Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.25/2023 with
Crl.M.C.No.83/2023

Reserved on : 14.08.2024
Pronounced on: 16.08.2024

Shri.Thombor Shadap … Appellant

-Vs-

1. The State of Meghalaya through the Superintendent of Police, East Jaintia Hills District, Meghalaya.

2. The Officer-in-Charge, Saipung Police Station, East Jaintia Hills District, Meghalaya.

…Respondents

Coram:
Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. A.K. Bhuyan, Adv with
Mr. J. Shylla, Adv
Mr. P.P. Medhi, Adv

For the Respondents : Mr. R. Gurung, GA with
Mr. J. Thabah, GA
Ms. S. Shyam, GA

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes

J U D G M E N T

(By the Hon'ble Chief Justice)

The Appellant, who is an Accused person in Sessions Case No.50 of 2021 on the file of the Sessions Judge/Addl.DC(J), East Jaintia Hills District, Khliehriat, was convicted by the Trial Court on 30.03.2023 for offence under Section 302 IPC and sentenced to undergo rigorous imprisonment for life with a fine of Rs.10,000/-. The Trial Court had given liberty to the family of the deceased to claim compensation from the State and in the event of payment of compensation by the State, the same may be recovered from the accused. Aggrieved by the judgment and the order of the Sessions Judge/Addl.DC(J), East Jaintia Hills District, Khliehriat, dated 30.03.2023, the Appellant has preferred the instant Criminal Appeal before this Court.

2. The case of the prosecution in brief is that based on the complaint given by one Smti Rimeki Paslein on 31.12.2011 that her husband Shri Shawas Pymgap was beaten to death at a place called Briwar Elaka Nongkhlieh, a case / FIR (Ex.P3) in Saipung Police Station Case No.1 (2) 2012 under Section 302/34 IPC came to be registered. Immediately thereafter the case was entrusted to one C. Shylla, Sub Inspector of Police, who examined the complainant and two independent witnesses and on his transfer, handed over the CD file to another SI C.

Shylla. Subsequently, two suspected persons were arrested, namely, the appellant herein and one Nidamon Chullet, who had admitted that under the influence of alcohol, they picked up quarrel with the deceased and the next day, they came to know that the deceased was murdered. The further case of the prosecution is that the dead body was sent for post-mortem after conducting inquest over the dead body and after investigation, a charge sheet was laid before the then DC of Khliehriat Court in C.S.No.6/2015 dated 29.07.2015 and was subsequently, made over to the Sessions Judge/Addl.DC(J), East Jaintia Hills District, Khliehriat for trial. The prosecution, in order to substantiate the offences against the accused persons, examined 11 witnesses and exhibited 6 documents. On the side of the accused, neither witnesses were examined nor documents marked. Statements under Section 164 Cr.P.C. were obtained from P.Ws.1 and 2. The accused were questioned under Section 313 Cr.P.C. and they denied the charges levelled against them. The Trial Court, after analyzing the evidence let in by the prosecution, found the appellant herein guilty of offence and convicted him as stated supra and acquitted the other accused finding no incriminating materials against him.

3. The learned counsel appearing for the Appellant/accused submitted that the name of the appellant was not found mentioned in the FIR initially and based on the statements made by P.Ws.1 and 2, who were claimed to be eyewitnesses, the accused was implicated in this case by creating a new prosecution theory. Moreover, the depositions of P.Ws.3 and 4 / mother and wife of the accused were not aware of the identity of the appellant herein and the P.W.3 in fact admitted that there was a delay of two days in lodging the FIR. Even the wife of the deceased deposed that she was informed by someone about the murder of her husband and there was no mention of the name of the assailant. He further submitted that though the occurrence had stated to be taken place on 29.12.2011, their statements were recorded only on 02.03.2012, after a lapse of more than two months. The depositions of P.Ws.1 and 2 do not instill confidence and lack credibility and trustworthy for the reason that they deposed before the Court that they forgot about the incident due to lengthy passage of time. Having given such a statement, a Test Identification Parade ought to have conducted to identify the accused persons and failure of the part of the Investigating Agency, which had not been taken into account by the Trial Court, is a fatal to the prosecution theory. He also submitted that inclusion of the name of the

appellant in the crime in a hasty manner on the basis of the depositions of P.Ws.1 to 3 raises doubts about its trustworthiness and that apart, naming the appellant during the deposition of P.W.3 was only an afterthought. When the entire case of the prosecution rests on the witnesses of P.Ws.1 and 2, it must be provided beyond reasonable doubt and correlated with oral and documentary evidences.

