

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate side

PRESENT:
HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

CRA 653 OF 2009
Ranjana Tamang
Vs.
The State of West Bengal

with
CRA 672 of 2009
Madan Thakur
Vs.
The State of West Bengal

For the Appellant	:	Mr. Ranjan Ray, Adv. Mr. Ajay Debnath, Adv. Mr. Pradip Kar, Adv. Mr. Sujit Saha, Adv. Mr. Devranjan Das, Adv. Mrs. Swagata Datta, Adv.
For the State in CRA 653 of 2009	:	Mr. Saswata Gopal Mukherji, PP Ms. Faria Hossain, Adv. Ms. Sujata Das, Adv.
For the State in CRA 672 of 2009	:	Ms. Zareen N. Khan, Adv. Mr. Ashok Das, Adv.
Heard on	:	21.11.2022, 23.11.2022, 20.12.2022, 14.03.2023 & 24.03.2023.
Judgment on	:	19.05.2023

CHITTA RANJAN DASH, J.:-

1. Both these appeals arise out of the Judgement dated 31.07.2009 and order of sentence dated 01.08.2009 passed by Additional Sessions Judge, Fast Track,

First Court, Siliguri in Sessions Trial No. 13/07 arising out of Sessions Case No. 23(5)07 convicting both the appellants under Section 302, 201 and 34 IPC and sentencing them thereunder.

2. The spot village is Gyan Jote under Kharibari P.S. in the district of Siliguri. Ranjana Tamang appellant in CRA 653 of 2009 is the widow of deceased Uddiman Tamang. Madan Thakur appellant in CRA 672 of 2009 who is a resident of Arjun Mahal, hamlet of Gyan Jote under Kharibari P.S. is alleged to have extramarital relationship with Ranjana Tamang and both of them are alleged to have committed murder of Uddiman Tamang and buried the dead body in the house of Uddiman Tamang two and half feet below the surface of the room.

2.1. P.W.15, the Inspector of Police attached to Kharibari P.S. is the informant. On 05.03.2004 he had come to Arjun Mahal in connection with enquiry into Kharibari P.S. G.D.E. No. 157 dated 04.03.2004 (Exhibit 15) lodged by Madan Thakur. In course of such enquiry, Chandrika Shah (P.W.10) informed him (P.W.15) that Uddiman Tamang is missing since about three months and she (P.W.10) suspects that his (Uddiman's) wife, Ranjana Tamang and Madan Thakur might have murdered him.

2.2. P.W.15 went to the house of Madan Thakur. He was not there. But Ranjana Tamang was there in Madan Thakur's house. P.W.15 enquired from her (Ranjana Tamang) about missing of her husband, Uddiman Tamang and asked her to take him (P.W.15) and other police officials accompanying him to the place where Uddiman Tamang (deceased) was residing.

2.3. Ranjana Tamang took them to the spot house. Local villagers also assembled there. On reaching the spot house at Gyan Jote, P.W.15 smelt foul odour coming

from the room. They entered into the room by opening bamboo door (as described in the FIR about the door of the spot house). They found surface of the floor to be uneven and suspected some foul play. On being interrogated by P.W.15, Ranjana Tamang disclosed that she and Madan Thakur murdered Uddiman Tamang and buried his dead body in the room below the earth.

2.4. P.W.15 made arrangement for spade etc. from the house of Mangal Bhagat (P.W.1). The floor was dug and a dead body was found. P.W.15 then informed S.D.O., Siliguri requesting him to send an Executive Magistrate to be present at the time of exhuming the dead body. Accordingly, B.D.O. Naxalbari (P.W.14) reached the spot and the dead body was exhumed. The dead body was identified by Ranjana Tamang to be that of her husband Uddiman Tamang. Thereafter P.W.15 prepared the written complaint and sent the same to O.C in charge of Kharibari P.S. to lodge FIR against the accused persons under Sections 302, 201 and 34 IPC. The written complaint was sent through constable, Biswajit Das (not examined). P.W.15 thereafter directed S.I., Bijoy Tamang, P.W.16 to take up investigation of the case.

3. On the basis of the report lodged by P.W.15, at first U.D. Case No.7 of 2004 was registered and thereafter Kharibari P.S. Case No. 18 of 2004 under Sections 302, 201 and 34 IPC was registered. P.W.16 on the instruction of P.W.15 took up investigation.

3.1. In course of investigation he (P.W.16) examined the witnesses, made incriminating seizures including the hammer (the alleged weapon of offence), controlled earth and wearing apparel of the deceased etc. sent the dead body for

post-mortem through P.W.2 (Constable) and also seized the visra etc. after post-mortem on production by P.W.2.

