

GAHC030000472023



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

Case No. : Crl.A./6/2023

Sh. Jamir Ahmed
S/o Motiour Rahaman
R/o Solomona Village, Bazaricherra, Karimganj, Assam.

VERSUS

The State of Mizoram and 2 Ors.
r/b the Secretary to the Govt. of Mizoram, Home Department, Aizawl. 2:The
Officer-in-Charge
Kulikawn Police Station

3:Sh. Jakir Hussei

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei

Advocate for the Respondent : Mrs. Linda L Fambawl, Addl. PP, Mizoram

Linked Case : I.A.(Crl.)/8/2023

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Bazaricherra
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Kulikawn
Aizawl
Mizoram.

3:Sh. Jakir Hussein
S/o Tayahir Ali
R/o Karimganj District
Assam.

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei
Advocate for the Respondent : P.P./Addl.PP
Mizoram

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO
HON'BLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT & ORDER (CAV)

DATE : 15.05.2024

(NELSON SAILO, J)

Heard Mr. Joseph L Renthlei, learned counsel for the appellant and Mrs. Linda L Fambawl, learned Addl. Public Prosecutor for the State. This is an appeal filed by the appellant against the Judgment dated 11.10.2022 passed by the Court of Addl. Sessions Judge, Aizawl in Sessions Registration No. 90/2018 by which, the appellant was convicted under Section 302 of the Indian Penal Code (IPC) and also

an appeal against the order of sentence dated 12.10.2022 by which, the appellant on his conviction under Section 302 of the IPC was sentenced to undergo imprisonment for his remaining life and also to pay a fine of Rs. 5000/- with a default clause.

[2.] The case of the prosecution in brief is that a written FIR was lodged by Jakir Hussein, S/o Tayahir Ali of Keutkona, Karimganj District, Assam, present address Bawngkawn, Aizawl to the effect that his brother Abu Bakkar Sidek aged 30 yrs., with present address Dam Veng, Aizawl was found dead inside their rented house in the morning of 31.03.2018 at around 3:00 AM. He had a fatal injury on his head and he appeared to have been murdered. Kulikawn P.S Case No. 43/2018 dated 31.03.2018 under Section 302 IPC was registered and investigated into.

[3.] During the investigation, the case I/O visited the place of occurrence under the supervision of the Sub-Divisional Police Officer (Aizawl South) and the Officer-In-Charge of Kulikawn Police Station alongwith the Forensic Science Laboratory (FSL) Team. A sketch map of the place of occurrence was drawn and the suspected murder and chance print on it as well as blood sample of the victim and the Inner Line Permit (ILP) of the accused was seized in the presence of the witness. Inquest was conducted and the complainant and other witnesses were examined and their statements recorded. The judicial statements of the two

roommates of the victim and the accused were recorded. The call details of the accused were obtained from CID (SB) which showed that the accused was available at Karimganj. A requisition was made to the Karimganj Police Station to locate and detain the suspect Jamir Ahmed and he was accordingly detained at Karimganj Police Station. A warrant of arrest was obtained from the Chief Judicial Magistrate (CJM), Aizawl and the police party proceeded to Karimganj Police Station to arrest the suspect. The police party produced the suspect at Kulikawn Police Station where he was formally arrested and an intimation was given to his relatives. During interrogation, he admitted to his guilt and his judicial statement was also recorded. The case I/O, upon finding a *prima facie* case under Section 302 IPC against the accused, filed the charge-sheet. A charge was framed under Section 302 IPC against the accused which was read over and explained to him in the language known to him and to which, he pleaded not guilty and claimed trial. The prosecution, in order to establish the charge against the appellant, produced and examined 11 prosecution witnesses out of the 14 prosecution witnesses that was cited. As for the defense, no witness was examined except for cross-examining the prosecution witnesses. The appellant was examined under Section 313 Cr.P.C and thereafter, upon hearing the parties, the learned Trial Court passed the impugned judgment of conviction and the order of sentence in the manner as already stated herein above.

