

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. A. No. 6/2023 with
Crl. A. No. 7/2023
Crl. A. No. 8/2023

Date of order: 23.02.2024

Mulo Rakait	vs.	State of Meghalaya
Thum Rakait	vs.	State of Meghalaya
Ioolang Rakait	vs.	State of Meghalaya

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants	: Mr. K.S. Kynjing, Sr. Adv. with Mr. K.S. Sunar, Adv. Mr. G. Syngkrem, Adv. Ms. B. Rapsang, Adv.
For the Respondent	: Mr. N.D. Chullai, AAG with Ms. R. Colney, GA

i) Whether approved for reporting in Law journals etc.:	Yes
ii) Whether approved for publication in press:	Yes

COMMON JUDGMENT

(Made by Hon'ble, the Chief Justice)

The Appellants, who are Accused persons in Sessions Case No.77 of 2013 on the file of the District and Sessions Judge, West Jaintia Hills District, Jowai, were convicted by the Trial Court for offences under Sections 302/34 IPC as follows:

Sl.No.	Offence	Conviction and Sentence
1.	Section 302 IPC	To undergo Life Imprisonment with a fine of Rs.15,000/- each and the fine amount shall be paid to the family members or close relatives of the deceased victim.

The Trial Court held that the convicts are not entitled to the benefit of Section 428 Cr.P.C., as they will have to undergo life imprisonment and they were ordered to serve sentence in prison. Aggrieved by the order of the District and Sessions Judge, West Jaintia Hills District, Jowai, dated 28.07.2022, the Appellants have preferred these Criminal Appeals before this Court.

2. The case of the prosecution in brief is that based on the complaint given by one Smti Sharbih Rakait on 11.07.2006 that her son Shri Salong Rakait was murdered by the appellants along with Mut Rakait and Dilip Chyrmang, a case in O.C. Jowai Police Station Case No.81 (07) 06 under Sections 302/34 IPC came to be registered. Immediately thereafter the case was entrusted to one C. Lamare, Sub Inspector of Police, who, after a thorough investigation and examination of witnesses, arrested the accused persons. The further case of the prosecution is that the dead body was sent for post-mortem after conducting inquest over the dead body. According to the prosecution,

all the accused persons pulled the deceased out of the house and committed the crime during puja days.

3. After investigation, a charge sheet was laid before the Court of the ADC, Jowai in C.S.No.86/06 dated 18.08.2006 and was subsequently, made over to the District and Sessions Judge, West Jaintia Hills District, Jowai for trial. The prosecution, in order to substantiate the offences against the accused persons, has examined 8 witnesses, marked 8 documents and exhibited 3 Material Objects. Statements under Section 164 Cr.P.C. were also obtained from the accused persons. Though case was registered against five persons, during trial, two of them, namely, Dilip Chyrmang and Mut Rakait had expired and therefore, the case against them was abated. All the accused were questioned under Section 313 Cr.P.C. and they denied the charges levelled against them. The Trial Court, after analyzing the evidence let in by the prosecution, found the three accused persons guilty of offences and convicted them as stated supra.

4. The learned Senior Counsel appearing for the Appellants/accused submitted that only based on the confession made by accused persons, they have been convicted, that too, confession made was not voluntarily, as there were no eyewitnesses to the occurrence. According

to him, Police personnel must give 24 hours' time to accused persons so as to enable them to decide about confession and in this case, only a time of two hours has been granted to them, which is not acceptable. He further submitted that forensic examination was not done in this case and seizure witness was a Police Officer (P.W.3), who cannot be termed as an independent witness. He also submitted that the consequences of giving confession statement had not been properly explained to accused persons in the local language known to them. Learned Senior Counsel for the accused, in support of his submission, strongly relied upon the following judgments of the Hon'ble Supreme Court:

i) *Shivappa vs. State of Karnataka*, reported in (1995) 2 SCC 76,

wherein it has been held as follows:

