

Thingbaijam Vs. State of Manipur

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Court : Guwahati

Decided On : May-13-2005

Judge : B.K. Sharma and T. Nandkumar Singh, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 233, 313, 322, 325, 326 and 326(1); Code of Criminal Procedure (CrPC) (Amendment) Act, 1978 - Sections 27; [Evidence Act, 1872](#) - Sections 24 and 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 302

Appeal No. : Criminal (Jail) Appeal No. 2 of 1999

Appellant : Thingbaijam

Respondent : State of Manipur

Advocate for Def. : Ch. Bidhyamani Devi, P.P.

Advocate for Pet/Ap. : N. Kerani Singh, Sr. Counsel and Debananda, Advs.

Disposition : Appeal dismissed

Judgement :

T. Nandkumar Singh, J.

1. The present appeal has been filed by the accused/appellant against the judgment dated 21-10-1999 passed in S. T. Case No. 92/94/8/94/9 of 1999 by the

learned Sessions Judge, Manipur East (Shri M. Binoykumar Singh, as he then was) wherein it has been held that the appellant/accused guilty and convicted him Under Section 302, IPC, and on the facts and circumstances of the case the appellant/accused was awarded life imprisonment. The learned trial Court passed his judgment dated 21-10-1999 basing primarily upon the circumstantial evidence and extra-judicial confession of the appellant./ accused. The learned trial Court was also of the firm opinion in passing the judgment dated 21-10-1999 that the death of Shri L. Mohendro Singh (deceased/victim) was homicidal and manner in which injury was inflicted was due to commission of crime of murder within the meaning of Section 300, IPC not falling under any of exceptions specified therein.

2. Heard Mr. N. Kerani Singh, learned : ST. counsel assisted by Mr. Debananda Singh, learned Counsel appearing on behalf of the appellant/accused as well as Mrs. Ch. Bidhyamani Devi, learned P. P. for the respondent.

3. To be prcised, the appellant/accused faced the trial for the offence Under Section 302, IPC on the case of the prosecution, in nut shell, mentioned hereunder.

4. Bus named 'Sakuntala' bearing registration MN-01-A 3715 along with its proprietor, Smt. Chaobihal Devi (P.W. No.

3) in the morning at about 5.20 a.m. of 17-9-1989 started from the village of the proprietor, Irengbam Village, towards Imphal along the Tiddim Road. The bus was driven by one Shri Ngangom Nilachandra Singh of Irengbam Village and one Shri Oinam Nimai Singh (P.W. No.

1) was the conductor of the bus. On the way to Imphal some passengers mostly women including

(1) Smt. Arnubi Devi (P.W. No. 5), and

(2) Smt. Tombimacha Devi (P.W. No,

6) boarded in the said bus 'Sakuntala'. When the said bus reached near the place called. 'Irengbam Kangjeibung (Playground), one L. Mohendro Singh, (deceased)

of Irengbam Village along with one Shri Irengbam Amusana (P.W. No.

11) boarded in the said bus. After proceeding about 200 ms. from Irengbam Kangjeibung, one Shri Th. Ibotombi Singh (appellant/accused also boarded in the said bus from the back side door, the said Irengbam Amusana Singh (P.W. No.

11) and the deceased, L. Mohendra Singh, occupied at Seat Nos. 22 and 23 respectively of the said bus, and when the said bus was about to reach the Chanura Bazar near Utlou Heibi Makhong at about 5.30 a.m. of 17-9-1989 the victim L. Mohendro Singh made a sound like 'Oh' suddenly on being assaulted by the appellant/accused with a commando knife. The appellant/accused by shouting 'don't touch him if any body wanted to live' moved backward and managed to escape through the back door of the bus. Shri Amusana Singh (P.W. No.

11) and other passengers including Smt. Amubi (Devi (P.W. No. 5). Smt. Tombimacha (P.W. No.

