



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

Case No. : CrI.A./1/2020

Sri Padma Sonowal,
S/O late Longkeswar Sonowal,
Age about 58 years,
Permanent resident of Village Kherem Bisa Kochari,
Bordumsa, PO/PS Bordumsa,
District Changlang,
Arunachal Pradesh.

VERSUS

1. The State of Arunachal Pradesh
to be represented by Public Prosecutor
Gauhati High Court,
Itanagar Permanent Bench.

2. Shri Jiten Bhumij,
C/O Bisa Agro Tea Estate, Bordumsa,
PO/PS Bordumsa,
District Changlang,
Arunachal Pradesh.

For the appellant : Mr. Sunil Mow, Advocate.

For the respondents : Mr. G. Tado, Additional PP, AP.

Date of hearing : 8 th December, 2023.

Date of Judgment : 15 th February, 2024.

BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA
HONBLE MR. JUSTICE BUDI HABUNG

JUDGMENT & ORDER (CAV)

Date : 15-02-2024

(*Budi Habung, I*)

1. This appeal is directed against the judgment dated 11.11.2019 and order on sentence dated 16.11.2019, passed by the learned Session Judge, Khonsa, in Session Case No. 45/2019, convicting the accused Shri Monjit Sonowal under Section 302 of the Indian Penal Code (for short IPC hereinafter) and sentencing him to undergo rigorous imprisonment for life and a fine of Rs.10,000/- and in default to undergo simple imprisonment of 2 (two) months.

FACTS OF THE CASE

2. The present case has arisen due to recovery of one unidentified female dead body from the jungle situated between Kherem Bisa village and Bisa Agro Tea Estate in almost decomposed stage infected with maggots. On 12.11.2016, PW-6 Smti. Monika Bhumij along with her friends Rina Sonar and Anita Bhumij while proceeding towards Bisa Agro Tea Estate had sensed some foul odour and following the odour, they saw one unidentified female dead body lying in a decomposed state. Thereupon, they had informed the matter to one Jiten Bhumij (PW-1), who then had informed the matter to the Manager of the Bisa Agro Tea Estate, and filed a written FIR before the O.C. of P.S- Bordumsa which was registered as Bordumsa P.S Case No. 32/16 under section 302 IPC and investigated into.

3. During the course of investigation, the I.O. of the case PW-13, visited the spot, drew rough sketch map, took photographs of the unidentified dead body from various angles, held inquest over the dead body, examined the informant and other witnesses and recorded their statement under section 161 Cr.P.C. and

as the dead body was not in a position to be carried to the CHC, Bordumsa, on requisition, Dr. K. Mongchan (PW-14) conducted post mortem examination over the dead body on the spot. The I.O. also seized part of the white kurta and black leggings, undergarment and one stiller (banger) from the dead body. One piece of grey coloured with red strap ladies chappal was recovered from near the dead body and seized by the I.O. Shri Binod Mura (PW-12), identified the dead body of the deceased to be one Ratni Mura. He identified the body from the photographs, seized wearing garments and chappal of the deceased. He further disclosed that late Ratni Mura was having a love affair with one Monjit Sonowal of Kherem Kasari village. On getting the said information, the I.O. had arrested the accused Monjit Sonowal. On interrogation, accused Monjit Sonowal admitted that he had an affair with the victim girl late Ratni Mura and confessed that he had killed the deceased. The accused further admitted that since the deceased, Ratni Mura was pregnant, he decided to eliminate her and took her to the road between Bisa Agro Tea Estate and Khouji Pathar village on 07-08.11.2016 at around 0300 hours and strangled her with his bare hands and dragged her body towards the bushes and concealed the dead body. The accused also disclosed that he threw the chappal and money purse (wallet) of the deceased on the other side of the jungle. On further interrogation, the accused led the police to the spot on 17.11.2016, and effected the recovery of the money purse of the deceased from the jungle nearby the P.O.

4. The accused then was forwarded to the Judicial magistrate First Class before whom he had given a confessional statement under section 164 of the Code of Criminal Procedure. He had also made an extra judicial confession before his friends namely Purojit Sonowal (PW-7), Debojit Sonowal (PW-8) and Probal Sonowal (PW-9) at a marriage party at Kherem Khosari earlier on 08.11.2016, stating that he had killed his girl friend.

5. On completion of investigation based on the evidences collected and confessional statement of the accused coupled with the corroborating statement of the witnesses, the IO found prima facie case well established against the accused for commission of an offence punishable under section 302 IPC and accordingly, a charge sheet was laid against the accused, Monjit Sonowal under section 302 IPC.

6. The prosecution in order to substantiate the charge levelled against the accused had examined PW-1 to PW-14 and exhibited 16 number of documents, i.e., EXH-1 to EXH-16(d). After completion of the prosecution evidences, the accused was examined under section 313 Cr.P.C and his statements was recorded where the accused had partially confessed having given his confessional statement before the Judicial Magistrate. The accused did not examine any witness in his defence.

