

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.1/2020 with
Crl.M.C.No.2/2020
Crl.M.C.No.3/2020

Heard on: 13.02.2023
Date of Judgment: 17.02.2023

Komerchand Sing Wanrieh Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. H.L. Shangreiso, Sr.Adv with
Mr. R. Majaw, Adv
Mr. A. Syiem, Adv

For the Respondents : Mr. A. Kumar, Advocate-General with
Mr. S. Sengupta, Addl.Sr.GA
Ms. S. Laloo, GA
Ms. A. Thungwa, GA
Mr. S.P. Mahanta, Sr.Adv with
Mr. L.M. Sangma, Adv
Mr. D. Dkhar, Adv

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes/No |
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JUDGMENT

Hon'ble, the Chief Justice:

A somewhat novel and audacious ground has been urged in this appeal. The appellant asserts that the District and Sessions Judge who

conducted the criminal trial and convicted the appellant and sentenced him to life imprisonment plainly did not have the authority to take up the trial or adjudicate the matter.

2. As a result of this frontal challenge to the authority of the District and Sessions Judges to take up criminal trials where the victim and accused are tribals belonging to the same tribal area, subsequent appellants have jumped on the bandwagon, if only to delay the inevitable or hope for better weather on the bench. The speedy disposal of criminal appeals in this Court has been affected, as a consequence, over the last six months or so. For one or the other reason and the search for relevant notifications published under authority of the Governor of the State, a speedier disposal of this appeal was impeded.

3. Before coming to the nature of the objection taken by the appellant as to the jurisdiction of the trial court in this case, the special feature of this State must be adverted to. Except for a small pocket in the capital city of the State, which area is known as the European ward in Shillong, the rest of the State is regarded as tribal land. The Khasi and Jaintia tribes occupy the central and eastern parts of the State while the

western part is the land of the Garo tribe. Accordingly, there are three distinct autonomous hill councils.

4. The autonomy of the District Councils and an independent court structure under them is provided for in the Sixth Schedule to the Constitution of India. The Sixth Schedule to the Constitution was designed on the basis of the recommendations of the Gopinath Bordoloi Committee set up by the Constituent Assembly. The discussions in course of the Constituent Assembly debates reveal the history from the British times when some of the regions in the North-East were described as “Backward Areas” and others as “Partly Backward Areas” that the Montagu-Chelmsford Report later rechristened less offensively as “Excluded Areas” and “Partly Excluded Areas”.

5. In essence, the Sixth Schedule mandates that the tribes would be governed by their laws, customs and usages and disputes between them would also be resolved by village elders or courts set up by the tribal councils, except in respect of certain classes of matters. Indeed, for the present purpose, paragraphs 4 and 5 of the Sixth Schedule to the Constitution are of some relevance. For the present discussion, paragraph

4(1) and paragraphs 5(1), 5(2) and 5(3) of the Sixth Schedule may be noticed:

“4. Administration of justice in autonomous districts and autonomous regions.—(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of subparagraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2)
...

“5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences. – (1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in

that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure, 1898, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

(4) ...”

6. There is no regional council in the State of Meghalaya. As aforesaid, there are three district councils covering the three separate tribes inhabiting the State. Loosely speaking, the area covered by the State was under the original Bengal Presidency and thereafter in the province of Assam under the British rule and, ultimately, a part of the State of Assam in independent India before the State of Meghalaya was carved out in the year 1972. Since 1972, several of the original districts have been bifurcated and further sub-divided such that there are now 12 administrative districts in the State.

7. At the time that the Constitution came into effect with the Sixth Schedule therein, paragraph 5 thereof provided that neither the Code of Civil Procedure, 1908 nor the Code of Criminal Procedure, 1898 (later, of 1973) would apply except as expressly provided in such provision. In paragraph 5(1) of the Sixth Schedule to the Constitution, the Governor is permitted to confer such powers under either Code as he deems appropriate. However, prior to the Constitution and the Sixth Schedule therein coming into effect, the previous laws in place, including, particularly, the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 provided that in criminal matters only the spirit of the Criminal Procedure Code was to apply and not the letter thereof. It must be recorded at this stage that the history of the administration of justice is much the same in the Garo hills, but since this matter emanates from the Khasi and Jaintia Hills, there is no further reference to the Garo Hills herein. The said Rules of 1937 were notified by the Governor of the then Assam province under Section 6 of the Scheduled Districts Act XIV of 1874 and such rules were to apply to the whole of the United Khasi Hills and Jaintia Hills district, excluding the

areas which were known as Khasi States. However, a day before the Constitution of India came into force in its entirety, the Khasi Syiemship (Administration of Justice) Order, 1950 was issued on January 25, 1950. Such Order of 1950 brought within its fold both the areas in the United Khasi and Jaintia Hills district covered by the 1937 Rules and the other Khasi States.

8. Though the 1937 Rules are no longer in vogue, a Supreme Court judgment in (1966) 3 SCR 830 (*State of Nagaland v. Ratan Singh*) has recognised that for the sake of continuity, the said Rules continue to have effect. Indeed, upon this State being incorporated, by the Meghalaya Act No.6 of 1972, the 1937 Rules have been adopted with effect from February 22, 1972.