4. Learned counsel for the appellant/accused, in support of his submission, strongly relied upon the following judgments of the Hon'ble Supreme Court:

i) ***Kali Ram vs. State of Himachal Pradesh***, reported in ***1973 (2) SCC 808***, wherein it has been held as follows:

> "We find it difficult to accept this part of the deposition of Parma Nand. Parma Nand admits that he came to know of the murder of Dhianu and Nanti about four days after those persons were found to have been murdered. It would therefore, follow mat Parma Nand came to know of the murder of Dhianu and Nanti on or about October 4, 1968. Had the accused left for the house of Dhianu deceased on the evening of September 29, and had Parma Nand PW come to know that Dhianu and Nanti were murdered in their house, this fact must have aroused the suspicion of Parma Nand regarding the complicity of the accused. Parma Nand, however, kept quiet in the matter and did not talk of it. The statement of Parma Nand was recorded by the police on December 11, 1968. If a witness professes to know about a gravely incriminating circumstance against a person accused of the offence of murder and the witness keeps silent for over two months regarding the said incriminating circumstance against the accused, his statement relating to the incriminating circumstance, in the absence of any cogent reason, is bound to lose most of its value. No cogent reason has been shown to us as to why Parma Nand kept quiet for over two months after coming

to know of the murder of Dhianu and Nanti about the fact that the accused had left for the house of the deceased shortly before the murder. We are, therefore, not prepared to place any reliance upon the second part of the deposition of Parma Nand.

The third part of the deposition of Parma Nand PW pertains to the shout of the accused from outside the shop of Parma Nand at about mid-night hour on the night of occurrence. This part of the deposition has not been accepted by the trial court and the High Court and we find no valid reason to take a different view.

ii) ***Karmajit Singh vs. State of Punjab***, reported in ***2000 (3) SCC 150***:

"9. It is not the case of the witnesses that they were sleeping on the roof after participating in the annual Bhog ceremony of late wife of Bhag Singh. The case put forward by them is that the assailants came in a group of 15 to 20 from the roof, cut open the same and started firing from their weapons. It is not clear from their evidence whether any lights were on at that time or they could see the assailants in the moonlight or a star lit night. It is not at all clear that when they did not even know the accused how they could identify him in spite of darkness particularly when these witnesses do not seem to be on the roof. In a fleeting moment of attack and the bolting away of the assailants from the scene they could not have got even a glimpse of the face of the accused. Thus there was no opportunity at all for them to see the accused. Further as to how police connected the accused with having committed the crime in the present case is not at all clear. Help has not been taken from the so-called eye witnesses in that regard. In the circumstances we have no hesitation to hold that the evidence of PW3 and PW4 does not inspire confidence to convict the accused for the murder and that too with charges of the severity of offences arising under TADA. The reasoning given by the learned Designated Judge is wholly illogical and consists of too naive an analysis of evidence. There must be a critical examination of the eye witnesses account before coming to the conclusion one way or the other and such exercise has not been done by the learned Designated Judge at all."

iii) ***Peer Singh vs. The State of Madhya Pradesh***, reported in ***2019 (4) SCC 582;***

“10. The "Dehati Nalishi" was recorded on the spot itself soon after the occurrence. As per the evidence on record Mansingh (PW-5) was present at the spot till 4.00 A.M. During this time, the police was there. It would have been much better if the "Dehati Nalishi" had been recorded at the instance of PW-5 who was not only an eye-witness but could even identify some of the accused. Even if we overlook this aspect, the fact remains that when the statement of PW-5 was recorded Under Section 161 Code of Criminal Procedure on the morning of 14th September, he did not name the three Appellants. When the statement was recorded in court he stated that when Babusingh was being attacked he (Babusingh) told the pillion riders to go to his house and inform that persons of Sobhagsingh are beating him. This fact is totally different from what is recorded in the "Dehati Nalishi" wherein it is stated that Babusingh took the names of Sobhagsingh and Thakursingh. As pointed out earlier Gattu (PW-8) does not say anything in his statement.

