

GAHC040005652022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : CRL.A(J)/11/2022

Suresh Majhi
S/o Shri Mohan Majhi,
Resident of Village Christian Chuk, PO and PS Mahadevpur, District Namsai
(Arunachal Pradesh), presently lodging at District Jail, Tezu, Lohit District
(Arunachal Pradesh)

VERSUS

THE STATE OF AP
Represented by the Public Prosecutor

Advocate for the Petitioner : Hage Lampu, Amicus Curiae

Advocate for the Respondent : L. Hage, Addl. P P of AP

BEFORE
HONBLE MR. JUSTICE NANI TAGIA
HONBLE MRS. JUSTICE MITALI THAKURIA

Date of Hearing : 25.07.2023

Date of Judgment & Order : 07.08.2023

JUDGMENT & ORDER (CAV)

(M. Thakuria, J.)

Heard Mr. H. Lampu, learned Amicus Curiae for the appellant. Also heard Ms. L. Hage, learned Additional Public Prosecutor, Arunachal Pradesh, appearing on behalf of the State respondent.

2. This jail appeal, under Section 374(2) of the Code of Criminal Procedure, 1973, has been preferred against the judgment of conviction and sentence dated 22.12.2021, passed by the learned Session Judge, East Sessions Division, Tezu, Arunachal Pradesh, in Session Case No. 07/(NMS)/2017, under Section 302 of the Indian Penal Code.

3. The brief facts of this case is that on 20.09.2016, one Shri Barna Kaharia lodged an F.I.R. against an unknown person with an allegation that his younger sister, Estila Kaharia, aged about 14 years, gone to the paddy field to harvest after her school on 19.09.2016. But she did not return home and thereafter it was informed that dead body of his sister was found with multiple cut injuries on her throat and forehead and was lying inside the toko paat garden, which is about 20 mtrs away from the house of the informant. Accordingly, a case has

been registered under Mahadevpur Police Station, being Mahadevpur P.S. Case No. 25/2016, under Section 302 of Indian Penal Code, against an unknown person.

4. The Officer-In-Charge himself investigated the case and during investigation, he visited the place of occurrence, which was inside a jungle area of toko plants, and recovered the dead body with several cut injuries on her throat, forehead and backside of the skull and accordingly, the dead body was sent for post-mortem. However, as per the I.O., due to heavy rainfall, the wearing apparels of the deceased got wet and hence no semen stain could be seen on her panty and private part. Thereafter, the I.O. collected the post-mortem report, wherein the doctor opined that the death is homicidal in nature. However, the doctor did not find any injury on her private part and no vaginal discharge or blood stain was detected on the private part of the deceased. It was also opined by the doctor that the victim was not pregnant. During investigation, the accused was traced out on 21.09.2016 and during interrogation, the accused revealed that since last 3 (three) years, he was having sexual physical relationship with the deceased girl without the knowledge of their family members. But when it was informed to him by the deceased that she might be pregnant as she is having some menstruation problem, as per his confession, the accused asked the victim to come on the day of incident inside the toko garden to have sex with him and instead of having any sexual intercourse with her, the accused killed the said girl with a sharp weapon. Accordingly, the accused was sent to record his confessional statement before the learned Judicial Magistrate First Class as he was ready to give his

confessional statement voluntarily. The I.O. also seized the murdered weapon, which is a sharp dao, in presence of all seizure witnesses, which was kept hidden in the house of the accused person. The blood stain was also found on the seized dao. Accordingly, it was sent to FSL for examination and after obtaining the report from the FSL and also after examining the other available witnesses, the I.O. filed the Charge-Sheet against the present accused appellant under Section 302 of the Indian Penal Code. However, at the time of filing the Charge-Sheet, the FSL report could not be collected by the I.O. and hence, a prayer was made to file Supplementary Charge-Sheet after obtaining the FSL report. Accordingly, the FSL report was obtained and Supplementary Charge-Sheet was filed before the Court.