“7. The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him. **That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of Section 164 Cr.P.C. and the Rules framed by the High Court for the guidance of the subordinate courts.** Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, **he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions**, as would satisfy the court that sits in judgment in the case, that **the confessional statement was**

made by the accused voluntarily and the statutory provisions were strictly complied with.”

ii) **Rabindra Kumar Pal alias Dara Singh vs. Republic of India,**

reported in **AIR 2011 SC 1436;**

“22. In Bhagwan Singh and Ors. v. State of M.P. MANU/SC/0040/2003 : (2003) 3 SCC 21, while considering these issues, it was held:

“27. ...The first precaution that a Judicial Magistrate is required to take is to prevent forcible extraction of confession by the prosecuting agency (see State of U.P. v. Singhara Singh MANU/SC/0082/1963 : AIR 1964 SC 358). It was also held by this Court in the case of Shivappa v. State of Karnataka MANU/SC/0189/1995 : (1995) 2 SCC 76 that the provisions of Section 164 Code of Criminal Procedure must be complied with not only in form, but in essence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.

28. It has also been held that the Magistrate in particular should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial. He should be granted sufficient time for reflection. He should also be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement...

23. In *Shivappa v. State of Karnataka* MANU/SC/0189/1995 : (1995) 2 SCC 76, while reiterating the same principle it was held:

“6. From the plain language of Section 164 Code of Criminal Procedure and the rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 Code of Criminal Procedure, it is manifest that the said provisions emphasise an inquiry by the Magistrate to ascertain the voluntary nature of the confession. This inquiry appears to be the most significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 Code of Criminal Procedure. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same...

....that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession..”

24. In *Dagdu and Ors. v. State of Maharashtra* MANU/SC/0086/1977 : (1977) 3 SCC 68, the following paragraph is relevant:

“51. Learned Counsel appearing for the State is right that the failure to comply with Section 164(3) of the Criminal Procedure Code, or with the High Court Circulars will not render the confessions inadmissible in evidence. Relevancy and admissibility of evidence have to be determined in accordance with the provisions of the Evidence Act. Section 29 of that Act lays down that if a confession is otherwise relevant it does not become irrelevant merely because, inter alia,

the accused was not warned that he was not bound to make it and the evidence of it might be given against him. If, therefore, a confession does not violate any one of the conditions operative under Sections 24 to 28 of the Evidence Act, it will be admissible in evidence. But as in respect of any other admissible evidence, oral or documentary, so in the case of confessional statements which are otherwise admissible, the Court has still to consider whether they can be accepted as true. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession even if it is admissible in evidence. That shows how important it is for the Magistrate who records the confession to satisfy himself by appropriate questioning of the confessing accused, that the confession is true and voluntary. A strict and faithful compliance with Section 164 of the Code and with the instructions issued by the High Court affords in a large measure the guarantee that the confession is voluntary. The failure to observe the safeguards prescribed therein are in practice calculated to impair the evidentiary value of the confessional statements.”

iii) *Sarwan Singh vs. The State of Punjab*, reported in (1957)

SCR 953;

“There can be no doubt that when an accused person is produced before the Magistrate by the investigating officer, **it is of utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all.** It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused

person in any given case. However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person **at least 24 hours to decide whether or not he should make a confession**. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded. In our opinion, in the circumstances of this case it is impossible to accept the view that enough time was given to the accused to think over the matter.”

iv) *Aher Raja Khima vs. State of Saurashtra*, reported in *AIR*

1956 SC 217;

“14. Now the law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. It is abhorrent to our notions of justice and fair play, and is also dangerous, to allow a man to be convicted on the strength of a confession unless it is made voluntarily and unless he realises that anything he says may be used against him...”

15. If the confession is excluded, then there is not, in our opinion, sufficient evidence against the appellant on which a conviction can be based.”

v) *Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey*,

reported in *AIR 2022 SC 5454*;

“27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing

charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the Accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the Accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of Code of Criminal Procedure, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution.”