6) and others picked up the deceased L. Mohendro Singh, who was lying down near the front door by holding his bleeding injury with one of his hands and placed him on a three seated seat. Smt. Chaobihal Devi, owner of the bus (P.W. No.

3) got down from the bus for informing the members of the family of the deceased. The appellant/accused, deceased Mohendro, Amusana (P.W. No. 11), Smt. Chaobihal Devi (owner of the bus/P.W. No. 3), Smt. Amubi Devi (passenger/P.W. No. 5), Smt. Tombimacha Devi (passenger/P.W. No.

6) are all co-villagers of the village called 'Irengbam Village'. The deceased, Mohendro was taken to the District Hospital at Imphal by the same bus, he succumbed to his injury on the way. Smt. Chaobihal Devi (owner of the bus/P.W. No.

3) informed about the incident to the mother of the deceased Mohendra and his mother informed about the occurrence to the father of the victim, Shri L. Dhono Singh (P.W. No.

9) who was serving as Work-charged employee at the Loktak Project which is very near from their village at about 8 a.m. of 17-9-1989 that his son deceased Mohendro was stabbed by the appellant/ accused, Shri Th. Ibotombi Singh. Shri L. Dhono Singh (P.W. No.

9) immediately proceeded along with his wife (i.e. mother of the deceased) towards Imphal District Hospital by boarding a bus and reached at the District Hospital at about 10 a.m. of that day and there he found his son (victim) lying dead. Then he lodged a written complaint to the O.C. Lamsang, P.S. i.e. the P.W. No. 12, who was present at the Hospital at about 10.20 a.m. of the same day. The FIR Case No. 98(9)89 Lamsang P.S. Under Section 302, I.P.C. was registered on the basis of the said report. The appellant/accused was a Sepoy of the 1st Bn. Manipur Rifles at (the time of the occurrence. On the same day, i.e. on 17-9-1989 at about 7 a.m. the appellant/accused, Shri Th. Ibotombi Singh was brought by his Coy Havildar Maj. Gogol before Shri Okram Nilamani Singh, Assistant Commandant of the 1st Bn. Manipur Rifles (P.W. No.

8) before whom the accused/appellant confessed that he stabbed the deceased with the commando knife on the same day in the bus and he also showed the very commando knife by which he stabbed the victim. Immediately Shri O. Nilamani Singh, Asstt. Commandant (P.W. No.

8) informed the Commandant of the Unit and asked the Havildar for keeping the accused/appellant under guard along with the weapon. On being informed through the Sub-Divisional Police Officer, Lamphel about the presence of the appellant accused in the 1st Bn. M.R. the O.C. Lamsang P.S. (i.e. P.W. No.

12) proceeded to the 1st Bn. M.R. and arrested the accused/appellant at about 6.30 p.m. of the same date, i.e. 17-9-1989. The O.C. Lamsang, P.S. (P.W. No.

12) seized the commando knife (Ext. M.O.

3) having reddish stain on its blade and a black umbrella (Ext. M.O.

4) on production by the appellant/accused in the office room of the Adjutant of 1st Bn. M.R. by preparing a seizure memo (Ext. P/3) in the presence of two seizure

witnesses and the appellant/accused also put his signature on the seizure memo (i.e. Ext. P/3). The O.C. Lamsang. P.S. (P.W No.

12) also seized the blood stained shirt worn by the appellant/accused (Ext. M.O. No.

5) by preparing seizure memo (Ext. P/9) in the presence of witnesses. The seized commando knife (M.O. No. 3), the blood stained shirt (M.O. No.

5) and blood stained pants were sent to the expert, i.e. the Director-cum-Chemical Examiner, to the Govt. of Assam Forensic Science Laboratory Assam, Kahilipara, Guwahati-19 on 3-5-1990 for examination through the Judicial Magistrate, 1st Class, Imphal West. Manipur. The expert submitted the report (Ext. P/12) confirming the presence of human blood on the commando knife (Ext. M.O. No.

3) but the origin of the blood found on the commando knife (i.e. M.O. No.