9. For the purpose of the present discussion, it would suffice to notice that under Rule 1A of the Rules of 1937, the Governor had the authority to appoint an Additional Deputy Commissioner, either generally or for the trial of a particular case or cases, pertaining to both civil and criminal matters and, for such purpose, the Additional Deputy Commissioner would exercise all or any of the powers of the Deputy

Commissioner. In due course, the Deputy Commissioners elsewhere in the country came to be recognised as Collectors and now are mostly known as District Magistrates. But in this idyllic State in the lap of nature straddling three hill ranges, the custom continues of Deputy Commissioners heading the districts.

10. Rule 16 of the said Rules of 1937 stipulated that criminal justice shall be ordinarily administered by the Deputy Commissioner, his Assistants and by sardars, dolois and other chief village authorities of the different communities. However, in terms of Rule 17 of the said Rules of 1937, only the Deputy Commissioner had the authority to pass a sentence of death, transportation or imprisonment up to the maximum amount provided for the offence and the like. The more serious sentences of death, transportation and imprisonment of seven years and more were subject to the confirmation by the then High Court of Assam. Petty cases were to be taken up by sardars, dolois and other chief village authorities as would be empowered by the Deputy Commissioner. An appeal would lie to the Deputy Commissioner from any decision of an Assistant. It appears that the word “Assistant” in the appeal provision in Rule 21

covered sardars, dolois and other chief village authorities, in addition to special persons that the Deputy Commissioner could appoint for taking up petty matters. As to the application of the Criminal Procedure Code, Rule 23 of the said Rules of 1937 recorded that the Deputy Commissioner and his Assistants shall be guided by “the spirit of the Code of Criminal Procedure, as far as it is applicable to the circumstances of the district and consistent with these rules.”

11. The Order of 1950 covered, as indicated above, both the United Khasi and Jaintia Hills district and also the Khasi States except the municipality of Shillong and the Cantonment. Such Order of 1950 recognises Khasi Syiemship where the Syiem means a customary head of the Khasi tribal institution of an administrative area of the United Khasi and Jaintia Hills district known as the Khasi State. The said Order of 1950 provided for the administration of the criminal justice to be by the Deputy Commissioner or Additional Deputy Commissioner and his Assistants as also by the courts of the Syiems. Rule 3 of the said order of 1950 extended the Indian Penal Code to the extent it was applicable in the other areas of the State of Assam. Rule 16 of the said Order of 1950 defined the court

of Syiem and its jurisdiction and sub-rule (2) therein mandated that the court of Syiem may try any offences under the Indian Penal Code or any other law for the time being in force except those punishable with death, transportation or involving a punishment of five years' imprisonment which may arise within the limits of its locality and in which the Khasis who reside or hold land within its locality are concerned.

12. For completeness, it must be recorded that the United Khasi and Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 came into effect for the entirety of the Khasi Hills Autonomous District excluding the area comprised within the municipality of Shillong and the Cantonment. Rule 4 delineated the classes of courts with village courts at the bottom of the pyramid, subordinate district council courts and additional subordinate district council courts in the middle of three-tier system and the district council court and additional district council court being at the helm. Rule 9 of the said Rules of 1953 contemplates a solitary district council court for the Khasi Hills Autonomous District. In dealing with the powers of court, village courts were not made competent to try offences in respect of which the punishment of imprisonment was

obligatory under the Penal Code as a village court had no authority to pass a sentence of imprisonment and the upper limit of the fine that it could fix has since been enhanced to Rs.150/-. In respect of criminal matters, the Subordinate District Council Court is given authority under the 1953 Rules to try all criminal cases not triable by a village court in which the offence is committed within its jurisdiction. The Additional Subordinate District Council Courts are competent to try all criminal cases not tried by a village court in which the offence is committed within its jurisdiction. Some exceptions are made as to such authority in specific instances. The only other provision to note is that under Rule 58 of the said Rules of 1953, the said Order of 1950 stood repealed.

13. Though several other sets of rules have been referred to in passing in course of the hearing, the only other body of rules that may be specifically noticed would be the Meghalaya Judicial Service Rules, 2006. Schedule-‘A’ to such rules refers to a post by the name of District and Sessions Judge. The qualifications for such post are identical to those necessary for a District and Sessions Judge elsewhere in the country.

14. According to the appellant herein, the authority under paragraph 5(1) of the Sixth Schedule to the Constitution has been exercised by the Governor in the State of Assam when Meghalaya was also an integral part of such State and by subsequent notifications after the formation of the State of Meghalaya. The parties have brought several notifications to bear on the issue beginning the one published on February 27, 1989 by which a named Judge of the Khasi Hills District Council Court was vested by the Governor with “the power for trial of offences punishable with death, transportation for life or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to the Khasi Hills Autonomous District.” A similar notification followed on November 20, 1989 by which an Additional Judge of the District Council Court in the Khasi Hills Autonomous District was similarly empowered, presumably upon the previous incumbent appointed by the February 27, 1989 notification demitting office. A further, similar notification came to be issued on April 21, 2006 with a named Judge of the Khasi Hills Autonomous District Council Court being given similar authority. On April 21, 2006, another

Additional Judge in the Khasi Hills Autonomous District Council Court was also given similar authority. On March 29, 2007, again in exercise of the Governor's authority under paragraph 5(1) of the Sixth Schedule to the Constitution, a Magistrate in the Khasi Hills Autonomous District Council Court was conferred with the powers of a Judicial Magistrate, First Class as provided under the Code of 1973 for trial of offences under the Penal Code or under any other law for the time being applicable in the Khasi Hills Autonomous District Council.

