

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A. (J) 24/2022

Sri Rangbhanga Reang,

son of late Bidyajoy Reang, resident of Debendrapara, P.S. Ompi

Sub-Division- Amarpur, District- Gomati, Tripura

----Appellant

Versus

The State of Tripura

----Respondent

For Appellant(s) : Mr. I. Chakraborty, Advocate

For Respondent(s) : Mr. S. Ghosh, Addl. PP

Date of hearing & delivery : **09.08.2023**
of Judgment & Order

Whether fit for reporting : Yes / No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

(Amarnath Goud, J)

Heard Mr. I. Chakraborty, learned counsel appearing for the appellant.

Also heard Mr. S. Ghosh, learned Additional PP appearing on behalf of the respondent-State.

2. This appeal arises out of the judgment and order of conviction dated 05.04.2022 and sentence dated 08.04.2022 passed in connection with case No. S.T.(GT/A) 40 of 2016 by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur, whereby and whereunder the learned Additional Sessions Judge convicted the appellant for commission of offences punishable under Sections 120-B read with Section 302 of the IPC and sentenced him to suffer rigorous imprisonment for life with default stipulations.

3. Brief fact of the prosecution case, is that, on 23.05.2016 the complainant, Tapas Deb (PW-1), lodged a written complaint stating *inter alia* that on 17.05.2016 at night at around 7:30 pm, the present appellant-accused alongwith another accused Bipul Saha, accompanied by the younger brother of the informant purchased some meat from Ompi Bazar and consumed the same in the house of Bipul Saha while having dinner and since that night, the brother of

the complainant had been missing and none could say whereabouts of him. It was also alleged in the complaint that both the accused persons had kidnapped his brother with intent to defraud him some money which the brother of the informant had withdrawn on that night. The informant further suspected some other persons to be involved in the incident.

4. The said complaint was registered as Ompi PS case no. 5 of 2016 under Sections 364-A/120-B of the IPC. The matter was investigated by the investigating officer. During investigation, I.O. has also visited the place of occurrence, prepared hands sketch map of the PO with separate index and also examined the available witnesses. The I.O. had also arrested the present appellant and took him on police remand by order of learned trial court and on his disclosure statement body of the victim was recovered. The IO had also seized some articles by preparing seizure list, collected inquest report, injury report and the post mortem report alongwith forensic report. During investigation, the prime accused, namely, Bipul Saha had surrendered before the concerned police station, and police took him under remand and on his disclosure statement, some articles were recovered from the house of the prime accused, Bipul Saha. Thereafter, the I.O. submitted charge-sheet against the accused-appellant under Section 120-B IPC and under Section 302/201 against the prime accused, Bipul Saha. On receipt of charge sheet, learned SDJM, Amarpur took cognizance of the offences and subsequently the case was committed to the court of learned Additional Sessions Judge, Gomati, Udaipur. At the commencement of trial, the learned Additional Sessions Judge had framed charge against the present accused person i.e. the appellant herein, under Section 120-B of the IPC to which the accused-appellant pleaded not guilty and claimed to be tried.

5. During trial, the prosecution to establish the charges had adduced 28 witnesses and exhibited some documents. After closure of recording evidences, the accused-person was examined under Section 313 Cr.P.C. wherein the accused-appellant denied all the allegations leveled against him by the prosecution witnesses and denied to adduce any evidence on his behalf. After hearing arguments and on examining the evidences and materials on record, the learned Additional Sessions Judge had convicted and sentenced the accused-appellant, as aforestated. Being aggrieved, the present appeal is preferred by the appellant.

6. Mr. Chakraborty, learned counsel appearing for the appellant has submitted that the delay in lodging the FIR has not sufficiently been explained by the complainant. Mr. Chakraborty, learned counsel has further submitted that there is no eye witness to alleged occurrence which can prove involvement of the accused in the alleged crime. It has also been argued by learned counsel that the prosecution has miserably failed to establish the principle of last seen theory. Leaned counsel for the appellant has further submitted that the entire prosecution case is based on circumstantial evidence. Mr. Chakraborty, has further submitted that the inclusion of the name of the accused-appellant is an afterthought and hence, he has urged this court to set the accused-appellant free from the charges leveled against him. Learned counsel also has argued that none of the prosecution witnesses are trustworthy and their evidence has no evidentiary value. In fine, learned counsel has argued that without properly appreciating the evidences on record, the learned trial court had convicted the appellant.

7. On the other hand, learned Additional PP appearing for the respondent-State has urged to maintain the findings of the learned trial court since there is no infirmity or illegality in the findings of the learned trial court.

8. We have considered the submissions of learned counsel appearing for the parties. We have perused the evidences and materials on record and the judgment passed by the learned Additional Sessions Judge.