3) could not be determined due to denaturation of blood.

5. Though none of the witnesses saw the very act of stabbing suddenly by the appellant/accused to the victim inside the bus, the learned trial Court held that following facts and circumstances are established beyond reasonable doubts :

(1) On 17-9-1989 at about 5/5.30 a.m. (he said Laishram Mohendro Singh, while travelling in the passenger bus Sakuntala bearing MNO-I/A-3715 from Irengbam village for going to Imphal, sustained serious bleeding injuries on his chest.

(2) Though no one saw any attack or assault made to the said Mohendro Singh, some of passengers heard him raising alarm suddenly saying 'Ah/oh' and the accused Ibotombi Singh was seen near the said Mohendro Singh holding a knife in his hand.

(3) The accused Ibotombi Singh escaped from the bus after making a threat to other passengers so as no one made any attempt to apprehend him.

(4) The said Mohendro Singh succumbed to his injuries on the same day within a short time of getting the injuries though he was taken to District Hospital at Imphal

immediately.

(5) On the same day at about 7 a.m. the accused confessed before the Assistant Commandant of the 1st Bn. Manipur Rifles showing the knife and saying that he had stabbed a person on the same day in the morning in a bus in which he also had been travelling.

(6) The accused was arrested on the same day from the 1st Bn. Manipur Rifles and the knife shown by him to the Assistant Commandant was also seized on the same day in the evening.

(7) The shirt of the accused was found stained with human blood by Expert.

(8) Blood was also found on the knife though its origin cannot be determined due to its denaturation.

(9) At the time of inquest on the dead body of Mohendro Singh, bleeding injuries and also scratch mark on the body were found.

(10) At the time of post-mortem examination two stab injuries on the right side front of the chest, one stab injury on the right costal margin and one incised wound in front of left shoulder of the deceased were found. The said injuries were also found ante-mortem in the nature.

(11) In the opinion of the doctor who conducted the post-mortem examination, the said injuries could have been caused by a normal healthy person using the knife marked Ext. M.O. 3.

(12) Further, in the opinion of the doctor, the said injuries were homicidal in nature and the said Mohendro Singh could have survived less than half of an hour after receiving the said injuries.

(13) The said knife was one shown by the accused to the Assistant Commandant (P.W. No. 8) on the same day in the morning at about 7 a.m. at the time of making the said extra-judicial confession by saying that he had stabbed a person using the said knife.

(14) The accused was not in good term with the said Mohendra Singh as shown by the fact that the accused had assaulted the said Mohendra Singh before the occurrence.'

6. Two main thrusts for challenging the impugned judgment of the learned trial Court dated 21-10-1999 are; that (1) the learned trial Court (Shri M. Blnoykumar Singh, as he then was) cannot act on the evidences of the prosecution, i.e. P.W. Nos. 1 to 13, in passing the impugned judgment dated 21-10-1999 because of Section 326 of Code of Criminal Procedure, 1973 (for short Cr. P.C.) for the reasons that he did not record the statements of all the P.Ws. i.e. P.W. Nos. 1 to 13, (2) the extra-judicial confessions made by the appellant/accused to Shri O. Nilamani Singh, Assistant; Commandant (P.W. No. 8) cannot form basis of conviction of the appellant/accused and the last but faint attempt made by the appellant/accused is that conviction of the appellant/accused cannot be based on the circumstantial evidences which is not credible.

