

GAHC040003532022

2026:GAU-AP:14



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

Case No. : Crl.A./8/2022

Shri Rabhidhan @ Rabidhan Chakma,

S/o – Lt. Bhagya Kr. Chakma,

Vill- Gautampur, Gautampur-B1,

PO/PS- Diyun,

Dist.- Changlang, Arunachal Pradesh.

....ACCUSED/CONVICT

Through;

Mrs. Bini Chakma,

W/o – Shri Rabidhan @ Rabhidhan Chakma @ Swapan Kumar Chakma,

Vill- Gautampur, PO/PS- Diyun,

Dist.- Changlang, Arunachal Pradesh.

....APPELLANT

VERSUS

1. The State of Arunachal Pradesh, represented by the P.P.

2. Mr. Mahondra Hazong (GB Haripur Village),

S/o Lt. Sobindra Hajong,

Vill- Haripur, PO/PS- Diyun,

Dist.- Changlang, Arunachal Pradesh.

....RESPONDENT

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

HON'BLE Mr. JUSTICE BUDI HABUNG

Advocate for the Appellant : Mr. Tabit Tapak

Advocate for the State Respondent : Mr. Gyati Tado, Addl. P.P

Date on which Judgment is reserved : 18.11.2025

Date of Hearing : 18.11.2025

Date of Judgment and Order : 09.01.2026

Whether the pronouncement is of the Operative part of the Judgment? :No

Whether the full Judgment has been pronounced ? : Yes

JUDGMENT & ORDER

(CAV)

[Budi Habung, J]

Heard Mr. Tabit Tapak, learned counsel for the appellant. Also heard Mr. Gyati Tado, learned Additional Prosecutor for the State respondent No.1.

2. This criminal appeal is directed against the judgment dated 19.05.2021 passed by the learned District & Sessions Judge, Tirap, Changlang & Longding at Khonsa, whereby the accused was convicted in Khonsa Sessions Case No. 191/2019, corresponding to Diyun P.S. Case No. 24/1999, under Sections 302, 380, and 201 of the IPC. The appellant was sentenced as follows:

- i. To undergo life imprisonment and pay a fine of Rs. 20,000/- (Rupees Twenty thousand only) for the offence under Section 302 IPC;
- ii. To undergo rigorous imprisonment for 7 years and pay a fine of Rs. 5,000/- (Rupees five thousand) for the offence of theft in a dwelling house under Section 380 IPC;
- iii. To undergo rigorous imprisonment for 7 years and pay a fine of Rs. 5,000/- (Rupees five thousand) for the offence under Section 201 IPC, and in default of payment of fine, to undergo simple imprisonment for 3 months in addition to said sentences.

It was further ordered that all the sentences shall run concurrently.

3. The prosecution case in brief is that on 02.08.1999, PW-2 lodged a written FIR before the Officer-in-Charge, Diyun, Changlang District, reporting that one Santosh Kumar Hajong, aged about 50 years, was found dead on the Manabum–Namsai road near Pakka Nala of village Gautampur at about 7 AM.

4. On receipt of the FIR, a case under Section 174 Cr.P.C. was initially registered. Upon investigation, a report was submitted opining that the death of the deceased was homicidal. The report further stated that the culprit had murdered the deceased during the night of 01.08.1999 and placed the body in the middle of the road near Pakka Nala, Gautampur village. A bicycle was placed near the body to mislead the police and to create an impression that the death

had occurred due to a vehicle accident.

5. The post-mortem report revealed that a heavy blunt object had struck the deceased on the forehead with such force that it fractured the skull and damaged the frontal part of the brain, leading to his death. Accordingly, a case under Section 302 IPC was registered and investigated into.

6. During the investigation, the bicycle found near the body was traced and identified as belonging to PW-3, who stated that it had been stolen on 01.08.1999. Several suspects (about 12 persons) were arrested and interrogated, and eventually the present accused was arrested. On his admission, the appellant was forwarded to the Magistrate for recording his confessional statement under Section 164 Cr.P.C. The accused confessed before the Magistrate and stated that, on seeing the dead body of a person whom he recognized to be his enemy with whom he had a quarrel earlier due to the land dispute, he took chance and assaulted the deceased with a heavy stone weighing around 8–9 kg. He further admitted that thereafter he stole the bicycle from nearby the village and placed it near the body to mislead the police and create the impression of a road accident.

7. After completion of the investigation, a charge sheet was filed under Sections 302, 380, and 201 IPC against the accused. Charges were framed under the same sections of offences. To prove the charges, the prosecution examined 12 witnesses and relied on several documents during the trial.

8. After completion of the prosecution evidence, the accused was examined and his statement recorded under Section 313 Cr.P.C., in which he denied all allegations and further retracted his confessional statement before

the Magistrate. However, the accused did not produce any witnesses in his defence.

