

HIGH COURT OF TRIPURA
AGARTALA
Crl. A(J) 55/2020

Sri Sumanjoy Tripura

son of late Lalit Kumar Tripura, resident of Tankipara, Tripura Basti,
P.S. Vanghmun, District- North Tripura

----Appellant

Versus

The State of Tripura

----Respondent

For Appellant(s)	:	Mr. A. Acharjee, Advocate
For Respondent(s)	:	Mr. S. Debnath, Addl. PP
Date of hearing	:	22.06.2022
Date of delivery of Judgment & Order	:	29.06.2022
Whether fit for reporting	:	Yes / No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT

(T.Amarnath Goud, J)

Heard Mr. A. Acharjee, learned counsel appearing for the appellant as well as Mr. S. Debnath, learned Additional PP appearing on behalf of the respondent.

2. This appeal arises out of the judgment and order of conviction and sentence dated 24.07.2017 passed in connection with case No. S.T./T-1/0000038/2016 by the learned Sessions Judge, Dharmanagar, North Tripura, whereby and whereunder the learned Sessions Judge had convicted the appellant for the offence punishable under Section 302 IPC, and sentenced them to suffer R.I. for life with default stipulation.

3. The case of the prosecution, as surfaced at the trial, may, in brief, be described as under:

One Dahindra Tripura on 23.05.2016 lodged an FIR stating interalia that on 23.05.2016 at about 5:30 pm Amenjoy Tripura called and took Biyakchunga, the sister in law of the informant, and told that Sumanjoy Tripura and Jugal Mohan Tripura were waiting for him for diving the loan amount among them at the road of Sabwal. After about half an hour one person namely Chama Reang informed the informant that near the Subwal road in a lunga he heard sound like “gher gher” and requested the informant to come at the place with people and then the informant alongwith Sunuhar Tripura, Ajoy kr. Tripura, Smt. Matibala Tripura and Jarendra Tripura went there alongwith a torch light. There the informant after searching with Chama Reang alongwith others found a dead body of a person and when he focused the light of the torch over the body he identified that it was the dead body of Biyakchunga and there were mark of sharp cutting injuries on the throat, back side of the head and hand of the dead body of Biyakchunga. There they also found a blood stained dao near the dead body.

4. The said complaint was registered as Vangmun PS case no. 04 of 2015 under Section 302/34 IPC. The matter was investigated by the investigating officer and after completion of investigation submitted charge-sheet against the convict appellant and others under Sections 120(B)/420/302/201 IPC. At the commencement of trial, the learned Sessions Judge had framed charges against the convict appellant to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution to establish the charges had adduced 19 (nineteen) witnesses. After closure of recording evidences, the convict appellant was examined under Section 313 Cr.P.C. wherein he denied all the allegations leveled against him by the prosecution witnesses since, according to the appellants, those were false. After hearing arguments and on examining the evidences and materials on record, the learned Sessions Judge had acquitted the convict-appellant from the charges framed against him under Sections 120(B)/420/201 IPC, but, convicted and sentenced him for committing offence punishable under Section 302 IPC. Hence, this appeal before this court.

6. Mr. A. Acharjee, learned counsel for the appellants has submitted that the prosecution has miserably failed to establish the charges levelled against the convict-appellants. Mr. Acharjee, learned counsel has further submitted that there is no legal evidence against the appellant. Mr. Acharjee, learned counsel had argued that out of two accused persons involved in commission of the offence, one, namely, Manohari Tripura had been honourably acquitted by this court. Learned counsel also has submitted that the learned trial court had convicted the appellant only on the basis of 3 witnesses i.e. PW-6, PW-7 and PW-9. Learned counsel has further argued that there is no eye witness to the alleged incident and according to the post-mortem report the injuries are ante-mortem in nature. He has also argued that the weapon of offence had been seized after 1 ½ months and the convict appellant had been arrested on the

basis of suspicion after about six days. Mr. Acharjee, has further submitted that the confessional statements, so made, cannot be treated to be as admissible in evidence.