5. The prosecution examined as many as 7 numbers of witnesses including the informant, the Investigating Officer and the Medical Officer. However, the prosecution could not examine the FSL expert in support of the case. After completion of the evidences and hearing the arguments put forwarded by the learned counsels for both sides, the learned Session Judge, Tezu, Arunachal Pradesh, passed the judgment and order, dated 22.12.2021, convicting the accused appellant under Section 302 of the Indian Penal Code and thereby sentenced him for life imprisonment. On being dissatisfied with the aforesaid judgment and order passed by the learned Session Judge, the present appeal has been preferred by the present accused appellant from jail.

6. It is stated that the appellant had not committed the murder of the deceased and the conviction order was passed without any material evidence or

any circumstantial evidence against the present convict appellant. The appellant was convicted solely on the basis of the confessional statement recorded under Section 164 Cr.P.C. which he gave only under pressure from the police personnel as he was produced from the police station where the police had every access on him and put pressure on him to make a confession before the Magistrate. It is further stated that at the time of recording of the confessional statement, he was not made aware that the same shall be used against him during the trial, nor he was allowed any time for retraction before recording of his statement.

7. It is submitted by the learned Amicus Curiae, Mr. H. Lampu, appearing on behalf of the appellant, that the conviction is based only on confession as well as on the basis of the evidences of P.Ws.-5 & 6. But, while recording the statement of the appellant under Section 313 Cr.P.C., he retracted his confessional statement and it is submitted that he made the confessional statement before the Magistrate only under pressure and treat from the police personnel. Further it is submitted that no circumstantial evidence is also revealed from the evidences of P.Ws.-5 & 6, on the basis of which the learned Session Judge, Tezu, passed the order of conviction against present convict appellant. Moreso, it is submitted that the FSL report is exhibited through I.O. and the prosecution failed to examine the FSL expert, who is the best person to speak about the report submitted by him. In the same time, it is seen that the blood group could not be determined or ascertained by the FSL expert and hence, the FSL expert will be the best person to say as to why the blood group could not be determined from the exhibit which was sent before him to examine. The learned Amicus Curiae further submitted that the confessional

statement may be the basis of the conviction, but, here in the instant case, it is seen that the accused retracted his confession while his statement under Section 313 was recorded. Hence, it cannot be safe to rely on confession only on the basis of the retracted confession where there is no other corroborative piece of evidence to record conviction against the accused appellant. It is further submitted that the only circumstantial evidence discussed by the learned Session Judge is the evidences of P.Ws.-5 & 6, who ask the accused appellant to cut toko leaves for their cultivable land, and the same is also admitted by the accused in his statement recorded under Section 313 Cr.P.C. But the evidence adduced by the P.Ws.-5 & 6 is not at all sufficient to prove any circumstantial evidence against the accused appellant.

8. In this context, the learned Amicus Curie also relied on a judgment of Hon'ble Apex Court reported in **2004 (6) Supreme 343 (Parmananda Pegu Vs. State of Assam)**, wherein, it is held that "Section 164- Retracted confession recorded u/s 164 Cr.P.C.- Court should see whether there were circumstances appearing from record which may cast doubt on voluntary nature of confession- As a rule of prudence Court should look to corroboration- Court should have assurance from all angles that retracted confession was in fact voluntary and it must have been true." The learned Amicus Curiae further stressed on paragraph Nos. 17, 18 & 19 of the said judgement, which are read as under:

"Having thus reached a finding as to voluntary nature of a confession, the truth of the confession should then be tested by the Court. The fact that the confession has been made voluntarily, free from threat and inducement, can be regarded as presumptive evidence of its truth. Still, there may be circumstances to indicate that the confession cannot be true wholly or partly in which case it loses much of its evidentiary value."

