



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 46 of 2024

Date of Decision: 17.11.2025

Shri. Alois Suam
S/o (L) Shri. Lowis Sayoo
R/o Mookyndeng Village,
West Jaintia Hills District,
Meghalaya.

.....Appellant

Vs.

The State of Meghalaya through the
Commissioner & Secretary to the Government of
Meghalaya, Department of Home (Police),
Civil Secretariat, Shillong, Meghalaya.

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. A.D. Syiem, Adv.
Mr. G. Syngkrem, Adv. vice
Mr. K.S. Kynjing, Sr. Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Mr. E.R. Chyne, GA.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |



JUDGMENT AND ORDER

Per W. Diengdoh, J:

1. On 06.09.2005, the Officer In-Charge, Jowai Police Station, West Jaintia Hills received an FIR filed by one Shri. Linus Sumer informing him that on 02.09.2005, his son Rishanki Biam was murdered by Aloï Suïam during the night at Saphai (Kympreng) village. The act was witnessed by one Ling Langstang. It was also stated that the said incident was reported to the In-Charge, Garampani O.P. on 04.09.2005.

2. On receipt of the said information, Jowai P.S Case No. 121 (9) 2005 under Section 302 IPC was registered and investigation was launched. From the records, it appears that the main suspect, named in the FIR surrendered before the police on 06.10.2005 and on prayer made, was remanded to seven days' police custody and thereafter, on expiry of the same, to judicial custody.

3. On completion of the investigation, the Investigating Officer has filed the chargesheet with an opinion that a well-established prima facie case is made out against the accused person who is then made to stand trial for having committed an offence punishable under Section 302 IPC.

4. Thereafter, the matter being taken up by the learned Sessions Judge, a charge under Section 302 IPC was framed against the accused



person on 02.04.2015, who pleaded not guilty and demanded to be tried.

5. The learned Trial Court then examined 7(seven) witnesses from the prosecution's side and as many as 6(six) documents were exhibited. After the prosecution's witnesses have been examined, the statement of the accused person under Section 313 was recorded and then he was asked whether he wishes to adduce evidence from his side, he declined. The final argument of the parties was heard by the court and finally, the learned Sessions Judge passed the impugned judgment and sentence, finding the accused person guilty of the offence punishable under Section 302 IPC and he was accordingly sentence to undergo life imprisonment.

6. Being aggrieved and dissatisfied with the said impugned judgment and sentence, the appellant/convict has now approached this Court with this instant appeal.

7. Heard Ms. A.D. Syiem, learned counsel for the appellant, who has argued that the learned Trial Judge has failed to appreciate and consider the evidence tendered by the alleged eye-witness, Morning Langstang when in the impugned judgment it was held that “...PW-2 the sole eye witness stated that he saw the accused attacked the deceased. PW-2 tried to intervene, but he was threatened by the accused, as such, he fled away. PW-2 reported the matter to the family of the deceased...”, whereas from the



entirety of the evidence of PW-2, it can be said that his evidence is wholly un-reliable.

8. The learned counsel has then led this Court to the evidence of PW-2 and has submitted that PW-2 has stated that he met the deceased victim on the day of the incident, who asked a biri from him. Then at that point of time, the accused/appellant came and assaulted the deceased victim and when PW-2 tried to intervene, he was himself threaten and so he fled away from the scene. He then told the police about the incident when the police came to the place of occurrence. PW-2 has also stated that he met the deceased on the village road near his house, but the body of the deceased was found lying at Saphai jungle, hence the statement of the PW-2 in this respect is false, submits the learned counsel.

9. PW-2 has again stated that as it was dark, he could not see from where the accused/appellant had assaulted the deceased as such, it can also be said that he did not see who had assaulted the deceased, submits the learned counsel.

10. Proceeding further with the evidence of PW-2, the learned counsel has submitted that his testimony is full of falsehood as he has asserted that he knows the accused person as they were from the same village, but from the records, it is seen that they are not from the same village.



Further, PW-2 has also stated that when he met the deceased, he was smelling of alcohol, but from the post mortem report, nothing has been indicated as such. He has also stated that when he reached the house of his wife's grandmother, he informed about the incident, but there are no witness or witnesses to prove that he has actually informed someone or even the family members of the deceased.

11. On the manner of the death of the deceased, the learned counsel has submitted that from the seizure list, what can be seen is that the alleged murder weapon was said to be a wooden firewood about 34 inches in length, which was also exhibited in court as Material Ext-1. However, from the post mortem report, details of which was brought before the court by PW-5, Dr. Paitbha Syngkon, the finding of the Doctor who had conducted the said post mortem and who is now deceased, is that the cause of death was due to violence axphysial dead and the alleged weapon used is broad ligature. Therefore, it cannot be said that the death was as a result of assault by the said wooden firewood. Here too, there is a contradiction in the evidence of the prosecution witnesses, asserted the learned counsel.