7. The Trial Court on consideration and appreciation of oral and documentary evidences and other materials available on record, found the accused guilty and convicted him under section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- and in default of payment of fine, the convict has to undergo simple imprisonment of two months in addition. It is against the said conviction and sentence passed by the learned Sessions Judge, Khonsa, the appellant has filed the present appeal.

8. We have heard Mr. Sunil Mow, the learned counsel for the appellant and Mr. G. Tado, learned Additional Public Prosecutor for the State.

SUBMISSION OF THE LEARNED COUNSEL FOR THE APPELLANT

9. The learned counsel for the appellant, Mr. Sunil Mow made the following submissions:

(i) That there is no any eye witness to the incident and all witnesses are

hearsay witness;

(ii) That the conviction of the accused is solely based on the confessional statement before the Magistrate under section 164 Cr.PC. However, the said Magistrate who had recorded the confessional statement of the accused has never been examined.

(iii) That although the confessional statement has been exhibited by the I.O. of the case as EXH-14, however, the statement exhibited in EXH-14 has never been proved by the Magistrate who had recorded the said confessional statement, and as the statement in EXH-14 has not been proved, same cannot be treated as proved documents; and based on the documents which is not proved, the accused cannot be convicted for an offence under section 302 IPC.

(iv) Moreover, while recording the confessional statement of the accused, it has to be voluntary and in question and answers form. However, in the instant case, it has not been done so.

(v) That before recording the confessional statement of the accused under section 164 Cr.PC, the accused was not provided with sufficient time for reflection which is against the provisions provided for recording confessional statement.

(vi) In support of his arguments, the learned counsel for the appellant has relied on the following judgments of the Hon'ble Supreme Court.

(vii) In the case of **Sarwan Singh V. State of Punjab** reported in **1957 SCC Online SC 1**, the Hon'ble Supreme Court has held which is reproduced herein below:

“10.....The whole object of putting questions to an accused person who offers to confess is to obtain an assurance of the fact that the confession is not caused by any inducement, threat or promise having reference to the charge against the accused person as mentioned in S. 24 of the Indian Evidence Act. 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....”

(viii) In the case of **Bhagwan Singh and Ors V. State of Madhya Pradesh** reported in **(2003) 3 SCC 21**, the Hon’ble Supreme Court held as under:

“29. The confession is also not recorded in questions and answers form which is the manner indicated in the criminal court rules. The confession was retracted before the trial Judge by the acquitted accused Pooran Singh on 28.7.1985 where, he disclosed that he was produced for judicial confession by telling him that he would be a prosecution witness as an approver. It is also stated that the police had met him in the jail and his signature was obtained on a statement. It appears that the accused Pooran Singh was in police custody when he was produced hand cuffed for recording judicial confession. The Judicial Magistrate also admitted in his statement that he was produced by the police through Police Station Daboh and after recording his statement, he was given back to the custody of police. There was, therefore, every possibility for accused Pooran Singh to have been physically and mentally pressurised for giving a judicial confession on an assurance that he would be made a prosecution witness as an approver. He has retracted his confession before the court on 28.7.1985 in the course of the trial and gave a statement in writing for retracting the judicial confession on 05.8.1985 in his examination as an accused after trial under Section 313 Cr.P.C. In his statement in writing under section 313 Cr.P.C, he stated that he was physically tortured and threatened by the police to agree for giving a false confession.”

(ix) In the case of **Tulsi Singh V. State of Punjab** reported in **(1996) 6 SCC 63**,

the Hon'ble Supreme Court held as under:

“5. To ascertain whether the above contention is borne by the record or not we have carefully looked into the evidence of the Magistrate as also the confession (Ext. P/6). On perusal thereof, we find that after his arrest the appellant was produced before the Magistrate on June 16, 1984 and sent to police Custody for a week on the prayer of the Investigation Officer. He was thereafter produced before the Magistrate on June 22, 1984 when he volunteered to make a confession. The Magistrate remanded him to judicial custody with a direction that he be produced on the following date, that is, on June 23, 1984. It appears that immediately after he was produced on that day the learned Magistrate recorded his confession. Though the learned Magistrate testified that before recording the confession he satisfied himself that the accused (appellant) was making a voluntary statement and that after giving due caution he recorded it, the confession does not anywhere indicate as to whether before recording the same he gave him the requisite caution and put question to satisfy himself that it was being made voluntarily. These are the basic pre-requisites for recording a confession under sub-section (2) of Section 164 Cr.P.C. and a mere endorsement in accordance with sub-section (4) after recording it would not fulfil the requirements of the former sub-section. Since none of the two requirements of Section 164 (2) Cr.P.C. has been complied with we are left with no other alternative to hold that the Special Court was not at all justified in entertaining the confession as a voluntary one. Once the confession is left out of consideration as it has got to be - impugned conviction cannot be sustained in absence of any other incriminating evidence against the appellant.”

