

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPIGURI
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

The Hon'ble Justice Rajarshi Bharadwaj
And
The Hon'ble Justice Shampa Dutt (Paul)

C.R.A. 18 of 2019

Bimal @ Raney Chettri @ Chhetri & Anr.

-vs-

State of West Bengal

For the Appellants : Ms. Rima Sarkar
Mr. Siddhi Sethia
Mr. Aniruddha Biswas

For the State : Mr. Aditi Shankar Chakraborty, APP
Mr. Abhijit Sarkar

Heard On : 4th April, 2023.

Judgement On : 16th May, 2023.

Rajarshi Bharadwaj, J.:

1. The instant appeal arises out of a judgement and an order passed by the Court of Learned Additional Sessions Judge 3rd Court at Darjeeling, dated 29.09.2015 and 30.09.2015 respectively in Session Case No. 9 of 2013, convicting the appellants under Sections 302/201/34 of the Indian Penal

Code and sentencing them to suffer imprisonment for life and to pay fine of Rs.50,000/- only in default to suffer simple imprisonment of 3 years for the offence punishable under section 302/34 of the Indian Penal Code and to suffer rigorous imprisonment for 5 years and to pay fine of Rs. 5,000/- only in default to suffer simple imprisonment a year for the offence punishable under section 201/34 of the Indian Penal Code.

2. The genesis of the prosecution case relates to Jorebunglow Police Station Case No. 74 of 2012 dated 15.11.2012 under Sections 302/201/34 of the Indian Penal Code which was set into motion pursuant to an FIR and a written complaint lodged by one Deo Kumar Chettri stating that on 14.11.2012 at about 8.30 p.m., Bimal @ Raney Chettri and his wife Amrita Chettri herein the appellants came crying saying that Ranim Chettri, brother of Bimal Chettri, became unconscious after falling on the ground near their house. On receiving such information, the de facto complainant along with the co-villagers rushed to the place of occurrence and found Ranim Chettri lying covered in blood. On lifting his body and bringing it to his house it was realised that he had died.

3. The next day, i.e., 15.11.2012 on inquiring Bimal Chettri and Amrita Chettri admitted to the villagers that on 14.11.2012 at about 6 p.m. Ranim Chettri asked for food to Amrita Chettri, meanwhile, a heated altercation ignited between Bimal Chettri and Ranim Chettri. Owing to which Bimal took a split wood/firewood and assaulted Ranim on his head, resulting to which Ranim fell down on the floor. Being unsure of Ranim's death Bimal gave another blow of the split wood on Ranim resulting in his death. Following which Bimal Chettri and Amrita Chettri concealed the dead body in the vegetable garden.

4. The de facto complainant, therefore, taking necessary action in the situation lodged the written complaint. On the basis of the aforesaid

complaint, investigation commenced. The Investigating officer on completing his investigation submitted the Charge-sheet against the accused persons herein the appellants under sections 302/201/34 of the Indian Penal Code. Thereafter, the then Ld. CJM took cognizance upon the same and on complying all legal formalities committed the case before the Ld. Sessions Court, Darjeeling. On receiving the case records the PO on 21.03.2013 framed charges against both the accused persons under sections 302/201/34 of the Indian Penal Code. However, the appellants pleaded not guilty and claimed to be tried.

5. In the course of trial, prosecution examined twelve (12) witnesses and exhibited number of documents as Exhibits 1- 21 respectively.

6. The learned Counsel representing the appellants submits that the prosecution has failed to bring the charges against the appellants under sections 302/201/34 of the IPC beyond reasonable doubt by relying on unreliable and vague circumstances not forming a complete chain pointing to his guilt. In the instant case, the alleged confession of the appellants was procured by compulsion as a result of due query by the villagers, members of village -Samaj and the police. The Additional Sessions Judge has erred in sentencing the appellants by placing reliance on such extra-judicial confession, which in the instant case has no value in the eyes of law as it is barred by Section 24 and Section 25 of the Evidence Act. Further, retaining of opinion as to cause of death by P.W.8 till the receipt of forensic report of viscera should be taken as a serious lacuna on the part of the prosecution case, thereby tilting the case in favor of the appellants. Hence, the testimony forming the backbone of the prosecution case is highly unreliable in nature and ought not to form the basis of conviction in the instant case. Thus, the learned Counsel for the appellant prays that the appeal may be allowed by setting aside the impugned judgment of the learned Additional Sessions

Judge, 3rd Court, Darjeeling in Sessions Case No. 09 of 2013.