12. Another point of argument raised by the learned counsel is that PW-6 who was the Magistrate who had recorded the statement of the accused/appellant under Section 164 Cr.P.C. has stated that he has complied



with the provision of Section 164, when during the process of recording of the statement, he has given three hours' time for reflection and that the accused has confessed that he has committed the crime. This, according to the learned counsel is not correct as generally, what has been accepted is that, if the accused is to make a confession admitting to his guilt, at least 24 hours' time of reflection must be given. In this regard, the accused/appellant in answer to question No. 12 in his statement made under Section 313, has stated that it was out of compulsion from the police that he has made the confession before the Magistrate. Therefore, any statement made by the accused/appellant is void ab initio, submits the learned counsel This contention is fortified by the following authorities:

- i) Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637, para 10;**
- ii) Devraj Goyal v. State of Uttarakhand, 2013 CRI.L.J. 4394, para 18, 19**

13. It is also the submission of the learned counsel that the fact that the material exhibit seized has not been proved to be the weapon used for the commission of the alleged crime, since PW-7, Shri Babu Singh has clearly stated that he did not notice any bloodstain on Material Exhibit-I, nor was any finger print lifted from the same, which only proved that the



accused/appellant is innocent of the offence alleged.

14. The observations of the learned Trial Judge in the impugned judgment that the multiple injuries and the fact that there is evidence of broad ligature being used for causing death of the victim has to be explained by the accused/appellant, is contrary to the provision of Section 106 of the Evidence Act as the prosecution must succeed or fail by the evidence it can bring up, and until a prima facie case is established by such evidence, the onus does not shift to the accused as was held in the case of Surendra Kumar v. State of U.P. reported in AIR 2021 SC 2342, para 28, submits the learned counsel.

15. Finally, the learned counsel has submitted that, unless there is some connecting link between the movement of the deceased and the accused/appellant, any kind of suspicion however great, cannot be a ground for the accused/appellant to be convicted of such offence charged. The impugned judgment and sentence is not based on legally sound principles and grounds, as such, the same has to be set aside and quashed.

16. On the other hand, Mr. N.D. Chullai, learned AAG along with Mr. E.R. Chyne, learned GA appearing for the State respondent, has strenuously supported the rationale of the learned Trial Judge, who has passed the impugned judgment, and has submitted that the findings of the learned Sessions Judge were based on evidence on record.



17. The learned AAG has submitted that the pivot on which the balance of the prosecution's case hinges, was mostly on the basis of the evidence rendered by the PW-2, who was the star witness and which evidence has not been shaken in the cross-examination.

18. The findings of the learned Trial Judge at para 9 (series) of the impugned judgment was read out by the learned AAG, who has then submitted that such findings has accurately brought out the facts of the prosecution's case, wherein it was evident that PW-2 has clearly narrated the sequence of events from the time he met the deceased victim who had asked for a biri from him to the moment the accused/appellant came and started assaulting the victim. This piece of evidence was not contradicted by the accused/appellant in the cross-examination as no suggestion was ever put to PW-2 that the accused/appellant has not assaulted the victim. This witness has therefore proved to be a sterling witness and as such, on his testimony alone, the case of the prosecution stands proved, submits the learned AAG. To buttress this contention, the case of Shri Edwin Sungoh v. State of Meghalaya, Crl. A. No. 19 of 2021, para 28, 29, 32 & 36 was cited.

19. On the argument of the learned counsel for the appellant that motive has not been proved as regard the cause of the alleged murder, the learned AAG has submitted that here too, the evidence of PW-2, who was



the eye-witness who has seen the accused/appellant assaulted the deceased victim, has to be accepted as a fact, as such, lack or absence of motive becomes inconsequential in the face of direct evidence as in this case. Para 37 of the case of Shri Edwin Sungoh was also cited in this connection.

20. Again, on the contention of the appellant that because, there was no sufficient time given to the accused for reflection before his statement before the Magistrate made under Section 164 Cr.P.C. was recorded and this, has caused prejudice to his case, thus has vitiated the trial, the learned AAG has submitted that there is no hard and fast rule which specify the length of time to be given for reflection. The case of Mulo Rakait & Ors v. State of Meghalaya, Crl. A. No 7 & 8 of 2023, para 18 was referred to in this regard wherein this Court has held that there is no hard and fast rule that accused must be given 24 hours of time.