3.2. In course of investigation it also came to light that Baburam Tamang, son of Uddiman Tamang at about 3:30 P.M. on 12.12.2003 had lodged GDE No. 448 dated 12.12.2003 regarding missing of his father Uddiman Tamang since about 15 days vide Exhibit-13. It also came to light that on 30.11.2003 on the basis of report of S.I., Srimanta Barman (P.W.9), GDE No. 1163 dated 30.11.2003 was registered at about 11:35 P.M. on the allegation that Ranjana Tamang and Madan Thakur were making nuisance by showing their bodies and kissing each other as a result of which local people were very much annoyed over their activities. GDE No. 157 dated 04.03.2004 vide Exhibit 15 was also lodged by Madan Thakur in Kharibari P.S. praying for lodging of FIR against one Matla Thapa and it was also mentioned in the said GD Entry that Madan Thakur and Ranjana Tamang have married on 24.11.2003 under Hindu Customs & Rites. It also came to light during investigation that Ranjana Tamang was the second wife of deceased Uddiman Tamang and Baburam Tamang who had lodged missing report vide Exhibit 13 was Uddiman's major son through his first wife. In course of investigation both the appellants were arrested and forwarded to Court in custody. On completion of investigation P.W.16 filed charge-sheet against both the appellants for offence under Section 302, 201 and 34 IPC.

4. Prosecution has examined 16 witnesses to prove the charge against the appellants. As introduced *supra* P.W.15 is the informant, P.W.s 1, 5, 7, 8 and 13 are co-villagers of deceased Uddiman, P.W.s 6 and 10 are villagers of adjacent hamlet. P.W.12 is the Vice-President of Siliguri Mahakuma Parishad who on

05.03.2004 was present in course of preparation of inquest report by the Executive Magistrate as well as by the I.O. (P.W.16). P.W.14 is the Executive Magistrate i.e. B.D.O., Naxalbari who held inquest over the dead body after it was exhumed in his presence. P.W.11 is the Demonstrator, department of F.S.M. North Bengal Medical College and Hospital who held post-mortem over the dead body of the deceased. P.W.2 is the constable who took the dead body for post-mortem on being challaned by I.O. (P.W.16). P.W.9 is the S.I. of Police who along with force had been to the spot village Gyan Jote on a raid on receiving secret information that a man and a woman were confined by the local people in a house at Gyan Jote. He lodged the GDE vide Exhibit 14 dated 30.11.2003. P.W.3 is the S.I. of Police who had lodged the GDE dated 30.11.2003 vide Exhibit 14 and a case under Section 290 IPC was initiated against Ranjana Tamang and Madan Thakur. P.W.4 is the S.I. of Police who received the information from Baburam Tamang, son of deceased Uddiman Tamang about missing of Uddiman Tamang and made GDE dated 12.12.2003 vide Exhibit 13. P.W.16 is the I.O.

Defence plea is one of complete denial and both the appellants have pleaded innocence.

5. Learned Court below also framed charge under Section 302, 201 and 34 IPC against both the appellants and returned the finding of guilt against them on the basis of circumstantial evidence held to have been proved during trial. The circumstances on which learned Trial Court has relied on are as follows:

“The case rests entirely on circumstantial evidence and circumstances relied upon by the prosecution are as follows:-

- (i) That the accused persons had extra marital relationship.
- (ii) That the accused Madan Thakur used to visit the house of Ranjana Tamang since last four years, prior to the incident and developed extra marital love affair with accused Ranjana Tamang.
- (iii) Uddiman Tamang one fine morning was found to be missing from his house.
- (iv) Accused Madan Thakur found in obscene and compromising condition with Ranjana Tamang in her house just following the missing of Uddiman Tamang.
- (v) Madan Thakur caught by the local people in compromising condition with Ranjana and both of them were handed over to the police.
- vi) Ranjana Tamang told P.W.1. Mangal Bhagat that Uddiman went to Bhusivita after taking tea from the house.
- (vii) Being interrogated and chased by the villagers, Madan Thakur gave false information that he would bring back Uddiman after one week and accused Madan Thakur vanished in the blue thereafter and came back after three months in his house in his village.
- (viii) Accused Ranjana started living with accused Madan Thakur going to his house.

- (ix) O.C. of Kharibari P.S. went to Arjun Mahal to enquire into the Kharibari P.S. G.D.E. No. 157 dated 04/03/04.
- (x) Chandrika Shah informed him that Uddiman was missing for about three months and expressed his suspicion that his wife Ranjana and Madan might have murdered Uddiman Tamang.
- (xi) O.C. of Kharibari met accused Ranjana Tamang in the house of accused Madan Thakur.
- (xii) Being interrogated, she accompanied O.C. Bijan Kumar Dey to the house of Uddiman Tamang.
- (xiii) O.C. Found the floor of the room of Uddiman as uneven and irregular.
- (xiv) As per the words of Ranjana, the floor of the room of Uddiman was dug and the dead body of Uddiman Tamang was discovered from the earthen floor of his room.
- (xv) That she made extra judicial confession of her guilt before the villagers and the Police Officer and other Police forces.
- (xvi) Police also seized hammer and other articles from the P.O.
- (xvii) That accused Madan Thakur absconded thereafter.