7. The learned Counsel appearing on behalf of the State has pleaded that in order to prove the charges against the appellants under sections 302/201/34 of the Indian Penal Code, the State prosecution, has relied on confession of the appellants, examined twelve (12) witnesses including the de facto complainant and the Investigating Officer, exhibited vital documents such as investigation report, inquest report, post mortem report and charge-sheet, moreover produced articles such as the offending article i.e., split wood, seized wearing apparels and other materials. The evidence relied upon sings to the tune of the prosecution case, is cogent and consistent and the punishment of such brutal act sentenced by the learned Additional Sessions Judge, 3rd Court, Darjeeling shall be upheld.

8. I have heard learned Advocates for the parties and have gone through the evidence of record meticulously which reveals as follows:

- I. P.W.1 is a resident of Rungmook Tea Estate and the de facto complainant. He deposed that on 14.11.2012 at about 8.30 p.m. the Bimal @ Raney Chettri and his wife Amrita Chettri came crying to his village stating that Ranim Chettri, brother of Bimal Chettri was lying unconscious a little far from the house of the accused. On hearing the same he along with the villagers rushed to the place where Ranim was lying unconscious. On reaching it was found that Ranim was covered in pool of blood in an unconscious state. Thereafter, he along with the villagers lifted Ranim Chettri and brought him to his house while had already died. The next morning the villagers interrogated Bimal Chettri and Amrita Chettri wherein they confessed that they had murdered Ranim Chettri with a fire wood. On account of which he lodged a complaint before the Sonada Out Post. However, he had no personal knowledge regarding the incident. Moreover, the Amrita Chettri stated to him that the victim had fell from the peak of the hill at about 5 feet height and sustained injuries.
- II. P.W.2 is a resident of Rungmook Tea Estate. He deposed that on

14.11.2012 at about 8.00 p.m. the Bimal @ Raney Chettri and his wife Amrita Chettri informed him that Ranim Chettri, brother of Bimal Chettri was lying unconscious in the field. On reaching the place of occurrence, it was found that Ranim was lying unconscious with head injuries. Thereafter, he along with the villagers lifted Ranim Chettri and brought him to his house, but had already died. He, thus, went to his home. The next morning when the villagers and the members of the Samaj interrogated Bimal Chettri and Amrita Chettri, they confessed that they had murdered Ranim Chettri. Moreover neither did he have any personal knowledge regarding the incident nor was he an ocular witness of the incident.

- III. P.W.3 is a resident of Rungmook Tea Estate. He deposed that the incident took place on 14.11.2012 at about 9.30 p.m. when he heard the villagers shouting owing to whom he went to the house of the Bimal Chettri and Amrita Chettri. On reaching there he saw Ranim Chettri lying unconsciously on the floor and injury marks on his lower jaw and head. He then found that Ranim Chettri had already died. However, he had no idea of how the incident took place. Thereafter, he immediately informed the Sonada Out Post over phone. The entire night everyone was there. Next morning when the Police reached, on interrogating Bimal Chettri and Amrita Chettri accepted in front of the police as well as the villagers that they committed murder of Ranim Chettri.
- IV. P.W.4 is a constable posted at Sonada Out Post. He deposed that on 15.11.2012 he escorted the dead body of one male from Rungmook T.E. to Darjeeling hospital for post mortem with the dead body challan which was signed by him marked as exhibit 5/1. He also received the wearing apparels of the deceased along with the post mortem blood and viscera which he handed over to the Investigating Officer of the case. He also seized things under proper seizure list marked as exhibit 6/1. However, the post mortem blood and the wearing apparels were not produced before the Court.
- V. P.W.5 residing at Rungmook Tea Estate deposed that on 14.11.2012 at about 8:30 p.m., Bimal Chettri and his wife Amrita Chettri came to the village making hue and cry and revealed that Ranim Chettri was lying a little far away from their house. On reaching such place, Ranim was found lying on the ground with injuries. Ranim Chettri