[4.] Mr. Joseph L Renthlei, learned counsel submits that as per the FSL report dated 25.04.2018 exhibit-A which is the dry blood sample of the victim, the same was found to be of blood group B. Likewise, exhibit-B which is the GI pipe with suspected blood stains on it, the same was also found to be belonging to blood group B of human origin. He submits that however, the FSL report by itself does not establish any connection or link with the appellant to prove that he had committed the murder. Likewise, the fingerprint examination report dated 14.05.2018 was with a finding that no conclusive opinion could be furnished due to poor quality of the chance print. Therefore, no link has been established by the prosecution to show that it was the appellant who had used the covered GI pipe to commit the murder, which can be clearly seen from the deposition of PW-11 & PW-12 who are the FSL experts and fingerprint experts.

[5.] The learned counsel referring to the examination-in-chief of PW-10 submits that PW-10 was the Judicial Magistrate 1st Class, Aizawl who recorded the confessional statement of the accused. In his cross-examination, PW-10 deposed that it was a fact that the statement of the accused was interpreted during the time of recording his statements by Lalthazuala, a Constable of the Mizoram Armed Police posted in Aizawl Police Station. He submits that the well- established principles governing Section 164 Cr.P.C is that at the time of recording the statement of the accused, no police or police official should be present in the open

Court and that a judicial confession not given voluntarily is unreliable, more so, when such confession is retracted, conviction cannot be based on such retracted judicial confession. The learned counsel submits that the appellant, during the time of his examination under Section 313 Cr.P.C against question No. 14, stated that it was his roommates Atik Uddin and Kamrul Hoque who started quarreling with the deceased regarding their salary. He tried to stop them, but however, the quarreling escalated and his two roommates started hitting the deceased with a GI pipe and asked him to put the GI pipe away before he ran away. That is how his fingerprints were found in the GI pipe. The reply given by the appellant to the question put to him can safely be presumed to be a retraction of his judicial confession. Under the circumstance, the confessional statement made by the appellant cannot be a basis for his conviction. In this connection, the learned counsel relies upon the case of *Rabindra Kumar Pal @ Dara Singh vs. Republic of India (2011) 2 SCC 490*.

[6.] The learned counsel further submits that in order to treat the statement of witness made under Section 164 Cr.P.C as relevant and admissible under Section 33 of the Evidence Act, the adversary must have had a right and opportunity to cross-examine the witness, whose statement is sought to be admitted into evidence. In this connection, the learned counsel relies upon the case of *Arjun Biswas vs. State of Mizoram, 2006 (2) GLR (NOC57) 48: 2004 SCC Online GAU 129*.

[7.] The learned counsel submits that the appellant has been convicted by the learned Trial Court solely on the basis of circumstantial evidence and by presuming that the appellant absconded after the alleged crime was committed. He submits that the law with regard to a case based on circumstantial evidence is well-settled. He submits that every circumstance must be fully proven and all the circumstances must form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused. In the present case, from the evidence of PW-1, who is the elder brother of the deceased, he also had a suspicion upon the other two roommates of the appellant, who came to inform him about the incident early in the morning. It is also in evidence that the two roommates, after a few days, were not traceable and that the fingerprints taken from them were also not sent for examination in the FSL. Therefore, there can easily be another hypothesis that it was not the appellant but rather his two roommates who had committed the alleged crime. In this connection, the learned counsel relies upon the case of *Baiju Kumar Soni &Anr. vs. State of Jharkhand, (2019) 7 SCC 773*. The learned counsel also submits that even if a person is absconding after a commission of offence of which he may not even be the author, such circumstance alone may not be enough to draw an adverse inference against him as it would go against the *doctrine of innocence*. It is quite possible that he may be running away merely on being suspected, out of fear of police arrest and harassment. Therefore, merely because the appellant was found to have left soon

after the alleged incident, no adverse inference can be drawn against him. In this connection, the learned counsel relies upon the case of *SK. Yusuf vs. State of West Bengal*, (2011) 11 SCC 754 and *Matru vs. State of Uttar Pradesh* (1971) 2 SCC 75, *Paramjeet Singh vs. State of Uttarakhand*, (2010) 10 SCC 439 and *Jayendra Vishnu Thakur vs. State of Maharashtra&Anr.*, (2009) 7 SCC 104.