Holding that the aforesaid circumstances have been proved learned Trial Court has shifted the onus to the appellants under Section 106 of the Evidence Act.

6. Mr. Ranjan Ray, learned Counsel for the appellant submits that the circumstances, relied on by learned Trial Court, do not form a complete chain unerringly pointing to the guilt of the appellants. Further it is submitted that appellant Madan Thakur has been implicated only on the basis of alleged confession of appellant Ranjana Tamang before the police and villagers. It is vehemently urged that the impugned Judgement and order of sentence be set aside and the appeal be allowed.

Ms. Faria Hossain being assisted by Ms. Sujata Das, learned Counsel appearing for the State in one appeal and Ms. Zareen N. Khan being assisted by Mr. Ashok Das, learned Counsels for the State appearing in another appeal on the other hand supports the impugned Judgement and submits that the appeal being devoid of any merit be dismissed.

7. Having heard learned Counsel for the parties we propose to make some facts clear before proceeding to discuss the circumstances relied on by learned Trial Court. According to P.W.10, Chandrika Shah, deceased Uddiman Tamang came to reside in Gyan Jote (spot village) about 10 years back (i.e. from the date of his deposition on 10th February, 2009). According to P.W.6 who is a resident of adjacent village Telenga Jote, deceased Uddiman Tamang was a 'Pherrywala' (wandering/roaming vendor selling different items) by avocation. As introduced *supra* P.W.1 is neighbour of deceased Uddiman Tamang. P.W.5 is also a neighbour of deceased Uddiman. P.W. 13 is also a co-villager of deceased Uddiman Tamang.

P.W.s 6 and 10 are villagers of adjacent village. Similarly P.W.7 resides adjacent to the house of deceased Uddiman Tamang and P.W.8 is also a co-villager of deceased Uddiman Tamang. None of the aforesaid witness had any knowledge that Uddiman had a first wife and he had a son named Baburam Tamang from his first wife. P.W.1 has testified that deceased Uddiman Tamang and appellant Ranjana Tamang had three children; two of them are sons and one is daughter; the eldest son was 15/16 years old at the time of occurrence; the second son was 12/13 years old and the youngest daughter was three and half years old at the time of occurrence. It is his further evidence that all of them were residing in the same house which has a single room.

7.1. P.W.5 whose house is situated at one quarter kilometre from the house of deceased Uddiman Tamang in his cross-examination has testified that deceased Uddiman Tamang has three children. The eldest son is 7 years old; accused Ranjana Tamang, Uddiman Tamang and three children used to live together in the spot house. P.W.6 who is a resident of adjacent village Telenga Jote in his cross-examination has testified that deceased Uddiman Tamang and accused Ranjana Tamang have three children; the eldest son of Uddiman Tamang was not living with them at the time of his death. P.W.7 whose house is situated adjacent to the house of Uddiman Tamang has testified that Uddiman Tamang and Ranjana Tamang have three children; his eldest son was ten years old; Ranjan Tamang and Uddiman Tamang and their three children used to reside in the spot house. P.W.8 who is a co-villager of deceased Uddiman Tamang has also testified that Uddiman Tamang and Ranjana Tamang have three children; Uddiman Tamang, Ranjana Tamang and their three children used to reside in the same house. P.W.10

Chandrika Shah, on whose report P.W.15 acted in promptitude and recovered the dead body from the dwelling house of Uddiman Tamang allegedly at the instance of appellant Ranjana Tamang has also testified that Uddiman Tamang was living in his house with his wife and children. All the witnesses have also testified that they have no knowledge how Uddiman died and who committed his murder.

8. From the evidence of the aforesaid witnesses it is clear that none has any direct knowledge as to how Uddiman Tamang died and who did his death. It is also clear from the evidence of the aforesaid witnesses that appellant Madan Thakur was an agent of Sahara and he was going to different houses in different villages for collection of subscription. P.W.7 has also testified that Madan Thakur was also coming to her house for collection of subscription. Same stand has been taken by appellant Madan Thakur in his statement recorded under Section 313 Cr.P.C. Appellant Ranajana Tamang in her statement recorded under Section 313 Cr.P.C. has also stated that Madan Thakur was coming to her house for collection of subscription.