15. On August 10, 2011, a notification issued under the order of the Governor approved the appointment of a named Judge of the District Council Court, Shillong "to try offences punishable with death, transportation for life or imprisonment for a terms of not less than 5(five) years under the Indian Penal Code or under any law for the time being applicable in the Khasi Hills Autonomous District Council." However, within a short time thereafter on September 28, 2011, three Judicial Officers in the regular hierarchy of the judiciary, and not from the District Council Court structure, were invested with the powers of a Judicial Magistrate, First Class as defined in the Code of 1973 within specified

areas. Such notification of September 28, 2011 specified that the notification was in supersession of earlier notifications in respect of the same matters within the East Khasi Hills district. However, the notification of September 28, 2011 referred to the said Rules of 1937 and the said Order of 1950 and also the approval of the Gauhati High Court for its publication, but did not allude to the Sixth Schedule to the Constitution. On May 29, 2014 under orders of the Governor, a further notification was published in exercise of the authority under the 1937 Rules and the Meghalaya Autonomous Districts Administration of Justice Act (Assam Act XIV of 1960 as amended and adopted by Meghalaya) to separate the judiciary from the executive in the West Khasi Hills district. By such notification, the District and Sessions Judge, Nongstoin was appointed as “the Additional Deputy Commissioner, West Khasi Hills District for the trial of all offences punishable with death, imprisonment for life or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to the District” except the Mairang (Civil) sub-division.

16. It is such notification of May 29, 2014 that the appellant questions on the ground that since the Criminal Procedure Code had not been notified in the State at the relevant point of time, there could have been no Sessions Division in terms of Section 9 of the Code of 1973 and, as a consequence, no position as a District and Sessions Judge. The second ground of challenge is that since the power to try criminal cases pertaining to heinous offences had already been conferred to a named Judge by the notification of August 10, 2011, the Governor had no residuary authority to carve out a part of the authority and confer the same on any other court or officer. The reading of paragraph 5(1) of the Sixth Schedule as per the appellant is that all the power has to be conferred on one court or officer and not divided and conferred on various courts or officers. The last limb of argument, though somewhat facetious, is that there is a distinction between a court and an officer in paragraph 5(1) of the Sixth Schedule to the Constitution.

17. It must be pointed out that the notification of May 29, 2014 clearly stipulated that such notification superseded all earlier

notifications in respect of the matters covered thereby pertaining to the East Khasi Hills district.

18. To maintain the continuity, there is then a notification of March 17, 2015 by which a named Additional Judge of the District Council Court in Shillong was conferred the authority to try cases of heinous criminal offences. The next notification is of December 10, 2015 by which a named Judicial Officer, designated as a District Judge, was appointed as Additional Deputy Commissioner in Ri-Bhoi district for trial of all heinous criminal offences. The notification specified that the authority exercised by the Governor was in terms of the Rules of 1937, the Act of 1960 and paragraph 5 of the Sixth Schedule to the Constitution. The notification further indicated that it was in supersession of earlier notifications pertaining to the relevant provisions within Ri-Bhoi district.

19. According to the appellant, in view of the Sixth Schedule to the Constitution envisaging the District Council Courts taking up all disputes between a tribal and another tribal within the jurisdiction of the District Council Court in the same area and since by a pervious notification of August 10, 2011 the Governor had conferred full authority to a named

judge of the District Council Court in Shillong, the subsequent notification of December 10, 2015 was an anomaly. The appellant also submits that the invocation of the authority of the Governor under paragraph 5(1) of the Sixth Schedule to the Constitution is flawed. To boot, the appellant maintains that since a particular judicial officer was named in the notification of December 10, 2015, whatever authority was legally conferred by such notification was limited to the named officer and could not be exercised by a successor in office.

20. The last three notifications are of February 12, 2016, February 7, 2017 and May 3, 2018. The first of such notifications pertains to the trial of heinous offences in the West Jaintia Hills district. The second of the notifications pertains to an Additional Judge in the District Council Court at Shillong. The third – and the most contentious – is the notification of May 3, 2018 in pursuance whereof the criminal trial in this case was conducted. The notification may be seen in its entirety:

“No. LJ (A) 77/2000/Pt.I/30- In exercise of the power conferred under rule 1-A of the Rules for Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 and further under sub-section (1) of Section 2 of the Meghalaya Autonomous District Administration of Justice Act (Assam Act XIV of 1960 as adapted

and amended by the Meghalaya) read with paragraph 5 of the Sixth Schedule of the Constitution of India is pleased to confer the District and Session Judge, Ri-Bhoi with powers of the Additional Deputy Commissioner, Ri-Bhoi District for the trial of all offences punishable with death imprisonment for a term not less than five years under the Indian Penal Code or under any other law for the time being applicable to the District and also to hear all Civil and Criminal revision, appeals, etc. from the decisions of the Assistants to the Deputy Commissioners within the said District and the Governor is further pleased to direct that such District & Sessions Judge as Additional Deputy Commissioner shall for the purpose aforesaid, exercise all the Judicial powers of the Deputy Commissioner within the said District with effect from the date of joining.