7. On the other hand, Mr. S. Debnath, learned Additional PP has supported the findings of the learned trial court while convicting the accused. Mr. Debnath, has also submitted that if the evidence of PW-9 and PW-18 are read together, it could safely be presumed that the convict appellant had committed the alleged offence. Hence, learned Additional PP has submitted to maintain the findings of the learned trial court.

8. We have considered the submissions for learned counsel appearing for the parties. We have perused the evidences and materials on record and the judgment passed by the learned Sessions Judge. For purpose of appreciating the submissions of learned counsel, it would be apposite for us to revisit the evidences let in by the prosecution witnesses.

PW-1, Karendra Tripura, deposed that following others, he saw the dead body of Biyangchunga and found cut marks on the body of the deceased at his throat and neck. He had also deposed that near the dead body he noticed one dao which belongs to Sumanjoy Tripura, who is his step-brother. He has further deposed that police seized footwear of Sumanjoy and one piece of footwear of right foot which belongs to Amenjoy, who is his son and in all the footwares there were mud. He

identified the materials that were seized by preparing seizure list. No effective cross-examination was carried out.

PW-2, Mahendra Tripura, deposed that in front of the dead body he noticed one dao and 3 footwares out of which one footware belongs to Amenjoy and 2 footwares belongs to Sumanjoy. He also identified by the dao found nearby the deadbody which belongs to Sumanjoy. He identified the materials that were seized by preparing seizure list. No effective cross-examination was carried out.

PW-3, Dahindra Tripura, is the complainant. He deposed that he came to know from his sister that Amenjoy reported that Sumanjoy and Jugal Mohan sent him to bring Biyakchunga stating that Jugal Mohan was waiting with money. After about half an hour he received an information from Chama Reang (PW-12) that one person was groaning by the side of the road and after having the information he went there and with the help of torch light, he identified the deadbody of Biyakchunga lying there with cut injuries. He noticed one blood stain dao near the dead body . About 15 meters away he noticed one pair of footware and one single footware. Thereafter, he informed the police and police came and seized the articles. He has also deposed that Karendra Tripura (PW-1) stated to the police that the dao belong to Sumanjoy Tripura. No effective cross-examination was carried out.

PW-4, Karnajoy Tripura, deposed that on reaching to the place of occurrence, he found dead body of Bayangchunga with cut injuries. He also deposed that he noticed one dao, 3 number of chappals which police seized by preparing seizure list. No effective cross-examination was carried out.

PW-5, Kahin Mala Tripura, is of tender age and after assessing her mental ability, she had stated that Jugal Tripura, the deceased was her brother. She has also stated that when her brother went out from their house, Sumanjoy Tripura followed her brother with a dao in his hand. She has also stated that at that time her mother was out of the house for the purpose of jhum cultivation and thereafter, her brother did never return. No effective cross-examination was carried out.

PW-6, Surendra Reang, deposed that on the day of occurrence Sumanjoy Tripura, husband of his sister-in-law and Amenjoy Tripura, his nephew came to his house in wet condition and spent the night. He has also deposed that he had seen some blood injuries in the hand of Sumanjoy Tripura and when he asked Sumanjoy about the injury, he stated him that he had committed murder of one person, namely, Biyakchunga. PW-6 has also deposed that after offering them dresses he went to the house of Khir Mohan Reang and informed him that the husband of his sister in law came with his nephew after murdering a person. Thereafter, he returned home alongwith Harendra Reang, son of

Khair Mohan Reang and after hearing the entire fact, Harendra advised him to send Sumanjoy and Amenjoy to the SPO camp. Thereafter, he took Sumanjoy Tripura and Amenjoy Tripura to the SPO camp by his vehicle. He has further deposed that thereafter police came to his house and seized the articles alongwith wearing apparels of Sumanjoy and Amenjoy on identification by the witness..

PW-7, Harendra Reang, deposed that he alongwith Surendra Reang (PW-6) came to his house and asked Sumanjoy and Amenjoy to go to the SPO camp. He had further deposed that Sumanjoy and Amenjoy told him the details how they had murdered one person. Thereafter, one day in his presence police seized one bag, one takkal and one ganjee belonging to Sumanjoy Tripura on is identification. No effective cross-examination was carried out.