21. Contrary to what the learned counsel for the appellant has contended that the accused/appellant was forced to make a confession admitting to his guilt in the commission of the said offence, the learned AAG has submitted that apart from sufficient time being given to the accused for reflection, his confessional statement made under Section 164 was also recorded in the proper form, and according to the recording Magistrate, who has examined himself as PW-6, the confession of the accused that he has



committed the offence appears to have been done so voluntarily.

22. On the nature and manner of death of the victim, the learned AAG has referred to the Postmortem report dated 5th September, 2005, wherein under the heading “*More detailed description of injury or disease*” it was noted as “*Compression to the neck (strangulation) leading to asphyxia is fatal and ante-mortem in nature*” and that the opinion of the Doctor is that “*...the cause of death was due to violent asphyxia death weapon/manual a broad ligature.*” According to the evidence of the witnesses, the murder weapon was said to be a wooden firewood and it was by this weapon, which was seized on the leading of the accused, that the victim was strangled, when the victim must have fell down. Submits the learned AAG.

23. The learned AAG has then reiterated that in view of the clear evidence on record, wherein the finger of guilt is pointed at the accused/appellant, who has assaulted and murdered the deceased victim, the findings of the learned Trial Judge warrant no interference.

24. We have duly considered the submission and contentions raised by the learned counsels for the respective parties in support of the impugned judgment and sentence as well as those seeking to assert that there has been a miscarriage of justice while convicting the accused/appellant which is required to be set right by this appellate court.



25. As has been observed hereinabove, the outcome of the case of the prosecution rests mainly on the testimony of the sole eye-witness, PW-2, whose evidence has been relied upon by the learned Trial Judge to convict the accused/appellant.

26. We will now firstly, have a re-look at the evidence of the said sole eye-witness, Shri Morning Langstang, who has entered the witness box as PW-2. This witness in his deposition before the court has narrated the sequence of events which took place on the day of the incident, though he could not remember the date, month and year as the incident happened a long time ago, he did say that at that particular time, he was on his way to his wife's grandmother house coming out from his wife's house, the distance being only about 15 minutes' walk. On the way, he met the deceased victim who asked a biri from him. At that point of time, he saw the accused came up to the victim and started assaulting him. When he asked the accused/appellant why he assaulted the victim, the accused threaten him causing him to flee to his wife's grandmother house.

27. If the testimony of PW-2 that he witnessed the victim being assaulted by the accused is to be tested, then, the result of such an assault has to be proved. In his deposition before the court, this witness has clearly stated that he saw the accused/appellant assaulted the deceased victim as he was



present at the scene at that particular moment. This statement was never challenged, in fact, in the cross-examination, PW-2 has reiterated the fact that the accused has assaulted the deceased victim. No counter evidence was ever produced by the defence to prove that the accused was never at the place of occurrence at that point of time.

28. To further confirm this fact, the details found in the postmortem report, would indicate that upon examination of the dead body, multiple small abrasion on the head, face and whole body was found. Further, there was also seen small abrasion (multiple) on the frontal and left parietal region of the scalp, size $\frac{1}{2}$ x $\frac{1}{2}$ scalp deep. Now, what are abrasions, they are, but, superficial skin injuries which usually causes damage to the epidermis. It is very unlikely that death can be caused by such abrasions.

29. However, in this case, it turned out that the victim has since died and his dead body was found by his father, Linus Sumer, who has revealed this fact in his deposition before the court as PW-1, when he said that on the day of the incident, when he came home and could not find his son, he and his friends went to search for him and they found the dead body in the garden.

30. Proceeding further, PW-7, Shri Babu Singh in his statement before the court has stated that in the year 2004, he was the In-charge of Garampani (police) Outpost. On 06.09.2005, he was endorsed to investigate



into the said case by the O/C Jowai P.S. Thereafter, he went to the place of occurrence (PO), and has drawn up the sketch map. He has also conducted the inquest over the dead body. He then sent the body for postmortem examination. This witness, although he has stated in his deposition that he has conducted the inquest over the dead body of the victim, the inquest report was never brought on record by way of an exhibit, as such, nothing much can be read from the statement of this witness in this regard.

31. PW-5, Dr. Paitbha Syngkon has produced the postmortem report before the court on behalf of Dr. G. Passah, who has conducted the said postmortem on the body of the deceased Risanki Biam and who has since expired. However, from the postmortem report, what has emerged is that, there is a finding of injuries, being multiple small abrasions found on the head, face and whole body. There was also compression to the neck (Strangulation leading to axphysia) which is fatal and ante-mortem in nature and is said to be the cause of death. As has been observed above, from the postmortem report, it can be deduced that the deceased did not die as a result of the multiple injuries found in his head, face and body, even if one assumes that he died because of the said abrasions on his scalp due to excessive loss of blood, this fact has not been indicated in the said postmortem report.