5. It was further argued by the learned Senior Counsel for the accused that the accused persons are poor and illiterates and the witnesses produced on the side of the prosecution did not have the exact knowledge of the occurrence except the fact that all the accused had quarrelled with the deceased. It was his submission that even the wife of the deceased, who was examined as P.W.4 stated that she was not aware as to who murdered her husband. Moreover, the chain of event was missing in this case, as there is no adequate evidence to link accused persons with the alleged murder of the deceased. Thus, he pleaded that there were several flaws committed by the prosecution and sought for interference by this Court in the conviction and sentence awarded by the Trial Court.

6. It was the case put forth by the learned Senior Counsel for the appellants that admittedly, there was a disgruntlement between the accused and the deceased and even on the date of occurrence, there was an infuriation, which is evident from the reading of the depositions of P.Ws.1 to 4 and therefore, the appellants had committed the offence under grave and sudden provocation. The case squarely falls under first exception to Section 300 of the Indian Penal Code and the appellants ought not to have been convicted for the offence of murder under Section 302 of the Indian Penal Code.

7. Per contra, learned Additional Advocate General appearing for the State contended that based on the confession statement given by one of the accused Mulo Rakait to Additional Deputy Commissioner (Judicial), it is evident that due to previous enmity and to wreak vengeance, the accused persons had committed the murder of the deceased. It was clearly explained to the accused that the person who is enquiring is not a Police Officer, but only a Magistrate. He further contended that a question was put to the accused that “Even if you make a confession you must know that you are not free or pardon, the law will take its own course?” and the accused replied “Yes, I understand.” For the question posed by the Magistrate as to whether there was any torture

by the Police, it was stated by the accused that there was no torture. The accused Mulo Rakait confessed that he along with other accused persons pulled the deceased to the road and killed him with hammer, stone and sticks and before recording his statement, he was informed in local Pnar language about the implications of his voluntary confession statement.

8. Learned Additional Advocate General appearing for the State also contended that apart from Mulo Rakait, other accused had also not denied the commission of offence and their statements were recorded by the Magistrate in English Language. To strengthen his case that it is sufficient that if the confession statement is substantiated by other evidence, the accused can be convicted on the basis of such confession statement, the following case laws were relied upon by him:

i) *Madi Ganga vs. State of Orissa*, reported in *AIR (1981) 2 SCC*

224;

“6. The final submission of the learned Counsel was that even if the confession to the Magistrate was accepted as voluntary it has not been sufficiently corroborated to justify the conviction of the accused. It is now well settled that in order to sustain a conviction on the basis of a confessional statement it is sufficient that the general trend of the confession is substantiated by some evidence which would tally with the contents of the confession. General corroboration is sufficient-*vide* Subramanian Goundan v. State of Madras (1). In the present case the confessional statement refers to the

motive for the occurrence. This part of the confession is corroborated by the evidence of P.W. 1. The confessional statement refers to the accused having thrown a big stone on the head of the deceased. This part of the statement is corroborated by the medical evidence. We think that there was sufficient general corroboration to justify the High Court acting upon it. The appeal, is therefore dismissed.”

ii) *Shankaria vs. State of Rajasthan*, reported in (1978) 3 SCC

435;

“39. It is true that the interval between the preliminary examination of the appellant and the recording of his confessional statement was about 15 minutes. **But there is no statutory provision in Section 164 Cr. P.C or elsewhere, or even an executive direction issued by the High Court that there should be an interval of 24 hours or more between the preliminary questioning of the accused and the recording of his confession.** The condition precedent for recording a confession by the Magistrate in the course of Police investigation is provided in Section 164(2) Cr.P.C. which mandates the Magistrate not to record any confession, unless upon questioning the accused person making it, he has reason to believe that it is being made voluntarily.