11. When we compare the statements of PW-1 and PW-5 there is another discrepancy viz. in court, the father Motisingh reiterates that Mansingh (PW-5) told him that Sobhagsingh, Thakursingh, Harisingh and Gulabsingh were beating Babusingh. The names of the three Appellants are absent even in the statement of Motisingh as recorded in court. Mansingh and the three Appellants belong to the same area and Mansingh is known to all the three accused, and when he could name four of the assailants, we see no reason as to why he could not name the other assailants if he had actually identified them at the place of occurrence. There is no plausible explanation given from the side of prosecution as to why the names of these three Accused-Appellants were missing both in the "Dehati Nalishi" as well as in the statement of Mansingh recorded Under Section 161 Code of Criminal Procedure (Exh. D-1). Further, as pointed above, Motisingh again in court does not say that Mansingh (PW-5) had identified the three Accused-Appellants as the assailants.

12. Therefore, a grave doubt is raised with regard to the presence of these three Accused at the place of incidence. The benefit of doubt obviously has to go to the Accused-Appellants. In view of the above discussion, we allow the appeals and set aside the judgment of the trial court dated 19th November, 2001 in Sessions Case No. 57 of 1993 and of the High Court dated 27th June, 2011 in Criminal Appeal No. 1354 of 2001 so far as the conviction of the Appellants; Peer Singh,

Bhagwansingh and Gajrajsingh is concerned. They are acquitted and directed to be set free forthwith if not required in any other case. All pending applications are accordingly disposed of."

6. It was further argued by the learned counsel for the accused that even the wife of the deceased, who was examined as P.W.4 initially stated that she was not aware as to who murdered her husband and thereafter, changed her version, deposing that it was the appellant who had committed the offence of murder. There is no adequate evidence to link accused person with the alleged murder of the deceased and based on the last seen theory, the accused was made a scapegoat, as there was a different version in the GDE No.619 dated 31.12.2011, by which the involvement of one more persons was mentioned, which has been omitted to be examined by the Trial Court during examination of P.W.11/IO. Thus, he pleaded that there were several flaws committed by the prosecution and sought for interference by this Court in the conviction and sentence awarded by the Trial Court.

7. Per contra, learned GA appearing for the State contended that it was not a case of simple in nature and since a murder had taken place, it would be prudent to give reasonable time to investigate and record the statements of witnesses, as otherwise, there is every possibility of the accused fleeing away from justice on account of lack of material evidence. The prosecution proved the case through

circumstantial evidence that it was the accused, who was the root cause of the murder of the deceased under intoxication, which was duly established by the witness of P.Ws.1 and 2. Moreover, the Doctor/P.W.6 clearly opined that the death had occurred due to shock and haemorrhage and thus, based on the evidence of P.Ws.1 and 2, it was the accused, who hit the deceased repeatedly and caused his death with sharp weapon and the post mortem report (Ex.P5) is the corroborative evidence. He further contended that the next plea raised by the accused that there was no Test Identification Parade conducted has no relevancy, because when the witnessed know the identity of the accused clearly, the conduct of Parade is an abuse of process of passage of time and after seeking the occurrence, it was P.Ws.1 and 2 who went to the house of the deceased and informed the same to his mother. To strengthen his case that delay in recording statement of eye witnesses is not fatal to the case, he relied upon the decision of the Supreme Court in the case of ***Goutam Joardar vs. State of West Bengal***, reported in ***MANU/SC/0834/2021,*** .wherein it has been held as under:

"10. It is true that there was some delay in recording the statements of the concerned eye-witnesses but mere factum of delay by itself cannot result in rejection of their testimonies.

