

**HIGH COURT OF TRIPURA  
AGARTALA  
CRL.A.(J)29 of 2022**

**Shri Bipul Saha,**  
son of Shri Braja Gopal Saha  
of Ompi, West Para, P.S. Ompi,  
District : Gomati Tripura

---- Convict Appellant(s)

Versus

**The State of Tripura**

---- Respondent(s)

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|------------------------------|---|------------------------------------------------|
| For Appellant(s)             | : | Mr. S. Sarkar, Sr. Adv.<br>Ms. V. Poddar, Adv. |
| For Respondent(s)            | : | Mr. S. Debnath, Addl. P.P.                     |
| Date of Hearing              | : | 12.12.2023                                     |
| Date of Judgment<br>& Order  | : | 09.01.2024                                     |
| Whether fit for<br>reporting | : | NO                                             |

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**HON'BLE MR. JUSTICE T. AMARNATH GOUD  
HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Judgment & Order**

*(Biswajit Palit, J)*

Heard Mr. S. Sarkar, Learned Senior counsel assisted by Ms. V. Poddar, Learned Counsel appearing for the appellant as well as Mr. S. Debnath, Learned Addl. P.P. appearing for the State.

2. This is an appeal by the convict-appellant Shri Bipul Saha against the judgment and order of conviction and sentence dated 05.04.2022 delivered in Sessions Trial Case No.ST(GT/A)40 of 2016 by the Learned Additional Sessions Judge, Gomati Judicial District, Udaipur.

3. The prosecution against the convict-appellant was based on the written complaint/ejahaar filed by one Tapash Deb, Son of Late Rakhal Deb of Village-Ompinagar, P.S. Ompi, Amarpur, Gomati,

Tripura stating inter alia that on 17.05.2016 in the night around 7.30 p.m. accused person Bipul Saha, Son of Late Brajendra Saha of Village Ompi Paschim Para and another namely Rangbhanga Reang, Son of Unknown accompanied by the younger brother of the informant namely Tapan Deb, Son of Late Rakhal Deb purchased some meat from Ompi Bazar and consumed the same in the residence of Bipul Saha having dinner. Since, that night, the brother of the informant Tapan Deb got missing and nobody could say his whereabouts. It was further alleged by the informant that both the accused persons kidnapped his brother with intent to defraud him some money which the brother of the informant had withdrawn on that day. The informant also suspected that some other persons namely Adhir Roy, Niresh Kalai, Sudip Das, Subir Kalai and one Manna Kalai might be involved with the alleged occurrence. The informant further alleged that due to searching of his brother on the basis of missing diary, there was some delay in lodging the FIR.

4. Based on the said information, Ompi P.S. registered a case being No.2016 OMP 005 under Section 364A/120B of IPC and the case was endorsed to SI Surjya Kanta Jamatia of said P.S. by the O/C of Ompi P.S. and after completion of investigation, the IO of the case laid charge sheet under Section 302/201 of IPC against the convict-appellant Bipul Saha and under Section 120B of IPC against another accused namely Rangbhanga Reang to face trial, in the jurisdictional Court. Since, the offence punishable under Section 302 of IPC is exclusively triable by the Court of Sessions, so the relevant prosecution papers were committed to the Court of Learned Sessions Judge, Gomati Judicial District, Udaipur and later on, the case was transferred to the Court of Learned Additional Sessions Judge, Gomati District, Udaipur for completion of trial of the case. The Learned

Additional Sessions Judge after going through the relevant prosecution papers and also after hearing both the sides framed charge under Section 302/201/120B of IPC against the appellant Bipul Saha and under Section 120B of IPC against another convict Rangbhanga Reang. The present appellant denied the charge, pleaded not guilty and claimed to be tried.

5. In order to substantiate the charge, prosecution in this case adduced in total twenty eight numbers of witnesses and relied upon some documentary evidences marked as Exbt.P/1 to Exbt.29 including the Inquest Report [Exbt.P-2/3], Postmortem Examination Report [Exbt.P/17] and Report of Tripura State Forensic Science Laboratory, TSFSL [Exbt.P/18, Exbt.P/20]. After recording the prosecution evidence, the appellant was examined under Section 313 of Cr.P.C. to have his response on the incriminating materials those surfaced in the evidence. The appellant renewed his claim of innocence and denied those incriminating materials revealed against him. Thereafter, having appreciated the evidence on record and after hearing elaborate arguments of both sides, the trial Court returned the finding of conviction as the prosecution had been successful in establishing the charge against the present appellant, particularly, on the basis of circumstantial evidence. Thus, the appellant has been convicted to suffer RI for life with fine of Rs.5000/- under Section 302 of IPC id to suffer SI for three months along with RI for life with fine of Rs.4000/- under Section 120B of IPC id to suffer SI for three months and also to suffer RI for three years with fine of Rs.2000/- under Section 20 of IPC id to suffer SI for two months and all the sentences were ordered to be run concurrently. The appellant has challenged the finding of conviction as well as the order of sentence by means of this present appeal.