8.1. From the aforesaid prevaricating evidence of the witnesses, it is clear that none of the witness had any personal and direct knowledge about the family of deceased Uddiman Tamang except the fact that he was blessed with three children. None is consistent about the age of the three children. P.W.1 who is a neighbour, in his cross-examination testified that the eldest son and second child of Uddiman Tamang and Ranjana Tamang reside elsewhere and P.W.6 has testified that eldest son of Uddiman Tamang was not living with him at the time of his death.

8.2. The evidence regarding this aspect being inconsistent, we are of the considered view that none of the witness had any personal knowledge or special

knowledge about the family of deceased Uddiman Tamang or about appellant Ranjana Tamang.

9. With the aforesaid background in mind and the principle of “Panchsheel” as enunciated by Hon’ble Supreme Court in the case of **Sharad Birdhi Chand Sarda Vs. State of Maharashtra (AIR 1984 SC 1622)** along with the principle of proving each circumstance relied on by prosecution as primary fact as enunciated in the case of **M.G. Agarwal Vs. State of Maharashtra (AIR 1963 SC 200)** we propose to re-appreciate the circumstances relied on by the prosecution and held to have been proved by learned Trial Court. We feel persuaded to say here that some of the circumstances relied on by learned Trial Court are mere repetitions, some are innocuous and inconsequential and some are supported by no evidence.

9.1. Circumstance nos. (i) and (ii) are taken up together first for consideration. Those are:

- (i) That the accused persons had extra marital relationship.
- (ii) That the accused Madan Thakur used to visit the house of Ranjana Tamang since last four years, prior to the incident and developed extra marital love affair with accused Ranjana Tamang.

So far as the aforesaid circumstances are concerned, it is P.W.1 who alone has testified that appellant Madan Thakur used to visit the house of Uddiman Tamang since last four years before the incident. Except the aforesaid bald and uncorroborated testimony, P.W.1 has not testified to the effect that they had any relationship either illicit or extra marital. There is nothing on record also to show

that Uddiman Tamang had ever objected to visit of appellant Madan Thakur to his house. Rather there is evidence of witnesses to the effect that Madan Thakur being an agent of Sahara was visiting the houses of different persons in the locality including the house of P.W.7 for collection of subscription and appellant Ranjana Tamang in her statement under Section 313 Cr.P.C. has also testified that Madan Thakur was coming to their house for collection of subscription for Sahara. On the lone testimony of P.W.1 therefore the aforesaid two circumstances cannot be held to have been proved to the extent that there was extra marital relationship between both the appellants since four years and for that appellant Madan Thakur used to visit the house of Ranjana Tamang since last four years. It can only be held that both the appellants were known to each other before the incident.

9.2. Thereafter circumstance nos. (iv) and (v) are taken together for consideration.

Those are:

- (iv) Accused Madan Thakur found in obscene and compromising condition with Ranjana Tamang in her house just following the missing of Uddiman Tamang.
- (v) Madan Thakur caught by the local people in compromising condition with Ranjana and both of them were handed over to the police.

So far as the aforesaid circumstances are concerned all the witnesses namely P.W.1, P.W.6 and P.W. 8 have testified parrot like that they found appellant Madan Thakur and appellant Ranjana Tamang in compromising position in the spot house (house of Uddiman Tamang). P.W.1 has testified that such incident happened after one day of the missing of Uddiman Tamang. P.W.10 though has not stated

anything about finding appellant Madan Thakur and appellant Ranjana Tamang in compromising position has testified that on one occasion police arrested Ranjana Tamang and Madan Thakur at about 8 P.M. after 5 days of the missing of Uddiman Tamang from his house. P.W.9 is the police officer who along with force had been to the spot village i.e. Gyan Jote for a raid on receiving secret information that a man and woman have been confined by the local people at Gyan Jote. P.W.9 has further testified that he arrested both Ranjana Tamang and Madan Thakur from in front of the house of Uddiman Tamang and on that day he made GDE vide Exhibit 14. He, however, was not able to say name of any particular person who informed him about the alleged illicit relationship of Ranjana Tamang and Madan Thakur. From the evidence of the aforesaid witnesses, it is clear that no one has seen both Madan Thakur and Ranjana Tamang in objectionable or compromising position. They suspected something and they confined them in the house and reported the matter to police. The Police Officer (P.W.9) has clearly testified that he arrested Ranjana Tamang and Madan Thakur from in front of the house in question being pressurised by the local people. In the G.D.E. (Exhibit-14), it is clearly mentioned that two minor children of Ranjana Tamang were also there with her. None of the witness has testified about presence of the children along with Ranjanan Tamang. Whatever be the intensity of relationship of a woman with a man, a woman, especially in a rural area cannot throw all her shames to wind to come to a compromising position even with her husband to the full sight of her children. The witnesses examined in the case have testified that after deceased Uddiman went missing, Ranjana Tamang went to live with Madan Thakur. According to P.W.1 this incident happened after one day of missing of Uddiman. P.W.10 has testified that

this incident happened after five days of missing of Uddiman. There is however no definite date when Uddiman went missing and when Ranjana Tamang left the house of Uddiman and went to live with Madan Thakur.

