed them the place where you had concealed the murder weapon and also led to the discovery of the articles mentioned above and based on your disclosure statement, the Investigating Officer discovered the same. What do you have to say on the same?

Answer:- Falsely stated merely throwing stone in the dark can't lead to a logical conclusion and entire case failed and hence I am entitled to acquittal, police didn't even sphere my lunatic mother including us for false projection of case.

Question No. 26:- What do you have to say about this case?

Answer:- It is totally a false case and I have been falsely implicated.

Question No. 27:- How Sweta Agarwal sustained the fatal cut wound on her neck and burn injuries on her body in your house and succumbed to the injuries in your house and died?

Answer:- I do not know how Sweta Agarwal sustained the cut wound on her neck and burn injuries on her body. When she was found in my house, she was alive. I also informed the Bharalumukh Police Station dialing the emergency No. 100 and told them that Sweta Agarwal had sustained cut wound and burn injuries and she should be shifted to the hospital. At that time, my mother Smt. Kamala Devi Singhal and elder sister Smt. Bhavani Singhal were also present in the house. Had Sweta Agarwal been provided with necessary treatment at that time, she would have been alive today.

Question No. 28:- What is your education qualifications?

Answer:- I have passed B.Com examination and now studying Chartered Accountancy in the Institute of Chartered Accountancy of India.

Question No. 29:- What do you have to say about the case?

Answer:- It is a totally false case and I have been falsely implicated.

Question No. 30:- You may adduce evidence?

Answer:- I want to adduce evidence on my behalf.

*(Sd/- Gobind Singhal)
(signature of the accused)*

The above examination was taken by me and contains a full and true account of the statement made by the accused.

*Sd/-
Sessions Judge
Kamrup (M), Guwahati."*

42. In the case of **Paramjeet Singh vs. State Uttarakhand** reported in **(2010)10 SCC 439** the Supreme Court , while elaborating on the importance of the statement of the accused under section 313 of the Cr.P.C, has observed that section 313 CrPC is based on the fundamental principle of fairness. The attention of the accused must be specifically brought to the inculpatory piece of evidence so as to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court would be under a legal obligation to put the incriminating circumstances to the accused and solicit his response. The provision is mandatory in nature and casts an imperative duty upon the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory materials appearing against him.

43. Taking note of the law declared in **Paramjeet Singh (supra)** and several decisions governing the issue, the Hon'ble Supreme Court, in **Nar Singh vs. State of**

Haryana reported in **(2015) 1 SCC 496**, has re-examined the scope and ambit of Section 313 of the Cr.P.C. and held that section 313 (1)(b) of CrPC aims at bringing the substance of the accusation to the accused so as to enable him to explain every circumstance appearing in the evidence against him and as such, the provision is mandatory and casts a duty upon the court to offer an opportunity to the accused to explain every incriminating evidence available against him. Having held as above, it has also been clarified that, whether a trial has been vitiated or not due to non-compliance of section 313 CrPC would depend on the degree of error or violation and the accused must show that such non-compliance has materially prejudiced him or is likely to cause prejudice to him. Having observed as above, the Apex Court, has laid down the following guiding principles to be followed by the courts which are reproduced herein below :-

“30. Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarised as under:-

30.1. Whenever a plea of non-compliance of Section 313 Cr.P.C. is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer;

30.2. In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

30.3. *If the appellate court is of the opinion that noncompliance with the provisions of Section 313 Cr.P.C. has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 Cr.P.C. and the trial Judge may be directed to examine the accused afresh and defence witness if any and dispose of the matter afresh;*

30.4. *The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused."*

44. In **Nar Singh (supra)** the Apex court had agreed with the stand of the appellant/ accused on the issue of non-compliance of the mandatory provisions of section 313 CrPC and has held that omission to put every material circumstance to the accused did not *ipso facto* vitiate the trial nor was the accused entitled to acquittal on the ground of such non-compliance but the matter could be sent for retrial. Accordingly, the case was remitted back to the trial court, after setting aside the conviction of the accused, with a direction to proceed afresh from the stage of recording the statement of the accused under section 313 CrPC. While examining the accused, the trial court was also directed to marshal the evidence on record and put specific and separate questions to the accused with regard to the incriminating circumstances and also to offer him an opportunity to examine defense witnesses, if so advised.

45. Similar view has been expressed by the Apex Court in another decision in the

case of **Reena Hazarika vs. State of Assam** reported in **AIR 2018 SC 5361** wherein, the following observations have been made in paragraph 16 which are quoted herein below :-

“16. Section 313, Cr.P.C. cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, nor being on oath under Section 313(2), Cr.P.C. The importance of this right has been considered time and again by this court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) Cr.P.C. the Court is duty bound under Section 313(4) Cr.P.C. to consider the same. The mere use of the word ‘may’ cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing.”

46. What crystallizes from the above decisions of the Apex Court is that the provision of section 313 CrPC is mandatory in nature and the same also confers a right upon the accused to offer explanation in respect of each of the incriminating evidence available against him, if so desired. Therefore, the failure on the part of the

trial judge to comply with section 313 CrPC may vitiate the trial if prejudice can be shown to have been caused or likely to be caused to the accused.

47. Following the principles laid down in the case of *Nar Singh (supra)*, this court, in a recent decision rendered in the case of **Md. Sahid Khan vs State of Assam** [2021 0 *Supreme (Gau)* 557] had taken note of the failure on the part of the trial court to put all the incriminating materials to the accused which were relied upon so as to convict him and on being satisfied that prejudice had been caused to the accused on account of such non-compliance, set aside the conviction and remitted the matter to the trial court for re-trial from the stage of recording the statement of the accused under section 313 CrPC with a direction to the learned court below to frame specific questions on each incriminating circumstances and to offer an opportunity to the accused to explain his stand.