This supersedes all earlier notifications issued to this effect under the aforesaid provisions within the Ri-Bhoi District.”

21. The judgment of conviction in this case was pronounced on December 16, 2019 and the sentence was also read out on the same day.
22. Two important factors must be kept in mind. The first is the gradual and delayed transition of judicial authority from the executive wing to courts, be it to the District Council Courts in accordance with the Sixth Schedule to the Constitution or the regular judiciary as otherwise envisaged in the Constitution de hors the Sixth Schedule thereto. The second aspect is the seemingly parallel, but not overlapping, functioning

of the District Council Courts and the regular judiciary in this State which is almost entirely covered by the Sixth Schedule.

23. A short but substantial answer to the doubts raised by the appellant herein would be to refer to the *de facto* doctrine since, irrespective of the technicalities and the perceived anomalies that the appellant cites, the real intent and purport of the law through the various rules, orders and notifications have been to confer authority for the trial of criminal cases by carving out a niche in respect of special matters referred to in paragraph 5 of the Sixth Schedule to the Constitution. Further, the application of the *de facto* doctrine in this case appears to be appropriate since it is nobody's case that serious criminal matters were heard by doctors or accountants or by judicial officers not of such experience or standing as would be in-keeping with the spirit of the Code of 1973.

24. There is, however, a more substantial answer. But before spelling it out, a recent healthy development in establishing the majesty of the rule of law in this State must first be noticed. It is heartening that in furtherance of the rapid strides all round that this State has made in recent

times, the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973 have now been notified in this State by separate notifications of September 20, 2022. The notification issued under the authority of the Governor in exercise of the power conferred under Section 1(2) of the Code of 1973 is set out:

“No. LJ(B).67/88/397- In pursuance to full separation of Judiciary from the Executive and in exercise of the power conferred in proviso to sub-section (2) of Section 1 of the Code of Criminal Procedure 1973, (Act 2 of 1974) the Governor of Meghalaya is pleased to apply the provisions of the Code of Criminal Procedure, 1973 to the Courts in the State of Meghalaya. The District Council Courts shall continue to derive powers under paragraphs 4 and 5 of the Sixth Schedule to the Constitution of India.

“The Governor of Meghalaya further directs that, notwithstanding such application, all actions taken by the Courts throughout Meghalaya, under the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 and the Rules of Administration of Justice and Police in Garo Hills, 1937 shall be deemed to have been taken under the relevant provisions of the Code of Criminal Procedure, 1973.”

25. Almost as an aside and before dwelling into the legal issues that have been raised by the appellant, it may be observed that while the State may lack in development in terms of healthcare, education, employment, industry and certain other facilities, the citizens here can no longer be

said to be backward or indulging in such practices as would rule out their integration into mainstream society as was rather uncharitably perceived while labelling parts of the State and the entire North-East in general as “Backward Areas” or “Partly Backward Areas”. It is true that the happy people of the State of Meghalaya love and worship nature, but they also avail of the latest benefits in information and technology and FMCG penetration is up to the last mile. There is no longer any primitiveness about the inhabitants of this State, though they yearn for all kind of development that the rest of the country has experienced, much as the other seemingly neglected regions of the North-East. In short, integration into mainstream society is complete.

26. Any assessment of the doubts and issues raised by the appellant herein has to begin with a reference to the two key paragraphs in the Sixth Schedule to the Constitution. There is no doubt that paragraph 4 vests the administration of justice in autonomous districts with the District Council Courts, but such authority comes with two caveats indicated by the expressions “between the parties all of whom belong to Scheduled Tribes within such areas” and “other than suits and cases to which the provisions

of sub-paragraph (1) of paragraph 5 of this Schedule apply”. The word “cases” in the second expression would take within its fold all matters covered by paragraph 5(1) of the same Schedule other than suits.

27. Paragraph 5 of the Sixth Schedule to the Constitution makes a clear distinction between other criminal matters and criminal matters pertaining to the trial of offences punishable with death, transportation for life or imprisonment for a term of not less than five years. In respect of such serious criminal cases pertaining to offences under the Penal Code or any other law applicable to the relevant district, the Governor is empowered to specifically confer authority on bodies and persons. Such authority may be conferred on a district council having authority over such district or courts constituted by such district council or on any officer appointed in that behalf by the Governor. Since there is no regional council here, the reference to regional councils in the provisions is ignored.

28. The last limb of paragraph 5(1) of the Sixth Schedule to the Constitution emphasises that it is only upon the conferment of authority by the Governor in respect of serious criminal matters that the relevant

court or officer shall try the matters in exercise of the powers so conferred. In other words, till the authority is conferred in accordance with paragraph 5(1) of the Sixth Schedule to the Constitution, such power cannot be exercised. That is the only possible interpretation since paragraph 4 of the said Schedule, which apparently confers all powers on village councils and District Council Courts, is tempered by excluding from such authority the jurisdiction to try suits and cases to which the provisions of paragraph 5(1) of the said Schedule apply. On the other hand, the authority may be conferred on the relevant District Council or courts constituted by such District Councils or any other officer appointed in that behalf by the Governor. Since it is clear that the authority in terms of the relevant provision may be conferred on the relevant District Councils or District Council Courts, it needs to be emphasised that such authority may also be conferred on any officer provided such officer is appointed in that behalf by the Governor.