was already dead by the time he was carried to his house. On interrogating Bimal Chettri and Amrita Chettri, the next morning, they confessed to murdering Ranim the previous night. Thereafter at 1:00 p.m. while the police came to conduct inquest, the police seized few articles. The articles were then labelled and a seizure list was prepared to which he affixed his signature. He affirmed that he had no personal knowledge about the incident of murder. During inquest by police officer, from the heave of firewood kept for the purpose of cooking, only a firewood was seized. He was not interrogated by the police at the time of inquest, but was also instructed to sign the seizure list in spite of not knowing how to read English.

- VI. P.W.6 residing at Rungmook Tea Estate deposed that there was a “halla” at the village on 14.11.2012 at about 8:30 p.m. where Amrita Chettri informed that her brother-in-law Ranim Chettri was lying unconscious in the field. On rushing to the spot with the other co-villagers, it was seen that Ranim Chettri was lying in a pool of blood. Ranim Chettri was already dead by the time he was carried to his house. On interrogating Bimal Chettri and Amrita Chettri, the next morning, they confessed to murdering Ranim. At the time of inquest, the police seized some articles and he affixed his signature to the seizure list prepared. He further asserted that he neither had personal knowledge about the incident of murder nor knowledge about the contents of the inquest report. The police did not interrogate him at the time of inquest, directed him to sign a blank paper and gave instructions to say as to what happened before the learned Magistrate.
- VII. P.W.7 posted at Sonada Out Post deposed that he seized few articles as directed under the seizure list in the presence of witnesses. He additionally said that though his signature on the seizure list was as per directions of the Investigating Officer, he could not find any labels on the seized articles.
- VIII. P.W.8 Dr. L.J. Bhutia is the medical officer attached to District hospital, Darjeeling. On 15.11.2012 he was posted in the same hospital and had held the post mortem over the dead body of Ranim Chettri on being brought and identified by constable (P.W.4). On examination he found that the condition of the deceased was stout. There were two wounds, laceration scalp- 2” and 4” long old bruise

and laceration ears. There was a cut injury old bruise. There was bruise marks on the side of chin, old scars over chin and neck. Such injury may be caused if a person falls from the hill top. According to his opinion the cause of death was by bleeding from the wounds caused by injury and can be ascertained after forensic report of viscera.

- IX. P.W.9, S.I of Police on receiving a written complaint dated 15.11.2012 from O/C Sonada O.P, Deo Kumar Chettri, started Jorebunglow P.S Case No. 74/12 u/s 302/201/34 IPC. Thereafter he drew a formal F.I.R by his own handwriting.
- X. P.W.10 constable of police submitted exhibits of the case to Office of Director, Chief Chemical Examiner RFSL, Jalpaiguri on direction of A.S.I Mingma Lepcha. He disclosed that he had no knowledge regarding seized 'alamat' in the instant case.
- XI. P.W.11 is S.I. of police posted at Sonada Out Post on 15.11.2012. He received information regarding the incident of murder from P.W.3 over telephone on 14.11.2012. During investigation, he visited the place of occurrence, prepared rough sketch map with index which is marked Exhibit-19 and signature marked Exhibit-19/1. Thereafter, he recorded the statement of the available witnesses under section 161 Cr.P.C., arrested the accused persons after taking the confessional statement from them and produced them before Court. However, the accused persons were not produced before the Ld. Magistrate for recording confessional statement. He seized and labelled the said weapon of offence under a seizurelist which is marked Ext.-8 and signature is marked Ext.-8/3 though he could not ascertain whether such type of weapon (firewood) was available in the house of the accused persons or not. An inquest was conducted over the dead body in presence of the available witnesses which is marked Exhibit-2 and signature marked Exhibit-2/4. Thereafter, he sent the dead body with the challan for post mortem examination. He also produced the witness before the Ld. Magistrate for recording the statement u/s 164 Cr. P.C., collected the statement along with seizing the wearing apparels of the deceased under a seizurelist prepared by him, collected the post mortem report from the District Hospital, Darjeeling, sent the post mortem blood and the offending weapon for R.F.S.L. report. However, there neither was any

label on the offending weapon, like firewood nor was any fingerprints taken of the accused persons for comparing it with the weapon of offence. The charge-sheet was submitted by him against the accused person vide C.S. no. 3/13 dated 21.1.2013 under sections 302/201/34 I.P.C.

