

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) 13/2021

Sri Janardhan Murasingh,

----Appellant

Versus

The State of Tripura

----Respondent

Crl. A(J) 17/2021

Sri Tapas Nama

----Appellant

Versus

The State of Tripura

----Respondent

For Appellant(s) : Mr. S. Lodh, Legal Aid Counsel

For Respondent(s) : Mr. Ratan Datta, PP
Mr. S. Debnath, Addl. PP

Date of hearing & delivery
of judgment and order : **06.07.2022**

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. S. Lodh, learned counsel appearing for the appellant as well as Mr. Ratan Datta, learned PP assisted by Mr. S. Debnath, learned Additional PP appearing on behalf of the respondent.

2. Both the appeals are taken up for disposal by a common judgment since the impugned judgment and order dated 17.03.2021 arose out of same charges framed against both the accused-appellants.

3. Both the appeals emerged from the judgment of conviction and sentence dated 17.03.2021 delivered in S.T. 07 of 2019 by the learned Sessions Judge, Gomati Judicial District, Udaipur, Tripura. By the said judgment, the appellants had been convicted under Section 302 read with section 34 of the IPC and sentenced them to suffer rigorous imprisonment for life and to pay a fine of Rs. 5,000/- each with default stipulation.

4. The case of the prosecution, in brief, is that on 15.06.2018 one Mithu Das, son of the deceased Sukumar Das, lodged a complaint with the Officer in-charge of Kakaraban Police Station stating *inter alia* that on 15.06.2018 at about 05-30 a.m. he got information from the local people that his father Sukumar Das (50) was lying dead in the paddy field at Mirza. Then he and some villagers rushed to the spot and found the dead body of his father was lying in the paddy field in naked condition and there was red mark in his throat. It is further stated in the complaint petition that on the previous day, i.e., 14.06.2018 at about 9 pm he saw his father sitting on the stairs of the Co-operative Bank near Mirza market. He further alleged that somebody had killed his father on the previous night.

5. The said complaint was registered as Kakraban PS case no. 80 of 2018 under Section 302IPC. The matter was investigated by the investigating officer and after completion of investigation submitted charge-sheet against the convict appellants and others under Sections 302/34 of the IPC. At the commencement of trial, the learned Sessions Judge had framed charges

against the convict appellants to which they pleaded not guilty and claimed to be tried.

6. During trial, the prosecution, to establish the charges had adduced 14 (fourteen) witnesses and exhibited some documents. After closure of recording evidences, the convict appellants were examined under Section 313 Cr.P.C. wherein they denied all the allegations levelled against them 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 convicted and sentenced the appellants for committing offence punishable under Section 302/34 IPC. Hence, this appeal before this court.

7. Mr. S. Lodh, learned counsel for the appellants has submitted that the prosecution has miserably failed to establish the charges levelled against the convict-appellants. Mr. Lodh, learned counsel has further submitted that there is no eye witness to the alleged occurrence and the last seen theory cannot sustain in the instant case. Mr. Lodh, learned counsel had further argued that the confessional statements, so made, cannot be treated to be as admissible in evidence.

8. On the other hand, Mr. Ratan Datta, learned PP has supported the findings of the learned trial court while convicting the accused-appellants. Mr. Datta, has also submitted that if the evidences are appreciated it cannot be said that the finding of conviction is without evidence or suffers from any

infirmity. Hence, learned PP has submitted to maintain the findings of the learned trial court.

9. We have perused the findings and analysis arrived at by the learned Sessions Judge in convicting and sentencing the appellants.

10. As we have seen, the conviction of the appellants is mainly based on the “principle of last seen together”, as surfaced from the prosecution witnesses. In view of this, it would be apposite to survey of the evidences and materials brought on record, to test the sustainability of the findings of guilt and the conviction thereof, as held by the learned Sessions Judge.

11. PW-9, PW-10 and PW-12, are relevant witnesses to the facts in issue relating to the “last seen together” theory and other ancillary circumstances.

PW-9, Narayan Sen, deposed that one year ago one day at about 9.00 pm he was returning from Mirza market accompanied by Sukha Ranjan Das and at that time he found Janardhan Murasingh and Tapas Nama were standing on the road side and Sukha Ranjan asked them why they were standing there and also asked them to go to home. On the next date at about 8.00 am there was a gathering in the field and he learnt that the dead body of Sukumar Das was lying in the field.

PW-10, Sukha Ranjan Das, deposed that on 15.06.2018 at about 10 pm he and Sukumar Das were sitting on the stair of Co-operative Bank at Mirza market where two others, namely, Gakulhari Debbarma and his wife Ratna Das Debbarma were also present. On his asking, Sukumar Das told that he would go to his house after a shortwhile. Then, they departed

for their house and on the way, Mithu Das, Rajesh Das entered their house and he and Narayan Sen were coming towards their house. After passing some distance they found Tapas Nama and Janardhan Murasingh were standing on the road side and he asked what they were doing there. Thereafter, he and Narayan Sen went to their house. He also deposed that on the next day morning his son informed him that the dead body was lying in the Mirza paddy field and he went there and found the dead body of Sukumar Das lying in the paddy field. He further deposed that police had seized some articles wherein he put his signature as a seizure witness.