29. Ignoring, to begin with, the authority which is expressly invoked in issuing the disputed notifications, it is evident that in each case the authority has been issued to a particular District Council Court or to a

named official manning a District Council Court or to a person appointed as the District Judge in terms of the Meghalaya Judicial Service Rules, 2006. There can be no doubt that a District Judge being appointed under the said Rules of 2006 has been so appointed to take up such matters as District Judges ordinarily would. Again, ignoring for the time being that at the time that the disputed notifications were issued, the Code of Criminal Procedure, 1973 had not been wholeheartedly embraced in this State, the constitutional hierarchy of the judicial system, except to the extent of the autonomy granted to the District Council Courts, was the same here as anywhere else in the country with the district judiciary and its several tiers forming the base, the High Court exercising superintendence over the district judiciary and the Supreme Court at the top of the pyramid exercising primacy in all matters judicial.

30. Thus, whether a notification named a particular District Judge or referred to the office of the District Judge, the conferment of the authority by the Governor had to be seen to be to an officer appointed by the Governor in that behalf. The fact that since the Code of 1973 had not been notified and sessions divisions had not been declared in accordance with

Section 9 of such Code would matter little. Appointments were made by the Governor on the recommendations of the High Court to the post designated as District and Sessions Judge and the conferment of authority by the Governor was either to a person holding such post or generally to that office.

31. There is no basis to the appellant's contention that once the authority in terms of paragraph 5(1) of the Sixth Schedule to the Constitution is conferred on a court or an officer, the Governor has no residuary power to carve out a part of the authority already conferred and vest the same in some other court or officer. Indeed, reading such limitation would defy logic and would be an anathema to an efficient justice delivery system. For example, in a particular matter, the judge manning the designated court or the named officer conferred the authority may desire to be recused. If the argument put forth by the appellant were to be accepted, that would imply that the particular matter could not be assigned to any other court or officer and that would go against the grain of paragraph 5(2) of the said Schedule. It cannot be said that the authority to assign a particular matter to another remains in some situations and

such authority is not generally available, unless the governing provision specifies as such. If there is the authority to assign a particular matter to another person or forum, it must be that there is general authority to carve out a portion of the authority already conferred to bestow another with the same.

32. Similarly, there is no limitation on the powers of the Governor in conferring a part of the authority, say, pertaining to the Penal Code, to a particular court or officer appointed in that behalf and some other special law to a special court or officer appointed in that behalf. The plain and wide amplitude of paragraph 5 of the Sixth Schedule to the Constitution cannot be seen to be hedged with such onerous conditions as the authority being required to be conferred on one court or officer or the authority once conferred not being capable of being modified in part to carve out a class of matters to be placed before an altogether separate court or officer.

33. An unsubstantiated factual submission has been made on behalf of the appellant to the effect that despite the notifications of December 10, 2015 and May 3, 2018, other criminal matters within Ri-Bhoi district pertaining to serious offences where the victim and the accused are tribals

and the offence may have been committed within the jurisdiction of the relevant District Council Court, continue on the board of the District Council Court. Since such factual assertion has been made deep into the hearing and just before the arguments being closed, the State has not been in a position to respond and confirm what the appellant has claimed.

34. However, in view of the second paragraphs in both the notifications of December 10, 2015 and May 3, 2018, the earlier notifications pertaining to trial of serious crimes within Ri-Bhoi district stand superseded and the power previously conferred to the District Council Courts or particular officers can no longer be exercised to the extent that it has been superseded.

35. The other, unremarkable point made on behalf of the appellant pertains to the indication of the source of authority in the several notifications referred to herein. While in the ideal situation, the statute and provision conferring the power and the extent of such authority may be quoted while issuing notifications conferring jurisdiction, the fact that the power to publish a notification is not indicated or an erroneous provision is quoted would make no difference as long as the power to

confer jurisdiction is there. There is no doubt that the power under paragraph 5(1) of the Sixth Schedule to the Constitution permitted all the notifications referred to hereinabove to be issued irrespective of whether such authority was indicated in the particular notification or the power invoked for such purpose was erroneously traced to some other rule or order. Whether under the Rules of 1937 or under the subsequent rules or, finally the Constitution, it is undeniable that it is the Governor who has the authority to confer jurisdiction on courts and officers for trying serious criminal matters. As such, the faulty nomenclature, the inappropriate invocation of the power or the complete failure to indicate the authority for such purpose, if at all, pales into insignificance as it is evident that the Governor possessed the requisite authority to direct the issuance of the relevant notifications.

36. Finally, there is an imaginary ghost that the appellant finds to be lurking in the second paragraph of the recent notification issued to make the Code of 1973 applicable to all criminal matters in the State. The appellant apprehends that such second paragraph is a disingenuous provision mischievously included in the relevant notification to

regularise the trial and adjudication of all criminal matters that may have been conducted without jurisdiction as canvassed by the appellant in the present case.