6. Mr. S. Sarkar, Learned Senior counsel assisted by Smt. V. Poddar, Learned counsel appearing for the appellant has strenuously argued that the prosecution in this case has failed to bring whom the charge leveled against the convict-appellant. He has further submitted that this case is purely based on circumstantial evidence but the prosecution in this case has failed to prove the chain of circumstances that lead to the conviction of the appellant. Learned Senior counsel also drawn the attention of the Court that the Learned Trial Court did not consider the statement of the witnesses of PW-1 and PW-7 and came to a wrong finding of conviction. It was further asserted that Learned Trial Court has also failed to consider the evidence of PW-3 and there were material discrepancies in the statement of witnesses which Learned Trial Court has failed to consider. Apart from that, there was delay of eight days in lodging the FIR, no satisfactory explanation is given by the prosecution in the FIR.

7. Learned Senior counsel again submitted that PW-28 in course of his examination very specifically stated that on 23.05.2016 at about 13.45 hrs. accused Rangbhanga Reang was taken to Lundingfa Old Jhum under Konaram Para of Ompi PS but on that day, no dead body was recovered. More so, the bag containing the seized articles, were also not seized. Before entering into the house of appellant Bipul Saha he did not procure any search warrant and did not cause search of his body by independent witnesses. Said witness again stated that although the dead body was recovered on 25.05.2016 at about 13.45 hrs. but Hand Sketch Map with index was prepared on 26.05.2016 but the Learned Trial Court did not take into consideration those points and ultimately convicted the appellant. Thus, according to Learned Senior counsel, there is serious perversity in the finding of conviction.

8. Finally, Learned Senior counsel submitted that disclosure statement has not been proved in view of the provision of Section 27 of Evidence Act and since the evidence of witnesses of the prosecution suffers from various infirmities so Learned Senior counsel has submitted that the prosecution has failed to prove the charge as framed against the appellant and thus, he is entitled to acquittal in this case.

9. On the other hand, Mr. S. Debnath, Learned Additional P.P. appearing on behalf of the prosecution submitted that this case is totally based on circumstantial evidence as there is no direct eye witness of the alleged occurrence of offence. But in this case, prosecution has been able to prove the chain of circumstance to substantiate the guilt of the appellant and furthermore, according to Learned Additional P.P. the prosecution in this case has been able to prove the disclosure statement of the accused persons under Section 27 of the Evidence Act. Thus, according to Learned Additional P.P., the Learned trial Court has rightly after elaborate discussions of all the legal aspects has delivered the judgment against the appellant and urged this Court not to interfere with the judgment of conviction and the consequential order of sentence.

10. For appreciation of the submissions made by the Learned Counsel for the parties, it would be apposite to note at the outset that there is no dispute that the brother of the informant Tapan Deb @ Chanu was murdered on 17.05.2016. As the entire case is based on circumstantial evidence, so let this Court take a short survey of the evidence as laid by the prosecution.

11. PW-1, Tapash Deb is the informant. He deposed that on 17.05.2016 after returning back to home he inquired about his brother Tapan Deb @ Chanu from his mother when she told him that Chanu

had left home at around 2.00 to 2.30 p.m. after handing over cash amounting to Rs.2,50,000/- to his mother and at about 8 p.m. at night Chanu (deceased) called his mother to inform that he would go to the Office of Udaipur Finance Company. Said PW-1 further stated that at about 9 p.m. he rang up to the mobile of his brother Chanu when his brother informed that he would stay in the house of one official of Finance Company. On the following day, they started searching his brother Chanu but could not trace him out and his mobile phone was found to be switched off. He rang up one Suman who was an official of Finance Company and on query, said Suman told his brother i.e. PW-1 that Chanu did not accompany him on the previous day. After that, they started searching him thoroughly but could not trace him out. PW-1 again stated that one Bikram Saha (PW-13) of Ompi market told them that his brother Chanu accompanied by Bipul Saha and Rangbhanga Reang purchased one hen from him on last Tuesday and chopped the same in a meat shop and went to the house of Bipul Saha where they consumed the meat which was purchased by the brother of PW-1. After that, on 23.05.2016, he laid the FIR to OC, Ompi P.S. which was written by one Prabir Shil and he identified his signature marked as Exbt.1.

12. PW-17, Prabir Shil is the scribe who identified the FIR marked at Exbt.1/1 and his signature marked as Exbt.1/2.

13. PW-6, Smti. Basanti Deb is the mother of deceased Tapan Deb @ Chanu. She in her evidence stated that on 17.05.2016, her son Tapan Deb @ Chanu withdraw Rs.2,50,000/- from the bank and keeping the said money with her he left the house at about 12 p.m. In the evening, said Chanu told her over phone that he had gone to the house of an employee of a Finance Company at Udaipur and will return back on the next day in the morning. But in the next day morning her

son did not turn up and she tried to rang up his mobile but it was found switched off. Thereafter, on thorough search PW-6 went to the house of Bipul Saha who used to drive their car but not found him in the house. So, she wen to Ompi Motor stand where she disclosed the matter to her elder son Tapash Deb (PW-1). She further stated that brother of Bipul Saha namely Dinesh Saha who was also their driver told her that Bipul Saha disclosed to him that the whereabouts of Chanu could be known from Rangbhanga Reang. So, her son Tapash Deb (PW-1) informed the matter to police and accordingly, police arrested Rangbhanga Reang who disclosed to the police about the place where her son was killed. Said PW-6 further stated that Bipul Saha always accompanied her deceased son and it was her belief that her son was killed by Bipul Saha for the purpose of misappropriation of amount of Rs.2,50,000/-.