In order to be assured of the truth of confession, this Court, in a series of decisions, has evolved a rule of prudence that the Court should look to corroboration from other evidence. However, there need not be corroboration in respect of each and every material particular. Broadly, there should be corroboration so that the confession taken as a whole fits into the facts proved by other evidence. In substance, the Court should have assurance from all angles that the retracted confession was, in fact, voluntary and it must have been true. The law on the subject of retracted confession has been succinctly laid down by a three Judge bench of this Court in Subramania Goundan Vs. State of Madras [(1958) SCR 428] which lays down:

"The next question is whether there is corroboration of the confession since it has been retracted. A confession of a crime by a person, who has perpetrated it, is usually the outcome of penitence and remorse and in normal circumstances is the best evidence against the maker. The question has very often arisen whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made. For the purpose of arriving at this conclusion the court has to take into consideration not only the reasons given for making the confession or retracting it but the attending facts and circumstances surrounding the same. It may be remarked that there can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially. It was laid down in certain cases one such being In re Kesava Pillai [ILR 53 Mad 160 : (AIR 1929 Mad 837)] (B) that if the reasons given by an accused person for retracting a confession are on the face of them false, the confession may be acted upon as it stands and without any corroboration. But the view taken by this Court on more occasions than one is that as a matter of prudence and caution which has sanctified itself into a rule of law, a retracted confession cannot be made solely the basis of conviction unless the same is corroborated one of the latest cases being Balbir Singh Vs. State of Punjab (S) AIR 1957 SC 216 (C), but it does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made. It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession."

The learned Judges then highlighted the difference between retracted confession and the evidence of an approver or an accomplice.

"Though under [Section 133](#) of the Evidence Act, a conviction is not illegal merely because it proceeds on the uncorroborated testimony of witnesses, illustration (b) to [Section 114](#) lays down that a Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. In the case of such a person on his own showing he is a depraved and debased individual who having taken part in the crime tries to exculpate himself and wants to fasten the liability on another. In such circumstances it is absolutely necessary that what he has deposed must be corroborated in material particulars. In contrasting this with the statement of a person making a confession who stands on a better footing, one need only find out when

there is a retraction whether the earlier statement, which was the result of remorse, repentance and contrition, was voluntary and true or not and it is with that object that corroboration is sought for. Not infrequently one is apt to fall in error in equating a retracted confession with the evidence of an accomplice and therefore it is advisable to clearly understand the distinction between the two. The standards of corroboration in the two are quite different. In the case of the person confessing who has resiled from his statement, general corroboration is sufficient while an accomplice's evidence should be corroborated in material particulars. In addition the Court must feel that the reasons given for the retraction in the case of a confession are untrue."

In Pyare Lal, supra, the same principle in regard to the evidentiary value of retracted confession has been reiterated. Subba Rao, J. speaking for a four Judge Bench, stated the legal position thus:

"A retracted confession may form the legal basis of a conviction if the Court is satisfied that it was true and was voluntarily made. But it has been held that a Court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only, a rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a Court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the Court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars. "

By the use of the expression "corroboration of material particulars", the Court has not laid down any proposition contrary to what has been clarified in Subramania Goundan's case (supra) as regards the extent of corroboration required. The above expression does not imply that there should be meticulous examination of the entire material particulars. It is enough that there is broad corroboration in conformity with the general trend of the confession, as pointed out in Subramania Goundan's case."

9. Accordingly, it is submitted by the learned Amicus Curiae, Mr. Lampu, that the prosecution could not establish the case against the present convicted appellant under Section 302 of the Indian Penal Code beyond all reasonable doubt and hence, it is a fit case where the accused is entitled for acquittal.