9.3. We are of the view that it is not good on anybody's part to judge a person by forming an opinion on some unseen or unheard thing. But in our society and especially in rural area people have a tendency to be judgemental especially regarding extra marital relationship or illicit relationship etc. more on hearsay than direct knowledge. We feel persuaded to say here that one should walk into the life of another rather softly because some wounds are not visible. Taking into consideration the discussion *supra* we are of the view that these circumstances i.e. circumstance nos. (iv) and (v) are proved to the extent that on the agitation of the local people as testified by P.W.9 he arrested appellant Madan Thakur and appellant Ranjana Tamang and made GDE vide Exhibit 14.

9.4. Coming to the circumstance nos. (iii), (vi) and (vii), those are as follows:

(iii) Uddiman Tamang one fine morning was found to be missing from his house.

(vi) Ranjana Tamang told P.W.1. Mangal Bhagat that Uddiman went to Bhusivita after taking tea from the house.

(vii) Being interrogated and chased by the villagers, Madan Thakur gave false information that he would bring back Uddiman after one week and accused Madan Thakur vanished in the blue thereafter and came back after three months in his house in his village

So far as circumstance nos. (iii), (vi) and (vii) are concerned all are based on evidence of Mangal Bhagat (P.W.1). It is found from the evidence of P.W.1 that on the morning of Thursday he asked appellant Ranjana Tamang regarding whereabouts of Uddiman Tamang and Ranjana Tamang told him that Uddiman has gone to Bhusivita after taking tea from the house. He (P.W.1) has further testified that after about one week of handing over Ranjana Tamang and Madan Thakur to police i.e. P.W.9 again appellant Madan Thakur was charged and they (villagers) told him to disclose regarding whereabouts of Uddiman Tamang and also asked him to bring Uddiman Tamang back to his house. Appellant Madan Thakur took one week time and after that he fled away and came back after three months. This evidence of P.W.1 is, however, not corroborated by any of the witnesses who are co-villagers and testified to be known to deceased and the appellants. In view of such fact these circumstances i.e. circumstance nos. (iii), (vi) and (vii) are held to be not proved on the basis of uncorroborated testimony of P.W.1, especially in view of other suspicious features in the prosecution case to be discussed at a later stage.

9.5. Circumstance nos. (viii) and (xi) are as follows:

(viii) Accused Ranjana started living with accused Madan Thakur going to his house.

(xi) O.C. of Kharibari met accused Ranjana Tamang in the house of accused Madan Thakur.

So far as circumstance no. (viii) is concerned, it is the evidence of all the witnesses that on the date when the dead body was exhumed from the spot house appellant Ranjana Tamang was there in the house of appellant Madan Thakur. The

witnesses have further testified that after Uddiman went missing, Ranjana Tamang started living with Madan Thakur. The G.D.E. (Exhibit-15) lodged by Madan Thakur on 04.03.2004 also shows that Madan Thakur and Ranjana Tamang had married on 24.11.2003 according to Hindu Rites and Customs. P.W.15 who had come for enquiry in connection with Kharibari P.S. GDE No. 157 dated 04.03.2004 (Exhibit-15) also met appellant Ranjana Tamang in the house of the appellant Madan Thakur and at that time Madan Thakur was absent. Circumstance nos. (viii) and (xi) are accordingly held to have been proved.

9.6. Circumstance nos. (ix) and (x) which are as follows are inconsequential:

- (ix) O.C. of Kharibari P.S. went to Arjun Mahal to enquire into the Kharibari P.S. G.D.E. No. 157 dated 04/03/04.
- (x) Chandrika Shah informed him that Uddiman was missing for about three months and expressed his suspicion that his wife Ranjana and Madan might have murdered Uddiman Tamang

9.7. Circumstance nos. (xii) and (xiv) are as follows:

- (xii) Being interrogated, she accompanied O.C. Bijan Kumar Dey to the house of Uddiman Tamang.
- (xiv) As per the words of Ranjana, the floor of the room of Uddiman was dug and the dead body of Uddiman Tamang was discovered from the earthen floor of his room.