[8.] The learned counsel further submits that the learned Trial Court in convicting the appellant under Section 302 IPC has heavily relied upon the statements made by him in his examination under Section 313 Cr.P.C. The learned counsel submits that in doing so, the learned Trial Court ought to have given reasons for having relied upon the 313 statements of the appellant. No reason has otherwise been assigned by the learned Trial Court. He submits that the statements of an accused person made under Section 313 Cr.P.C is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence led by the prosecution and it cannot be a substitute for the evidence of the prosecution. An adverse inference can be taken against the accused only if the incriminating material stands fully established and the accused is not be able to furnish any explanation for the same. In support of his submission, the learned counsel relies upon the case of *Reena Hazarika vs. State of Assam*, (2019) 13 SCC 289 and *Raj Kumar Singh vs. State of Rajasthan*, (2013) SCC 722.

[9.] The learned counsel finally submits that the learned Trial Court has sentenced the appellant for his conviction under Section 302 IPC to undergo imprisonment for his remaining life alongwith fine and default clause. The said sentence does not leave any scope for the appellant to avail remission of sentence or parole as may be permissible under the relevant provisions of law. He, therefore, submits that in the event, Court decides to uphold the impugned conviction, the sentence imposed may be appropriately modified.

[10.] Mrs. Linda L Fambawl, learned Addl. Public Prosecutor, submits that the motive behind the murder of the appellant is very clear from the chain of events. She submits that the investigation revealed that there was an argument between the appellant and the deceased regarding the daily wage given to the appellant by the deceased. The appellant out of anger struck the deceased with the GI pipe measuring 3.8 ft in the head/neck of the deceased and as a result of which the latter succumbed to his injuries. Immediately, thereafter the appellant fled the scene and could be only arrested with the help of the Assam Police, stationed in Karimganj Police Station. The conduct of the appellant itself in fleeing away from the scene early in the morning clearly explains that it was he who had murdered the deceased. Referring to the questions put to the appellant in his examination under Section 313 Cr.P.C, the learned Addl. Public Prosecutor submits that the appellant has clearly admitted that he had a quarrel with the deceased as was

narrated by his two roommates. According to his 2 (two) roommates, when they awoke, they found the deceased in his bed lying dead and that the appellant had already left the rented house. She submits that against question No. 12 put to the appellant he agreed that, he was formally arrested on 10.04.2018 and produced before the Officer-in-Charge of Kulikawn Police Station where he confessed before the police that he had murdered the deceased by smashing his head using the seized GI pipe at around 1:00 AM on 31.03.2018 and thereafter immediately fled away by Sumo to Karimganj. Therefore, she submits that it was none other than the appellant who had committed the murder.

[11.] The learned Addl. Public Prosecutor by referring to the confessional statements made by the appellant submits that the same was made voluntarily by the appellant, without any coercion and threat. Since there was an issue with the language for communication, the learned JMFC took the assistance of an interpreter who happened to be a police personnel. The same does not vitiate the confessional statement since it is clear from the question put to the appellant at question No. VII that he accepted that he was completely under the supervision of the Court and no police officers associated with the investigation were present in the vicinity. She therefore submits that under the facts and circumstances, the conviction of the appellant and the sentence imposed upon him is sustainable and should not be interfered with by this Court.

[12.] We have heard the submissions made by the learned counsels by the learned counsels for the rival parties and we have perused the materials available on record as well.

[13.] In order to find out whether the impugned judgment and the order of sentence are sustainable, we may examine the evidence led during the trial, including the confessional statements recorded before the trial. PW-1 Jakir Hussein in his cross-examination deposed that he knows the accused person who stood before the Court. He lived with the accused person, his brother the deceased and two other persons namely; Kamrul Hoque and Atik Uddin in the same house belonging to C. Rokunga in Dam Veng, Aizawl since the last one year. He was a cement mistiri and worked in a different building construction. His deceased brother was also a cement mistiri and the accused was his helper. The two other persons who also lived with them were also his brother's helpers. Just before two weeks of the incident, he left their rented house in Dam Veng to stay at Bawngkawn in his new work site. In the early morning of 31.03.2018 at around 3:30 to 4:00 AM, Kamrul Hoque and Atik Uddin, the two helpers of his brother came to his work site at Bawngkawn and informed him that his brother sustained severe injury on his head and requested him to come to the rented house at Dam Veng. Accordingly, he alongwith two proceeded to the rented house by Taxi. Upon reaching, he found his brother lying on his bed and his head fractured on the back