10. *PW-1, Tapash Deb is the complainant of the instant case. In his deposition he deposed that Tapan Deb @ Chanu, the victim, was his brother who is no more. On 17.05.2016 he inquired about his brother in his house and his mother told that Chanu left home at 2 to 2.30 pm after handing over Rs. 2,50,000/- to her. He further deposed that at night Chanu called his mother on phone and told that he would go to Udaipur Finance Company. This witness further deposed that at about 9 pm he rang up Chanu and Chanu told him that he was staying at the house of an official of the Finance company. On the following day, he started searching of his brother but did not get any trace of his brother and his mobile was switched off. This witness also deposed that one Bikram Saha of Ompi market told that his brother purchased one hen from him on last Tuesday and chopped the same and at that time he was accompanied by Bipul Saha and Ranga Bhanga Reang and went to the house of Bipul Saha where they consumed the meat. This witness further deposed that it was his suspicion that Bipul Saha and Ranga Bhanga Reang might have killed his brother. This witness identified the accused-appellant in the dock.*

In cross examination, this witness has stated that when he found the mobile phone of his brother switched off he went to motorstand where from he came to know that from noon time his brother was accompanied by Manna Kalai. No other material could have been elucidated from his cross-examination.

From the deposition of PW-2, PW-3, PW-4, PW-5, PW-8, PW-14, PW- 22, PW- 23, PW-26, PW-27 nothing relevant has been established regarding the involvement of the appellant with the alleged crime.

PW-6, is the mother of the deceased, who in her deposition stated that on 17.09.2016, her son Tapan Deb withdrew Rs. 2,50,000/- from the bank and after keeping the said money to her, he left the house at 12 pm and when on the next day till 10 am her son did not return, she tried to ring the mobile of her phone but, it was switched off. Thereafter, she searched every possible places and the brother of Bipul Saha, namely, Dinesh Saha told that Bipul Saha disclosed him that whereabouts of Chanu might be known to Ranga Bhanga Reang. This witness further deposed that Bipul Saha always accompanied her deceased son and it is her strong belief that her son was killed by Bipul Saha for misappropriating the amount of Rs. 2,50,000/- from him.

Nothing material could have been elucidated from her cross-examination.

PW-7, in his deposition stated that prior to lodging of ejahar they came to know from Bikram Saha and Abu Deb @ Sukanta of Ompi that on 17.05.2016 his nephew Chanu was accompanied by Bipul Saha and Ranga Bhanga Reang and they purchased a hen from them. This witness also deposed that on 25.05.2016 the dead body of Chanu was recovered by police from Doctor Singh para in a jhum khet as pointed by Ranga Bhanga Reang.

In cross-examination, when this witness was confronted to his previous statement made before the I.O. recorded under Section 161 CrPC that prior to lodging of ejahar they came to know from Bikram Saha and Abu Deb @ Sukanta of Ompi that on 17.05.2016 his nephew Chanu was accompanied by Bipul Saha and Ranga Bhanga Reang and they purchased a hen from them and so they informed the police who arrested Bipul Saha and Ranga Bhanga Reang, was found to be absent. Further, when this witness was confronted to his previous statement recorded by the I.O. under Section 161 CrPC that he stated

to the IO that the dead body of Chanu was recovered as pointed by the accused Ranga Bhanga Reang, was also found to be absent.

PW-9 was declared hostile and nothing material was revealed from his deposition. PW-10 in his deposition stated that about two years back being sweeper he was called by the O/C, Ompi PS and he went to the house of the accused and on reaching there as per pointing of accused a bag containing some clothes was recovered from the tank of a kachcha latrine and from the pocket of a pant one ATM card, PAN card and a key which belonged to Tapas Deb. Nothing material was revealed from his cross examination.

PW 11 and 12 are the seizure witnesses.

PW 13 has been turned hostile. In cross examination by the prosecution this witness deposed that on 17.05.2016 at the request of Bipul Saha he told Om @ Umesh Kalai the adjacent butcher shop owner to cut hen into pieces for Rs. 20/- and accordingly he agreed and at that time he asked Bipul Saha as to what will he do with such a large quantity of meat then Bipul replied that he will eat such meat with Chanu in his house and at that time one Ranga Bhanga Reang accompanied Bipul Saha and thereafter both Bipul Saha and Ranga Bhanga Reang left and at that time it was about 6 to 7 in the evening. This witness during cross examination by the prosecution has also deposed that definitely Bipul Saha and Ranga Bhanga Reang together detained Chanu somewhere.

PW-15 and 16, in their deposition stated that on 13.06.2016 on call by the OC of Ompi PS they went to the PS where they found accused Bipul Saha disclosing the manner as to how he caused the death of Chanu @ Tapas Deb. Nothing material has been revealed from their cross examination.

PW-17, is the scribe of the FIR.