Nothing material had been elucidated from the chief-examination or cross-examination of PW-8, Chamin Joy Tripura.

PW-9, Lobaram Reang, was the vice chairman of the village committee at that relevant point of time. He had deposed that after 25 days of the occurrence police came to nearby his shop alongwith Manohari Tripura. Laldika who also accompanied the police asked Manohari Tripura as to whether he had murdered Jugal to which he replied 'yes'. Thereafter Manohari took them into his house and produced one six pocket holder three quarter pant and one shirt which were blood stained and these

articles were subsequently seized on identification. Thereafter, Manohari led them to one orange and coffee garden and in his presence Manohari had stated that he committed murder of Jugal by a stone, which was seized by police in his absence. Thereafter, he showed another place where again he had assaulted Jugal Mohan Tripura when he tried to escape from their custody by means of a stone, which was accordingly seized by police but, PW-9 has stated that he did not notice whether there was any blood on the stone. No effective cross-examination was carried out.

PW-10, Lalthingzova, deposed that Manohari, Jugal, Sumanjoy Tripura and Matibala Tripura hired his vehicle bearing no. MZ-01-D-7330 where they came for collection of some loan. He had further deposed that thereafter, he heard that Jugal Mohan had expired. No effective cross-examination was carried out.

PW-11, Arjan Chakma, S.I. of police had arranged for postmortem examination of the deceased. He had seized the blood samples of the deceased, underwear of the deceased and viscera of the deceased by preparing seizure list on identification. No effective cross-examination was carried out.

PW-12, Chama Reang, was the person who informed the complainant at first regarding the occurrence. PW-12 has deposed that on the alleged date and time when he was travelling towards Subwal he heard one person groaning by the side of the road and also noticed some blood on the road.

Assuming something wrong, he informed Dahindra Tripura to come to the spot and find out whether that person was from their village or not. Thereafter, on search they recovered the deadbody from lunga and the deadbody of Beakchunga who is the husband of his younger sister. Dahindra Tripura also informed the police. The police came to the spot and recovered the dead body and seized a dao containing blood stain, three chappals. PW-12 also deposed that Karendra Tripura, elder brother of Sumanjoy also came to the spot and identified the dao as of Sumanjoy. He has also identified the chappals belonging to Sumanjoy and one single sandal which belong to the son of Karendra Tripura, namely, Omenjoy. No effective cross-examination was carried out.

PW-13, Pati Rani Tripura is the wife of the deceased, Biyakchunga. She has deposed that she noticed that her husband went out with Omenjoy and after few hours she came to know that dead body of her husband was found from the road side. She also deposed that from her brother, Dahindra, she came to know that Sumanjoy and Omenjoy had murdered her husband. She has also stated that her husband loaned out some money from Sumanjoy but Sumanjoy failed to return back the money for which her husband was to inform the matter to Young Mizo Association. She had also deposed that out of fear Sumanjoy had murdered her husband. No effective cross-examination was carried out.

PW-14, Polindra Tripura, is the mother of Jugal Mohan Tripura and she had deposed that after four days of the occurrence, dead body of Jugal Mohan was recovered from the orange orchard and the dead body of her son was decomposed and there was several cut injuries and his hands and legs were in tied condition by herbs. She had also deposed that Sumanjoy had taken loan from her son but Sumanjoy did not return the said money. She had also stated that 2-3 days earlier from the date of recovery of the deadbody of her son, deadbody of one Biakchungga was recovered from the road side. PW-14 had identified her signatures on the exhibited materials, so seized by the police. No effective cross-examination was carried out.

Nothing material had been elucidated from the chief-examination or cross-examination of PW-15, Kalimohan Tripura.