side and his whole brain was lying on the wall and on the floor. There was a pool of blood on the floor beside his bed. He tried to wake him up by calling his name, but he did not wake up since he was already dead. He then informed the landlord C. Rokunga about the incident, who immediately rushed to the place of occurrence. PW-1 further deposed that when he reached the place of occurrence the appellant had already fled away and he strongly suspected him of murdering his brother. He then went to Kulikawn Police Station and submitted the FIR. Although, he did not mention the name of the two helpers of his brother in the FIR, he strongly suspected them of being involved in the murder of his brother as they were all staying in the same room with their beds only 3 feet apart. The police informed the two helpers not to leave the station but after a week, they fled away without informing the police till date. In his cross-examination, PW-1 stated that the FIR he submitted was written by the police and that he did not know Mizo language completely. He also stated that he did not know how many people were there in the room in which his brother was living at the time of his death since he was not in the room at that time. PW-1 in his re-examination by the Addl. Public Prosecutor stated that although he could not read Mizo but he understood Mizo language. He orally submitted the information to the police and the police wrote down the information and read over the same to him and he put his signature.

[14.] PW-4 Lalnunpuia, in his examination-in-chief, stated that he knows the

accused person who was present in the Court. Abu Bakkar S/o Tayahir Ali of Kentkona, Karimganj District, Assam was working as head mistiri in the construction of their house building at Ramhlun Venglai since 2018. The accused was working as a helper with the said head mistiri. All the helpers were directly employed by the said head mistiri and payment of salary to the helpers and their lunch during working hours were all managed by the head mistiri. On 31.03.2018, Abu Bakkar or his helper did not turn up at the work site at the usual time and at around 9:16 AM he got a telephone call from Jakir Hussein informing him that Abu Bakkar was taken to Civil Hospital and that he was murdered. He was also informed that he seems to have been murdered by one of his helpers. As soon as he heard this, he went to the hospital where the deceased person was being taken for post-mortem examination. At the hospital, he was informed that the deceased was murdered by one of his helper Jamir Ahmed who had fled away. In his cross-examination, he stated that he did not know the exact number of helpers who were living with the deceased and that it was a fact that the ILP of the accused was sponsored by his father.

[15.] PW-5 is the father of PW-4 and his deposition is similar to the deposition of PW-4 and therefore may not be reflected for brevity.

[16.] PW-6 P.C Lalthianghlina of Dam Veng, Aizawl in his examination-in-

chief stated that on 31.03.2018, police personnel seized a GI pipe (3 ft 8 inches), chance print (lifted from the weapon of offence), blood sample of the victim and ILP of Jamir Ahmed from inside the rented house of accused and he witnessed the same. He stood as a seizure witness putting his signature in the seizure memo. In his cross-examination, he stated that he was not very sure how the chance print was taken by the police and in fact he did not actually see the chance print being taken. As he was near the place of occurrence he was merely asked to sign as witness in the seizure memo. He also stated that he is not sure if the blood sample of the victim that was taken was from the GI pipe or not.

[17] PW-8 Dr. Lalringmaia, in his examination-in-chief, stated that the dead body of the deceased was forwarded to Civil Hospital for post-mortem examination and the same was accompanied by an inquest report, dead body challan and command certificate. The same was received by him and the means and time of dispatch of the dead body and the identifying persons is as shown in the said documents. He conducted the post-mortem of examination over the dead body of the deceased and according to him, the cause of death of the deceased was *Cranio-Cerebral injuries* (Head Injury). The date and time of arrival of the dead body at the mortuary as recorded in the post-mortem examination report is a *bona fide* mistake. The exact time of arrival of the dead body was 9:45 AM on 31.03.2018 and post-mortem examination was conducted at 10:20 AM. Thereafter,

the dead body was dispatched at 11:10 AM. PW-8 exhibited of the examination the post-mortem report as Exhibited P-3 and his signature as Exhibited P-3(a). Although PW-8 in his cross-examination stated that he could not say whether the injury was caused by beating/hitting the accused from the post-mortem examination but in his re-examination, he stated that he could clearly say that an injury was caused by a blunt weapon.