42. Although the interval between the preliminary questioning of the appellant and his confession was about 15 minutes, the appellant had no less than 38 hours at his disposal, whilst he was in judicial custody free from fear or influence of the Police, to think and decide whether or not to make a confession. As noticed already, the appellant was brought from Ganganagar to Raisingh Nagar on June 12, 1974 because on that day no Magistrate competent to record the confession of the appellant was available at Ganganagar. The appellant was admitted to the Judicial Lock-Up Raisingh Nagar under the orders of the Magistrate about or after 4 p.m. on that date. Thereafter, the appellant continuously, remained in the Judicial Lock-Up or judicial custody till his confession was recorded on June 12, 1974 from 8.45 a.m. onwards. The

Magistrate, Shri Bansal was aware that the appellant was continuously in judicial custody since the evening of June 12, for about 38 or 40 hours preceding the confession.

49. A suggestion was put to Shri K. P. Srivastava in cross-examination, that after the confession had been recorded, the accused was taken to Hanumangarh and the witness had accompanied him. The witness stoutly refuted this suggestion that the custody of the accused was after the confession, given to him or the investigating Police. He however, affirmed that the accused was sent to the judicial lock-up Hanumangarh. There was no good reason to disbelieve the evidence H of the Magistrate P.W. 6) and the Superintendent of Police (P.W. 22) to the effect that after recording the confession, the custody of the accused was not handed to the investigating police.”

9. Learned Additional Advocate General went on to add that the prosecution had clearly established the guilt of the accused through testimonies about the overt act on the part of the appellants/accused and their testimonies were corroborated with all material particulars. In sum and substance, it was his submission that since the prosecution was able to prove the guilt on the part of the appellants/accused beyond any reasonable doubt and that the appellants/accused knowing pretty well about the consequence of attack on the deceased with Hammer, attacked him and hence, they are not entitled to any leniency and prayed for the dismissal of these appeals.

10. We have carefully considered the submissions made on either side and perused the materials available on record.

11. The questions that arise for consideration in this case, are:

(i) Whether the prosecution, through the testimonies of witnesses, exhibits and material objects marked, is able to prove its case beyond reasonable doubt?

(ii) Whether the reasons assigned by the trial Court in the impugned judgment for convicting and sentencing the appellant/accused are sustainable?

12. The main contention of the accused persons was that there was no eyewitness produced by the Police to prove that it was accused, who had done away with the life of the deceased and that the accused were implicated in this case based on their own confession statement, on the basis of which they cannot be made as a scapegoat. At this juncture, we feel it appropriate to refer to as to what was the confession statement of the accused and how the prosecution was able to link the accused with the crime in corroboration with other evidence and documents. **On the side of the prosecution, there were eight witnesses produced to prove the guilt of the accused and as per the version of P.W.1, the deceased, who was the son of her cousin sister**

visited her house for puja and at that time, there was a quarrel between the deceased and the accused, as a result of which, the deceased was pulled out of her house and attacked by the accused.

However, she was not aware as to who attacked / killed the deceased at the first instance and her cross examination was declined. The version of P.W.1 was reiterated by P.W.2 and P.W.3, out of whom, the deceased was P.W.2's cousin brother and their cross examinations were also declined. P.W.3 signed the seizure mahazar and confirmed that the following articles / material objects were seized in his presence:

- 1) One big stone with blood stains on it;
- 2) One hammer with a small wooden handle length 2'';
- 3) 11 Nos. of firewood (Pines and bamboo).

13. The next witness P.W.4, who was the wife of the deceased, had deposed that she was not present at the scene of occurrence, as she was looking after her new born baby and she was informed and she was informed by her neighbour that her husband was murdered by accused persons, who are all related to the deceased and her cross examination was also declined. The other witnesses, namely, P.Ws.5 to 8 were Police Officers, Doctor and Magistrate respectively and they had briefed as to the progress of the case in each stage.

14. P.W.6 / Dr. Paitbha Syngkon had stated that the body of the deceased was brought to the Civil Hospital, Jowai and Dr. G. Passah had conducted the Post Mortem on the dead body at 2:30pm on 11.07.2006 and he was present during Post Mortem and in the opinion of Dr.G.Passah, the cause of death was due to shock and haemorrhage resulting from head injuries. P.W.6 had stated in his cross examination as under:

“In my opinion the weapons used for such injuries are blunt weapon like a hammer which is blunt and heavy and any other blunt object.”