11. The material on record definitely establishes the fear created by the Accused. If the witnesses felt terrorised and frightened and did not come forward for some time, the delay in recording their statements

stood adequately explained. Nothing has been brought on record to suggest that during the interregnum, the witnesses were carrying on their ordinary pursuits.

12. Thus, the eye-witness account unfolded through PW18 and PW19 cannot be discarded. We have gone through their testimonies and are convinced that their statements were cogent, consistent and trustworthy.

13. We, therefore, reject the submissions advanced by Mr. Raj Kumar Gupta, learned Advocate. On merits, we do not find any reason to take a different view in the matter."

8. Learned Government Advocate also referred to the judgment of the Apex Court in the case of ***Latesh @ Dadu Baburao Karlekar vs. The State of Maharashtra,*** reported in ***(2018) 3 SCC 66*** to state that merely because names of accused are not stated and their names are not specified in FIR, that may not be a ground to doubt contents of FIR and the case of prosecution cannot be thrown out on such count.

9. He also relied upon the judgment of the Supreme Court in the case of ***Romesh Kumar vs. State of Punjab***, reported in ***(1994) SCC (Cri) 67***, wherein it has been held as follows:

"6. Learned Counsel for the appellants has vehemently argued that in the absence of test identification parade no reliance can be placed on the testimony of Ashok Kumar PW3. We do not agree with the learned Counsel. Ashok Kumar has stated that he knew the appellants and even otherwise he was in the company of the appellants for about three hours and had witnessed the killing of Chhinda at their hands. There was, thus, no question of holding any test identification parade in this case.

7. The learned Counsel then contended that the prosecution story was highly improbable. According to him the rickshaw puller carried three assailants and a dead body through the bazars of Ludhiana for 2/3 hours and came across some persons on the way but he did not tell anyone

about the occurrence. He further contended that at the fame when injuries were being inflicted on the person of Chhinda, his hue and cry, must have attracted the residents of the area to the spot. We see no force in the contention. The learned Special Judge has fully examined this aspect of the case. According to him the occurrence took place at mid-night in the month of February. The possibility of the happenings in the rickshaw having not been noticed by the midnight walkers cannot be ruled out. In any case the eye-witness account of Ashok Kumar as (sic) by Mangit Singh and Jogi Ram proves the guilt against the appellants beyond reasonable doubt. 8. We agree with the reasoning and the conclusions reached by the Special Judge.

9. The appeal is, therefore, dismissed. Appellant Bhushan Kumar is on bail. He is directed to surrender to his bail bond to undergo the remaining sentence of imprisonment."

10. Learned Government Advocate went on to add that in an appropriate case, the GD entry can be treated as a First Information Report, based on which, the case may progress in respect of search and seizure. Thus, he concluded that the prosecution had clearly established the guilt of the accused through testimonies about the overt act on the part of the appellant/accused and their testimonies were corroborated with all material particulars. In sum and substance, it was his submission that since the prosecution was able to prove the guilt on the part of the appellant/accused beyond any reasonable doubt and hence, he is not entitled to any leniency and prayed for dismissal of the appeal.

11. We have carefully considered the submissions made on either side and perused the materials available on record.

12. The questions that arise for consideration in this case, are:

(i) Whether the prosecution, through the testimonies of witnesses, exhibits and material objects marked, is able to prove its case beyond reasonable doubt?

(ii) Whether the reasons assigned by the trial Court in the impugned judgment for convicting and sentencing the appellant/accused are sustainable?

13. The main contention of the accused person was that though there were eyewitnesses produced by the Police to prove that it was accused, who had done away with the life of the deceased, their statements were recorded after a period of more than two months. We feel it appropriate to refer to as to what was the statements made by the eyewitnesses and how the prosecution was able to link the accused with the crime in corroboration with other evidence and documents coupled with the eyewitnesses of P.Ws 1 & 2. On the side of the prosecution, there were eleven witnesses produced to prove the guilt of the accused, of whom, versions of P.Ws l and 2 weighed much importance in the minds of the Trial Court to convict the accused. P.W.1, in her cross examination stated as follows:

> "18. It is not a fact that I did not see the persons fighting but just hear it from people but actually when I used my torchlight I had seen with my eyes bah Thom was fighting with the deceased.
>
> 19. I know the accused person bah Thom prior to the incident and I have met the accused twice or thrice along with the victim."