PW-16, Dr. Sunny Debbarma had conducted the postmortem examination over the deadbody of deceased Jugal Mohan Tripura and he had identified his signature on the post mortem report. PW 16 also deposed that the death was due to severe hemorrhage and shock which was homicidal in nature and the time of death was about 4-5 days earlier. No effective cross-examination was carried out.

PW-17, Dr. Subhankar Nath, was the Deputy Director cum Assistant Chemical Examiner at the State Forensic Science Laboratory and he had examined the seized articles and after examination he had submitted his

report with opinion. He had identified his signature on the report. No effective cross-examination was carried out.

PW-18, Suresh Debbarma, S.I. of Vangmun PS had conducted the investigation, collected the reports, examined the witnesses, seized the material objects, and thereafter, submitted the charge-sheet. No effective cross-examination was carried out.

PW-19, Dr. Sirshendu Dhar is the Medical Officer who alongwith another Dr. Pinki Chakma conducted postmortem examination over the deadbody of one Biyakchunga. He had also deposed that as per his opinion the cause was death was a result of shock and hemorrhage and also the injuries were anti-mortem in nature. He had identified his signature on the report. No effective cross-examination was carried out.

10. The learned trial court taking into cumulative evidences of PW-6, PW-7 and PW-9 had returned the findings of conviction against the appellant. From better scanning of the evidences on record, it came to light that PW-6, in his evidence has stated that on seeing blood injury in the hand of Sumanjoy Tripura when he asked Sumanjoy, he stated that he came to his house after committing murder of one person named Biyakchunga. Thereafter, he offered them dresses and went to the house of PW-9 who then advised him to hand over Sumanjoy and Amenjoy to SPO camp. Thereafter, he returned to his house with PW-7 and took them to SPO camp and handed over them. He further deposed that on 01.06.2016 police came to his house alongwith

Sumanjoy and took the wearing apparel which they left at his house and police also seized pillow cover which they used during sleeping and there was blood stain on the pillow cover. He also stated that police had seized jeans and shirt of Sumanjoy alongwith one half pant and shirt, and, according to him, in the wearing apparels there some blood spot. He also stated that again on 13.06.2016 police came with Sumanjoy and seized one takkal, one bag of Sumanjoy and his shirt and in presence of police Sumanjoy stated that the takkal belonged to Amenjoy. PW-7 in his deposition had stated that in the house of PW-6 he found Sumanjoy and Amenjoy and he also found a cut injury in the hand of Sumanjoy who reported him that a person had given bite injury at his finger and to remove his finger from that person other person had murdered him and on their desire PW-6 had taken them to SPO camp. PW-7 also stated that after some days police called him and in his presence they seized one bag, one dao (takkal) and one ganjee. PW-9, in his deposition has stated that the police came with accused Monohari and on query Monohari replied that he had actually murdered Jugal. Thereafter, Monohari took them into his house alongwith police and produced one six pocket holder three quarter pant and one shirt which were blood stained and those articles belonged to Monohari. This witness further deposed that Manohari led them to orange and coffee garden and stated that in that place he committed murder of Jugal by means of stone. This witness further deposed that thereafter Monohari showed another place where he assaulted Jugal and caused some

injury by means of stone and also he led the police and him to another place in a lunga where he first caused death of Jugal.

11. Having considered the evidences on record, we do not find any evidence to link the appellant with the alleged murder. Taking into account the blood stain found on the wearing apparels of the appellant, the appellant was taken into custody by the police that too after about 6 days from the date of occurrence. It is also evident from the record that the report of the forensic experts does not support the prosecution case as the blood stain of the deceased was not compared with the blood stain found on the wearing apparels of the appellant. Moreover, the learned trial court did not find any material against the appellant for any criminal conspiracy and had acquitted the appellant from the charge under section 120B IPC.