P.W. 15 and 16 have testified that appellant Ranjana Tamang took the police to the spot house i.e. house of Uddiman Tamang where she was also living earlier and it is the evidence of the I.O. (P.W.16) and other witnesses that as per the words

of Ranjana Tamang the dead body of Uddiman Tamang was exhumed from one room of the spot house. So far as circumstance no. (xii) is concerned, P.W.7 has testified in her cross-examination that she showed the house of Uddiman Tamang to the police. There is also discrepancy in the evidence of the witnesses to the effect that at the instance of appellant Ranjana Tamang, the spot where the dead body had been buried was found and at her instance that spot was dug. From the evidence of P.W.15 it is found that bad smell was coming from the room and the surface of the room was uneven creating suspicion in his mind. In view of such fact we are constrained to hold that circumstance nos. (xii) and (xiv) have been proved to the extent that appellant Ranjana Tamang accompanied P.W.15 to the spot house on his (P.W.15's) asking and at the spot house a dead body was dug out from beneath the earth.

9.8. Circumstance nos. (xiii) and (xvi) are inconsequential as incriminating circumstance inasmuch as the hammer in question was not sent to the medical officer who conducted post-mortem nor it was sent for chemical examination or for finding of finger print of the assailant on its handle. Circumstance no. (xvii) is also of no avail inasmuch as there is no evidence to show that appellant Madan Thakur had absconded after recovery of dead body rather there is evidence to show that P.W.16 arrested Madan Thakur after recovery of the dead body.

9.9. Circumstance no. (xv) is the alleged extra judicial confession of her guilt by appellant Ranjana Tamang before the villagers and the police officer and other police officials. P.W.15 has testified that on being interrogated after arrival of the Magistrate appellant Ranjana Tamang confessed to have killed Uddiman Tamang along with appellant Madan Thakur and buried the dead body under the floor of

the room. She also confessed that they hit Uddiman Tamang on his head by hammer and then strangulated him as Uddiman was little drunk. P.W.14 the Executive Magistrate is, however, completely silent about such extra judicial confession made by appellant Ranjana Tamang.

To top it all the alleged confession being a confession to a police officer is hit by Section 25 of the Evidence Act though all the independent witnesses are very vocal about such confession of appellant Ranjana Tamang before the police.

10. Taking into consideration the aforesaid facts the following circumstances are had to have been proved:

- (i) Appellant Madan Thakur and appellant Ranjana Tamang were arrested by the police on one occasion before 05.03.2004 by P.W.9 on being pressurised by agitating villagers;
- (ii) Uddiman Tamang was missing from his house;
- (iii) Appellant Ranjana Tamang was living with appellant Madan Thakur in his house on 05.03.2004 when the dead body was recovered from the spot house or even before that;
- (iv) Appellant Ranjana Tamang accompanied P.W.15 to the spot house and a dead body was exhumed from the room of the spot house.

11. We have to find out whether from the aforesaid proved circumstances inference of guilt of the appellants can be drawn and whether the aforesaid

circumstances which according to us are proved constitute a complete chain unerringly pointing to the guilt of the appellants.

12. Before answering the aforesaid questions we feel persuaded to discuss here some suspicious features in the evidence on record. P.W.s 15 and 16 (I.O.) have testified that appellant Ranjana Tamang identified the dead body of Uddiman Tamang after it was dug out from the earth in the spot house. None of the witness has, however, specifically identified the dead body recovered from the spot house to be that of Uddiman Tamang. Some of the witnesses have testified that dead body of Uddiman Tamang was dug out but they have not specifically identified the dead body with specific marks of identification. Two circumstances had set the minds of the witnesses to testify without being specific that it was the dead body of Uddiman, which was dug out. Those circumstances are:

(i) Uddiman was missing;

(ii) Ranjana Tamang was living with Madan Thakur.

These two circumstances had moulded their mind to the extent of a belief that dead body of Uddiman was dug out and Ranjana Tamang along with Madan Thakur has committed the murder of Uddiman.

12.1. P.W.1 who is the neighbour of deceased Uddiman Tamang has testified that he did not see the police digging the floor of the room of Uddiman Tamang; he however saw the dead body of Uddiman; it was apparent that the dead body was of Uddiman Tamang, when he saw it. Such evidence of P.W.1 cannot be held to be a clear identification of the dead body of deceased. He has also not testified that appellant Ranjana Tamang happened to identify the dead body of Uddiman. P.W.5 beside being a co-villager is a witness to the inquest over the dead body. P.W.5 who