PW-18 is the videographer who on 25.05.2016 on call by OC Ompi PS, went to the PS and videographed the entire incident that from the PS they went to the

house of Bipul Saha where Ranga Bhanga Reang showed the place at which he alongwith Chanu Deb and Bipul Saha consumed foreign liquor and thereafter as pointed by accused Ranga Bhanga Reang reached to the place where dead body of Chanu was found and recovered. This witness further deposed that he also videographed the incident in the PS where Bipul Saha disclosed the incident as to how he murdered Chanu @ Tapas Deb and also showed the place where he sat with Ranga Bhanga Reang and Chanu in his house and consumed alcohol. Nothing materials could have been elucidated from his cross examination.

PW- 19 is the Medical Officer who conducted post mortem examination over the dead body of deceased Tapas Deb, and PW-20 and 21 are the Chemical Examiner of SFSL.

PW-24, is the DCM, Amarpur and as per his deposition, infront of him two accused persons, namely, 'Reang' and Bipul Saha made disclosure statement.

PW-25, in his deposition stated that Rang Bhanga Reang disclosed that on 17.05.2016 he went to Ompi market where he met Bipul Saha and both of them purchased meat and went to the house of Bipul Saha where Tapas Deb @ Chanu also reached at night at about 9:00 pm and there all of them consumed alcohol and Tapas Deb @ Chanu was about to consume alcohol mixed with Coca Cola and after having meal Ranga Bhanga Reang left for his house and at late night at about 0400 hours accused Bipul Saha informed Rang Bhanga Reang on mobile that Tapas Deb @ Chanu expired in the house of Bipul Saha and also instructed Rang Bhang Reang to assist him to dispose of the dead body of Tapas Deb and initially Ranag Bhanga Reang refused to come and on threatening by the accused Bipul Saha, he finally agreed and so Ranga Bhanga Reang was instructed by the accused Bipul Saha to reach Konaram Para where the dead body would be disposed. This witness further deposed that

after sometime Ranga Bhang Reang was informed by Bipul Saha that he already disposed of the dead body of Tapas Deb @ Chanu in a lunga in between Konaram Para and doctor Singh para jungle. This witness also deposed that Rang Bhang Reang took the persons present in the PS to a lunga known as Puran Jum in Doctor Singh Para jungle where from a drain the dead body of Tapas Deb @ Chanu was recovered. Except some denials, nothing material has been elucidated from his cross examination.

PW-28, is the IO who after investigation has submitted the charge sheet.

11. On over all appreciation of the evidences on record, it is well established that there is no eye witness to the alleged incident. The entire case is based on circumstantial evidence. There is no direct evidence from any of the prosecution witness which can prove the charge of accusation leveled against the accused-appellant. PW-1, is the brother of the victim and the informant of the instant case, but said PW-1 could not disclose anything regarding involvement of the appellant in the alleged crime. This witness has only stated that he heard that his brother i.e. the victim was with one Bipul Saha accompanied with the present appellant, who purchased some meat from Ompi market and they all went to the house of Bipul Saha. PW-1 in his deposition specifically stated that *it is my suspicion that accused Bipul Saha and Ranga Bhang Reang might have killed my brother chanu.* From his deposition, it is clear that he has come to know from another person (PW-13) that his deceased brother was with the appellant, but this witness was not sure as to whether the crime was committed by the appellant or not. Thus, there is no force or any intensity of importance in his deposition which could demonstrate that Ranga Bhang Reang, the appellant had killed the victim, Chanu.

12. Further, PW-6, mother of the victim in her deposition stated that one Dinesh Saha, told her that Bipul Saha disclosed him that whereabouts of the

victim might be known to Ranga Bhanga Reang. This witness further deposed that *it is my strong belief that my son was killed by Bipul Saha for misappropriating the amount of Rs. 2,50,000/- from my son..* In cross examination, this witness volunteered that she disclosed to her son Tapash Deb about keeping of money to her by Chanu, the victim. Thus, this witness also failed to bring any concrete evidence against the appellant. Moreover, this witness has specifically stated that Bipul Saha had killed her son, and she did not utter a single word against the present appellant to have committed the offence under Section 302 IPC. Further, Dinesh Saha, as named by PW-2, was not cited as prosecution witness.

13. Further, PW-7, is a hearsay witness who heard from Bikram Saha and one Abu Deb that the victim was accompanied with Bipul Saha and the present appellant. This witness also deposed that later on as pointed out by the appellant, the dead body of the victim was recovered from Jhum Khet. When this witness was confronted with her statement recorded under Section 161 CrPC that the dead body of Chanu was recovered as pointed by the accused Ranga Bhanga Reang, was found to be absent, so this can be treated as her first time statement before the learned court. PW-9 and 13, turned to be hostile, but from their cross-examination by the prosecution nothing material could have been established against the present appellant.