(x) In the case of **Assistant Collector of Central Excise, Rajamundry V. Duncan Agro Industries Ltd. and Others** reported in **(2000) 7 SCC 53**, the Hon'ble Supreme Court held as under:

“10. Section 164 of the Code deals with "recording of confession and statements". The provision empowers a judicial magistrate to record any confession or statements made to him during 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. It must be pointed out that the power conferred by the said provision could be exercised only by a judicial magistrate. Even a police officer on whom power of a magistrate has been conferred is forbidden from recording a confession. Sub-sections (2) and (4) deal with procedure which such magistrate has to follow while recording inculpatory statements made by persons."

(xi) That, although the PW-7, 8 and 9 are stated to have given their statement before the Magistrate under Section 164(5) of the Cr.PC, that on being asked, the accused had stated before them that he had strangled his girlfriend; however, they all have turned hostile during evidence. The PW-7, 8 and 9 denied having stated before the Magistrate that in the marriage party, the accused had stated before them that he had strangled the deceased girlfriend. Although the PW-7, 8 and 9 have proved their signatures in EXH-7(a), 8(a) and 9(a) respectively, but their statement recorded by the Magistrate has not been proved. Hence, the same cannot be relied upon for conviction of the accused under Section 302 of IPC.

(xii) That in his examination under Section 313 of Cr.PC, the accused has denied all circumstances and evidences adduced by the prosecution witnesses stating that the evidences and the documents against him are false.

(xiii) For the reasons stated above, the learned counsel for the appellant submits that the prosecution has miserably failed to prove any case against the accused beyond reasonable doubt, the learned trial court has wrongly convicted the accused person. Hence, prays for his acquittal from the charge under Section 302 IPC.

SUBMISSION OF THE LEARNED ADDITIONAL PP FOR THE STATE

10. Mr. G. Tado, learned Additional Public Prosecutor for the State submits that the evidences of the witnesses, including the evidences of PW-2 (Shri Soma Mura), PW-4 (Shri. Tile Sonar); the evidences of the PW-6 (Smt. Monika

Bhumij), who first saw the dead body of the deceased; and the evidences of PW-7, 8 and 9 who gave their statements before the Magistrate stating that the accused had given an extra judicial confession before them; the evidence of PW-12 (Shri. Binod Mura), who identified the dead body of the deceased and stated that the accused and the deceased had a relationship with each other and the evidences of the I.O. of the case PW-13 (Shri. Robert Borang) and Dr. Kamngun Mongchan (PW-14) who had conducted the post mortem examination apart from the confessional statement of the accused and his examination under Section 313 of Cr.P.C clearly proves the case against the accused for commission of the alleged offence under Section 302 IPC. The learned Additional PP while supporting the conviction and sentencing of the accused person has made the following submission:

- (i) That the learned Trial Court has rightly believed the evidences of the prosecution witnesses which corroborates with the confessional statement, the disclosure statement of the accused person leading to the recovery of the money purse of the deceased person and the statement under section 313 Cr.P.C where, the accused has stated that the police had arrested him from his home and physically assaulted him to confess the guilt and then he was brought to the ADC (the Judicial Magistrate First Class) where out of fear of the police, he had confessed the guilt.
- (ii) That all the relevant incriminating questions appeared in the evidence were put to the accused during his examination under Section 313 Cr.P.C and answer given by the accused to the question no. 25, stating that the police had arrested him from his home and physically assaulted him to confess his guilt and he was brought to the ADC where out of fear of the police, he had confessed the guilt of the commission of the charge would be sufficient to hold him guilty of the charge levelled against him.

(iii) That the accused was arrested on 14.11.2016 and thereafter he was remanded to judicial custody on 22.11.2016 and since then he was under Judicial custody; and his confessional statement was recorded on 30.11.2016, as such, the accused was produced from the judicial custody and not from the police custody as alleged by the learned defence counsel. Moreover, the accused had given his confessional statement voluntarily at his own volition after he was given a sufficient time for reflection.

(iv) And further, that the confessional statement was recorded on 30.11.2016, there after the charge was framed against the accused on 06.03.2017 and the 313 Cr.P.C statement of the accused was recorded only on 18.10.2019; thus in between the accused had sufficient time for about 3 years to reflect and retract his confessional statement given before the Magistrate. However, in the instant case, as the accused had chosen not to retract his confessional statement at the earliest point of time, the same cannot be accepted at this stage.

(v) That although the attendance of the Magistrate could not be procured, the Confessional statement recorded by him has been exhibited as Ext-14, and as per record, the accused was given sufficient time for reflection before recording his confessional statement.

(vi) In support of his submission, the learned Additional PP relied on the decision of the Hon'ble Supreme Court reported in **1978 3 SCC 435, (Sankaria Vs. State of Rajasthan)** wherein the Hon'ble Supreme Court has held as under:

“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 of the Magistrate P.W. 6) and the Superintendent of Police (P.W.

22) (1) A.I R 1970 S.C. 283 to the effect that after recording the confession, the custody of the accused was not handed to the investigating police.