In course of her cross-examination, minor discrepancy was found but Learned Trial Court came to the observation that minor discrepancy do not go to the root of the matter and shake the basic version of the prosecution story and it was not exaggeration or improvement on the part of the witness and he relied upon a decision of the Hon'ble Supreme Court in a case cited in **Bharwada Bhoginbhai Hirjibhai vs State of Gujarat AIR, 1983 SC 753 : (1983) (3) SCC 217** wherein it was held that *"Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important "probabilities -factor" echoes in favour of the version narrated by the witnesses."*

14. PW-7, Samir Paul deposed that on 18.05.2016 in the morning he came to know from his elder sister (PW-6) that Chanu did not return back to home on 17.05.2016 in the night as he had gone to

Udaipur to meet the employee of Finance Company. But on that day, the employee of Finance Company came to the house of Chanu at Ompi and made query about Chanu. After query by the employee of Finance Company, the family members of Chanu started searching about him but could not trace out Chanu and accordingly, a verbal information about the missing of Chanu was given to the Ompi P.S. by PW-1, Tapash Deb. Said witness also deposed that prior to the lodging of ejahar by PW-1 they came to know from one Bikram Saha and Abu Deb @ Sukanta of Ompi that on 17.05.2016, his nephew Chanu was accompanied by Bipul Saha and Rangbhanga Reang, they purchased a hen from them. PW-7 further deposed that they informed the police who arrested Bipul Saha and Rangbhanga Reang and on 25.05.2016, the dead body of Chanu was recovered by police from Doctor Singh Para in a Jhum Khet as pointed out by Rangbhanga Reang. He identified his signature as Exbt.2 in the inquest report.

During cross-examination, PW-7 stated the place where from the dead body of Chanu was recovered was a deep jungle at a depth of about 120 feet from main road. He was put under cross-examination by the defence when he stated that, he said to the IO that the dead body of Chanu was recovered as pointed out by the accused Rangbhanga Reang but that portion "pointed out by Rangbhanga Reang" was not found in the statement recorded by the IO. Learned Trial Court also took the view that this minor discrepancy does not go to the root of the matter and shake the version of the prosecution story. As such, it does not amount to improvement or exaggeration on the part of that witness. Learned trial Court relied upon another citation in **Narayan Chetanram Chaudhary & Anr. vrs. State of Maharashtra, (2000) 8 SCC 457** wherein it was held that "*Only such omissions which amount to contradiction in material particulars can be*

*used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the Court is different in materials particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differs from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, there is no ground to reject the whole of the testimony of such witness."*

15. PW-13, Bikram Saha was declared hostile by the prosecution and his portion of statement was marked as Exbt.2 (subject to proof by I.O.).

16. PW-9, Usha Ranjan Kalai and PW-22, Sanjit Saha were also declared hostile but nothing came out relevant from their evidences.

Leading to discovery under Section 27 of the Evidence Act, prosecution adduced some more other witnesses.

17. PW-15, Srikanta Deb and PW-16, Subrata Das deposed that on 13.06.2016 at about 10 to 10.30 a.m. at Ompi P.S. the convict-appellant, Bipul Saha disclosed the manner as to how he caused the death of Tapan Deb @ Chanu and in their presence Bipul Saha disclosed that on 17.05.2016 he purchased a hen from Ompi market and thereafter he along with Rangbhanga Reang took the meat to his house and while going to his house Bipul Saha also purchased three numbers of alcohol bottles and in his house at night on the same day Chanu @ Tapan Deb came and he along with Chanu @ Tapan Deb and