10. In this context, the learned Additional Public Prosecutor, Ms. L. Hage, has submitted that the prosecution has been able to prove the case against the present convict appellant and the learned Session Judge had rightly held that

the accused committed the murder of the deceased and accordingly convicted the present accused appellant under Section 302 of the Indian Penal Code. She further submitted the accused made a voluntary confession before the learned Session Judge, wherein he admitted that he had physical and sexual relationship with the deceased girl for last 3 (three) years and on the day of incident also, he invited the deceased girl inside the toko garden and instead of having any sexual intercourse with her, he committed murder by using a dao, which was also recovered from the house of the accused appellant. Further it is submitted that evidences of P.Ws.-5 & 6 are also sufficient to prove the circumstantial evidence pointing the guilt towards the accused appellant. Moreso, from the evidence of the learned Magistrate, it is evident that the statement was made voluntary before the learned Magistrate and after sufficient caution given to him. However, it is submitted that he retracted his confessional statement while recording his statement under Section 313 Cr.P.C., but he remain silent regarding the recovery of the murdered weapon from his house in presence of witnesses and such recovery also supports the prosecution version that the accused committed the murder of the deceased. Further it is submitted that from the evidence of the doctor, it is seen that the death was of homicidal in nature and from the FSL report also, it is seen that the blood stain, which was found in the murdered weapon, was of human blood though due to some inadvertence, the blood group could not be detected by the FSL expert. Accordingly, it is submitted that the learned Session Judge committed no error or mistake while convicting the accused appellant under Section 302 of the Indian Penal Code.

11. In support of her submission, the learned Additional Public Prosecutor further relied on a decision of Hon'ble Bombay High Court passed in **Criminal Appeal No. 37/1997 (Ganesh Namdeo Varad Vs. The State of Maharashtra)**, wherein in paragraph Nos. 19 & 20, it has been held as under:

"19) The accused has, at no point retracted his confession since 26.2.1996 till his statement under [Section 313 Cr.P.C.](#), dated 14.1.1997 and except suggesting the P.W.4 that it was recorded in presence of police or that he was under pressure from police. The suggestion is absurd and needs to be deprecated as P.W. 4 being Magistrate, discharging his official duties, had no reason to mitigate the solemn function. P.W.5 was suggested, he has compelled the Accused by beating and allured him.

However, to P.W.4 Accused either on 19.2.1996 or 26.2.1996 did not protest that he was in fact trembling under duress or pressure from police. The Accused was made aware, his statement can be used against him, but still in his own wisdom knowing full well consequences of his action, ventured to make confessional statement on oath. On analyzing the evidence of P.w.4 and reading the confessional statement of Accused, I hold, it was springing from the Accused without any compulsion, or mental imbalance and the facts disclosed by accused, do corroborate to some of vital events. The substance and details of offence committed has been highlighted by Accused. This naturally assumes character of admissibility.

20) The accused/appellant, as stated earlier, only at the stage of [313 Cr.P.C.](#) exhorted that the confessional statement was under pressure from police. This may not bring his case within the term of 'retraction of confession', however, even if it is treated so, a retracted confession may form the legal basis of a conviction if the Court is satisfied that it was proved and was voluntarily made. The only rider is the Court shall not base the conviction on such confession without corroboration, which, in fact, is not a rule of law, but is only rule of prudence."

12. After hearing the submissions made by the learned counsels for both sides, we have perused the case record and the judgment of conviction and sentence dated 22.12.2021, passed by the learned Session Judge, East Sessions Division, Tezu, Arunachal Pradesh, in Session Case No. 07/(NMS)/2017, under Section 302 of the Indian Penal Code.

13. It is a fact that at the time of lodging the F.I.R., the culprit could not be

detected and the case was registered against an unknown person under Section 302 of the Indian Penal Code. The doctor/P.W.-3 found multiple cut injuries on forehead and posterior part of the head, trachea and auspicious was totally cut off and accordingly, he opined that the injuries are sufficient to cause death of the deceased and it is of homicidal in nature. And hence, the question arises as to who committed the murder of the deceased. As stated above, initially the F.I.R. was lodged against an unknown person, but during investigation, the police arrested the present convict appellant, made a house search, recovered the dao which is stated to be the murdered weapon, seized the said dao in presence of witnesses and accordingly, after interrogation, the accused was sent for recording of confessional statement under Section 164 Cr.P.C. as he was ready to make his confession before the learned Magistrate. But there is no evidence as to how the suspicion or doubt arises on the accused and how the I.O. arrested him on the allegation of murder of the deceased girl. So, let us discuss the evidence recorded by the learned Session Judge, East Sessions Division, Tezu, Arunachal Pradesh.