is also a witness to inquest has not testified that appellant Ranajan Tamang identified the dead body of Uddiman. He has also not testified specifically that the dead body was that of Uddiman though in his evidence there is mention about recovery of the dead body of Uddiman. P.W.6 who is also a witness to inquest is however a chance witness. He was returning from the market and finding gathering near the house of appellant Ranjana Tamang he went there and was also present when the dead body was dug out from the room of Ranjana Tamang. He has also not testified that the dead body was identified by Ranjana Tamang as that of Uddiman Tamang. He has also not specifically testified that he identified the dead body as that of Uddiman. He had only made mention about recovery of dead body of Uddiman. P.W.7 who is neighbour of deceased Uddiman Tamang has also stated nothing specific about identification of the dead body of Uddiman Tamang in particular except brushing reference to recovery of dead body of Uddiman Tamang. She has also not testified to the effect that it was Ranjana Tamang who identified the dead body of the deceased. P.W.8 who is another co-villager of the deceased is also silent about identification of the dead body and in his cross-examination he has specifically testified that he did not go near to the dead body as bad smell was coming. P.W.13 who is also a co-villager and a witness to inquest has also testified in his cross-examination that he did not see the dead body. The appellant Ranjana Tamang in her statement under Section 313 Cr.P.C. in answer to question no.44 has stated that she did not see the dead body as she was taken to the P.S., in answer to question no.51 she has stated that yes Uddiman's dead body was found. To the specific question put to her in question no.53 that she identified the dead body to be that of her husband Uddiman Tamang, she has answered that the dead

body was not recovered in front of her and this allegation is false. P.W.11 the Medical Officer who conducted post-mortem has testified that the dead body was identified to him by Constable no. 1544 Gouranga Roy of Kharibari P.S. He has further testified thus - on P.M. examination, he found the dead body partially decomposed with adipocere change over the face, neck, chest wall and buttocks with mummification of abdomen wall, lower limbs dark brown in colour.

The Medical word 'adipocere change' means a waxy substance consisting chiefly of fatty acids and calcium soaps that is formed during decomposition of dead body fat in moist or wet anaerobic conditions. In such a stage, when mud also must be sticking to the dead body as it was dug out from earth, identification becomes difficult, if the person identifying does not know closely the person whose dead body is identified.

12.2. From the aforesaid discussion it is found that none of the independent witness has testified that appellant Ranjana Tamang identified the dead body of the deceased Uddiman Tamang to be that of Uddiman Tamang. Most of the independent witnesses have not gone near the dead body for some reason or other. They only have testified that dead body of Uddiman Tamang was dug out as it was deep in their mind that it is Uddiman Tamang whose dead body has been buried in the spot house. The Executive Magistrate (P.W.14) has not whispered a word about the identification of dead body by appellant Ranjana Tamang. The inquest report, dead body challan etc. is silent about identification of the dead body by Ranjana Tamang or any other person. The Medical Officer (P.W.11) has testified that the dead body was identified to him by Constable No. 1544 Gouranga Roy of Kharibari P.S. Said Constable Gouranga Roy has been examined as P.W.2. In his cross-

examination P.W.2, Gouranga Roy has testified that he was instructed from the P.S. to take the dead body from Gyan Jote to the NBMCH. He cannot say whose dead body it was. The dead body was being dug out from mud. He wrapped it and took it to the NBMCH. The dead body was decomposed but it was a male dead body.

12.3. From the aforesaid evidence we are in doubt as to whose dead body was dug out from the spot house. Was it the dead body of Uddiman Tamang or Uddiman has the possibility of returning alive even after 30 years, if the dead body was of any other person. It might have so happened that some person/persons in inimical terms with Uddiman Tamang might have murdered Uddiman and buried his dead body in his own house which was found to be abandoned. There being no proper identification of the dead body at any stage. We are constrained to entertain a genuine doubt about the fact as to whether the dead body was that of missing Uddiman Tamang and whether Uddiman Tamang was at all murdered or the dead body was of any other person.

12.4. We feel persuaded to entertain such a genuine doubt in view of the fact that the spot house is a thatched house and it is fitted with only a bamboo door as reflected by P.W.15 in the written complaint. And a room fitted with a bamboo door can give access to any person who could have come and buried the dead body of any other person there after Ranjana Tamang left the spot house and it is also the consistent deposition of the witnesses that Ranjana Tamang went to live with Madan Thakur after missing of deceased Uddiman Tamang.

13. Another peculiarity of the case is that Baburam Tamang, son of alleged deceased Uddiman Tamang filed a report vide Exhibit 13 on 12.12.2003 stating

therein that since 15 days his father Uddiman Tamang is missing. Exhibit-13 being a part of record, we perused the same and it is reported therein that his (Baburam's) step mother left their house with unknown person and after that his father was missing. Though Exhibit-13 was registered vide GDE No. 448 dated 12.12.2003 no enquiry was conducted thereon. If we calculate 15 days back from 12.12.2003 it goes to show that alleged deceased Uddiman Tamang was missing from 26/27 of November, 2003. Here comes to light the GDE No. 157 dated 04.03.2004 which was lodged by appellant Madan Thakur in Kharibari P.S. alleging some overt act in respect of appellant Ranjana Tamang by one Matla Thapa. In the said entry Madan Thakur has specifically asserted that he married Ranjana Tamang on 24.11.2003 as per Hindu Customs & Rites. If the aforesaid GDE No. 157 dated 04.03.2004 (Exhibit-15) is read in conjunction with GDE No. 448 dated 12.12.2003 (Exhibit-13) it is clear that Baburam Tamang son of Uddiman Tamang is true to the extent that after his step mother left the house with some unknown person his father was missing.