9. Upon completion of the trial, the learned Sessions Judge found that the prosecution had proved its case against the accused, and he was convicted for offences punishable under Sections 302, 380, and 201 IPC. Accordingly, by the impugned judgment dated 19.05.2021, the accused was sentenced as follows:

- i. To undergo life imprisonment and pay a fine of Rs. 20,000/- for the offence under Section 302 IPC;
- ii. To undergo rigorous imprisonment for 7 years and pay a fine of Rs. 5,000/- for the offence of theft in a dwelling house under Section 380 IPC;
- iii. To undergo rigorous imprisonment for 7 years and pay a fine of Rs. 5,000/- for the offence under Section 201 IPC, and in default of payment of fine, to undergo simple imprisonment for 3 months.

All the sentences were ordered to run concurrently. It is against this judgment that the accused/convict has filed the present appeal.

SUBMISSION OF THE LEARNED COUNSEL FOR THE APPELLANT

10. The learned counsel for the appellant contended that there is no eyewitness to the incident and, therefore, the conviction of the accused is based purely on suspicion. He further contended that the confessional statement has not been proved by the Magistrate who recorded it and that the same has been retracted by the accused during his examination under Section 313 Cr.P.C., yet the appellant has been convicted on the basis of such statement. It was further

contended that conviction based on a retracted confessional statement is a weak piece of evidence. He further submitted that in the present case, there is no *mens rea* or motive attributable to the accused. It was also contended that the absence of any eyewitness and the absence of any incriminating statement against the accused render the prosecution case doubtful. The learned counsel further submitted that the conviction of the accused is based solely on the retracted confessional statement, without any corroborative evidence linking the accused to the crime.

11. It was argued that the circumstantial evidence relied upon by the prosecution does not form a complete chain of circumstances so as to unerringly point towards the guilt of the accused. It was further submitted that even if the confession is assumed to have been voluntarily made during investigation, the same cannot be the sole basis of conviction in the absence of corroboration.

12. It was also contended that none of the prosecution witnesses has adduced any incriminating evidence implicating the accused. There is no definite proof that the accused committed theft of the bicycle and, therefore, the offences under Sections 380 and 201 IPC are also not made out against him. Consequently, it was strongly submitted that the accused is entitled to the benefit of doubt.

SUBMISSION OF THE LEARNED ADDITIONAL PUBLIC PROSECUTOR

13. On the other hand, the learned Additional Public Prosecutor submitted that the prosecution case rests entirely on circumstantial evidence, namely that the accused himself had confessed before the Judicial Magistrate that on the evening of the incident, upon receiving information that a body was lying on the road, he went to the spot and recognized the deceased as a person with whom

he had quarreled about three months earlier in connection with a land dispute. He stated that he considered it a golden opportunity to take revenge and, accordingly, picked up a boulder weighing about 8 to 9 kg and struck the deceased on the head. He further confessed that thereafter he stole a bicycle and placed it near the dead body to create an impression that the death had occurred due to a road accident.

14. It was contended that, on the basis of this confession, the offences punishable under Sections 302, 380, and 201 of the IPC are clearly made out against the accused. The learned Additional Public Prosecutor further submitted that the confessional statement of the accused recorded under Section 164 Cr.P.C., coupled with the medical evidence indicating a homicidal death, fully corroborates the prosecution case.

15. In support of his submissions, the learned Additional Public Prosecutor relied upon the following judgments:

- i. ***Naresh Kumar Sharma v. State of West Bengal***, reported in ***1987 (0) Supreme (Cal) 185***; and
- ii. ***Amir Hamja v. State of Assam***, reported in ***2020 Gau LT 501***.

16. Upon consideration, the following points emerges for determination by this Court:

- i. Whether the prosecution has proved beyond reasonable doubt that the appellant committed the murder of the deceased, Santosh Kumar Hajong.

- ii. Whether the conviction can be sustained solely on the basis of the confessional statement recorded under Section 164 of the Cr.P.C.;
- iii. Whether the circumstantial evidence forms a complete chain pointing only to the guilt of the accused.

17. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties and have perused the entire materials on record, including the Trial Court Record (TCR). Since this Court is the first appellate court and a court of facts, it is required to re-appreciate the evidence on record in order to arrive at the truth of the case. For proper appreciation, we now briefly examine the evidence adduced by the prosecution witnesses.

18. P.W-1, P.W-2 and P.W-3 are not material witnesses.

19. P.W-4 is the informant. He had only seen the dead body and was not an eyewitness to the incident.

20. P.W-5 is the doctor who conducted the post-mortem examination and opined that the death was homicidal, caused by brain hemorrhage due to blunt force injuries.

21. P.W-6 is the Investigating Officer, who deposed that the dead body was found lying in the middle of the road and that he seized a stone (boulder), a bicycle, and a pair of slippers from the spot.

22. The family members of the bicycle owner deposed regarding the loss of the bicycle on 01.08.1999 and its subsequent recovery from the spot. The FIR was lodged on 02.08.1999. However, the trial commenced with the framing of charges against the accused only on 10.03.2020, owing to a long lapse of time

of about 21 years between the occurrence and the recording of evidence; as a result, most of the witnesses could not recall the incident clearly

23. It is observed that no FSL report was produced and no recovery of weapons at the instance of the accused was proved. Further, in his statement under Section 313 Cr.P.C., the accused retracted his confessional statement recorded before the Magistrate and alleged that the confession was obtained due to coercion and physical assault by the police.