14. P.W.-1 is the informant of this case, who is the brother of the deceased and as per him, on the day of incident, her sister was found missing in the house and accordingly, he made search of her, but she was not found. On the next day, he again went out to search for his sister and she was found lying dead inside the toko plantation. Seeing the dead body of his sister, he felt unconscious and he gain his sense in the hospital and thereafter, the matter was reported to the police and F.I.R. was drafted and he put his signature accordingly. He was also present at the time of inquest conducted by the police

and also present at the time of seizure of the sickle, toko leaves, dao and panty etc. by the police. This witness also exhibited his signature in the F.I.R. as well as in the seizure list. He also identified the dao and the sickle which was seized in his presence by the police during investigation.

15. P.W.-2 is the father of the deceased and he also narrated the same story and deposed that after hearing his son shouting, he also went there and saw the dead body of his daughter which was laying inside the toko field. He also deposed that he saw multiple deep cut injuries on neck, forehead, backside and face of his deceased daughter. He also put his signature in the seizure list made by the police as well as on the inquest conducted by police. He also identified the material exhibits, i.e. dao and sickle, which was produced before him in the Court at the time of his examination.

16. P.W.-3 is the doctor who conducted the post-mortem of the deceased and accordingly, considering the multiple injuries sustained by the deceased, he opined that the death is of homicidal in nature.

17. P.W.-4 is the learned Magistrate who recorded the confessional statement made by the accused under Section 164 Cr.P.C. and it is deposed by him that he explained the accused everything before recording the confessional statement. From his cross-evidence, it is seen that the accused had voluntarily given his statement and no police personnel was allowed to be present while recording his statement.

18. P.W.-5 simply deposed that on the day of incident, it was raining and he asked the accused to cut some toko leaves and the P.W.-6 also supported the P.W.-5 and as per her also, P.W.-5 asked the accused to cut some toko leaves for covering the paddy field.

19. P.W.-7 is the I.O. of this case who investigated the case and during investigation, he arrested the accused, recorded his statement under Section 161 Cr.P.C., produced the accused before the Magistrate for recording his statement under Section 164 Cr.P.C., collected the post-mortem as well as FSL report and finding a *prima facie* case established against the accused, filed Charge-Sheet under Section 302 of the Indian Penal Code. He further deposed that during investigation, he also drawn sketch map and seized the sickle of the deceased girl, some blood stain of the deceased from the P.O. and also conducted the inquest of the dead body before sending it for post-mortem. But there is no explanation given by the I.O. as to on what basis, he had the suspicion over the accused and arrested him. But it is deposed that during examination, he disclosed that he had a sexual relationship with the deceased girl for more than 3 (three) years before the incident and he also disclosed that the deceased told him that he is having some menstrual problem and she might be pregnant and hence he thought that his reputation will be damaged in the village and therefore, he made a secret plan to eliminate the girl. On the day of incident, he again met the deceased girl and she also agreed to have sex with him, but instead of having sex with her, he cut on her neck, forehead, backside and face of the deceased and for which, the deceased died there. After examining the accused, the police sent him before the learned Judicial

Magistrate First Class for recording his statement under Section 164 Cr.P.C. After filing the Charge-Sheet, he made a prayer for filing Supplementary Charge-Sheet and on receipt of the FSL report, he filed the supplementary Charge-Sheet against the present accused appellant. Accordingly, the I.O. exhibited the dead body challan, inquest report along with FSL report.