52. After bestowing our best consideration to all the questions bearing on the 'point, we are of opinion that in the circumstances of the case, the High Court was right in coming to the conclusion that this confession (Ex. P. 27) had been voluntarily made by Shankaria, accused.'"

(vii) That after his arrest, while the accused was still under the police custody, he had given a disclosure statementa before the police stating that, after commission of the offence he had thrown away the slippers and lady purse of the victim on the bushes. The slippers were already recovered and seized earlier from the spot. But the purse was not recovered as it was not seen near the spot. The accused then lead the I.O. of the case to the spot and effected recovery of money purse of the deceased which he had thrown in the bushes after commission of the alleged offence, this fact was only known to the accused person.

(viii) That the fact that the accused and the deceased was in a relationship and as a result of their such relationship, the deceased got pregnant, was deposed by the PW-12 and also confessed by the accused and the same has not been denied or rebutted by the accused during cross examination or even in his statement under Section 313 of Cr.P.C.

(ix) That on the day before the incident night PW-4 (Shri Tile Sonar) took the deceased to the house of one Smti. Radhika Bhumij on at the instruction of the accused who also told PW-4 that he will come to the house of Smti. Radhika Bhumij after closing his shop. But as Radhika Bhumij refused to keep the deceased in her house, on being further instructed by the accused, the PW-4 took the deceased to Government Primary School, Khouji Pathar. And after leaving the victim girl at the said school, when he was heading towards his home, the PW-4 met the accused who was proceeding towards the school

where the victim girl was waiting for him. PW-4 further categorically stated that at that time, the victim girl was wearing white coloured dress which was later on seized from the PO. PW-4 further stated that after 4 to 5 days, he heard about the death of the deceased girl. This statement clearly shows that at the instruction of accused, the victim was made to wait for him in the school, and the accused was the only person last seen going towards the victim alone.

(x) As per the confessional statement of the accused under section 164 Cr.P.C, the accused had physical relationship with the deceased, due to which she became pregnant and she insisted him to marry her. On the incident evening, he met with the deceased at the Government Primary School and they were there till 3 am in the morning. He persuaded her to go back to her home at Alubari Village but she was not willing to go back to her village and insisted him to marry her due to which he got angry and strangulated the deceased and murdered her and came back home. This confessional statement of the accused has been corroborated by the evidence of Dr. K. Mongchan (PW-14). The PW-14 stated that although he did not find any symptom regarding the death of the deceased, but the maggot at the neck area was unusually large in number so the anti-mortem injury at the neck region cannot be ruled out.

(xi) The learned Additional PP submits that the Magistrate may not always be required to be called in the Court except in the absence of any circumstances justifying calling of the Magistrate as witness, to prove the confessional statement recorded by him.

(xii) In support of his submission, the learned Additional PP produced the decision of the Hon'ble Gauhati High Court reported in **(1993) 1 GauLJ 415, (Mahiram Bora V. State of Assam)** wherein the Court held as under:

“6. Let us now examine the confession. Confession has not been exhibited. The Magistrate who recorded the confession has also not been examined. In view of

*the decision of the Supreme Court in Madi Ganga vs. State of Orissa, AIR 1981 SC 1165, **examination of Magistrate may not always be required except in the absence of any circumstances justifying calling of the Magistrate as witness.***

(xiii) The learned Addl. PP further submits that although the PW-7, 8 and 9 has retracted their earlier statement by stating that although the Magistrate has recorded their statement but they never stated before the Magistrate that the accused in the marriage party had stated before them to have strangled the deceased; however, the PW-7, 8 and 9 have not denied having gone to the Marriage party and putting signatures in their statements before Magistrate. They have identified their signatures as EXH-7(a), 8(a) and 9(a) respectively. The learned Addl. PP submitted that after recording their statements, it was read over to them which was accepted as correct, and thereafter only they had put their respective signature affirming what they have stated before the Magistrate to be correct which have been identified by them during evidence in the court.

(xiv) In support of his submission in sub-para (xii) and (xiii) above, the learned Additional PP has cited a judgment of the Hon'ble Supreme Court reported in **1981 2 SCC 224 (Madi Ganga V. State of Orissa)** which is reproduced herein below:

*“5. We desire to express no opinion on the question whether the extra-judicial confession made to P.Ws. 2 to 5 is barred under Section 24 of the Evidence Act. It is unnecessary for us to say anything on this question, since we are satisfied that the learned Sessions Judge was wholly wrong in excluding and the High Court was certainly right in acting upon the confessional statement made to the Magistrate. The learned Magistrate has put to the accused all the necessary questions to satisfy himself that the confession was voluntary. He has also appended the necessary certificate. We do not accept Shri Jain's submission that the learned Magistrate should have been examined as a witness. **Section 80 of***

the Evidence Act makes the examination of the Magistrate unnecessary. It authorises the Court to presume that the document is genuine, that any statements as to the circumstances under which it was taken are true and that such confession was truly taken in accordance with law. Shri Jain submitted that if the Magistrate had been examined as a witness, the accused might have been in a position to show, by cross examination that the confession recorded by the Magistrate was not voluntary. ***The Magistrate has appended a certificate that he was satisfied that the confession was voluntary. No circumstance has been brought out in the evidence justifying the calling of the Magistrate as a witness.*** We do not think that the circumstances of the case justify any comment on the alleged failure of the prosecution to examine the Magistrate as a witness.