Rangbhanga Reang consumed the meat with alcohol. Bipul Saha in their presence further disclosed that he mixed sleeping pills in Coca-cola bottles and the same was offered to Chanu who consumed the Coca-cola and thereafter, Chanu became senseless. On the night itself, after consuming meat with alcohol Rangbhanga Reang left home from the house of Bipul Saha and at about 4 a.m., Bipul Saha took the body of Chanu @ Tapan Deb by his Max vehicle bearing No.TR-03-4112 and started proceeding towards Doctorsingh Para/ Gamaku. On the way, Bipul Saha found road block because of the fall of a log on the road and so he could not proceed straight way and as a result, he had to back with his vehicle and finding a lunga, Bipul Saha caused the fall of the body of Chanu @ Tapan Deb and the body rolled down at the foot of lunga. Said Bipul Saha reached at the foot of lunga and drag the body to a drain and started pressing neck of Chanu by his leg and covered by banana leafs. Bipul Saha also disclosed that he concealed the wearing apparels of Chanu @ Tapan Deb in his latrine and he threw the Coca-cola bottles in a pond of his adjoining house of one Mrityunjoy Guha. Those witnesses further stated that on the same day as per pointing of accused Bipul Saha, police recovered Coca-cola bottles from a pond from in adjoining house of Bipul Saha and the stripe of sleeping pills from the bamboo fencing of the house of accused Bipul Saha and on the same day, Bipul Saha also pointed the place i.e. the latrine from where the police recovered the wearing apparels of Chanu. From the wearing apparels of Chanu which were recovered from the latrine of Bipul Saha, police also recovered the ATM Card in the name of Chanu. Said PW-15 identified his signatures as Exbts.13, 13/1, 13/2, 13/3 in the disclosure statement and pointing out evidence of accused Bipul Saha in four pages.

18. PW-15 further identified his signature in the seizure list as Exbt.14 after the seizure of the stripe of sleeping pills and also identified the seized material i.e Exhibit-M.O.8. He also identified his signature as Exhibit-4/1 in the seizure list after the seizure of the wearing apparels with ATM Card and money bag of Tapan Deb and also identified the seized materials as Exhibit-M.O.10, M.O.1, M.O.2 & M.O.9. He identified his signature as Exhibit-15 in the seizure list after the seizure of a portion of sit cover of the Max vehicle of Bipul Saha with some blood stain and identified the seized material marked as Exhibit-M.O.11. PW-16 identified his signature as Exhibits-13/4, 13/5, 13/6, 13/7 in the disclosure statement and pointing out evidence of accused Bipul Saha in four pages. He identified his signature in the seizure list in respect of seizure of stripe of sleeping pills marked as Exhibit-14/1 and identified the seized materials marked as Exhibit-M.O.7. Said PW-16 identified his signature as Exhibit-15/1 in the seizure list after seizure of Coca-cola bottles and identified the seized materials marked as Exhibit-M.O.8. Said witness identified his signature as Exhibit-4/2 in the seizure list after the seizure of wearing apparels with ATM Card and money bag of Tapan Deb marked as Exhibit-M.O.10, M.O.2 & M.O.9. He identified his signature as Exhibit-15/1 in the seizure list in respect of seizure of sit cover of Max vehicle with some blood stain and identified the seized materials marked as Exhibit-M.O.11.

19. PW-18, Rajesh Das is a professional videographer who made the videography at Ompi P.S. when accused Rangbhanga Reang and Bipul Saha made their disclosure statement as well as other places till the recovery of the dead body of deceased Chanu and visiting the scene of occurrence at the instance of the accused persons. He developed two discs from the recorded video and handed over the

same to I.O. along with a certificate made under Section 65B of the Indian Evidence Act. The I.O. seized the same by preparing seizure list wherein he put his signature marked as Exhibit-6/2 and identified the seized discs marked as Exhibit-6/2 and Exhibit-M.O.4 and Exhibit-M.O.5 respectively. He identified the certificate marked as Exhibit-16 and signature therein marked as Exhibit-16/1.

20. PW-25, Debasish Deb also deposed in the same manner like PW-15 & PW-16. According to this witness, accused Rangbhanga Reang disclosed that late night at about 0400 hours appellant Bipul Saha informed Rangbhanga Reang on mobile that Tapan Deb @ Chanu expired in the house of Bipul Saha and as such, instructed said Rangbhanga Reang to assist him to dispose of the dead body of Tapan Deb @ Chanu. But Rangbhanga Reang refused to come but being threatened by appellant Bipul Saha he finally agreed and instructed to reach Konaram Para where the dead body would be disposed of but after some time Rangbhang Reang was informed by appellant Bipul Saha that he had already disposed the dead body of Tapan Deb @ Chanu in a lunga, in between Konaram Para and Doctor Singh Para jungle and on query by Rangbhang Reang the appellant Bipul Saha informed about the place of disposal of the dead body. Said PW-25 further deposed that Rangbhang Reang also disclosed that he could show the place where the dead body of Tapan Deb @ Chanu was concealed and accordingly, he took the persons present in the P.S. to a lunga known as 'Puran Jum' in Doctor Singh Para jungle wherefrom a drain the dead body of Tapan Deb @ Chanu was recovered which was covered with banana leaves. After that, the inquest was made and the witness put his signature on the inquest report and identified his signature marked as Exhibit-2/2. This witness identified his signatures

in the disclosure statement of accused Rangbhang Reang marked as Exhibits-22/2 and 22/3.

21. PW-10, Tapan Das deposed that about two years back he went to the residence of accused with police and on reaching there as per noting of accused in his house one bag containing some clothes were recovered from the tank of a Kaccha latrine and from the pocket of a pant recovered one ATM Card, PAN Card belonging to Tapan Deb and a Key and after that, he handed over the same to the police who seized the same by preparing seizure list wherein the witness put his signature and identified the same marked as Exhibit-4. He also identified the seized ATM Card marked as Exhibit-M.O.1 and PAN Card marked as Exhibit-M.O.2.