XII. P.W.12 A.S.I of Police disclosed that A.S.I Mingma Lepcha seized wearing apparels, viscera, post mortem blood being produced by S.I Madan Rishi by preparing seizure list. During cross-examination, he has stated that he put his signature as per direction of his Superior Officer and that the seized items were not produced before the court.

9. In the instant case, this Court does not find the extra-judicial confessional statement of the appellants admissible in law. The purported extra-judicial confession cannot be voluntary and free by any stretch of imagination in view of the fact that the same was made by the appellants in front of the police and in the presence of a gathering of villagers. As reiterated by the Supreme Court in **Sahadevan v. State of Tamil Nadu reported in AIR 2012 SC 2435**, such confession suffers from inherent improbabilities and does not inspire confidence. It is a settled principle of law that extra-judicial confession is a weak piece of evidence and when it is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses importance. As rule of caution, it must be supported by a chain of cogent circumstances and further corroborated with independent and reliable evidence. In the case of **Nikhil Chandra Mondal versus State of West Bengal reported in 2023**, the Supreme Court held that where the prosecution seeks conviction of the accused on extra-judicial confession, the evidence of the witnesses before whom the alleged confessional statement was made, requires a greater scrutiny to pass the test of credibility. The depositions of P.W.3 and P.W.11 that the appellants were compelled to confess murdering the deceased during interrogation conducted by the police in the presence of the co-villagers and depositions of P.W.5 and P.W.6 who

neither had personal knowledge regarding the incident nor knowledge as to the contents seized during inquest conducted over the dead body of the deceased has been wrongly overlooked by the learned Judge.

10. **The Supreme Court in Sailendra Rajdev Pasvan and Ors. versus State of Gujrat Etc reported in AIR 2020 SC 180** is of the opinion that in a case where evidence is of circumstantial nature, law postulates two-fold requirements. Firstly, that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and secondly, all the circumstances must be consistent pointing out only towards the guilt of the accused. The present case being devoid of any ocular witnesses is totally based on circumstantial evidence which fails to establish motive and intention of the appellants with regard to the murder of the deceased. Motive plays an important part in order to tilt the scale in a case where the charge is sought to be proved only on circumstantial evidence. The fact that the deceased suffered death from bleeding from injuries and lacerations caused either by falling from a hill top or by assault by means of split wood affirmed by P.W.8 in his examination-in-chief and reserving opinion as to cause of death till the receipt of forensic report of viscera in his post mortem report, further corroborated by confession made by the appellants to P.W.1 that the deceased succumbed to wounds sustained from falling off the peak of a hill at about five feet creates reasonable doubt that whether the murder has been committed by the appellants. Suspicion, however high, cannot take the place of proof. The incautious way in which the alleged weapon of murder i.e. split wood is handled; no proper labelling and specifications of the Exhibit, no collection of finger-prints of the appellants for comparison and lack of awareness as to incidents of crime as well as contents of seizure list on part of majority of P.Ws are facts which are consistent with the innocence of the appellants.

11. Having regard to the aforesaid reasons so assigned, this Court is of the opinion that in the instant case, the evidence led by the prosecution to prove the appellants guilty is not sufficient and the appellants are entitled to the benefit of doubt. The appellants ought to be acquitted.

12. Hence, on analyzing the evidence on record, the criminal appeal being CRA 18 of 2019 is allowed. The impugned judgment and order of conviction and sentence passed by the learned Judge is, thus, quashed and set aside. Pending connected application is consequently disposed of.

13. The appellants are acquitted of the charges levelled against them and shall be set at liberty forthwith if they are not wanted in any other case.

14. Copy of the judgement along with Lower Court Records shall be sent back to the Trial Court at once for necessary compliance.

15. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, expeditiously after complying with all requisite legal formalities.

[Rajarshi Bharadwaj, J.]

[Shampa Dutt (Paul), J]

Kolkata

16.05.2023

PA (BS)