As per the Post Mortem report, the injury was described as under:

“Head injury with injury to the brain was fatal and auto-inactive in nature.”

15. Coming to the confession statements of the accused, among five accused, four accused, namely, Thum Rakait, Mut Rakait, Mulo Rakait and Ioolang Rakait, out of whom, Mut Rakait died during the course of trial, voluntarily confessed in their 164 Cr.P.C. statements, which are extracted hereunder:

Name of the accused	164 Statement
Thum Rakait	After (L) Salong Rakait killed my mother and ran away 13 yrs ago tried to find him but could not and give up. After few months returned back to the village and we did nothing to him. When came back he started drinking and cause trouble to us and always waited to attack us whenever we go to work we had walk through the garden of other people in the village. Whenever he was drunk he was always after our family members. Once during our family rites we thought of finishing him off because he came to our house to

	create trouble. Then after that one night on 10.7.06 he tried to hurt and beat my sister and we (myself, Mut, Iooland and Mulo) came of the house and beat him up. We beat in front of our house by hammer, stones and stick. We thought of finishing him off because if he lives he will kill us all, so we kill him instantly by using these materials available. After we called the Police. That's all sir.
Mut Rakait	13 years ago (L) Salong Rakait killed my elder aunt and we did not do anything due to our customs but whenever he was around we were afraid of him and most of the time we avoid him and ran away. Last week during our family rites performance he started to create trouble and we tolerate this. But on the 10.07.06 night, he was drunk and started to shout at us at one house and challenged us. Thereafter, we (myself, Thum, Mulo and Iooland) came outside and beat him up and he tried to run away. Then we hold him and hit him with sticks, hammer and stones. We pull him to the road and beat him till he was dead after that we went to the Police to report the incident. That's all sir.
Mulo Rakait	(L) Salong Rakait killed my mother when I was young about 13 years ago and we did not do anything because we were small and we just forget it. But this man always picking up trouble with us often when he was drunk but most of the time we avoid and ran away. Last week during performance of family rites he came to our house and started to create trouble and we thought of finishing him off but the ladies did not allow us to do because of our family rites. But again on 10.7.06 after he came from some body's house got drunk and he came to our house and strated to threaten the sisters of the house and at that moment we (myself, Mut, Thum and Iooland) came of the house and beat him up. Then we pull him to the road and killed him with sticks, stones and hammer. After that the ladies went and report to the police and the police came and cover the dead body. That's all sir.
Iooland Rakait	It was last week during performance of our family rites, he (Lt Salong Rakait) came to our house and started to create trouble and he asked us to come outside to kill us all both big and small people and also knock the door of his mother. Every time he always carry a dao and road the village roads and looking for us and most of the time we ran away and guard him. On the 10.7.06 after drinking and come to our compound and call us and the ladies started to scream and at that moment we came out of the house all the four of us (myself, Mulo, Mut and Thum) and beat him up with sticks, stones and hammer. Then we pull him to the road and killed him there. That's all sir.

16. The provisions of Section 164 Cr.P.C. clearly contemplate as to the manner in which a Magistrate should record the statement of accused and this Court must ensure that such pre-conditions had been

followed by the Magistrate while recording the statement. Section 164

Cr.P.C. reads as follows:

“164. Recording of confessions and statements.

(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

Provided that any confession or statement made under this sub-Section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make, may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

Signed A.B.

Magistrate."

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB,] *[Inserted by Criminal Law (Amendment) Act, 2013]* section 376E or section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with

the assistance of an interpreter or a special educator, shall be video-graphed.

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.]

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.”

We are fully convinced with the recording of 164 statements by the Magistrate, as there was no deviation from the conditions adumbrated under Section 164 Cr.P.C.