37. Since no irregularity, far less any illegality, has been found in the conduct of criminal trials as in the present case, the validation of the trial conducted in this case need not be on the crutches of the second paragraph in the relevant notification of September 20, 2022. Though it is not necessary to look into the basis for including the second paragraph in the said notification, prima facie, it appears to be by way of abundant caution. At any rate, the justification or efficacy of the relevant paragraph may be more appropriately assessed when it is pressed into service. In the present context, it is wholly immaterial.

38. For the reasons aforesaid, there is no merit in the objection raised by the appellant as to the jurisdiction of the trial court in this case to conduct the criminal trial, adjudicate the matter and pronounce its judgment and order thereon. In terms of the notification of May 3, 2018, the office of the District and Sessions Judge, as specified in the Meghalaya Judicial Service Rules, 2006 was vested with the power to try

the present case as it involved a death sentence and the appellant's challenge to such authority is in vain.

39. The merits of the matter are now taken up for consideration.

40. The first information report in this case was lodged by the headman of Nongtraw village at the Umiyam Police Station in Ri-Bhoi to the effect that on August 26, 2013, some villagers found a dead body in a drain off the Guwahati-Shillong bypass road at about 12:30 pm. One Merilda Nongbri appeared on the scene and identified the dead body to be that of her daughter Ertelin Nongbri. The FIR specified that the mother suspected that her daughter had been murdered.

41. The post-mortem examination of the body was conducted in the afternoon of August 27, 2013. The body was found in an early state of decomposition. The medical examiner suggested that the deceased had suffered ante-mortem injuries. The examination revealed head injuries and the cause of death was recorded as "due to shock as a result of brain injury and asphyxia due to head injury and strangulation."

42. The appellant herein was arrested a month later on September 28, 2013. According to the prosecution, the appellant herein led the police to

the place of occurrence from where two broken hairclips and a piece of stone, that the appellant apparently smashed the victim's head with, were found together with the hanger of a torchlight said to belong to the appellant. The seizure-list prepared in such regard recorded that the police was led to the place of occurrence by the appellant. The appellant and a local witness signed the seizure-list. Two other persons were named in the charge-sheet as accomplices, but they were acquitted due to lack of evidence against them.

43. In course of the trial, the teenaged daughter of the victim deposed as the first witness and claimed that on August 22, 2013 her mother had gone to Umroi market and that was the last time the daughter saw the mother. She reported that she heard and saw her mother talking on the mother's mobile phone and the mother promised the person at the other end of the line that she would come. The daughter remembered the exact words that she overheard her mother using in Khasi language, "*Toto nga la wan*", meaning "*Yes, I am coming.*"

44. A younger sister of the victim was examined as PW 2 and she deposed that on August 22, 2013 while she was going to wash the clothes

at a nearby water-body, the appellant ran away upon spotting her and went towards the neighbouring jungle. To be fair to the witness, she responded in course of her cross-examination that she did not know who had killed her sister.

45. PW 3 appears to have been an unrelated witness who claimed that the appellant herein had told her that he had constructed a house and purchased gold ornaments for the victim. She claimed to have appended her signature to the sketch-map of the place of occurrence that the police prepared. However, in her cross-examination, she said that she had neither seen anything of note nor was aware of where the incident had taken place.

46. PW 4 was another sister of the victim. She identified the appellant in the Court and claimed that the appellant had called her on her mobile phone and told her that her elder sister would not be able to escape from the clutches of the appellant. In her cross-examination, however, such witness claimed that she had not told either the village authorities or the police about the phone call that she had apparently received from the

appellant herein. She also claimed that she did not know whether her deceased sister had a relationship with the appellant.

47. The mother of the victim was examined as PW 6. She testified that on August 22, 2013, her daughter “left the house at around 11:00 am for buying some eatables for her children and I left the house for washing clothes at Umtung stream which is a walking distance from my house.” She recollected that she saw the appellant running into the forest with a bag and identified the appellant in the dock.

48. The mother narrated that her daughter left the village on August 22, 2013 and, quite unusually, did not return the same day. The mother maintained that since such daughter had two of her own daughters staying in Shillong, the mother then conjectured that the daughter may have gone to visit her daughters in Shillong. The witness stressed that it was not natural for the daughter to not return on the same day as the victim did not, generally, stay with either of her daughters in Shillong. The mother deposed that she enquired of her granddaughters in Shillong whether their mother had visited them and was informed that the victim had not gone to Shillong. The mother claimed that she searched for her daughter in

vain and, a couple of days after she saw her daughter last, she informed the Rangbah Shnong (headman) of her adult daughter having gone missing. It was two days after she reported the matter to the headman that the victim's body was discovered in a drain. The mother claimed that it was the appellant who had killed her daughter and asserted that "I remember that on 22.08.2013 when my daughter left for Bhoirymbong, I saw Komerchand Sing Wanrieh (the appellant herein) followed my daughter. My statement was recorded by the police and I had given the name of the accused Komerchand Sing Wanrieh as I suspected." The mother also testified that the appellant had led the police to the place where he had committed the offence. She recalled that the appellant used to visit her house as he wanted to get married to the victim. The mother claimed that she did not approve of the proposal as the appellant was married and had children. The mother recounted that her deceased daughter was also not interested in the appellant.