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."

(xv) The learned Additional PP further submits that it is a clear case of cold-blooded pre-planned murder by the accused to eliminate the deceased when she told that she was pregnant and insisted him for marriage and thus, the evidences clearly attracts the provisions of Section 302 IPC. Therefore, the

learned PP sought to dismiss the appeal.

POINTS FOR DETERMINATION

11. In view of the rival contention urged by the learned counsel for the parties, the points that so arises for determination in the present case is as to ***“whether the learned Sessions Judge has justified in convicting the accused for offence punishable under section 302 IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs. 10,000/- with default?”***

FINDING AND REASON

12. We have given our thought and consideration to the arguments advanced by the learned counsel for the parties and perused the entire materials including the LCR. Since this Court being the first appellate court and it is a fact-finding court, in order to find out the truth it has to appreciate the evidences. For the proper appreciation of facts, we may now refer to the evidences and statements, some of which are crucial evidences in the case.

- i. PW-1, Shri. Jiten Bhumij, who is the informant in the present case deposed that he forgot the exact date of the incident but in the month of November, 2016, he was informed by some women about one dead body found lying in the jungle of Bisa Tea Estate. After hearing the information, he first informed the matter to the General Manager of Tea Estate and then to O.C/P.S., Bordumsa, who arrived on the spot. This witness has also seen one slipper lying near the dead body and identified his signature in the seizure memo, inquest report, photographs of PO, dead body and slipper.
- ii. PW-2, Shri. Soma Mura, who is the Gaon Burah, having heard about the incident had visited the PO and saw the dead body lying on the ground. This witness also identified his signature in seizure memo

and inquest report.

- iii. PW-3, Rajen Bhumij, also visited the PO on being informed by the PW-1 and had seen the dead body lying in the jungle at Bisa Tea Estate. He also identified his signature in seizure memo.
- iv. PW-4, Shri Tile Sonar, who had given his statement before the Magistrate deposed that he have forgotten the date and month but one evening in the month of November, he had seen the deceased Ratni Mura standing under the bamboo groves. Accused Shri Monjit Sonowal asked him to take her to one Smti. Radhika Bhumij and he will follow after closing shop. Accordingly, this witness took the deceased to Smti. Radhika Bhumij, but Smti. Radhika refused to allow the deceased to stay in her house; so, the accused then told him to take the deceased to the Government Primary School, Khouji Pathar, which he did accordingly. After leaving the deceased at the school as instructed by the accused, while this witness was going back towards his home, he met the accused who was on his way proceeding towards the school where the deceased girl was waiting for him. This witness deposed that the deceased at that time was wearing a white colour dress. He further stated that after 4 to 5 days, he heard about the death of the deceased girl. This witness also identified his signature in the seizure memo and his statement recorded by the Magistrate under section 164(5) Cr.PC.

The above evidence of this witness that he took the deceased to school on the direction of the accused and when he was going back, the accused went to school side to meet the deceased has not been rebutted by the defence side.

- v. PW-5, Shri. Anthony Mura, had gone to the spot after hearing about the incident and had seen the dead body which was in a decomposed stage. He had also seen the police arrive at the spot and held inquest over the dead body and the doctor also came and conducted post mortem over the dead body on the spot.
- vi. PW-6, Smti Monika Bhumij while proceeding towards the Tea estate along with her friends Rina Sonar and Anita Bhumij, came across a bad smell on the road and they noticed one unidentified female dead body lying in the jungle in a decomposed stage and accordingly informed the matter to one Jiten Bhumij (PW-1).
- vii. PW-7, Purojit Sonowal who is a friend of the accused person has been declared as a hostile witness during his examination. He deposed that in the month of November, 2016, he along with the accused and some other persons had attended a marriage party at Kherem Kachari village. However, this witness retracted his earlier statement and stated that though the Magistrate recorded his statement, he had never stated before him that the accused in the marriage party had stated that he strangled the deceased. This witness however has identified his signature in the statement given by him before the Magistrate.
- viii. PW-8, Debojit Sonowal and PW-9, Probal Sonowal are friends of the accused person. They were also declared hostile during their examination and had given similar statement as that of the PW-7. They have also identified their own signatures in the statement given by them before the Magistrate.
- ix. PW-10, Shri. Numel Mura, and PW-11, Smti. Sukara Mura are the father and mother of the deceased girl. PW-11 stated that one day, at about 10 am her daughter went out from their house and never came back. PW-10 and PW-11 had identified the photographs of the dead body of the deceased to be their daughter.

x. PW-12, Shri, Binod Mura, has also been declared hostile during his examination as he retracted from his earlier statement and denied having stated before the police that the deceased had an affair with the accused and that he suspected the accused to be the perpetrator of the offence.