7. Section 326 of the Cr. P.C. was amended by Section 27 of Cr. P.C. (Amendment) Act, 1978 (Act No. 45 of 1978) basing on the 41st report of the Law Commission. Before the amendment of Section 326 of the Cr. P.C. 1973, there were serious practical difficulties inasmuch as under the Old Section 326 of the Cr. P.C. 1973, as the evidences have to be recorded afresh by the new Officer, witnesses who were already examined in the case at the cost of considerable strain and expenses not only to the parties but also to the State exchequer. Very occasionally Judicial Officer of a Court was changed and was replaced by another. The witnesses, who were already examined in the cases at the cost of considerable strain and expenses, have to be resumed and re-examined afresh by the new Officer(s) thereby inflicting heavy litigation cost on the party and processes would have to be repeated over again if such next judicial personage also was changed. Eventually, object sought to be achieved by such repetitions, when compared with the enormous costs and trouble, was not of much utility, This matter had been discussed by the Law Commission and in its 41 st. report recommended thus :

'16. The Law Commission in its 41st Report recommended thus :

'It is obviously desirable that in serious cases the whole evidence should be heard by the Judge who finally decides the case. However, having regard to the realities of the situation, it is necessary to make some provision for cases where such transfers do take place, because a mandatory provision for a de novo trial may often cause considerable inconvenience and hardship. We, therefore, propose to extend the section to Judges of Sessions Courts by referring to 'Judge or Magistrate' instead of 'Magistrate' only.'

The 41st report of the Law Commission was accepted by the Parliament and was finally approved by the Parliament through Section 27 of Act No. 45 of 1978. As such, Section 326 of the Code of Criminal Procedure, 1973 after amendment reads as follows :

'326. Conviction or commitment on evidence partly recorded by one Magistrate and partly by another --

(1) Whenever any (Judge or Magistrate), after having heard and recorded whole or any part of the evidence in an inquiry or a trial, ceases to exercise Jurisdiction therein and is succeeded by another (Judge or Magistrate) who has and who exercises such jurisdiction, the (Judge or Magistrate) so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself :

Provided that if the succeeding (Judge or Magistrate) is 'of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code (from one Judge to another Judge or from one Magistrate to another Magistrate), the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of Sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under Section 322 or in which proceedings have been submitted to a superior Magistrate under Section 325'.

8. From the bare perusal of the Section 326 of Cr. P.C. it is clear that a Judge who has recorded the evidence in the case either in part or in whole can act on the evidences recorded in the case which are partly recorded by his successor and partly recorded by himself. We may gainfully refer to the decision of the Apex Court in Bhaskar alias Prabaskar v. State represented by the Inspector of Police, Vellor Taluk P.S. Vellore, reported in (1999) 9 SCC 551 : (1999 Cri LJ 4556) held that :

'13. For the application of Section 326 of the Code three postulates must be concatenated together. First is, a Judge should have recorded the evidence in the case either in part or in whole. Next is, the said Judge should have ceased to exercise jurisdiction in that case, and the third is, another Judge should have succeeded him and such successor Judge must have jurisdiction to try the offences concerned. If the above conditions are completed the successor Judge stands empowered to act on the evidence already recorded in the case.'

9. In the instant case, the prosecution examined as many as 13 P.Ws. out of whom the statement of P.W. No. 1 (Shri O. Nimai Singh), P.W. No. 2 (Irungbam Shanti Singh), P.W. No. 3 (Irungbam Ongbi Chaobihal Devi), P.W. No. 4 (Mutum Angousana Singh), P.W. No. 5 (I. Ongbi Amubi Dcvi), P.W. No. 6 (Irungbam Timbimacha Devi), P.W. No. 7 (Huidrom Nabachandra Singh), P.W. No. 8 (O. Nilamani Singh), P.W. No. 9 (Laishram Dhono Singh), P.W. No. 10 (Laishram Tiken Singh) and P.W. No. 11 (Irungbam Amusana Singh) are recorded by Shri M. Binoykumar Singh, Sessions Judge, Manipur East (as he then was). As such, the first ground for challenging the impugned judgment dated 21-10-1999 that Shri M. Binoykumar Singh, learned Sessions Judge, Manipur East (as he then was) cannot act on the evidence recorded in the present case for convicting the appellants/accused is not sustainable under the law.