48. It is to be borne in mind that the purpose of section 313 CrPC is to afford a fair opportunity to the accused so as to offer explanation with regard to each incriminating evidence available against him. During examination of the accused under section 313 CrPC, the questions are put to the accused orally. Therefore, the trial court should avoid posing long and arduous queries to the accused and instead bring to his notice, in a concise form only the incriminating evidence available on record against him. If the questions put to accused turns out to be very long and arduous, containing voluminous details or if the same is put in the form of interrogatories, then the accused would naturally not be in a position to understand the actual incriminating circumstances available against him and may even fail to

comprehend the questions in the proper perspective so as to offer an explanation, in which event, the accused would undoubtedly suffer prejudice. Therefore, it would be the duty of the trial court to put the substance of all the incriminating circumstances to the accused by framing specific and separate question on each incriminating evidence brought on record against him and give an opportunity to the accused to offer explanation.

49. In the present case, having regard to the manner in which the incriminating circumstances were brought to the notice of the accused (A-1) while recording his statements under section 313 CrPC, we are convinced that the accused did not get a proper opportunity to respond to all the incriminating evidence available against him in a proper manner. The learned trial Judge was not correct in putting such long and voluminous questions to the accused pertaining to the incriminating circumstances. We also find that some of the incriminating evidences were put to the accused in the form of interrogatories, hinting at some form of predisposition on the part of the trial Judge against the accused. The learned court below had also failed to put all the incriminating circumstances to the accused which were eventually relied upon for his conviction. We are, therefore of the opinion that there was non-compliance of the mandatory provision of section 313 CrPC. Going by the nature and degree of non-compliance, as noticed above, there can hardly be any doubt about the fact that prejudice to the accused was inherent, having a vitiating effect on the trial. We, therefore, find sufficient force in the submission of the learned counsel for the appellant that a fair trial was denied to his client.

50. Law is well settled that the more serious the offence, the stricter is the degree of proof required [see *Paramjeet Singh @Pamma vs State of Uttarkhand (2010) 10 SCC 439*]. During trial involving heinous crimes, the accused must also be afforded a fair opportunity to defend his interest. In the present case, the A-1 has been found guilty by the learned trial court for committing the murder of the deceased Sweta Agarwal and accordingly, he has been sentenced to death. The evidence brought on record, in the ultimate analysis, may or may not be sufficient to establish the charge brought against A-1 beyond reasonable doubt. If the murder charge is proved as per law then the accused may also deserve stringent punishment. However, the said aspect of the matter would be relevant only when the accused is subjected to a fair trial. Regardless of the evidence brought on record by the prosecution, unless this court is satisfied that the accused was afforded a fair trial and was given every opportunity to defend himself, the question of affirming conviction for murder and award of capital punishment would not arise.

51. During the course of hearing Dr. Choudhury has addressed elaborate arguments ,not only touching upon various issues pertaining to the merit of the case but also inviting the attention of the court to the lapses on the part of the IO in his failure to carry out proper investigation in the case. According to Dr. Choudhury, benefit of such lapses in investigation and trial must go to the accused. Bearing in mind the recourse that we propose to adopt in this proceeding, we refrain from expressing any opinion on the said submissions made by the learned counsel for the appellant at this stage.

52. For the reasons mentioned here-in above, we set aside the conviction of the accused Kamala Devi Singhal (A-2) and Ms Bhavani Singhal (A-3). Both the accused persons are acquitted of the charges brought against them under Sections 120(B)/302/201 of the IPC.

Consequently, Criminal Appeal No.396/2019 stands allowed.

53. In so far as Criminal Appeal No.350/2019 preferred by accused Gobind Singhal (A-1) is concerned, the impugned judgment dated 30.07.2019 is set aside and the matter is remitted back to the learned trial court to conduct a re-trial of the case from the stage of recording the statement of the accused person (A-1) under Section 313 Cr.P.C. In doing so, the learned Sessions Judge would reframe and put specific and separate questions to the accused pertaining to each incriminating evidence available against him and thereafter, proceed to decide the case on merit and in accordance with law without being influenced by any observations made in this order. Since the occurrence took place in the year 2017 and in order to ensure speedy justice, an endeavor may be made by the trial court to conclude the trial as expeditiously as possible, preferably within six months from the date of receipt of the records, if necessary by conducting day to day trial.

54. Dr. Choudhury has produced a copy of the orders passed earlier by this Court granting bail to the appellant A-1 during trial and submits that in the event the impugned judgment is interfered with and the case is remanded for re-trial, then the appellant (A-1) be granted bail. We are not inclined to consider the bail prayer of the A-1 at this stage. The A-1 is, however, granted liberty to approach the learned trial

court seeking bail by filing appropriate application, if so advised. If such an application is filed by the A-1, the same be considered on merit and decided in accordance with law, without being influenced by any observation made herein above.

55. In the result, Criminal Appeal No.350/2019 stands partly allowed.

The Death Ref. No.3/2019 stands answered accordingly.

Both the appeals stand disposed of in terms of the observations and directions as above.

Registry to transmit the LCR as expeditiously as possible.

JUDGE

JUDGE

T U Choudhury, Sr. P.S.

Comparing Assistant