During cross-examination, PW-10 stated that he did not find any road nearby the latrine. But in course of his cross-examination, he stated that the latrine was situated at a stones throw distance from the road.

22. PW-24, Rupan Das, the then DCM of Amarapur deposed that on 25.05.2016, the inquest was conducted and a report was prepared on the dead body of Tapan Deb @ Chanu in the Ompi Hospital wherein he put signature marked as Exhibit-2/1. Said witness further deposed that on 13.06.2016 he went to Ompi P.S. for recording the disclosure statement of accused Rangbhang Reang and he put his signature in the disclosure statement of Rangbhang Reang marked as Exhibit-22 and Exhibit-22/1. Said witness further deposed that after seven to eight days of such recording another disclosure statement of appellant Bipul Saha was recorded at Ompi P.S. and thereafter, appellant Bipul Saha took them to his house wherein at his pointing a stripe of medicine, wearing apparels from the latrine tank, Coca-cola bottle from the pond of his house were recovered and after completion of the

aforesaid procedure i.e. disclosure statement and recovery of the aforesaid articles at his pointing, he put his signature in the disclosure statement and pointing out memorandum marked as Exhibit-13/8 to Exhibit-13/11. Said PW-24 further deposed that on the pointing of accused Bipul Saha one purse was recovered from his house and in the purse ATM Card along with some papers were also recovered. This witness identified the ATM Card along with Tablets, Coca-cola bottle, money bag and wearing apparels which were already marked as Exhibits-M.O.1, M.O.7, M.O.8, M.O.9 and M.O.10 respectively.

During cross-examination, PW-24 stated first of all strip of medicine was recovered followed by other articles. This witness could not say the date of manufacture, expiry, name of the company of the aforesaid stripe of medicine.

23. PW-28, Surjya Kanta Jamatia, the I.O. of this case who conducted investigation and laid charge sheet against the present appellant and another. This witness identified the seizure list showing the seizure of half pant as Exhibit-7/1, signature identified as Exhibit-7/2, identified the seizure list showing seizure of empty strip of tablet as Exhibit-14/2, signature identified as Exhibit-14/3, identified the seizure list showing seizure of Coca-cola bottle marked as Exhibit-15/2, signature identified as Exhibit-15/3, identified the seizure list showing seizure of half sleeve ganji (vest) and black pant as Exhibit-4/2 and signature identified as Exhibit-4/3.

These were the material witnesses of the prosecution as per Section 27 of the Evidence Act.

24. PW-19, Dr. Shyam Debbarma deposed that on 25.05.2016 at Ompi CHC he conducted the postmortem over the dead body of Tapan Deb in connection with Ompi P.S. Case No.2016/OMP/005 dated

23.05.2016 under Section 364A/120B of IPC and on examination he gave the following observations :

- "1) The body was decomposed with plenty maggots over the body;**
- 2) Both eyes were liquefied and sockets were empty with plenty of maggots;**
- 3) Central incisors, right lateral incisors teeth (upper and lower) were found missing;**
- 4) On opening of abdomen gas sound is heard with foul smell;**
- 5) There was multiple abrasion on left knee, lacerated wound measuring 1 cm x 3 cm on occipital region, brain and thorax were found congested."**

Said witness further deposed that Viscera was sent for forensic and toxicological analysis and as per report of forensic examination the cause of death was due to asphyxia because of over dose of drugs. He identified the postmortem report in two pages marked as Exhibit-17 and his signature marked as Exhibit-17/1. He further deposed that on 25.05.2016 he handed over the viscera of the dead body of Tapan Deb to police at Ompi Hospital Morgue which was seized by a seizure list and he identified his signature marked as Exhibit-8/1.

25. PW-20, Dr. Subhankar Nath deposed that on 23.06.2016 the DNA Typing Division received two exhibits marked as 'H' and 'I' as inter divisional examination and opinion from Toxicology Division in connection with Ompi P.S. Case No.2016/OMP/005 dated 23.05.2016 under Sections 364(A)/120(B) with added Sections 302/201 of IPC. The period of examination was 27.06.2016 to 03.08.2016. According to this witness, the two exhibits were as follows :-

- "1) Exhibit-H:- A piece of seat cover of the vehicle No.TR-03-4112(Max) of Bipul Saha having four encircled area by white colour, contained some black stain.**
- 2) Exhibit-I :- One brown colour envelope having six gala seals of Ompi CHC and signature along with stamp of medical officer, Ompinagar CHC, Gomati Tripura dated 17.06.2016, inside which a blood stained gauge, said to be the dry blood of Tapash Deb, the elder brother deceased.**