xi. PW-13, Shri Robert Borang, is the I.O of the case and on receipt of the information, he rushed to the place of occurrence and saw the dead body of an unidentified female body. The upper portion of the dead body was covered with maggots and he held inquest over the dead body of the deceased. He observed that there was a mark of dragging the body on the ground for about three metres and also observed that the pant of the deceased was lowered from the waist down and there was mud which might have been caused due to the dragging of the body. As on that day, it was almost evening and the dead body was not in a position to be moved from the place, he had deployed the police guard for the night and on the next date, he again went to the spot and on that day, the Doctor conducted post mortem examination over the body on the spot, as the body was at decomposed stage and not in a position to be moved. Later, he obtained an order from the ADC, Bordomsa for disposal of the dead body. However, before the disposal of the dead body, he had taken photographs of the dead body, seized wearing apparels, finger ring and bangles for identification. After completion of investigation the he has submitted the charge sheet against the accused under section 302 IPC. This witness stated that the accused was arrested and during the interrogation, while still under the police custody, the accused gave a disclosure statement and led them to the spot from where they recovered the money purse of the deceased at the distance of about 15 ft away from the dead body. This witness further stated that on the next date of recovery of the dead body, one Binod Mura, PW-12 came to the police station and informed that one of his relatives girl was missing. Thereupon, on being

shown the photographs and the wearing apparels of the deceased, the PW-12 had identified that it belongs to his relatives missing girl. Shri Binod Mura, also disclosed that the name of the deceased as Ratni Mura and she was in relationship with the accused Monjit Sonowal. The PW-12 further stated before him that he had seen the deceased and the accused in a Santro car at the Monday market on 07.11.2016 and since then, the deceased was missing and her phone was also not working. This deposition of the I.O. has not been submitted by the defence side.

This witness goes on to state that basing on the statement of PW-12, the accused, Monjit Sonowal was arrested on 14.11.2016, who admitted his guilt and stated that he had killed the deceased by strangulation and then dragged her body and hid it in the jungle. The accused also disclosed that he threw the slipper towards the jungle from where it was recovered and during further interrogation, the accused had also disclosed that he had thrown the purse of the deceased towards the opposite side of the road and led them to the spot from where they recovered the purse of the deceased on being lead and shown by the accused.

xii. The I.O. also came to know that the accused had also made some extra judicial confession before his friends in the village. Accordingly, the I.O. had recorded the statement of three friends of the accused under section 161 Cr.P.C who had disclosed that the accused had given an extra judicial confession before them regarding killing of his deceased girlfriend. Thereafter, the I.O. had forwarded the three friends of the accused to the Judicial Magistrate for recording their statement under section 164(5) of the Cr.P.C. He had also forwarded the accused to the Magistrate for recording his confessional statement under section 164 IPC. After completion of the investigation, on

prima facie case being found well established against the accused for commission of offence punishable under section 302 IPC, the I.O. laid charge sheet against the accused. This witness has identified the exhibit seizure memo, inquest report, dead body challan, forwarding of dead body for post mortem examination, charge sheet, material exhibit, photographs and his signature, including statement of the accused and the witnesses under section 164 and 164 (5)Cr.P.C.

xiii. PW-14, Dr. Kamngun Mongchan on requisitioned had conducted post mortem examination over the dead body of the deceased. His findings are as follows:

Condition of the dead body: the hair has fallen off, skin blackened and peeling of seen in trunk and limbs, maggots noted in head and neck, trunk upper limb and genital area, abdomen distended, face some parts of soft tissue absent, eyeball absent, neck's soft tissue absent. There were no wounds or bruises or, mark of ligature on neck. On examination of the dead body regarding spinal cord, on scalp hair has fallen off, skull and vertebra intact. On examination of muscles, bones and joints no abnormality were seen including any injury or decease, but post mortem fracture of left forearm bone was present from mid-shape part and distil part was missing. There was no dislocation. The cause of death could not be ascertained. Vaginal swab collected and handed over to the IO along with viscera samples. During his cross, this witness stated that on examination of the dead body and its stage of decomposition, the death might have occurred about 4 to 5 days before the examination. On examination, he did not find any symptom regarding cause of death, but the maggot at the neck area was

unusually large in number, so the anti-mortem injury at the neck region cannot be ruled out.