20. So, from the evidences of P.Ws., it is seen that admittedly none of the witnesses have seen the occurrence. The informant and his father saw the dead body of the deceased and accordingly lodged the F.I.R. Further they were present at the time of inquest as well as at the time of seizure of the articles by police. But, these 2 (two) witnesses are not aware about any relationship between the deceased daughter/sister and the present accused appellant. They have not stated anything regarding any affair between the deceased and the accused and they only lodged the F.I.R. for the death of the deceased daughter/sister when they found the dead body laying in the toko field. Apart from that, these 2 (two) witnesses are not aware about the incident. P.Ws.- 5 & 6 are the witnesses who met the accused on the day of incident and P.W.-5 asked him to cut some toko leaves to cover their paddy field and apart from that, they have not stated anything in regards to the incident nor there is any evidence that they have seen the deceased girl along with the accused near the toko field. Their evidence is only to the extent that they met the accused and asked him to cut toko leaves to cover their paddy field. Though on the basis of the evidences of P.Ws.-5 & 6 it is recorded by the learned Session Judge that the accused was present at the P.O. on the day of incident and there is a circumstantial evidence which supports the prosecution case, but, from the

evidences of P.Ws.-5 & 6, it is seen that there is no statement made by these 2 (two) witnesses that they have seen the accused near the place of occurrence except the statement that they asked the accused to cut toko leaves for them. From the statement made by the accused under Section 313 Cr.P.C. also, it reveals that he admitted the fact that he cut toko leaves for P.W.-5, but the evidences of P.Ws. 5 & 6 are not at all sufficient to prove the chain of circumstantial evidence to point fingers towards the accused appellant.

21. To convict an accused under the circumstantial evidence, the prosecution has to prove that the chain is complete and has to establish the following:-

"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The 8 circumstances concerned 'must' or 'should' and not 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as 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.

22. A decision of the Hon'ble Apex Court, passed in **Criminal appeal Nos. 868-869 of 2004 (Ramesh Bhai & Anr. State of Rajasthan)**, and paragraph Nos. 6 & 7 of the judgment, can be relied on, which read as under:

"6. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193, wherein 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...."

7. In Padala Veera Reddy v. State of A.P. and Ors. (AIR 1990 SC 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

23. But, here in the instant case, it is seen that there is no evidence at all to fulfill the conditions which are require to prove a case under "circumstantial evidence". Neither there is any statement that they saw the accused near the P/O nor they saw the victim with the accused on the relevant day of the

incident.

24. Further it is seen that as per the I.O., the murdered weapon, i.e. dao, along with some toko leaves was recovered from the house of the accused appellant and accordingly, those were seized in presence of the witnesses, i.e. P.Ws.-1 & 2, and they also supports the prosecution's version to the extent that they put their signatures in the seizure list and those were seized in their presence. But, there is no evidence regarding leading to discovery of the murdered weapon and there is no statement made by the P.Ws.-1 & 2 in their evidence that the accused led the police for recovery of those murdered weapons. Both the P.Ws.-1 & 2 simply adduced their evidence that the dao along with some other articles were seized in their presence. But, the evidence of the I.O. as well as the evidence of P.Ws.-1 & 2 are totally silent regarding the discovery of the murdered weapon from the possession or house of the accused appellant.

25. It is a fact that the specific question was not put to the accused appellant regarding the recovery of the murdered weapon (dao) from his possession while recording his statement under Section 313 Cr.P.C.

26. In the case of **Wasim Khan Vs. The State of U.P. [AIR 1956 SC 400]** and also in the case of **Bhoor Singh & Anr. Vs. State of Punjab [AIR 1974 SC 1256]**, the Hon'ble Supreme Court expressed the view that the provision of Section 313 Cr.P.C. are to bring the substance of accusation to the accused so that he can explain every circumstance appearing against him during the course

of evidence and it is mandatory provision which casts a duty on the Court to give the opportunity to the accused to explain every incriminating circumstance brought against him in the evidence. But, the question whether the trial is vitiated or not due to non-compliance of Section 313 of the Code of Criminal Procedure would depend upon the degree of error and the accused must show that such non-compliance of Section 313 of the Code of Criminal Procedure has caused prejudiced or is likely to cause prejudice to him.