[18.] PW-9 T Lalhmachhuana of Dinthar Veng, Aizawl in his examination-in-chief stated that on 27.04.2018, while he was posted at District Court, Aizawl as JMFC-I, Kamrul Hoque and Atik Uddin were brought before him in his Court to record their statement under Section 164 Cr.P.C. Accordingly, after following all the formalities prescribed by law, he recorded their statement separately. He read over the statements to each of them and in acknowledgment of their correctness, Kamrul Hoque put his thumb impression while Atik Uddin put his signature. PW-9 exhibited both the statements recorded and his signature as exhibit P-4, P-4(a), P-5 & P-5(a). In his cross-examination, PW-9 stated that he does not speak Hindi or Bengali and the two persons gave their statements in their own language which was interpreted to him by a person whom he does not remember.

[19.] PW-10 H Laldusanga in his examination-in-chief stated that at the time of recording the confessional statement, he was holding the post of JMFC,

Aizawl. The accused was brought to him on 10.05.2018 in the Court room and he placed him under the supervision of Court staff for reflection from 11:00 AM on 2:00 PM. He explained to him the purpose and requirements of Section 164 Cr.P.C to the accused person and on being satisfied that he was in a fit state of mind and was prepared to make the confessional statement voluntarily, he recorded the confessional statement. In his cross-examination, he stated that the accused person could not speak Mizo and therefore, what he stated was interpreted to me by Sh. Lalthazuala, who is otherwise not personally known to me.

[20] PW-11 Ammie Lalnunpuui in her examination-in-chief stated that she is presently posted at Aizawl as Junior Scientific Officer, DNA. On 13.04.2018, she received exhibit samples viz; GI pipe (3 feet, 8 inch length) and blood samples of victim (dried) in connection with Kulikawn P.S Case No. 42/2018 dated 31.03.2018 under Section 302 IPC. The exhibit blood sample was kept in a paper envelope and the GI pipe was wrapped with white cloth. She alongwith Lalchhanzova, Assistant Director examined the two exhibits by using various scientific methods. Upon such examination, they found the exhibit-A dried blood sample of the victim belonged to blood group B. Exhibit-B which was a blood stain was found in the GI pipe were also found to be belonged to blood group B. In her cross-examination, PW-11 stated that it was a fact that there was no evidence to show any connecting link between the accused person from her scientific examination.

[21.] PW-12 K.C Hmingthanga in his examination-in-chief stated that on 31.03.2018 as per the requisition received from the police, he alongwith his colleague from the FSL visited the crime scene. On reaching the scene, the victim was found lying on his bed and his body was covered with a blanket and his face with a pillow. There was a pool of blood on the floor beside the bed. A 3.8 feet long, GI pipe stained with blood was found beside the foot of the bed and a mark of chance print was found on the GI pipe. It was developed, photographed and lifted from it. The lifted chance print was handed over to the case I/O for further necessary action. On 12.04.2018, the chance print was received at FSL for examination and after detailed and careful examination by using scientific equipment, the chance prints were found to be of poor quality and therefore, no conclusive opinion could be made from it. In his cross-examination, PW-12 stated that what he meant to say in his examination-in-chief was that there is no evidence to show any connecting link between the accused person and the GI pipe.

[22.] PW-13 S.I Awanish Kumar in his examination-in-chief stated that after obtaining the warrant of arrest of the accused from the CJM, Aizawl, he alongwith two Armed Personnel and one MRP Constable was proceeded to Karimganj on 09.04.2018 at 6:00 AM. Upon reaching the place at 12:00 noon, they took custody of the accused, and brought him back to Aizawl and handed him over to the officer-in-charge of the Kulikawn Police Station.