14. P.W.2 deposed that he was unable to recollect the incident that happened at night and he was subjected for examination in chief and cross in the month of December, 2021, whereas the occurrence had taken place in the year 2011. He was again re-examined and cross-examined by the accused and the prosecution. In his initial cross examination, he deposed thus "8. It is a fact that I was only informed that the deceased died but I did not see who killed him." Subsequently, his depositions were as follows:

"Re-examination in Chief:

1. On reaching the PO I saw that the deceased victim was lying on the ground unconscious and he was bleeding from his face at that time while the accused Shri. Thom was still hitting him."

Re-Cross Examination:

1. It is not a fact that I did not see the victim bleed at the time of the incident.

2. It is not a fact that I did not recognize the assailant at the time of the incident."

15. It is apposite to extract the statements made by P.W 1 under Section 164 Cr.P.C., which read as follows:

"On 29th Dec. 2011 at about 9:00p.m, I was present at a market place at Briwar. I had met the victim (L) Shri.Chawas Phyrngap before he was beaten/assaulted and killed. After talking with him I went my own way. After sometime I heard people saying that someone was being beaten up by some men. I along with Shri Kom Patwet rush to the spot and saw the victim lying unconscious on the ground. He was bleeding from his face. At that time, I saw Shri.Thom of Shangpung village who was stilling hitting the half-dead man. That market at Briwar belongs to Shri Thom. I do not know his title but only his name and village.

The deceased and myself belongs to the same village, therefore, on seeing what had happened to him we left the spot and went straight to the Village and informed his parents. We all went to the spot but his dead body was taken somewhere else. We then returned to our village Shnongrim. The next day, i.e.30.12.11 the whole village (all men) went to make a search and at about 1.00 or 2.00pm we found his dead body at Wah untler and took him home. On 31st Dec 2011 FIR was lodged and the Police came and conduct post mortem at his house."

16. The afore-stated version was reiterated by P.W.2, stating that "same statement was given as that of Shri. Rilang Skhlain.", who is P.W.1. There is no whisper about the seizure of a torchlight, as P.W.1 was able to identify the accused only with the help of the torchlight on the reason that the incident had happened during midnight. Other witnesses, namely, P.Ws 3 and 4/mother and wife of the deceased were supporting the versions of P.Ws 1 and 2 to the extent that P.Ws 1 and 2 informed about the murder of the deceased and actually, they were not present in the scene of occurrence.

17. P.W.6 Dr. Wandap Bamon had stated that he went to the house of the deceased and conducted the Post Mortem on the dead body at

2:00pm on 31.12.2011 and in the opinion of P.W.6, the cause of death was due to shock and haemorrhage by multiple wounds hit with weapons. As per the Post Mortem report/Ex.P5, the wounds were described as under:

1.EXTERNAL APPEARANCE

1. Conditional of subject-stout. Emaciated, decomposed, etc.	2.Wounds-position size and character	3.Brusies-Possition, size and nature	4.Mark of ligature on nect, dissection etc.
Fresh	Laceralia wounds post to Right Ear Inch X ½ Inch Right forehead 2 inch X1 inch Nose:2inch x1 inch Right check-1 inchX1/2 inch Chin-2inch x1 inch, Upper lip ½ inch x ½ inch, Left lumber regim 1.Chop wound 4 ½ x 1 inch 2.chopo wound-2 ½ inch x 1 inch	Abdomen Size 1x1/2 inch Left upper arm size 1 ½ x 1 inch Left Hand size ½ x ½ inch	N I L

1.EXTERNAL APPEARANCE

1.Scale, Skull, Vertebree	2.Membraro	3.Brain and Spinal Cord
Chopan wond Scalp: Left parielat Region size-2 inches x1 inch Fracture of left Parital bone size 1 inch x 1 inch vertebrae – normal	Damage	Brain-Damage Spinal cord-normal