32. According to the Doctor, the cause of death was due to



strangulation leading to asphyxia and the broad ligature, would suggest that there was force applied on the neck. To prove this finding, the prosecution has brought in PW-7, the Investigating Officer of the case who has stated that in course of investigation, the accused has led him to the discovery of a wooden firewood about 34 inches, which according to the prosecution is the murder weapon. However, PW-7 never said that in his findings, the said wooden firewood was used by the accused to kill the victim. He also said that he has seized the same and has brought it before the court as material Exhibit 1. He has also admitted that he did not lift any fingerprints from the said piece of wood and also that he could find no blood stains on such firewood.

33. In such a scenario, what can be deduced is that, firstly, PW-2 the eye-witness has never mention anything about seeing the accused carrying a wooden firewood, secondly, he has also not said that he saw the accused strangle the victim with such firewood. Therefore, there is nothing to connect the firewood as the murder weapon and that it was the seized material which was used by the accused to commit the crime.

34. Under such circumstances, we are constrained to observe that though, PW-2 has seen the accused assaulted the victim, it cannot be said that such assault has led to the death of the victim, since in the intervening



period from the time PW-2 fled from the scene when the victim was then alive, to the time the victim was found dead by his father and party, there is no record as to when the dead body was found. PW-1, the father of the victim, who in his deposition, has stated that upon finding the dead body of his son, he reported the matter to the police, and the police who has registered such FIR, has noted that the same was filed only on 06.09.2005, 4(four) days after the victim was assaulted, though PW-1 did say that on 04.09.2005 has informed the Officer In-Charge, Garampani Outpost about the matter. Therefore, there has arisen a doubt as to when the deceased victim actually died, since the probable time of death is very important to be considered, the postmortem report also not having such precise information in this regard. Therefore, it cannot be said as to whether it was the accused/appellant who is responsible for the death of the deceased victim.

35. We have also noticed that the learned Trial Judge in the impugned judgment, has relied mainly on the evidence tendered by PW-2 to the extent that he is the eye-witness to the crime. However, even if we admit that this witness is a rustic villager who may not be able to give a detailed account of what he has witnessed, the fact remains that there is no mention of the wooden firewood which is said to be the murder weapon supposedly being used by the accused/appellant in the commission of the crime, to the extent that it was responsible for the death of the victim. This is too glaring



a fact to be ignored for which it was incumbent upon PW-2 to have mentioned the same in his testimony.

36. It is reiterated that we are convinced that the accused/appellant has indeed assaulted the victim, however, as has been mentioned, there is no clear evidence that such assault has resulted in the death of the victim, this, read with the findings in the postmortem report. In such a situation where there are two hypothetical views present as to whether it was the accused who has murdered the victim or it was not him, it is well settled that the view favouring the accused has to be adopted by the court. In this regard, in the case of **Kali Ram v. State of Himachal Pradesh (1973) 2 SCC 808**, the Supreme Court at para 25 of the same has observed as follows:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences.



The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh, (1974) 3 SCC 227, a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.”

37. From the impugned judgment, we also find that the learned Trial Judge while forming his opinion on the question as to whether the accused/appellant has made a voluntary confession implicating himself as to the commission of the offence had discussed the evidence of PW-6, the Magistrate who has recorded the statement of the accused/appellant under Section 164 Cr.P.C wherein he is said to have voluntarily confessed to have committed the crime, the conclusion reached is that the accused/appellant had indeed committed the offence as charged though there is infirmity in the recording of such statement. The observation in this regard runs as “... *The evidence of PW-2, sole eye-witness gets fortified with the confessional statement, inspite of the infirmity in the confessional statement...*” This



according to us, is a contradiction of sorts which reflects the uncertainty in the mind of the court.

38. Without going into the basics as to what entails a recording of a statement under 164 Cr.P.C. as far as confession of an accused to the commission of an offence is concerned, in this case, what is evident is that the accused/appellant is a labourer by profession and nothing is said about his educational qualifications or that he is well versed in the English language. It would be incumbent upon the learned Magistrate to have ascertain the fact that he understands the English language, if not, then an interpreter to be appointed to make him understand the questions put to him. Nothing is found to give us the indication that this exercise was carried out by the learned Magistrate. The assumption that he may not understand the English language (since nothing is on record to prove that he was questioned in his native language) cannot be ruled out. Under such a situation, there is doubt as to the veracity of his alleged confession.