10. As stated above, in the instant case, the appellant/accused who is admittedly a Sepoy of the 1st Bn. Manipur Rifles, soon after the occurrence which took place at

about 5.30 a.m. went to his battalion, i.e. the 1st Bn. M.R., and his Coy, Havildar Maj. Gogol took the appellant/accused to their concerned senior officer, i.e. the Assistant Commandant, Shri O. Nilamani Singh (P.W. No. 8) and voluntarily stated to their superior officer, Shri O. Nilamani Singh, by showing the commando knife, (i.e. Ext. M.O. 3) that the appellant/accused had stabbed a person with the said commando knife inside a bus in which he, the appellant/accused and the deceased were travelling together on the very day, i.e. on 17-9-1989. The said extra-judicial confession of the appellant/accused was taken as credible and reliable for convicting the appellant/accused Under Section 302, IPC by the trial Court.

11. Extra-judicial confession, if through a voluntary, can be relied upon by the Court to convict the appellant/accused for the commission of the crime alleged. It is now well settled position of law that, if extra-judicial confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tends to support the statement, cannot be ignored and also that evidence in the form of extra-judicial confession made by the accused to a witness cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. [Ref. :-- (i) Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1954 SC 322 : (1954 Cri LJ 910) and (2) Maghar Singh v. State of Punjab, (1975) 4 SCC 234 : (1975 Cri LJ 1102).]

12. The Apex Court in Kishorchand v. State of H.P., reported in (1991) 1 SCC 286 : (1990 Cri LJ 2289), held that

'Unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity.'

However, before relying on the extra-judicial confession, the Court has to be satisfied with its voluntary nature and is not the result of inducement, threat or promise envisaged Under Section 24 of the Evidence Act.

13. The Apex Court in Gura Singh v. State of Rajasthan, reported in (2001) 2 SCC 205 : (2001 Cri LJ 487), had discussed the evidentiary value of extra-judicial

confession and requirements to be fulfilled for forming the extra-judicial confession as the basis for conviction of the accused. The portions of the Apex Court judgment in Gura Singh v. State of Rajasthan (supra) which spell out the prosecution story are quoted hereunder :

'It is also necessary to note the relationship of the witnesses with the deceased and the appellant. Bhajan Singh, the unfortunate victim of the crime had two wives. The appellant is the son from the second wife Ms. Har Kaur who was previously married to one Kapur Singh. Joginder Singh (PW-7) is the son and Niranjana Singh (PW-6) is the son-in-law from the first wife of the victim. Bhajan Singh, the deceased had a brother, namely. Rood Singh whose son is Jarnail Singh (PW-2). Bhajan Singh, the deceased was in possession of 105 bighas of land at Badopal (Rajasthan) where he used to live with the appellant. Joginder Singh (PW-7) was living in Punjab where he looked after 40 acres of the other land belonging to Bhajan Singh and his family. Some altercation is stated to have taken place between Bhajan Singh and the appellant some days before the occurrence regarding expenditure incurred by the accused in the marriage of his sister-in-law and installation of a hand pump. On the day of occurrence which led to the killing of the deceased, the conversation commenced on the same issue which was not taken kindly by the appellant who inflicted the kassi blow at 1 a.m. on 7-7-1976 resulting in the death of the deceased. On the next morning the appellant went to Jarnail Singh (PW-2) and confessed about the commission of the crime and the manner in which the injuries were caused resulting in the death of the deceased Bhajan Singh. In the company of Jarnail Singh (PW-2), the appellant approached Billor Singh (PW-5), Niranjana Singh (PW-6) and Joginder Singh (PW-7) making before them the extra-judicial confession and requesting them to help him. Jarnail Singh (PW-2) and Billor Singh (PW-5) thereafter called Amar Singh, Panch. Jarnail Singh lodged the first information report (Exhibit P-2) at 12.30 p.m. at Police Station Karanpur which was at a distance of 8 kilometres from the place of occurrence. The appellant was arrested on the same day. He made the disclosure statement (Exhibit P-21) consequent to which kassi, the weapon of offence (Exhibit P-19) was recovered. Again on 12-7-1976-the appellant made another disclosure statement in consequence of which a chadar (sheet) (Exhibit P-12) stained with blood was recovered vide,(Exhibit P-22).'