49. In course of her cross-examination, the mother maintained that her deceased daughter had left for Bhoirymbong on August 22, 2013 walking down the public road and soon thereafter she spotted the

appellant and “as soon as he saw me he ran towards the jungle.” She recalled that her daughter had left around 11 o’clock and she saw the appellant herein following her daughter. She explained that she did not immediately report the matter to the police as she later perceived that the daughter may have gone to Shillong to visit her two daughters. It may be remembered at this stage that the mother had asserted in her examination-in-chief that two days after she saw her daughter last and thereafter discovered that the daughter had not gone to Shillong, she reported to the headman of the village that her daughter had gone missing and it was two days after she had reported the matter to the headman that the dead body of the daughter was found.

50. PW 7 was a witness to the seizure-list prepared at the alleged place of occurrence where, according to the police and the prosecution, the appellant had led the police. She told the court that the appellant had confessed before the police that he had killed the victim. Such witness, another sister of the victim, added that, “While he confessed to the commission of murder, he also stated the manner in which he killed my sister.” She stated that the appellant “struck my sister on her head with a

log and thereafter, he smashed her face with a stone.” The witness maintained that the appellant herein had confessed to killing the victim “in my presence and in the presence of the police.” Even in her cross-examination, PW 7 was steadfast in repeating that the appellant revealed that he had killed her sister. She also added that there were many persons present when the appellant admitted that he had committed the offence.

51. PW 8 was the investigating officer. He claimed that he arrested the appellant herein and the appellant “led me to the PO where he committed the offence, the accused had hit the deceased (victim) with a stone on her head.” The investigating officer testified that when he was led to the place of occurrence by the appellant herein, he found ash on the ground and he perceived that the villagers had set fire to the under-growth “to get rid of the foul smell.” The assertion by the investigating officer that the appellant had struck the victim with a stone on her head echoed the deposition of PW 7 as to the manner of the commission of the offence.

52. The investigating officer claimed to have recorded the statements of six witnesses. He deposed that it was his perception that the appellant herein had an affair with the victim and on August 21, 2013 the appellant

went to the house of the deceased at 8 pm, a fact that was reported to the investigating officer by a child of the deceased.

53. The doctor who conducted the post-mortem examination was examined as PW 10. He confirmed that he had conducted the post-mortem examination on August 27, 2013 and found a laceration mark on the forehead extending down to the left eyeball which was 4 inch in length and about half an inch wide and equally deep. The doctor recalled that he found another laceration at the back of the head measuring 3 inch by 2 inch and the ligature mark in the middle of the neck starting from the front across the right side to the back. He also discovered that the skull was fractured corresponding to the two wounds that he had earlier described in greater detail. He repeated his findings of ante-mortem head injuries and asphyxia due to the brain injuries and apparent strangulation. Apart from the fact that he admitted having given the head injuries and strangulation as two distinct causes of death, there is nothing much of note in the cross-examination.

54. The appellant submits that since there was no eye-witness to the incident and this is a case of circumstantial evidence, it cannot be said

that the evidence as presented completed the chain of events to establish beyond reasonable doubt that it was the appellant who had murdered the deceased. The appellant suggests that several of the witnesses presented embellished versions of their earlier statements at the time of the trial, particularly the sister of the deceased who claimed to have received a phone call from the appellant that the deceased was in the custody of the appellant.

55. The appellant reasons that it is inconceivable that a person would have gone missing and a sister of such person would have received a phone-call from the appellant with the appellant claiming that the missing person was in the appellant's custody, but the sister would not immediately report such matter to either her mother or to the police or would not even recount the telephone call in course of her subsequent statement given to the police. The appellant asserts that merely because the mother saw the appellant shortly after the deceased left the house or another sister of the deceased saw the appellant and perceived that the appellant ran away from her presence, cannot suggest that the appellant had committed the offence.

56. The common thread running through the deposition of several of the witnesses, including that of the mother and the investigating officer, is that the appellant had an affair with the deceased or, at the very least, that the appellant had a crush on the deceased and it may have been a case of unrequited love. Sufficient motive is attributed to the appellant in course of the testimonies of the prosecution witnesses.

57. Indeed, in both the mother of the deceased and a sister claiming to have seen the appellant around their house shortly after the deceased left the house and the fact that the appellant went in the same direction as the deceased, there is a degree of uniformity in the evidence that called for an explanation from the appellant.

58. It is true that the stone recovered from the alleged place of occurrence had not been sent for forensic examination or DNA analysis to ascertain or confirm whether it could be linked to the injuries suffered by the deceased, but there is no reason to disbelieve the investigating officer as he claimed that it was the appellant who led the police to the place of occurrence. Further, though any confession made to the police would not be admissible in evidence, the sister of the deceased who was

a witness to the seizure-list prepared at the place of occurrence claimed that the appellant confessed to having committed the crime and described that he had first hit the victim with a log and then smashed her face with a stone. The nature of the injuries discovered on the person of the deceased was consistent with the injuries apparently admitted to have been inflicted by the appellant. The medical examiner clearly indicated two sets of injuries that the deceased had suffered. The medical practitioner fairly admitted that he had found signs of strangulation, but had also indicated that the brain injuries and the resultant asphyxia may also have caused the death. It must be kept in mind that at the time that the post-mortem examination was conducted on the body, early decomposition had already set in.