24. However, upon completion of the trial, the Trial Court held that the death of the deceased was homicidal and that the confessional statement recorded under Section 164 Cr.P.C. was voluntarily made by the accused. Relying upon Section 80 of the Evidence Act, the Trial Court presumed the confession to be genuine. On the basis of the confessional statement and surrounding circumstances, the learned Trial Court held that the prosecution had proved the guilt of the accused beyond reasonable doubt and accordingly convicted the accused and sentenced him to undergo imprisonment for life

25. Discussion and Analysis:

(a) From the submissions, evidence, and materials on record, it is an admitted position that there is no direct evidence in the present case. The entire prosecution case rests primarily on the confessional statement of the accused, which he later retracted during his examination under Section 313 Cr.P.C. The conviction of the accused is also sought to be supported by certain circumstantial evidence, such as the recovery of the bicycle which has also not been definitely proved.

(b) Confessional Statement under Section 164 Cr.P.C.:

There is no dispute that a confession recorded under Section 164 Cr.P.C. is admissible in evidence if it is shown to be voluntary and truthful. However, the law is equally well settled that a retracted confession cannot form the sole basis of conviction unless it is corroborated in material particulars. In this regard, reliance has been placed on the decision in ***Subramania Goundan v. State of Madras***, reported in ***AIR 1958 SC 66***, and ***State of Rajasthan v. Raja Ram***, reported in ***(2003) 8 SCC 180***.

26. Section 80 of the Evidence Act raises only a presumption regarding the regularity of the recording of a document, and not as to the truthfulness of its contents.

27. In the present case, the confession made by the accused during the investigation was retracted by him in his examination under Section 313 Cr.P.C. It is further evident that there is no independent corroborative evidence connecting the accused with the act of assault. None of the prosecution witnesses has adduced any evidence incriminating the accused in the commission of the offence. Moreover, no recovery of the alleged weapon of offence at the instance of the accused has been proved. Additionally, there is no forensic or scientific evidence on record to support the prosecution case.

28. We have carefully examined the oral evidence of the relevant witnesses. It is not in dispute that the prosecution case rests entirely on circumstantial evidence, as there is no eyewitness to the occurrence. Therefore, the well-settled principles governing the appreciation of circumstantial evidence are required to be strictly applied.

Principles Governing Circumstantial Evidence:

29. In this regard a reference may be made to the case decided by the

Hon'ble Supreme Court in ***Sharad Birdhichand Sarda v. State of Maharashtra***, reported in **(1984) 4 SCC 116**, where in it is settled that:

- i). The circumstances from which the conclusion of guilt is drawn must be fully proved;
- (ii) . The proved circumstances must be consistent only with the hypothesis of the guilt of the accused;
- (iii). The circumstances must be of a conclusive nature;
- (iv). They should exclude every possible hypothesis except the one to be proved;
- (v). There must be a complete chain of evidence which leaves no reasonable ground for a conclusion consistent with the innocence of the accused.

30. Thus it is settled principle governing conviction on circumstantial evidence which requires that circumstances must be fully established, they must form a complete chain and they must exclude every hypothesis except the guilt of the accused.

31. In the present case, the recovery of the bicycle from the spot only proves theft and not murder. Further, the presence of motive alone is insufficient. No circumstance proves that the accused was last seen with the deceased. Further, no medical or forensic evidence connects the accused with the injuries on the body of the deceased; thus, the chain of circumstances is incomplete.

32. We have examined the authorities relied upon by the prosecution. The decisions in ***Naresh Kumar Sharma*** (*supra*) and ***Amir Hamja*** (*supra*) do not assist the prosecution, as in those cases the confessional statements were amply corroborated by independent evidence, which is apparently absent in the present case.

33. We have noted that while the prosecution has succeeded in proving that the death of the deceased, Santosh Kumar Hajong, was homicidal, it has failed to establish beyond reasonable doubt that the appellant was the author of the crime or that he committed the offence. Further, a conviction based solely on a retracted confession without corroboration is legally unsustainable. Thus, in our opinion, the learned trial court committed a serious error in treating the retracted confession as substantive proof of guilt.

34. Accordingly, and for the reasons stated above, the appeal is allowed.

35. The judgment dated 19.05.2021 passed by the learned District & Sessions Judge, Tirap, Changlang & Longding at Khonsa is set aside.

36. The accused, Shri Rabidhan @ Rabhidhan Chakma @ Swapan Kumar Chakma, is acquitted of all charges under Sections 302, 380, and 201 of the IPC.

37. The appellant shall be released forthwith, if not required in any other case. Any fine paid shall be refunded.

38. In view of the above, this appeal stands disposed of.

39. sent back the trial court record.

JUDGE

JUDGE

Comparing Assistant