The Apex Court in Gura Singh (2001 Cri LJ 487) (supra) held that

'Extra-judicial confession, if true and voluntary, it can be relied upon by the Court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person' who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. That the evidence in the form of extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the Court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. It is not open to the Court trying the criminal case to start with a presumption that extra-judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession.'

14. In the instant case, the appellant/ accused made the extra-judicial confession instantaneously immediately after the occurrence to his senior officers, i.e. the Assistant Commandant, Shri O. Nilamani Singh (P.W. No. 8), and there is absolutely no reason on the part of the Asstt. Commandant, Shri O. Nilarnani Singh (P.W. No. 8) for stating falsely that the accused/appellant had made the extra-judicial confession to him. Further, there is absolutely no reason and circumstances in the present case to show that the extra-judicial confession of the appellant/accused has been procured under undue influence, coercion or pressure inasmuch as the appellant/accused expected a favour from his senior officers, i.e. the Assistant Commandant of his battalion and his Coy. Havildar Maj. Gogol and there is absolutely no reason on the part of the Asstt. Commandant, Shri O. Nilmani Singh (P.W. No. 8) promising to favour the appellant/accused in case he made a truthful statement regarding the occurrence. Further, in the instant case, during the course of the full dressed trial, there was not even a whisper on the part of the appellant/accused that the appellant/accused had been under the undue influence, coercion and pressure to make the extra-judicial confession before the

senior officers, i.e. the Assistant Commandant, 1st Bn. M.R., Shri O. Nilamani Singh (P.W. No. 8) about the occurrence and also that the statement of his senior officer Shri O. Nilamani Singh is tainted one and not credible. Over and above, in the instant case, the time, the manner and the attending circumstances clearly proved that the appellant/accused had made a voluntary extra-judicial confession before Shri O. Nilamani Singh (P.W. No. 8) without any fear and coercion.

15. For the reasons discussed above, the second ground for challenging the impugned judgment dated 21-10-1999 that the learned Sessions Judge, Manipur East cannot pass the impugned judgment basing on the extra-judicial confession of the appellant/accused is not sustainable under the law.

16. Regarding the 3rd ground for challenging that the learned Sessions Judge, Manipur East passed the impugned judgment merely on circumstance evidence is also not acceptable under the law in the instant case for the reasons mentioned in following paras.

17. The golden thread which runs through the web of administration of justice and criminal case is that if two views are possible on the evidence adduced in the case, (1) pointing to the guilt of the accused and another to his innocence, the view which is favourable to the accused should be adopted. The paramount jurisdiction of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is not less than from the conviction of the innocent. The Apex Court in *C. Chenga Reddy v. State of A.P.*, (1996) 10 SCC 193 : (1996 CM LJ 3461), held that 'In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be a conclusive In nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally Inconsistent with his innocence'.

18. The Apex Court in the *State of U. P. v. Ashok Kumar Srivastava*, AIR 1992 SC 840 : (1992 CM LJ 1104). held that a great care must be taken in evaluating the circumstantial evidence and if the evidence relied on is reasonably capable of two

influences -- one in favour of the accused must be accepted. It is also pointed that circumstances relied upon must be found to have been fully established and cumulative of all the facts so established must be consistent only with the hypothesis of guilt. The Apex Court in the State of U.P. v. Satish, AIR 2005 SC 1000 : (2005 CM LJ 1428), convicted the accused to death sentence basing on the circumstantial evidence. The portion of the Judgment of the Apex Court in the State of U.P. v. Satish, 2005 CM LJ 1428 (supra) which spells out the prosecution case are quoted hereunder :

'4. On 16-8-2001 the victim who was studying in Sarvodya Public School had gone to school and did not return at the usual time. On the next day morning her dead body was found in the Sugarcane field of one Moolchand around 6.00 a.m. She was lying in a dead condition and blood was oozing from her private parts and there was marks of pressing on her neck. Report was lodged at the nearby Police Station and the dead body was sent for post-mortem examination,. Dr. R. K. Gupta (PW-7) conducted the postmortem around 2.00 p.m. on 17-8-2001 and opined that death was within the preceding 24 hours.'