39. Secondly, in his said confession, he said that he confessed to have committed the crime. But this is too vague an answer as apparently, he has not given the details of how he has committed the crime and the learned Magistrate ought to have taken note of this and should have made further queries in this regard, which was not done so.



40. Thirdly, the accused/appellant was put a question, being No. 12 while his statement under Section 313 Cr.P.C. was recorded, such question being that he had admitted to have committed the crime before the learned Magistrate who has recorded his statement under Section 164, what he has to say to this. His answer to this is that he has done so out of compulsion from the police. Though this portion would not have any substantive evidentiary value, however if we look into it in the light of the evidence of PW-6 who, in his cross-examination, he has stated that “...*During the reflection time the accused person was asked to be in the custody of Police for 3 hours...*”, what has emerged is that the accused was brought before the learned Magistrate for recording of his statement under Section 164 straight from police custody, albeit, after being given three hours reflection time. Now, what reflection can there be if he is kept under such an intimidating situation. His capacity to think rationally and with a free mind is suspect. Thus, confession under such circumstances cannot be considered any effective confession at all. In this regard, the case of Sarwan Singh Rattan Singh v. State of Punjab (supra) cited by the learned counsel for the appellant is relevant, when from an extract of para 10, it is seen that the Supreme Court has observed as follows:

“10. ... Besides, in neither Court below has any attention been paid to the fact that Sarwan Singh appeared to have been kept in police custody without any justification between 26th November



and 30th November. We have carefully considered all the relevant facts bearing on this question and we see no escape from the conclusion that the failure of the learned Judges of the High Court to take into account these material facts has introduced a serious legal infirmity in their conclusion that the confession made by Sarwan Singh is voluntary. That is why we think we must reverse this conclusion...”

41. Going further on this issue, the Supreme Court in the same case of Sarwan Singh Rattan Singh (supra) at para 11 has also observed that “... *There is, besides, another fact which is equally fatal to the prosecution case. Even if the confession is held to be voluntary, it must also be established that the confession is true and for the purpose of dealing with this question it would be necessary to examine the confession and compare it with the rest of the prosecution evidence and the probabilities in the case...*” In the case of the accused/appellant herein, as has been observed and found out, duly recorded hereinabove, the evidence of PW-2 does not inspire confidence that he has actually witnessed the accused/appellant killing the victim by any broad weapon such as a wooden firewood and besides the evidence of PW-2 which was heavily relied upon by the prosecution to secure conviction of the accused/appellant, there is no other credible evidence to this effect to implicate the accused/appellant as far as the act of murder is concerned. Therefore, such voluntary confession even if accepted to be true (which is not), cannot be the reason to convict the accused/appellant.

42. However, we would venture to say that from the body of evidence



presented and as has been observed hereinabove, we find that the accused/appellant is guilty of the offence of criminal force as per Section 350 IPC, which is reproduced hereinbelow as:

“350. Criminal force. – Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.”

43. What has been established is that the accused/appellant had used intentional force without the consent of the victim and such force has resulted in injuries sustained by the victim. Therefore, in this manner, the accused, for having committed such an offence, he is liable for punishment under section 352 IPC, which provides for imprisonment of upto three months or fine which may extend upto ₹ 500/- (Rupees five hundred) only or both.

44. Under such circumstances, this Court hereby alters the charge against the accused/appellant for an offence punishable under Section 302 IPC to that for the offence punishable under Section 352 IPC and sentence to undergo punishment for imprisonment for three months.

45. Since it appears from the records that the accused/appellant has been in custody for a period of more than three months, the period of imprisonment hereby imposed would be considered as term served.

46. Having duly noted the many authorities cited by the respective



parties as well as the contentions on other aspects of the case, in the overall analysis of the evidence and materials on record, we are convinced that the prosecution has failed to prove the guilt of the accused/appellant beyond reasonable doubt as far as the offence of murder is concerned.

47. Accordingly, we find that the accused/appellant is entitled to benefit of doubt in so far as the charge under Section 302 IPC is concerned. The impugned judgment and the corresponding sentence of imprisonment in this regard is required to be set aside and quashed, which is done so herein.

48. In the event, this appeal partly succeeds, the conviction and sentence of the accused/appellant as regard Section 302 IPC is hereby overturned. He is now entitled to be immediately release, provided he is not wanted in any other case.

49. Trial Court records are hereby sent back.

50. Appeal disposed of. No costs.

(B. Bhattacharjee)
Judge

(W. Diengdoh)
Judge