17. P.W.6 / Dr.Paitbha Syngkon, who had commenced the post-mortem at about 02.30 p.m., on 11.07.2006, had noted in his Post Mortem Report dated 11.07.2006, which is marked as Ex.P.2 that the death would have been caused with heavy and blunt objects. From the evidence of P.W.6, it could be visualized that the deceased had died on account of head injury and not by any other mode and thus, the depositions given by P.Ws.1 to 4 coupled with the confession statements of the accused that they beat the deceased

with big stone, hammer and firewood (M.Os.I to III) were duly proved / corroborated with the medical evidence.

18. The next plea canvassed by the learned Senior Counsel for the appellants was that the appellants were not given sufficient time much less 24 hours before obtaining confession statements from them, which is contrary to the settled law. **We emphasize here that there is no hard and fast rule that accused must be given 24 hours of time.** As per the dictum laid down by the Supreme Court in the case (*Shankaria vs. State of Rajasthan*), referred to by the learned Additional Advocate General, it is a duty of the Magistrate to ensure that that accused persons are freed from the possibility of influence by the Police by giving adequate time to them and there is no necessity for the Magistrate to wait for 24 hours and thereafter obtain 164 Cr.P.C. statements from the accused. Therefore, the argument advanced to that effect is not helpful to the appellants.

19. Yet another submission of the learned Senior Counsel for the appellants was that there was no independent witness to speak about the materials alleged to have been seized, as P.W.3, who had signed seizure mahazar was a Police Officer. It is pertinent to mention here that Section 102 Cr.P.C. does not prevent a Police Officer to seize the

property and the only requisite condition is that after seizing of the property, it must be informed / reported to his higher Officer. For the sake of convenience, Section 102 Cr.P.C. is extracted hereunder:

102. Power of police officer to seize certain property.

“(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer-in-charge of a police station, shall forthwith report the seizure to that officer.”

20. In all probabilities, we are of the view that the prosecution has proved its case beyond reasonable doubt that the appellants had committed the offence of murder. The Trial Court, by following the dictum laid down by the Supreme Court in the case of **Subramania Goundan vs. State of Madras**, reported in **AIR 1958 SC 66**, and upon satisfying itself that even a retracted confession can be acted upon, had imposed the punishment as stated supra. ***The only question before us was as to whether the Court below in convicting the appellants to undergo life imprisonment is justified or not.***

21. At this juncture, the learned Senior Counsel for the Appellants raised the alternative plea of culpable homicide not amounting to murder and thereby attempted to bring this case under

Exception 1 to Section 300 IPC, so as to have the benefit of reduction of punishment under Section 304 IPC. In order to substantiate the said argument, the learned Senior Counsel brought to the notice of this Court the verbal fights between the parties and due to grave and sudden provocation they had caused the death of the deceased and therefore, the appellants can be convicted for culpable homicide not amounting to murder and sentenced under Section 304 (i) of the Indian Penal Code.

22. Admittedly, there was no direct eyewitness to the occurrence, purely on account of which, but at the same time, the entire case of the prosecution cannot be brushed aside. The evidence of P.Ws. 1 to 3 clearly shows that it was the appellants, who pulled the deceased out of the house and beaten him black and blue dark. On a careful reading of the confession statements of the appellants, especially Mulo Rakait, we are able to draw a picture that it was the deceased, who invited the trouble by visiting the house of the accused persons and causing hindrance to them during puja days, besides making ladies scream, when they were busy with puja works. Moreover, the deceased also cannot be termed to be a sacred person, as he had killed the mother of one of the accused, namely, Thum Rakait. That apart, the deceased was also in the habit of teasing accused persons, when they were not

grown up. It can be presumed that the act of the deceased could have definitely developed a grudge against the accused persons, thereby the continuous tease and other activities of the deceased have all along been lingering in the minds of the appellants / accused, which, at one point of time, burst out to lose their self-control and caused the death of the deceased by attacking him with the material objects stated supra. Though accused persons had an idea to finish off the life of the deceased on account of their previous enmity with him, on the day of occurrence, pursuant to the torture / provocation meted out at the hands of the deceased / uttering abusing words by the deceased against them by disturbing the puja celebrations, appellants were forced to respond to the gesture of the deceased, which cannot be said to be voluntary in nature, but only out of provocation. Therefore, we are satisfied that the commission of the offence by the appellants squarely falls under the provisions of Exception 1 of Section 300 owing to the existence of the following ingredients:

- All the accused had been provoked by the deceased.
- Provocation happened suddenly.