27. Here in the instant case, it is seen that the question in regards to recovery of weapon was very material as the murdered weapon is alleged to have been recovered from the house of the accused. But, he was not given any chance to give any explanation in that regard which may cause prejudice to the convict/appellant.

28. Coming to retracted confession, it is seen that he made total denial of the entire allegation brought against him and it is stated by him that he was unnecessarily tortured and forced to admit the allegation made against him. But he could not tell all these things before the Magistrate out of fear and at that point of time.

29. Thus, it is seen that though the accused confessed his guilt at the time of recording his statement under Section 164 Cr.P.C., but, subsequently, at the time of recording of statement under Section 313 Cr.P.C., he retracted his statement and it is stated that he was forced to make the statement before the learned Magistrate as he was threatened and unnecessarily tortured by the police and

out of fear only, he made his confessional statement before the Magistrate.

30. It is a settled position of law that the confessional statement also can be the basis of conviction if the Court find it believable and true. However, as per Rule of prudence, the Court should look for corroboration from other evidences. Further, the retracted confession may also form the basis of conviction if believed to be true and voluntarily made and if there is corroborative piece of evidence which supports the prosecution case. But, here in the instant case, as discussed above, it is seen that there is no material witness or corroborative evidence to support the prosecution case that the accused appellant committed the murder of the deceased. As discussed above, there is no eye witness to the incident nor any witness saw the accused along with the deceased on the day of incident or had any knowledge about the relationship between the accused appellant and the deceased. P.Ws.-1 & 2, the family members of the deceased, also not aware about any relationship between the accused and the deceased and except their presence in the seizure of the weapons, there is no other evidence to support the prosecution case. As stated above, P.Ws.- 5 & 6, who are relied by the learned Session Judge while recording conviction, is also not at all sufficient to prove the circumstantial evidence against the accused appellant. The only statement made by these 2 (two) witnesses that they asked the accused to cut toko leaves to cover their paddy field and except that there is no evidence at all which supports the prosecution case. Coming to the recovery of the weapon from the house of the accused, it is seen that the accused was not put any question regarding the recovery of weapon from his house and further there is no evidence leading to discovery of the weapons from the house of the

accused appellant. It is the only version of the I.O. that the weapons were recovered from the house of the accused appellant and there is no other supportive evidence in regards to leading to discovery of those murdered weapon. More so, the accused was not given any chance to made any explanation for the alleged recovery of the weapon from his house as no question was put to him regarding the recovery of the dao from his house while recording his statement under Section 313 of the Cr.P.C.

31. So, considering the entire evidences and the circumstances of this case, it is seen that the conviction cannot be based solely on the confessional statement/retracted confessional statement made by the accused appellant and also there is no circumstantial evidence established on the basis of the statement made by the P.Ws.-5 & 6 on the basis of which, the learned Session Judge convicted the present accused appellant under Section 302 of the Indian Penal Code.

32. In view of the discussion made above, we are of the view that the prosecution has failed to prove the charge brought against the appellant beyond all reasonable doubt.

33. In the result, present appeal succeeds and is allowed. The judgment of conviction and sentence dated 22.12.2021, passed by the learned Session Judge, East Sessions Division, Tezu, Arunachal Pradesh, in Session Case No. 07/(NMS)/2017, under Section 302 of the Indian Penal Code, is set aside and the appellant is acquitted from the charge levelled against him. Accordingly, the

appellant be released forthwith if not required to be detained in connection with any other case.

34. In terms of above, this criminal appeal stands disposed of.

35. Before parting, we put on record the appreciation for the valuable assistance rendered by Mr. H. Lampu, learned Amicus Curiae, and we recommend that he is entitled to a fee, as per the notified rate, to be paid by the State Legal Services Authority.

36. Send back the case record. Inform the Jail Authority accordingly to do the needful.

JUDGE

JUDGE

Comparing Assistant