14. The police has not at all enquired into these two vital GDE vide Exhibit 13 and 15. P.W.s 15 and 16 have also admitted that they have not examined either first wife of Uddiman Tamang or Baburam Tamang, son of alleged deceased Uddiman Tamang. Had they been examined some relevant fact might have come on record. This is also one of suspicious aspect in the prosecution case.

15. With the aforesaid suspicious features in the prosecution case we shall now proceed to examine the circumstances proved in the case.

16. The circumstances proved in the present case as enumerated in paragraph 10 *supra* are:

- (i) Appellant Madan Thakur and appellant Ranjana Tamang were arrested by the police on one occasion before 05.03.2004 by P.W.9 on being pressurised by agitating villagers;
- (ii) Uddiman Tamang was missing from his house;
- (iii) Appellant Ranjana Tamang was living with appellant Madan Thakur in his house on 05.03.2004 when the dead body was recovered from the spot house or even before that;
- (iv) Appellant Ranjana Tamang accompanied P.W.15 to the spot house and a dead body was exhumed from the room of the spot house.

17. We have already discussed in detail circumstance nos. (i) and (iv) *supra* in detail. So far as circumstance no.(i) is concerned, P.W.9 had arrested Ranjana Tamang and Madan Thakur from front of the house of Uddiman Tamang at about 8 p.m. on 30.11.2003 as some villagers had detained them there and put pressure on P.W.9 to arrest them. There is allegation that both Ranjana Tamang and Madan Thakur were found in compromising position in the house of Uddiman Tamang. But such allegation is held to have not been proved. This circumstance therefore, no more alive to be an incriminating circumstance any more. So far as circumstance no.(iv) is concerned, on the asking of P.W.15, Ranjana Tamang accompanied him (P.W.15) where she and Uddiman Tamang were once living. P.W.7 has testified that she showed the house of Uddiman Tamang to the police. There is nothing incriminating also in this circumstance inasmuch as no

incriminating behaviour or act has been attributed to Ranjana Tamang so far as murder of Uddiman is concerned.

17.1. So far as circumstance nos. (ii) and (iii) *supra* are concerned, it is found on record from the evidence of witnesses that by the time both Ranjana Tamang and Madan Thakur were arrested Uddiman Tamang was already missing. It is evident from the evidence of P.W.1 that appellant Madan Thakur was coming to the house of appellant Ranjana Tamang since four years. They might have developed some affair or relationship between them and they might have thought to live together leaving Uddiman and such practice in rural area is not uncommon. A dead body was found to have been buried in the spot house where Uddiman Tamang and Ranjana Tamang were once living. But there is no evidence to the effect that the dead body was identified to be that of Uddiman Tamang. If we take all the aforesaid circumstances together and try to infer about the guilt of the appellants, we find that there are many missing links which rather point towards the innocence of the appellants than to their guilt.

17.2. Only because appellant Ranjana Tamang and appellant Madan Thakur decided to marry or live together, Ranjana Tamang leaving her husband Uddiman Tamang cannot justify any motive on their part to kill Uddiman Tamang inasmuch as there was no remedy for Uddiman to bring back Ranjana Tamang as it is a common practice in rural area to leave one spouse to espouse another for some ill-feeling or misunderstanding between the spouses. Then there is materials to show that Uddiman Tamang left the house after only Ranjana Tamang eloped with some unknown person who is none other than appellant Madan Thakur. If Uddiman Tamang left the house it was none of the business of both the appellants to find

him out, kill him and bury him in the very said house where Uddiman Tamang was once living.

18. We are, therefore, constrained to hold that in view of the suspicious circumstances in the prosecution case as discussed *supra*, the appellants are entitled to get benefit of doubt. Accordingly, the impugned judgement and order of sentence are set aside. Each of the appellant in both the appeals are acquitted of the charge. Both the appeals are accordingly allowed. Both the appellants are directed to be released forthwith, if their detention is not required in any other case.

19. The Trial Court record along with a copy of the judgement be sent down to the Trial Court.

20. Department is directed to send an advance copy of the judgement to Secretary, District Legal Services Authority, Siliguri to take immediate steps for release of the appellants from jail by making necessary enquiry regarding the fact, at present which correctional home they are lodged in.

21. Pronounced in open Court on this day i.e. 19th day of May, 2023.

I agree.

(Partha Sarathi Sen, J.)

(Chitta Ranjan Dash, J.)