FINDING OF THE COURT

13. We have gone through the oral evidence and the relevant witnesses. In the instant case, the accused had not rebutted the evidence on record that on the incident day, he had asked PW-4 to take the deceased, Ratni Mura who was standing under the bamboo grooves to the house of one Radhika Bhumij with the instruction that he will come to the house of Radhika Bhumij after closing his shop. However, as Radhika Bhumij did not allow the deceased to stay in her house, thereupon the PW-4 took back the victim and informed the same to the accused; the accused then asked PW-4 to take the deceased to the Government Primary School, Khauji Pather to which the PW-4 complied with. And after leaving the deceased in the school building as instructed by the accused, when the PW-4 was going back home, he met the accused on the way near the school gate proceeding towards the school where the deceased was waiting for him. Thus, the conduct and the movement of the accused person just before the incident has been fully described by PW-4. This part of the unrebutted evidence clearly shows that the accused had an intimate relationship with the deceased and as his shop was crowded with lot of people around, he arranged for his secret meeting with her through PW-4. And as per his direction the PW-4 took the deceased girl to the school building and left her to wait for accused. And on his way back home, he met accused near school gate who was going towards the school building to meet the deceased. And it was the accused only, under whose instruction the deceased was made to wait for him in the school building and it was the accused alone who was last seen going towards the victim with whom he had love affairs and thereafter, the accused and the deceased were not seen returning. And after about 4 to 5 days of the said incident on

11.11.2016, the dead body of the deceased was found lying in the road side bushes. These clearly indicates that it was the accused who had killed the deceased on the day of the incident and none else.

14. It is also seen that the PW-4 categorically and clearly deposed that he remembered that the deceased was wearing white colour dress. This corroborates the recovery and seizure of the wearing apparels of the dead body of the deceased which was identified by PW-12 who is the relative of the deceased. This fact has not been contradicted or rebutted by the defence in the cross examination or anywhere else during the entire trial of the case.

15. The record further reveals that after his arrest during investigation, the accused while admitting his guilt of commission of the offence had made a disclosure statement before the I.O. of the case and stated that after commission of the offence he threw the chappal (slipper) and the money purse of the deceased on the other side of PO inside the jungle bushes. Soon after the disclosure statement, the accused lead the I.O of the case to the place where he had thrown the purse and effected recovery of the lady money purse belonged to the deceased. This disclosure was made by the accused person while he was still under police custody during interrogation. The recovery of the said lady money purse of the deceased was made on being lead and shown by the accused and seized in presence of five independent witnesses including PW-2 and PW-3. It is to be noted that the other articles belonged to the deceased like, the wearing apparels, ring, bangles and a pair of ladies chappal were already seized earlier from the PO on 13.11.2016 (Ext-2). However, at the time of recovery of those articles, the presence of lady purse belonged to the deceased was not known to the IO of the case or to any person. This was a discovery of a new fact which was exclusively in the knowledge of the accused person alone and he made a disclosure statement leading to the recovery and

seizure of the same on 17.11.2016 (Ext-6) while still under police custody.

16. Section 27 of the Evidence Act admits the confession made by an accused either to the Police or to any one while the accused is in police custody. Section 27 is an exception to the section 25 and 26. Section 27 provides that a confessional statement made to a police officer can be proved against him. In the instant case, the accused while still under the police custody had confessed his guilt of commission of the alleged offence and gave disclosure statement leading to the discovery of the lady purse of the deceased which he had thrown in the jungle bushes opposite the dead body of the deceased after commission of the offence.

17. It is also seen that three friends of the accused namely; PW-7, 8 and 9, stated that on 08.11.2016, they went to the house of one Shri Tutu Sonowal in his daughter's marriage party, the accused made an extra judicial confession stating that he had strangled and killed his girlfriend and also stated that the dead body of the deceased was in the bushes at Khasibari. The said statement was given before the Magistrate; however, during evidence they all have retracted from their earlier statement as a result, they were declared hostile. And during cross examination, they all have stated that although the Magistrate had recorded their statement, they have never stated before him that the accused had stated in the marriage party that he had strangled and killed the deceased. However, PW-7, 8 and 9 had identified their signatures in their statements before the Magistrate, i.e., EXH-7(a), 8(a) and 9(a) respectively. In absence of any specific allegation that they were forced to signed on the statement recorded by the Magistrate in Exh-7, 8 and 9, respectively due to some personal enmity or some other cogent reason, mere statement of the witnesses that they did not give such statement while accepting their signatures on it, is hard to believe. Moreover, they have not stated that if not for the said

one point statement, what other statement they have given before the Magistrate.

18. It is also seen that, as the accused had confessed his guilt of commission of the alleged offence and gave disclosure statement leading to the discovery of a new fact, that is the lady purse of the deceased; the accused later on, was forwarded to the Magistrate for recording his confessional statement. Accordingly, the learned Magistrate, after giving him an adequate opportunity for reflection, had recorded the confessional statement of the accused under section 164 Cr.P.C, where the accused while confessing his guilt has given the following statement:

“I Monjit Sonowal, S/O Podma Sonowal of Khorem Kochari village PO/PS Bordumsa do hereby state that one of my friends Shri Porom Sonowal, S/O Tarun Sonowal of same village gave me a contact number of Miss Ratni Mura and I talk with her over phone and I proposed her for love. When she came to Bordumsa to meet me in the month of May, 2016 and again she came to Bordumsa in the month of Sept, 2016 and we had physical relation in one of my friend's rented house (Hemanta Gogoi) and she went back the next day to Diyun as she was working in some private school.