12. In the case in hand, we are constrained to hold that the learned trial court could not convict the appellant basing on the confession of the co-accused, Manohari Tripura, rather the learned trial court ought to have find out and ascertain as to what evidence has been adduced by the prosecution against the appellant and if the confession of the co-accused is found to be sufficient then such confessional statement could have been used for the purpose of convicting the appellant. In the present case, we noticed that the only evidence which the prosecution adduced against the appellant was the fact that the co-accused accompanied the appellant and also had led the police to recover one six pocket holder three quarter pant and one shirt from his

house which were seized by making seizure list. Even, we do not find any definite link between the statements of PW-6, PW-7 and PW-9 so as to reach to a finding that the appellant is guilty of the alleged offence. Moreover, there is no eye witness to the alleged incident except mere extra-judicial confessional statement of the appellant. .

13. In the case in hand, it is evident that on the confession of the co-accused, the investigating officer had recovered the articles and accordingly seized but, no such statement of the appellant, who was in custody during recovery of the articles was found in the instant case. Mr. Acharjee, learned counsel in course of his submission has argued that the statement which is not related to the recovery of the article is not admissible under section 27 of the Indian Evidence Act. In this regard, Mr. Acharjee, learned counsel has referred to a decision of the Gauhati High Court in *Dabu Munda vs. State of Tripura*, reported in *1991 GLR 293, para 9*, wherein the, it was held that-

“9. The learned trial court has placed reliance upon the statement said to have been made by the accused appellant to the Investigating Officer, which has led to the recovery of the dead body. The learned counsel for the appellant has submitted that no such statement was made by the appellant. We had carefully considered the evidence and in our opinion the learned trial court was in error in having placed reliance upon the part of the statement under Section 161 of the code recorded by the deceased SI R.K. Datta marked Ext. P/10. It is settled law that only that much of the statement made by an accused in custody during investigation to the police is admissible as leads to the recovery of some articles or things. Any other part of the statement which is not related with the recovery of articles is not admissible under Section 27 of the Indian Evidence Act. We are also not satisfied about the prosecution version that the accused appellant had made any such statement, for the reasons that, the person before whom the said statement had been made i.e. the Investigating Officer, R.K. Datta having had died was not before the court. It was part of statement under Section 161 of the Coe. The prosecution did not explain why when the accused had been taken into

custody the statement of accused was required to be recorded under Section 161 of the code, particularly when PW 5. Sudhir Ranjan Debbarma, an executive magistrate who had also accompanied the Investigating Officer when the body of the deceased was recovered from the well, nowhere in his statement said that the accused appellant had led the party to the well wherefrom the dead body was recovered. PW-6 Panchu Telenga who was a sweeper and had accompanied the party when the dead body was recovered, has also said nothing about the accused appellant having led the party to the aforesaid well from where the body was recovered. In that the recovery of the dead body was at the instance of the accused appellant. However, even if it be accepted that the accused appellant had made such a statement,, only that part which led to the recovery of dead body would be admissible and on its basis all that could be said was that the body was hidden in the well which in fact could not be stretched to mean that the accused appellant had caused the death of Pankhi Rai Debbarma. There is no evidence at all who caused his death except that he died of strangulation. It follows that there was no evidence for the prosecution that accused appellant had caused the death of the deceased, and accordingly, in our opinion, his conviction and sentence under section 302 IPC cannot be sustained and has to be set aside”.

14. In view of the above principles, as enunciated by the Gauhati High Court, we find force in the submissions of Mr. A. Acharjee, learned counsel appearing for the appellant except the fact which is revealed by the accused in the custody about the discovery, no other fact relating to acceptance of guilt, close to confession, cannot be treated as the legal evidence under Section 27 of the Evidence Act. .

15. Because of what have been discussed and pointed out above, we are clearly of the view that the evidence on record was grossly inadequate to convict the appellant and he ought to have, therefore, been acquitted of the charges framed against him.

16. In the result and for the reasons discussed above, the appeal succeeds. The impugned order of conviction of the appellant and the sentence passed

against him by the judgment and order under appeal is hereby set aside. The appellant is held not guilty of the offence of which he stands convicted for. Accordingly, the appellant is set at liberty. The surety also stands discharged.

Send down the LCRs.

Pending application(s), if any, also stands disposed.

JUDGE HIGH COURT OF TRIPURA **JUDGE**



सत्यमेव जयते

Saikat