[23.] PW-14 S.I Lalremsanga Sailo, who is the case I/O in his examination-in-chief stated that he was endorsed the case for investigation and during his investigation, he examined the complainant, visited the place of occurrence, drew a sketch map of the place of occurrence and informed the FSL team to collect evidence from the place of occurrence. He also examined the roommates of the deceased i.e. Atik Uddin and Kamrul Hoque both 18 years and recorded their statements. They stated that the accused and the deceased had a quarrel on 30.03.2018 regarding salary and when they woke up in the morning they found the deceased lying dead on his bed, while the accused had left their rented house. He forwarded the two persons to the CJM, Aizawl for recording of the judicial statements and their statements were accordingly recorded. He interrogated the accused who disclosed to him that he had murdered the deceased by smashing his head by using the seized GI pipe at around 1:00 AM on 31.03.2018 and he immediately fled away to Karimganj by Sumo. In his cross-examination, PW-14 stated that the accused was a prime suspect in the case in the light of the interrogation of the two roommates of the victim and because of the fact that the accused was nowhere to be seen. The accused upon fleeing away kept on switching on and off his mobile phone and his location was traced by the CID (SB) showing different locations towards Zonuam, Zarkawt, etc.

[24.] From the evidence led by the prosecution, it may be seen that there

are no eye witnesses to the crime. The appellant, the deceased person, Atik Uddin and Kamrul Hoque were all staying together in the rented house at Dam Veng, Aizawl. After a certain argument between the deceased and the accused person on the night of 30.03.2018, Atik Uddin and Kamrul Hoque in the early hours of 31.03.2018 found the deceased person with injuries on his head and lying on a pool of blood. The appellant was found missing from the house and they proceeded to Bawngkawn where Jakir Hussein, elder brother of the deceased was staying in his workplace to inform him about the injury sustained by the deceased. What followed thereafter upto the conviction of the appellant is that he has been convicted on the basis of circumstantial evidence.

[25.] The Apex Court in the case of *SK. Yusuf (supra)* held that undoubtedly, conviction can be based solely on circumstantial evidence but however, the Court must bear in mind while deciding the case involving the commission of serious offense based on circumstantial evidence that the prosecution must stand or fall on its own legs and cannot derive any strength from the weakness of the defense case. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete

as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability that the act must have been done by the accused.

[26.] In the present case, it may be seen that Kamrul Hoque, one of the inmates of the accused and the deceased in his statements made u/s 164 Cr.P.C stated that on 30.03.2018 at around 7:00 PM, the deceased and the appellant had an argument on money matters and both of them were very angry. At around 11:30 PM, the deceased asked him and Atik Uddin to go to bed and they slept in one bed. When they slept, both the appellant and the deceased were still awake. When he woke up at around 3:00 AM and switched on the light, he saw the deceased lying on a bed with his face covered with a pillow. There was blood in and around his head and he then shouted out aloud. Atik also woke up and they found the door was open and the appellant was no longer there. Atika and he immediately went to inform the incident to the elder brother of the deceased at Bawngkawn. Atik Uddin also had a similar narration in his statements recorded u/s 164 Cr.P.C. They stated that the deceased and the appellant had a heated argument regarding salary. The appellant said that he is going to go home the next day but the deceased said that he will not permit him to do so. He and Kamrul Hoque went to sleep while the appellant refused to sleep. When they awoke in the morning the appellant was no longer there and the face of the deceased was

covered by a pillow and they saw blood in and around his face. He and Kamrul Hoque then went to Bawngkawn to inform Abu Bakkar.