**The Exhibit-H was examined for blood and saliva. The Exhibit-I was examined for blood. On biological examination blood stained and saliva stain was not detected in the Exhibit-H. Blood stain was detected in the Exhibit-I. The DNA Profile was generated from the Exhibit-I is shown in the Annexure-A and it is found to be the human male blood. The report was prepared by PW-20 in the official compute in four sheets and signed on 03.08.2016 and submitted to Toxicology Division for forwarding the report to the forwarding authority i.e. the SDPO, Ompi, Gomati Tripura. The report was forwarded to the forwarding authority along with Toxicological report vide No.SFSL/374/16/TOX/167/16/4911 dated 04.08.2016 by the Director of SFSL, Tripura. PW-20 identified the report as Exhibit-18, the signatures therein identified as Exhibit-18/1 to 18(4) and the forwarding letter of Director-cum-Chemical Examiner, Government of Tripura identified as Exhibit-19 and the signature of the Director identified as Exhibit-19/1."**

26. PW-21, Suman Chakraborty deposed that on 31.05.2016 their office received one sealed packet from SDPO, Ompi containing exhibits in connection with Ompi P.S. Case No.2016/OMP/005 which was endorsed to him by their Director for examination and opinion. Inside the sealed packed there were five plastic containers marked as Exhibits-A to E containing Stomach, Liver, Kidney, Hearts, Spleen subsequently marked in their Lab as TOX/167/16A to TOX/167/16E. Subsequently, on 23.06.2016 four more exhibits marked as Exhibits-F, G, H and I in connection with same case were forwarded by the same forwarding authority and received and endorsed to him as usual. Exhibits marked H & I were referred to DNA FP Division as per requisition of IO. The rest exhibit marked 'F' was one plastic bottle of cold drinks written Coca-cola etc. The container affixed a paper slip with case reference, particulars of witness with signature etc;, inside it found 10 ml of dirty coloured muddy liquid substance. Exhibit marked 'D' was containing an empty blister strip of twenty tablets written Warnax 0.5 Alprazolam Tablets. This packet was also bearing case reference, particulars of witness etc. subsequently marked as

TOX/167/16(F) & (G). The Exhibits were examined from 16.06.2016 to 25.07.2016 by Chemical colour test Chromatographic (TLC, GC) and Spectroscopic (MS method). On examination Ethyl Alcohol and Alprazolam, A Benzodiazepine Group of Drugs has been detected in the viscera sample of deceased Tapan Deb marked as TOX/167/16A and TOX/167/16B. Exhibit marked C, E and F were negative for the presence of common Organo Phosphorous, Organochloro, Pyrethroids and Carbamates Group of Pesticides and Arsenic. Exhibit-D was not examined as it was not suitable for detection of common poison. Exhibits marked as A, B and F has been exhausted during examination. PW-21 further deposed that the report was prepared by him in the official computer in three pages which he identified as Exhibit-20 and signatures therein identified as Exhibits-20/1, 20/2 and 20/3.

Following are the witnesses of the investigation part :

27. PW-28, Surjya Kanta Jamatia who conducted investigation of the case and he identified the exhibited documents. He deposed that on 23.05.2016 one Tapash Deb laid the ejahar which was registered vide case No.2016/OMP/005 dated 23.05.2016 and identified the same i.e. Exhibit-1/3. He filled up the printed FIR form marked as Exhibit-24 and the signature marked as Exhibit-24/1. He further deposed that on 18.05.2016, one written missing information of Tapan Deb @ Chanu was received at P.S. which was entered in the General Diary bearing No.15 dated 18.05.2016. On 23.05.2016, he visited the P.O. and prepared the hand sketch map marked as Exhibit-25, and his signature marked as Exhibit-25/1 with separate index marked as Exhibit-26 and signature of him marked as Exhibit-26/1. He also conducted the inquest over the dead body of Tapan Deb @ Chanu at the place of recovery and prepared a report and identified the same

marked as Exhibit-2/3 and his signature marked as Exhibit-2/4. He also deposed that he arranged for postmortem examination of the dead body of deceased Tapan Deb @ Chanu and on production by Dr. Shyam Debbarma, he seized the viscera of deceased at Ompi Hospital morgue by preparing seizure list marked as Exhibit-8/2, signature marked as Exhibit-8/3. On 26.05.2016, he again visited the place of occurrence where the dead body was recovered and prepared hand sketch map of the second P.O. marked as Exhibit-27 and his signature marked as Exhibit-27/1 with separate index marked as Exhibit-28 along with signature marked as Exhibit-28/1. He further deposed that in course of investigation, he made a prayer for adding Section 302/201 of IPC in this case. He arranged for sending the viscera to the SFSL. He caused arrest of accused Bipul Saha from East Agartala P.S. as the accused on 10.06.2016 surrendered at East Agartala P.S. He also seized some portion of seat cover containing blood stain from the vehicle bearing No.TR-03-4112 (Max) and seized the same by preparing seizure list and identified the seizure list marked as Exhibit-15/4 and his signature marked as Exhibit-15/5. On 16.06.2016, he sent requisition for collection of blood sample of informant Tapash Deb and on the following day, the blood sample of Tapash Deb was seized from Dr. Biswajit Debbarma, by preparing seizure list Exhibit-10/1 and his signature marked as Exhibit-10/2. He arranged for sending the seized blood sample for forensic examination. On 24.06.2016, he seized two Compact discs by preparing seizure list and identified the same marked as Exhibit-6/3 and his signature marked as Exhibit-6/4. On 19.08.2016, he submitted a prayer before the Court for tagging the GD Extract in connection with GDE No.15 dated 18.05.2016 which was marked as Exhibit-29 and after completion of investigation he laid charge sheet.