59. The entire evidence was explained to the appellant herein during his examination under Section 313 of the Code. The appellant did not lead any evidence to establish any alibi nor cast any aspersion on the testimony of the relatives of the deceased as to why they would ascribe any motive to the appellant.

60. Indeed, in response to the trial court putting it to the appellant that the appellant had been seen by a sister of the deceased at a time immediately after the deceased was last seen, the appellant claimed that he was not present at Nongtraw village at such time. Yet, the appellant made no attempt to establish such assertion or to set up any alibi. When a positive assertion is made to dispute some evidence, there must be an attempt to establish the same for it to be given any credence. In the state of the evidence against appellant, the onus was on him to prove otherwise, which the appellant abjectly failed to discharge.

61. The appellant did not indicate, even in the remotest sense, as to why relatives of the deceased would be inimical to the appellant or would allege the appellant's infatuation for the deceased or attribute such fatal attraction as the motive for the crime.

62. There is no doubt that this was a case of unnatural death. While the medical examiner accepted that if a person fell at a particular angle from a height and hit his head against a hard surface, somewhat similar injuries could be found, but that was only in response to a suggestion in the cross-examination. The overall impression from the post-mortem

report and the evidence of the medical examiner is that he perceived that the deceased was dealt blows by some person that resulted in the facial and cranial injuries suffered by her since the doctor also spoke of strangulation marks. What also appears straightforward is that the appellant herein had a motive, and since he was seen in the proximity of where the deceased was last seen, he had the opportunity to commit the offence. Further, the fact that the appellant led the police to the place of occurrence and a sister of the deceased asserted that the appellant not only confessed to having committed the crime but also described the manner in which he carried it out, the chain of circumstantial evidence is woven tight around the appellant and without any weak link for it to give way to reasonable doubt on any count.

63. The appellant has referred to the judgments reported at (2010) 10 SCC 439 (*Paramjeet Singh alias Pamma v. State of Uttarakhand*) pertaining to circumstantial evidence and (2012) 2 SCC 399 (*Madhu v. State of Kerala*) pertaining to Section 27 of the Evidence Act, 1872. A further judgment of the Supreme Court rendered on April 16, 2018 in Criminal Appeal No.1134 of 2013 (*Navaneethakrishnan v. The State*

Inspector of Police) has also been placed to demonstrate that it is only when the chain of events lead to the irresistible conclusion about the guilt of the accused and no other hypothesis against the guilt is possible, that an accused would be found guilty on the basis of circumstantial evidence.

64. The principles enunciated in the judgments cited are beyond question. In *Paramjeet Singh*, the Supreme Court emphasised that the prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. While accepting that a false defence may be called into aid only when the various links in the chain of circumstantial evidence are in themselves complete, the Court observed that the facts established should be consistent only with the hypothesis of the guilt of the accused and such facts may not be explained away by any other hypothesis.

65. In *Madhu*, in discussing how much of the information received from the accused by the police may be proved against him in the context of Section 27 of the Evidence Act, the Supreme Court observed that such provision was an exception to the rule established in Sections 25 and 26 of the Act and, Section 27 of the Act, in essence, pertains to the discovery

of some new fact as a result of the confessional statement of the accused.

66. In *Navaneethakrishnan*, the court cautioned that there was a long mental distance between what may be true and what must be true and such distance separates conjectures from sure conclusions.

67. Even with such strict tests in mind, since the conviction in this case is based on circumstantial evidence, it cannot be said that there is any missing or weak link that leads to any reasonable doubt as to the culpability of the appellant. Strictly speaking, the deceased may not have been last seen with the appellant before her lifeless body was discovered. Yet, in the quite believable evidence of a sister and the mother of the deceased that the appellant herein followed the deceased after she left the house, there is sufficient proximity of the appellant established with the deceased. At any rate, there is nothing to doubt that the appellant led the police to the place of occurrence and confessed to killing the deceased in the presence of several persons, including a sister of the deceased.

68. With the appellant's proximity to the deceased being established, the place of occurrence being found to be close-by and a weapon being discovered therefrom which could inflict the injuries discovered on the

person of the deceased, the chain is as tight as possible in the absence of direct ocular evidence.

69. The judgment of conviction and the sentence of life imprisonment awarded by the trial court do not call for any interference. Here was a married man with children chasing a middle-aged woman who may not have had much interest in him and, from all accounts, it appears to be a case where if the appellant could not satisfy his lust the appellant could at least ensure that she was finished.

70. CrI.A.No.1 of 2020 is dismissed.

71. CrI.M.C.No.2 of 2020 and CrI.M.C.No.3 of 2020 are disposed of.

72. Let an authenticated copy of this judgment and order be immediately made available to the appellant free of cost.

(Sanjib Banerjee)
Chief Justice

I agree.

(W. Diengdoh)
Judge

Meghalaya
17.02.2023
"*Lam* DR-PS"