*And after two months she came to Bordumsa to **meet me on 07/11/16** and I took her to my home but she was telling that she was pregnant and insisting me to marry her. I tried to convince her that I cannot marry her. As she was compelling for marriage, **I took her to nearby Govt. School at 8 pm till 3 AM in the morning.** I persuaded her to go back to her home at Alubari village but she was not willing to go back and she compelled me for marriage with her. So, I got angry and strangulated her and murdered her in nearby jungle and came back home. This much to say.”*

19. The confessional statement (Ext-14) has been properly recorded u/s 164 of Cr.P.C by the Judicial Magistrate First Class, Bordumsa on 30.11.2016 as per the procedure in the format for recording such confessional statement. The

record reveals that at the time of giving confessional statement the accused was produced from the judicial custody and after recording his confessional statement, he was remanded back to the Judicial custody. The record also reveals that before recording the said confessional statement, the Magistrate had ensured and satisfied himself that it was made voluntarily on his own free will; and in the end, at the foot of the confessional statement the Magistrate has appended a certificate that he was satisfied that the confession was voluntary. The attendance of the Magistrate could not be procured for identification of his signature. However, in view of the above, no circumstance has been brought out in the evidence justifying the calling of the Magistrate as a witness.

20. Further, the confessional statement of the accused has been well corroborated by the evidences of PW-1, PW-2, PW-4, PW-12, PW-13 and PW-14. It is also corroborated by the statements of PW-7, PW-8 and PW-9 although during evidence they tried to resile from their earlier statement but still they admitted that they have put their respective signatures on the statements which amounts to admission of their statements unless proved otherwise. The confessional statement has also been well corroborated by the disclosure statement of the accused who lead the police and effected recovery of the new fact in the case, that is; the money purse of the deceased from the place where he had thrown after commission of the offence, which fact was only known to the accused alone and no one else.

21. In the above facts, and in view of the judgment rendered in the **Mahiram Bora V. State of Assam (Supa)** we find sufficient force in the submission of the learned Additional Public Prosecutor. Moreover, while mechanically denying all circumstances appearing against him in the evidences, during 315 Cr.P.C. examination, the accused has admitted that he was taken to the Magistrate for recording his confessional statement although he attempted to deny having

confessed his guilt before the Magistrate. And in answer to the query No.25 of 313 Cr.P.C examination, by which the accused was asked, if he wanted to say anything in defence; the accused stated that he does not know anything about the case, the police have arrested him from his home and physically assaulted to confess the guilt. He further stated that he was brought to ADC where due to fear of police he had confessed the guilt.

22. The further contention of the appellant is that the accused cannot be convicted solely on the basis of the confessional statement and the statement of the accused in his examination under section 313 Cr.P.C. Controverting the contention of appellant, the learned Additional Public Prosecution submits that the object of Section 313 Cr.P.C is to empower the Court to examine the accused with a view to give him an opportunity to explain the circumstances that appear against him in the evidences. In the instant case, the accused was examined under section 313 Cr.P.C by the Sessions Judge. However, mere perusal of the statement under 313 Cr.P.C, any reasonable person can easily understand that the accused has mechanically denied all the circumstances and the allegation appearing in the evidences against him. We find the response of the accused to the queries made by the Court under section 313 Cr.P.C examination lacks proper explanation and it has hardly any logic in as much it contradicts some of his own statements. In response to some of the queries, he simply answered by saying 'that is not a fact' or 'the exhibits are false' and no further explanation or any reason has been assigned while denying the circumstances appearing against him in evidence. He even denied having known the PW-3 and PW-4 despite that they have already identified him being hails from his same village. And in answer to query No. 25, in his examination under Section 313 Cr.P.C, the accused stated that the police had arrested him from his home and physically assaulted to confess the guilt. He was brought to the ADC,

Bordumsa and out of fear of the police, he had confessed the guilt. This statement of the accused amounts to admission of having given confessional statement and it shows that he was giving a false statement in answer to all other queries that has been put to him during examination under section 313 of Cr.PC. Therefore, the said confession of his guilt by the accused under section 164 Cr.P.C and statement u/s 313 Cr.P.C, in our opinion, would lead ample credence to the prosecution case, thereby firmly establishing the charge brought against the accused.

23. For the aforementioned reasons, we are of the considered opinion that the prosecution has proven the charges levelled against the accused beyond all reasonable doubt. The Trial Court has appropriately evaluated and appreciated the evidences and convicted the accused/appellant sentencing him to life imprisonment for the charged offence. There is no need for this Court to intervene, and therefore, the criminal appeal should be dismissed as it lacks merit.

24. As a result, this Criminal Appeal is dismissed. The judgment and conviction of the appellant/accused Monjit Sonowal dated 11.11.2019, and sentencing him to imprisonment for life dated 16.11.2019 for an offence under section 302 IPC by the learned Session Judge, Khonsa in Khonsa Sessions case No.45/19 is hereby confirmed.

JUDGE

JUDGE

Comparing Assistant