18. Though injuries and wounds found on the dead body were exhibited by Doctor, there was no particular weapon seized by the prosecution, with which the deceased was attacked, despite the fact that the Doctor opined that the death was caused with a sharp weapon. There was no mention by P.Ws.1 and 2 about the weapon used by the

accused, while hitting the deceased. It is pertinent to mention here that the Apex in the case of ***Mahamad Khan Nathekhan vs. State of Gujarat***, reported in ***(2014) 14 SCC 589*** categorically held that a case where the charge is sought to be proved only on circumstantial evidence, motive plays an important part in order to prove the guilt of the accused. Of course, in the instant case, two witnesses, viz., P.Ws.1 and 2 were cited as eyewitnesses and on the basis of their evidence, the Trial Court proceeded to convict the accused. Except saying that there were quarrel between the accused and the deceased, as a result of which, the deceased was murdered, no witness had spoken about the motive for such murder. Even the prosecution failed to establish as to what was the exact motive for the so-called quarrel and subsequent attack. The Supreme Court in ***Raju Jagdish Paswan vs. The State of Maharashtra, MANU/SC/0082/2019***, held that manner and motive for commission of murder, magnitude of the crime, anti-social or abhorrent nature of crime and personality of victim of murder were certain factors which had to be taken into account for deciding whether a case would fall in the category of the rarest of rare cases.

19. The Apex Court in ***Ram Kishan Singh vs. Harmit kaur and another (1972) 3 SCC 280***, held that a statement recorded under

Section 164 of the Code of Criminal Procedure is not a substantive evidence and it can be used both to corroborate or contradict the statement of a witness. Moreover, the accused in his statement under Section 313 denied the consumption alcohol with the deceased and started the war of words and as such, the prosecution must have produced sufficient evidences to prove either the previous enmity or sudden provocation and the like. In a case involving murder, the witnesses were examined in a casual manner with a delay of more than two months to record their statement as well as their depositions were recorded in the Court after a decade, which creates doubts in the minds of this Court.

20. There was no cogency in the deposition of P.W.2, who, on one hand deposed that he was only informed about the death of the deceased, as he ran away from the scene of occurrence and on the other hand, stated that while returning back, he had noticed the accused hitting the deceased. In all probable, this Court can assume that there is a possibility of exaggeration and based on the presumption, a person cannot be convicted to undergo life imprisonment. If at all, the Trial Court is convinced with the depositions of P.Ws 1 and 2, in the absence of motive and intention, which are essential ingredients and factor in a

murder case punishable under Section 302 IPC, the punishment could have been brought within the ambit of Section 300 IPC, a culpable homicide not amounting to murder. In a nutshell the correctness of the last seen version emanating from P.Ws 1 and 2 becomes doubtful, especially against the Appellant herein. It was not disputed that the occurrence had taken place during night hours and the P.W.2 is stated to have identified the accused only with the help of a torchlight, which has not admittedly been recovered and what were the weapons used for hitting the deceased was not known. Thus, we are able to see several flaws in the theory of the prosecution and with such inconclusive evidence, we are afraid to uphold the judgment of the Trial Court. As stated earlier, we have also found that the prosecution has miserably failed to prove the alleged motive. In our considered view, the remaining circumstances relied on by the prosecution and held as proved by the Court below would not unerringly point to the guilt of the Appellant. Thus, in our view, it is unsafe on the aforesaid circumstances to maintain the conviction of the Appellant and we thus extend the benefit of doubt to him.

21. In view of the above, the judgment dated 30.03.2023 passed by the Sessions Judge/Addl.DC(J), East Jaintia Hills District, Khliehriat

made in Sessions Case No.50 of 2021 is set aside and the appellant is acquitted of the charge. The appellant is set at liberty, in case his detention not required in any other case. The bail bond executed, if any, shall stand cancelled and fine amount, if any paid, shall be refunded to the appellant.

22. In fine, ***Crl.A.No.25 of 2023*** is allowed. Consequently, Crl.M.C.No.83 of 2023 is closed.

(W.Diengdoh)
Judge

(S.Vaidyanathan)
Chief Justice

PRE-DELIVERY JUDGMENT IN
Crl.A.No.25 of 2023