'5. Three persons claimed to have seen the accused nearby the place of occurrence between 1.00 p.m. to 2.00 p.m. on the date of occurrence. Two of them, namely, Sanjeev Kumar Tyagi (PW-3) and Kulbhushan (PW-. 5) claimed to have seen the deceased being carried on a bicycle by the accused who was taking the bicycle with the deceased sitting on the handle thereof. Anil (PW-2) stated that he had seen the accused in perplexed state around 2.00 p.m. near the place from where the dead body of deceased was found. Investigation was undertaken. During such investigation, there was recovery of accused's underwear as also the undergarment the deceased was wearing. This recovery was treated to be under Section 27 of the Indian Evidence Act. 1872 (in short the 'Evidence Act').'

19. The Apex Court in the State of U.P. v. Satish (2005 CM LJ 1428) (supra) held that where time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime became impossible. Para 23 of the AIR is quoted hereunder :

'23. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, It would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs-3 and 5, in addition to the evidence of PW-2.'

In the instant case, as stated above, though none of the prosecution witnesses stated that he or she saw the very act of the appellant/accused assaulting or stabbing the deceased Mohendro with the commando knife (Ext. M.O. 3) in the bus all the prosecution witnesses have stated very clearly that the victim/deceased Mohendro suddenly stated 'Ah' and on such heading all the prosecution witnesses looked at the accused and saw that the appellant/accused was near the victim holding the said commando knife (Ext. M.O. 3) on his right hand and an umbrella on his left hand (Ext. Mo.O. 4) and the deceased holding his chest with blood and the victim fell down with bleeding injuries inside the bus and the appellant/accused shouted hot to touch him, if any body wants to live alive and stating so he managed to escape from the backside door of the bus. As such time-gap between the shouting by the deceased and looking to the victim/deceased on such shouting by the prosecution witnesses and they saw the accused standing near the victim with the commando knife (M.O. 3) in his right hand and an umbrella (M.O. 4) in his left hand so small and instantaneous for coming to a definite conclusion that the present appellant/ accused is the very author of the crime and also that it would be impossible for any person to be the author of the crime in the said incident inside the bus on 17-9-1989.

20. Smt. Chaobihal Devi (P.W. No. 3), the owner of the bus stated that she was sitting in the first row of three seated seat behind the driver of the bus and on hearing the sound like 'Ah' from the deceased Mohendro she turned back and saw

the appellant/accused holding a knife in the middle space of the bus near the deceased and the deceased with one of his hands on the serious bleeding injuries in his chest. The accused/appellant shouted not to touch him, if anybody wants to stay alive.

21. Similarly, P.W. No. 5 (Amubi Devi), stated that on hearing the sounds made by the victim/deceased and some passengers, she and other villagers stood up and saw the accused standing and holding a knife in the middle space of the bus near the deceased and the deceased having bleeding injuries in his front portion facing the accused in a closed distance and the accused was holding commando knife (M.O. 3) in his right hand. Similarly, Smt. Tombimacha Devi (P.W. No. 6) is also one of the women passengers in the bus corroborated the statements of P.W. No. 3 (Chaobihal Devi) and P.W. No. 5 (Amubi Devi). P.W. 11, I. Amusana Singh is also one of the passengers travelling in the said bus at the time of the occurrence, also stated that he along with the victim Mohendro and one Shri Irungbam Tomba Singh of Irangbam Village boarded the said bus. He occupied Seat No. 22 and the deceased occupied Seat No. 23 respectively. Suddenly, the deceased shouted 'Ah' and when he looked towards the victim/deceased he saw the accused/appellant holding a commando knife (M.O. 3) in his right hand and an umbrella (M.O. 4) in his left hand standing opposite to the victim/deceased. And he immediately shouted to the accused/appellant not to behave like that stating that as all of them were coming from the same locality and when he tried to intervene the accused/appellant shouted not to touch him if they want to be alive.