During cross-examination he deposed that on 23.05.2016 at 1345 hours accused Rangbhang Reang was taken to Lundingfa Old Jhum under Komaram Para of Ompi P.S. but on that day, no dead body was recovered. The bag containing the seized articles were also not seized. He further deposed that accused Bipul Saha brought out the empty strip of tablets from the bamboo fencing of kitchen room as per seizure list marked as Exhibit 15/2 and accused Bipul Saha produced Coca-cola bottle and the same was seized. He also stated that the seizure list marked as Exhibit-14/2 does not contain any description regarding the date of manufacturing of tablets, Company, date of expiry etc. He again stated that although the alleged dead body was recovered on 25.05.2016 at about 1345 hours, but the hand sketch map with index were prepared on 26.05.2016.

28. PW-26, Pradip Das deposed that on 24.05.2016 in connection with East Agartala P.S. GDE Nos.53 and 58 dated 24.05.2016 and Ompi P.S. Case No.05/2016 under Sections 364A/120B of IPC, he seized one vehicle bearing No.TR-03-4112 (Mahindra Max) from Resham Bagan in the garage of Pradip Banik and Ajit Banik by preparing seizure list marked as Exhibit-23, and his signature marked as Exhibit-23/1, and said witness after seizure handed over the aforesaid vehicle to the I.O. of that case.

29. PW-11, Shri Jibananda Das seizure witness deposed that on 23.05.2016 the I.O. seized one mobile phone (Black colour) by preparing seizure list wherein he put his signature and identified the same as Exhibit-5, on 24.05.2016 the I.O. seized the CD containing the statements of Bipul Saha and Rangabhang Reang by preparing seizure list wherein he also put his signature as witness which he identified as Exhibit-6. On 26.05.2016 the I.O. seized a pant (light blue coloured) by preparing seizure list wherein he put his signature as

a witness which he identified as Exhibit-7. On 25.05.2016 the I.O. seized the exhibits in bottle after postmortem by preparing seizure list wherein he put his signature as witness and identified the same as Exhibit-8, on identification by the witness black coloured mobile marked as Exhibit-M.O.3, 2 numbers of CDs as marked as Exhibit-M.O.4 and Exhibit-M.O.5, blood stain in gauge cloth is marked as Exhibit M.O.6.

30. PW-12, Md. Atikul Islam Khadim deposed that on 23.05.2016 the IO Surjya Kanta Jamatia seized one mobile phone (Black colour) by preparing seizure list wherein he put his signature as witness, which he identified as Exhibit-5/1. On 04.06.2016, the IO seized a Max vehicle bearing No.TR-03-4112 of accused Bipul Saha by preparing a seizure list wherein he put his signature as witness and identified his signature marked as Exhibit-9. On 17.06.2016, the IO seized dry blood sample of the deceased in gauge cloth by preparing seizure list wherein he put signature which he identified as Exhibit-10, on 24.06.2016 the IO also seized two CDs developed by videographer Rajesh Das by preparing seizure list wherein the witness put his signature marked as Exhibit-6/1, he also confirmed Exhibit-M.O.3, Exhibit-M.O.4, Exhibit-M.O.5 and Exhibit-M.O.6.

31. PW-27, Ajit Banik deposed that on 24.05.2016 one vehicle bearing No.TR-03-4112(Mahindra Max) was undergoing repairing in their workshop and on that day, the police seized the said vehicle by preparing seizure list wherein he put his signature marked as Exhibit-23/1.

32. PW-2, Shri Panjiam Reang, PW-3, Smti. Aldirani Debbarma, PW-4, Pandirai Reang, PW-5, Kanta Rai Reang, PW-8, Nitai Rudra Paul, PW-14, Ajay Reang could not say anything about the prosecution case.

33. PW-23, Sumit Sen is the Marketing Agent of Sree Ram Transport Finance Company deposed that on 16.05.2016, Tapan Dey @ Chanu executed an agreement for the purpose of a Bus and on next Wednesday, he was supposed to go to the house of Tapan Dey @ Chanu for procuring the money from him and on Wednesday, when he rang up to Tapan Dey on his mobile number he found that the same was found to be switched off, so on the same day, he went to Ompi Syndicate Office where he came to know that Tapan Dey @ Chanu was missing. PW-23, further deposed that Tapan Dey @ Chanu did not go to his residence on Tuesday and after eight to nine days he came to know that the dead body of Tapan Dey @ Chanu was recovered.