PW-12, Smt. Ratna Das (Debbarma), deposed that the deceased used to work in her house. The incident happened one year ago. She also deposed that on that night, she and her husband went to Mirza market to repair their bicycle and when they were returning home, Sukumar Das also accompanied them. She further deposed that on the way they got Halal Nama @ Tapas Nama and Janardhan Murasingh on the road who were in drunken condition with mobile in their hands. At that time Halal Nama charged Sukumar Das why he visited his house and then he pushed Sukumar Das. She also deposed that thereafter Sukumar Das proceeded towards his house. Thereafter, they went to their house. On the next morning they received an information that Sukumar Das was murdered and his dead body was left in the paddy field.

12. The learned trial court taking into cumulative evidences of PW-9, PW-10 and PW-12 had returned the findings of conviction against the appellants. From better scanning of the evidences on record, it came to light that none of the aforesaid witnesses had seen the deceased Sukumar Das alongwith the appellants on the alleged date of incident. They had conjointly deposed that on the way of their return to their respective dwelling house they saw both the appellants on the road with whom they had also talked but, only PW-12 had deposed that one of the appellants, namely, Halal Nama @ Tapas Nama had pushed Sukumar Das but, lateron Sukumar Das also went to his residence. Thus, nothing material had been elucidated from their evidences to establish the theory of last seen together. If the evidence relating to last seen together, as stated by PW-9, PW-10 and PW-12, is taken away from the evidence of the prosecution, then the evidence remains regarding extra-judicial confession.

13. The learned trial court had also returned the findings basing on the confessional statement, so made by the accused before the DCM, Udaipur (PW-7). PW-7, in his deposition has stated that on 18.06.2018 as per order of SDM, Udaipur he went to Kakraban PS in connection with disclosure statement of the accused-appellants and in his presence the accused-appellants gave disclosure statement which was recorded by the police officer of the concerned police station. The statements of the accused-appellants were recorded from 0805 hours to 0855 hours and after recording their statement, he put his signature therein. PW-7 also deposed that as per the memorandum

prepared by him, the accused persons took them to the place of occurrence alongwith witnesses where the accused persons demonstrated how they have committed the murder of the deceased. He further deposed that he had put his signature on the memorandum.

14. For better appreciation, we have considered the deposition of other witnesses. PW-13, is the investigating officer who after completion of his investigation had arrested the accused persons on 17.06.2018 and on 18.06.2018 in presence of Executive Magistrate (PW-7) the confession of the accused persons was recorded by him and thereafter he had forwarded the accused persons before the court. Thereafter, he had submitted the charge-sheet. PW-14, is the son of the deceased. He had deposed that in the morning of last Jaishtya on 31st, Thursday, he got information that his father Sukumar Das was murdered and his deadbody was left at the paddy field. PW-1, deposed that on 18.06.2018 on being called by the O/C he went to the Kakraban PS to conduct video recording of confessional statement of the two accused persons. PW-2 and PW-3 are the seizure witnesses. PW-4, is the Medical Officer, who conducted post mortem examination over the dead body of the deceased. He had opined that the injuries could be accidental or homicidal and the injuries were anti-mortem in nature. PW-5 and PW-6, are the Senior Scientific Officer cum Assistant Chemical Examiner at TSFSL, Narsinghar and she had conducted examination as per requisition. PW-8 is the Sub-Inspector of police who after receipt of a complaint from PW-14 had

registered the complaint. PW-11, deposed that on 14.06.2018 at about 10 p.m. he went to his house after closing his cycle repairing shop at Mirza market and next day he heard that Sukumar Das was murdered and his dead body was found in the paddy field.

15. Having considered the evidences on record, we do not find any evidence to link the appellants with the alleged murder. None of the witnesses had stated that they had seen any of the appellants assaulting or threatening the deceased, Sukumar Das. Moreover, there is no eye witness to the alleged incident except mere confessional statement of the appellants. Further, it is evident that the appellants were taken into custody by the police on 17.06.2018 after which their statement ought to have been recorded before any Judicial Magistrate but, their confession was recorded before the Executive Magistrate, which is not admissible as per Evidence Act.

16. It is the prosecution who has to prove the last seen together with the other connecting circumstances that except the accused persons no other person could commit the offence. In the instant case, it cannot be ruled out that PW-9, PW-10 and PW-12 could not disclose that they had seen the deceased with the appellants on the relevant date and time for the last time. The scribe i.e. PW-14 also failed to substantiate that the accused-appellants herein had murdered his father i.e. Sukumar Das. Thus, the prosecution has not been able to connect the said appellants with the commission of offence beyond all reasonable doubt.

17. Because of what have been discussed and pointed out above, we are clearly of the view that the evidences adduced by the prosecution are not only shaky but, also inconclusive and improbable and inconsistent with the guilt of the appellants. Hence, we have no hesitation to hold that the prosecution fails to prove the complete chain of circumstantial evidence as required for drawing an inference that the murder of the deceased was committed only by the appellants and none else.

18. In the result and for the reasons discussed above, both the appeals succeed. The impugned order of conviction of the appellants and the sentence passed against them by the judgment and order under appeals is hereby set aside. The appellants are held not guilty of the offence of which they stand convicted for. Accordingly, the appellants are set at liberty henceforth. The surety also stands discharged.

Send down the LCRs.

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

JUDGE

JUDGE