[27.] PW-14 in his examination-in-chief stated that during his investigation, he examined Atik Uddin and Kamrul Hoque and recorded their statements. According to them, the deceased and the appellant had a quarrel regarding salary and when they woke up in the morning of 31.03.2018 they found the deceased lying dead on his bed while their roommate the appellant had left their rented house. However, PW-1 who is the elder brother in his examination-in-chief stated that in the early morning on 31.03.2018 at around 3:30 to 4:00 AM, Kamrul Hoque and Atik Uddin came to him at his work site in Bawngkawn and informed him that his brother had sustained severe injury on his head and asked him to come to their rented house at Dam veng. On reaching the place, he found his brother lying on his bed and his head was fractured on the back side and whole of his brain was lying on the wall and on the floor. There was a pool of blood on the floor beside his bed. He called out his name but he could not wake up as he was already dead. PW-1 also stated that he not only suspected the appellant who was not found in the rented house but also strongly suspected the two helpers Kamrul Hoque and Atik Uddin since they were all staying in the same room. As per the evidence on record, the bed of the deceased person and that of the two helpers were only 3 ft apart. Despite the same, the two helpers were not aware about the incident which

happened just next to their bed. The evidence led by the prosecution therefore cannot be said to be consistent leading to a sole hypothesis on the guilt of the accused appellant.

[28.] The Apex Court in *Rabindra Kumar Pal @ Dara Singh (supra)*, after referring to various authorities on the factors which requires consideration with regard to Section 164 Cr.P.C at paragraph No. 64 of the judgment held as follows:-

“64. The following principles emerge with regard to [Section 164 Cr.P.C.](#):-

(i) The provisions of [Section 164 Cr.P.C.](#) must be complied with not only in form, but in essence.

(ii) 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.

(iii) A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.

(iv) The maker should be granted sufficient time for reflection.

(v) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.

(vi) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.

(vii) Non-compliance of Section 164 Cr.P.C goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.

(viii) During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.

(ix) At the time of recording the statement of the accused, no police or police official shall be present in the open court.

(x) Confession of a co-accused is a weak type of evidence.

(xi) Usually the Court requires some corroboration from the confessional statement before convicting the accused person on such a statement."

[29.] From the above abstract, what can be seen is that at the time of recording the statement of the accused, no police or police official should be present in the open Court. In the instant case, it was a police personnel or officer who had done the translation of the statements made by the accused person/appellant while he was making a confessional statement. Although the learned Addl. Public Prosecutor submits that the police personnel was not involved

in the investigation but it can be seen that he is a police personnel from the Mizoram Armed Police (MAP) and was stationed in the Aizawl Police Station. The principles abstracted above also provide that the Court usually requires some corroboration from the confessional statement before convicting the accused person on such a statement. In the instant case, we do not find any such corroboration and rather from the examination of the appellant under Section 313 Cr.P.C, it is found that he had accused the other two inmates of having committed the crime instead. Therefore, no reliance can be placed to the explanation given by the appellant under Section 313 Cr.P.C.

[30] The Apex Court in *Baiju Kumar Soni & Anr. (supra)* in the given facts of that case held that in a case based on circumstantial evidence, every circumstance must be fully proved and all the circumstances must form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused. In the instant case, from a proper appreciation of the evidence of the prosecution, as already noticed earlier, there cannot be a single hypothesis as to how the deceased was murdered. Apart from the deceased, there were three persons staying in the same room on that fateful night and the two inmates instead of ascertaining whether the deceased was alive or not proceeded to Bawngkawn to inform the elder brother of the deceased. The investigation led by the I/O was also limited only to that of the appellant and no follow-up action was taken in respect of the

other two inmates except for recording their statements under Section 164 Cr.P.C. The two inmates were also not even examined as witnesses although they were cited as Prosecution Witness Nos. 2 & 3.

[31.] Therefore, under the facts and circumstances and after giving our anxious consideration, we are of the considered view that the prosecution has failed to bring home the guilt of the accused person/appellant with proof beyond reasonable doubt and therefore, the appellant should be given the benefit of doubt. For the aforesaid reasons, the judgment dated 11.10.2022 passed by the Court of Additional Sessions Judge, Aizawl in Sessions Registration No.90/2018 by which, the appellant was convicted under Section 302 of the Indian Penal Code and the sentence order dated 12.10.2022 are found to be unsustainable and therefore, they are accordingly set aside and quashed.

[32.] In the result, the appellant is acquitted from the charge on being given the benefit of doubt. He is directed to be released immediately if not wanted in any other case.

JUDGE

JUDGE

Comparing Assistant