- All the accused had lost their self-control or controlling power, which had resulted in the death of the deceased, who gave the provocation.
- All the accused caused the death during the continuance of their deprivation of the power of self-control and they had no malafide intention.

23. In the present case on hand, though the Trial Court had elaborately discussed about the scope of application of Section 300 IPC, it proceeded to convict the appellants on the basis of their own confession statements coupled with the factum of seizure of material objects, which brings trauma in our mind in confirming the conviction inflicted upon them. Though the case against the appellants was tried under Section 302/34 IPC, there was no whisper or discussion about the imposition of punishment under Section 34 IPC, while convicting the accused for the reason that Section 34 does not state a specific offence, as it only lays down the rule of evidence, which is required to prove that two or more persons were involved in the crime so as to bring it within the ambit of common intention and each of them will be held jointly liable and the punishment for this offence will be consistent with the crime they committed.

24. For the foregoing discussions and on analysis of the entire circumstances and evidence, we are convinced that the facts of the present case falls under Exception 1 of Section 300 on the ground of “**sustained provocation**” and consequently, it is a culpable homicide not amounting to murder. Thus, in our considered opinion, the conviction and sentence passed by the Court below requires modification, as the facts of the present case clearly falls under Exception 1 to Section 300 of the Indian Penal Code and therefore, the appellants are convicted for “culpable homicide not amounting to murder” and they are sentenced under Section 304 (I) of the Indian Penal code, to undergo Rigorous Imprisonment for a period of ten years.

25. The Apex Court in the case of *Anbazzhagan v. The State Represented by the Inspector of Police, 2023 (10) SCALE 173*: has clearly distinguished the difference between the two parts of Section 304 of the IPC, which reads as under:

“46. ...We have noticed something in the aforesaid observations made by this Court which, in our opinion, creates some confusion. We have come across such observations in many other decisions of this Court over and above the case of Jagrup Singh (1981) 3 SCC 616. What we are trying to highlight is that in Jagrup Singh (supra), although this Court altered the conviction from Section 302 to Section 304 Part II, it took shelter of Exception 4 to Section 300 of the IPC. The

question is, was there any need for the Court to take recourse to Exception 4 to Section 300 of the IPC for the purpose of altering the conviction from Section 302 to Section 304 Part II of the IPC. We say so because *there is fine difference between the two parts of Section 304 of the IPC. Under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all.* Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.”

26. In the case on hand, the offence committed by the accused persons had been duly established by the prosecution, which, in our view, amounts to culpable homicide not amounting to murder, so as to convict the appellants under Exception 1 to Section 300 of the Indian Penal Code.

27. In the result, these Criminal Appeals are allowed in part and the conviction and sentence passed by the Court below dated 28.07.2022 made in Sessions Case No.77/2023 by the District and Sessions Judge, West Jaintia Hills District, Jowai is modified in respect of Section 304 (I) of IPC to the extent that the Appellants shall undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.15,000/- (Rupees Fifteen Thousand only) each, in default to undergo three months Rigorous Imprisonment. As ordered by the Trial Court, the fine

amount shall be disbursed to the family members or close relatives of the deceased victim, if not already paid. It is made clear that the appellants shall be entitled for set off in accordance with Section 428 of the Code of Criminal Procedure for the period of detention already undergone by them.

(W.Diengdoh)
Judge

(S.Vaidyanathan)
Chief Justice

Meghalaya
23.02.2024

"*Lam* DR-PS"/"ar"

PRE-DELIVERY JUDGMENT IN
Crl.A.Nos.6, 7 & 8 of 2023