22. It is clear view and beyond reasonable doubt that the circumstances in the present case have shown to be closely connected to show that the incriminating fact is so complete that it must be incompatible with the innocence of the appellant/accused.

23. Last but faint attempt on the part of the learned Counsel for the appellant/accused is that the prosecution fails to prove that the commando knife (Ext. M.O. 3) stains with blood. It would be relevant to point out that during the course of the trial, no question was raised about the non-staining of blood on the commando knife (Ext. M.O. 3). It is also not the case of the appellant/accused

during the course of his examination Under Section 313 of the Cr. P.C. that the commando knife (Ext. M.O. 3) is not stained with blood, nor he led evidence on Ms defence Under Section 233, of the Cr. P.C. that the commando knife (Ext, M.O. 3) is not stained with blood.

24. The seizure memo (Ext. P/3) for seizure of the commando knife on the production by the appellant/accused at the office of the Adjutant 1st Bn. M.R. in the presenee of the witnesses, mentioned very clearly that '1. Section Nittyai Singh, Inspector, O.C. Lamsang P.S., have in the presence of the undersinged witnesses seized under mentioned commando knife from the possession of the accused Thingbaijam alias Thangjam Ibotombi Singh, 28 years, s/o T. Mangi Singh of Irengbam Mamang Leikai, Rifleman No. 22598 of 1st Bn. M.R. Coy, Imphal.

(1) Commando knife of about 11 1/2' and having reddish stain with blood'. The P.W. 12, O.C. Lamsang P.S. stated that the said commando knife (Ext. M.O. 3) was sent to the expert, i.e. the Director-cum-Examiner to the Govt. of Assam Forensic Science Laboratory, Assam, Kahilipara, Guwahati-19 on 3-5-1990 through the Judicial Magistrate, 1st Class, Imphal West, Manipur for examination and opinion. The expert gave its report (Ext. P/12) that the commando knife (Ext. M.O. 3) found to have been stained with blood but the origin of the blood cannot be determined due to denaturation of blood. The Apex Court in Sanjay alias Kaka v. State (N.C.T. of Delhi) reported in AIR 2001 SC 979 : (2Q01 Cri LJ 1231) held that failure of the prosecution to prove the origin of the blood-stain on the pants and shirt of the accused would not extent any benefit of doubt to the accused and para 34 of AIR is quoted hereunder :

'34. Following Taja Ram's case, this

Court again in Gura Singh v. State of Rajasthan, (2000) Suppl (3) JT (SC) 528 : 2000 AIR SCW 4439 : AIR 2001 SC 330 : (2001 Cri LJ 487), (para 20) held :

'We do not find any substance in the submissions of the learned Counsel for the appellant that in the absence of the report regarding the origin of the blood, the trial Court could not. have convicted the accused. The Serologist and Chemical

Examiner has found it that the Chadar (sheet) seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with the lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and stale argument. The trial Court as well as the High Court were, therefore, justified in holding this circumstance as proved beyond doubt against the appellant.'

The Apex Court also is of the similar view in Gura Singh v. State of Rajasthan, 2001 Cri LJ 487 (supra).

25. In the facts and circumstances of the instant case, we are of the considered view that mere failure of the expert to determine the origin of the blood found on the commando knife (Ext. M.O. 3) due to its denaturation shall not give the benefit of doubt to the extent that the prosecution had failed to prove the prosecution case beyond reasonable doubt.

26. For the reasons discussed above, we are of opinion that no interference to the impugned judgment and order of the learned trial Court dated 21-10-1999 is called for. Accordingly the present Criminal (Jail) Appeal has no merit and hereby dismissed.

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