34. These were the some and substance of the evidence on record of prosecution. Before we proceed further to re-appreciate, it is to be noted here that Learned Additional P.P. in course of hearing of argument submitted that since the case is entirely based on circumstantial evidence and the prosecution both by oral/documentary evidence on record has been able to prove the charge against the appellant, so Learned Addl. P.P. urged for upholding the conviction.

35. On the other hand, Learned Senior counsel appearing on behalf of the accused appellant submitted that the prosecution has failed to prove the chain of circumstances in this case and relied upon one citation of the Hon'ble Supreme Court in **Sharad Birdhichand Sarda versus State of Maharashtra** reported in **(1984) 4 SCC 116** Hon'ble the Supreme Court have been pleased to observe as under :

**"151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete than a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not**

suffer from any infirmity. It is not the law that where is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. The State of Madhya Pradesh : AIR 1952 SC 343 This case has been uniformly followed and applied by this Court in a large number of later decisions upto date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh : (1969) 3 SCC 198 and Ramgopal v. State of Maharashtra : (1972) 4 SCC 625. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (supra):

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra : (1973) 2 SCC 793 where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and

**the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."**

**(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."**

36. Here in the case at hand, according to the prosecution, the prosecution has been able to prove the motive, disclosure statement and the circumstantial evidence to sustain the charge against the appellant. Now, for the sake of evidence, I would like to refer herein below the provisions of Section 27 of the Evidence Act which reads as follows :

**"27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."**

37. In this case to substantiate, evidence leading to discovery under Section 27 of the Evidence Act, prosecution has adduced PWs- 10, 15, 16, 18, 24, and 28. The evidence of those witnesses have been elaborately discussed. The appellant by the trend of cross-examination of those witnesses during trial could not raise any doubt to disbelieve their evidence. It is a settled principle of law that as per Section 27 of the Indian Evidence Act an information received from the accused in a police custody leading to discovery of fact is admissible and relevant. In the present case, there is no dispute on record that the disclosure statement of the accused persons namely Bipul Saha and Rangbhanga Reang were made during their police custody. In this case, the fact

discovered by the police with the help of disclosure statement of the accused persons in police custody and the recovery of incriminating materials on the strength of such statement is that it was the accused who concealed those articles at the hidden places and it appears from the evidence on record that the prosecution has been able to prove the fact of recovery beyond reasonable doubt against the present appellant. Regarding motive, it is the case of the prosecution that the appellant Bipul Saha had some link with the deceased and as such, he had knowledge about the withdrawal of Rs.2,50,000/- by the deceased for purchasing of a vehicle which prompted the appellant to made up in mind with another accused namely Rangbhanga Reang for killing of deceased Tapan Deb.

38. The Learned Trial Court below, to prove motive relied upon the following citations :

**42. In *Ranganayaki v State*, AIR 2005 SC 418 the Hon'ble Supreme Court observed that though it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved.**

**43. In the case of *Atley v State of UP*, AIR 1955 SC 807 the Hon'ble Supreme Court held that "Where there is clear proof of motive for the crime, that lends additional support to the finding of the court that the accused was guilty but the absence of clear proof of the motive does not necessarily lead to the contrary conclusion. The absence of proof of motive has this effect only, namely that the other evidence bearing on the guilt of the accused had to be very closely examined."**

39. Regarding circumstantial evidence and its admissibility, the prosecution should 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 should complete that there is not

escape from the conclusion that within all human probability the crime was committed by the accused and none else.

4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than 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 view.

40. Here, in the case, the accused Rangbhanga Reang has led to discovery of the dead body of Tapan Dey @ Chanu and the present appellant Bipul Saha has led to discovery of the wearing apparels of the deceased, one strip of sleeping pills of Warnax 0.5, one Coca-cola bottle, used in the crime, one half sleeve ganji, one black pant, one PAN Card and one ATM Card containing the name of the deceased. All those discovered facts were within the knowledge of the present appellant. The medical evidence i.e. PW-19 and the Forensic evidence i.e. the evidence of PW-21 corroborated the fact that the deceased had consumed Ethyl Alcohol and Alprazolam Tablets which caused the death of the deceased, Tapan Deb.

41. According to the Learned Court below, Warnax 0.5, Alprazolam Tablet and other articles had direct noxious with the circumstances of this case which is only inconsistent with the innocence of the accused but consistent with the guilt of the accused person i.e. the appellant of this case. Thus, from the evidence on record specifically the disclosure statements of the appellant and another co-accused and from the evidence of other witnesses of the prosecution, it is clear that prosecution in this case has been able to prove that the present appellant was responsible for the murder of the deceased. The appellant even during his examination under Section 313 of Cr.P.C. remained silent save and except denial which lead to an inference that the prosecution had been able to prove the chain of circumstances in this case.

Thus, this Court does not find any reason to interfere with the finding of conviction and as consequence thereof, this appeal being bereft of merit, and stands dismissed.

Send down the LCRs.

**JUDGE**

**JUDGE**