14. From the evidence of PW-15, PW-16 and PW-18, who are independent witnesses, it can conclusively be said that the present appellant had no role in the alleged crime rather than these witnesses have deposed completely against one Bipul Saha who has resulted in the crime. According to these witnesses, on 13.06.2016 said Bipul Saha had given a complete demonstration in the Ompi PS in presence of the officer-in-charge of the PS and the SDM as to how he had killed Chanu, the victim. From the entire evidence of PW-15, 16 and 18, what

is revealed is that the victim alongwith said Bipul Saha and the present appellant had consumed liquor together in the house of Bipul Saha. Mere presence of the appellant in the house of Bipul Saha alongwith the victim does not provide any evidence that either he had killed the victim or had conspired against the victim to kill him or dispose of the dead body. From the evidence of most of the prosecution witnesses, it is clear that the victim went to the house of Bipul Saha where they had consumed liquor and as per the evidence of PW-19 and 21, the cause of death was due to over dosage. From the evidence of PW-15, 16 and 18, it has come to light that during demonstration by accused Bipul Saha, he has stated that police has seized some sleeping pills from his house which he had mixed with Coco Cola (bottles of which was also seized by police), so it can be presumed that the pills were mixed with Coco Cola and was given to the victim to drink. Now, it has not been well established from the evidence of any of the prosecution witnesses that the appellant had either mixed the pills with the cold drinks or had given the said mixture to the victim to drink.

15. Further, as already stated above, all the witnesses have given contradictory versions as to the death of the victim, and the same amounts to material contradictions. It is reiterated that the testimony of PW-1 (brother-cum-complainant) is inconsistent with the testimonies of PW-2 (mother of the victim). Under the circumstances, this Court is of the opinion that the conviction of the appellants recorded by the learned trial court for causing death of deceased by the present appellant is not well-founded and is liable to be set aside. Keeping in view the aforesaid principle, this Court would hold that in the present case, there are material discrepancies in the testimonies of the witnesses and the same is fatal to the case of the prosecution. The prosecution has thus failed to prove the guilt of the accused-appellant beyond reasonable

doubt. In the present case, owing to the substantial and material contradictions in the testimonies of the prosecution witnesses, the evidence of the prosecution is considered wholly unreliable. Therefore, in the facts and circumstances of the case, the evidence does not prove the alleged offences of murder against the accused-appellant. The prosecution witnesses are not steady enough to bring the charge against the appellant. They have only stated what they came to learn from other persons. There is no direct evidence against the appellant to hold him guilty of the alleged offence. Therefore, the entire facts and circumstances of the case lies upon circumstantial evidence. There must be a chain of evidence not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, but in the instant case, the prosecution witnesses are not inconsistent which could lead to an inference against the prosecution case. The only evidence which appears to have been pressed into service by the prosecution was that the appellant was present in the house of Bipul Saha alongwith the victim who had consumed liquor there and later on the seized articles were recovered from the house of Bipul Saha, drawing adverse inference against the appellant. None of the prosecution witness could complete the chain of evidence so as to prove the guilt of the appellant. In *C. Chenga Reddy and Ors. v. State of A.P.* reported in (1996) 10 SCC 193, it has been observed thus:

“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 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....”.

16. From careful perusal of the evidences on record, it is seen that none of the prosecution witnesses could throw light on the appellant to have committed the offence of murder. From their deposition, it is only revealed that they have

seen the appellant with Bipul Saha and the victim and as per evidence of PW-1, PW-7, PW15, PW16 and PW-18, said appellant was present in the house of Bipul Saha where the alleged crime was committed. Mere presence of the appellant in the alleged place of occurrence cannot establish or cannot lead to conclusive proof that the appellant had taken active part in the alleged crime. There can be no dispute regarding the fact that the case is built on circumstantial evidence. In a case based on circumstantial evidence, direct proof of guilt of the accused is often lacking. When a case is based on circumstantial evidence, the circumstance must be cogently and firmly established. The circumstance must point the guilt of the accused, forming a chain of evidence ruling out the innocence of the accused. Where any link in the chain is missing, the accused is entitled to benefit of doubt.

17. On consideration of all these relevant facts and vital pieces of evidences, in our view, from the circumstances, the conclusion of the guilt of the appellant herein has not been fully established beyond all shadow of doubt as the circumstances are not convincing in nature since neither the chain of evidence is complete nor the circumstances leading to the conclusion that the offence was committed by the appellant and none else is proved. Hence, the impugned judgment cannot be sustained in law. Accordingly, the appeal filed by the appellant-accused is allowed. Consequently, the impugned judgment dated 05.04.2022 and sentence dated 08.04.2022 passed by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur, is hereby quashed and set aside. The appellant is directed to be released forthwith if not required in any other case.

Send down the LCRs.

JUDGE

JUDGE