GAHC010027202020

2024:GAU-AS:11843

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

Case No. : CRL.A(J)/12/2020

SUNIL MANKI MURA
S/O. LT. MITHUN MURA, NO.3 DIBRUJAN, P.S. PENGAREE, DIST. TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MS. B SARMA, AMICUS CURIAE,

Advocate for the Respondent : PP, ASSAM,

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Advocate for the appellant : Ms. B. Sarma, Amicus Curiae.

Advocate for the respondents: Ms. B. Bhuyan, Sr. Advocate & Addl. PP, Assam.
Ms. R. Das, Advocate.

Date of hearing : 26.11.2024.

Date of judgment : 29.11.2024

JUDGMENT & ORDER

(S.K. Medhi, J)

The instant appeal has been preferred from jail under Section 383 Code of Criminal Procedure, 1973 against the judgment and order dated 10.07.2019 passed by the learned Addl. Sessions Judge (FTC) No.1, Margherita, Tinsukia in Sessions Case No. 88(M)/16. By the aforesaid judgment and order, the appellant has been convicted and sentenced to undergo rigorous imprisonment (RI) for life and also to pay a fine of Rs.10,000/- under Section 302 IPC. The matter involves the alleged rape and killing of the daughter of the informant.

2. The criminal law was set into motion by lodging of an *Ejahar* on 26.08.2015 by the PW2- father of the victim. It was stated that on 8:00 pm on 25.08.2015, the daughter was found missing from the house and a search was made. In the morning, the appellant was suspected and questioned and he had confessed that in the previous night, he had lifted her from her house, took her to the cultivation field, forcibly committed rape on her in the bamboo grove and thereafter killed her on the bank of the river. It was also stated that the dead body of the girl was recovered and the police was informed.

3. Based on the aforesaid *Ejahar*, the formal FIR was registered and the investigation was done leading to filing of Charge-sheet under the provisions of law. The charges were accordingly framed and on its denial, the trial had begun. In the trial, the prosecution had adduced evidence through 11 (eleven) nos. of prosecution witnesses.

4. PW1 is the Doctor, who had conducted the post-mortem. According to him, the death was by drowning which was ante-mortem. The doctor, however, did

not note any injury marks on the body of the deceased.

5. PW2 is the informant-father of the deceased who had deposed that on the date of the incident while coming from duty the appellant had taken him to his house and offered liquor which he had consumed heavily and thereafter he had come to his house slept on a cot. At that time the victim and his five year old son were also in the house and his wife had gone out to bring water from a little distance and on her returned the victim was found to be missing and accordingly a search was made in which other villagers had also joined. During the search they found the appellant with his hands stained with mud and on suspicion had interrogated him. He deposes that though initially the appellant had denied his involvement, subsequently he made a confession before him and such confession was made before the police had arrived. He had also deposed that the tobacco container of the appellant was found on the cot where the daughter was sleeping and the said container could be identified by him.

6. PW3 is a hearsay witness whose deposition is not relevant.

7. PW4 is a co-villager and he had deposed that he was in the search party and on the next day, the body of the victim was found near the Dibru river. He had also made a statement that the appellant had confessed in his presence regarding his involvement. He had also deposed that even after arrival of the police, the appellant had confessed his guilt. In the cross-examination, however, he has revealed that the appellant was gheraod by around 30 people of the village and the appellant was assaulted and rebuked by the villagers.

8. PW5 is a co-villager, who had deposed that he was also in the search party for the daughter of the informant who could not be traced out. He had also deposed of finding one tobacco container of the appellant from the bed of the

victim which he could identify. In his cross examination, however, he had stated that the accused was assaulted by the people who had assembled there and he was apprehended till the arrival of the police.

9. PW6 is the mother of the victim. She has stated that on the fateful evening when her daughter was sleeping with her younger brother, her husband had come home at a drunken condition and she had gone to fetch water. After returning, she did not find the daughter and raised an alarm whereafter the villagers had come and made a search. The dead body of the daughter was found on the next morning on the bank of the Dibru River. She had also deposed of noticing some injuries on her private parts. She has also deposed that the accused had confessed regarding his involvement in the offence whereafter the police was informed and the accused was handed over. In her cross examination, she deposes that the tobacco container was green in colour and there are many other villagers who consumed tobacco and had containers of similar green colour. She has also deposed that before the arrival of the police, the appellant was assaulted by the villagers as a result of which he had disclosed his involvement in the offence.

10. PW7 is a co-villager, who was also in the search party. He had also deposed that on the next day at about 10-10:30 am, some fishermen informed the villagers that a dead body of a minor girl was recovered from the Dibru River whereafter he had gone to see the body. He had deposed during the search, the accused was found with his hands stained with mud and that he had confessed his guilt. He is also one of the seizure witness. In his cross examination, he had however clarified that he did not know the contents of the seizure list which was not read over to him. He had also stated that whole night the accused was detained by the villagers and he was assaulted by the villagers as a result of

which he had disclosed the commission of the offence.

11. PW8 is a co-villager, who however stated in his chief examination that he did not know anything about the incident. He was accordingly declared hostile and cross-examined by the prosecution.

12. PW9 is a witness to the Inquest Report. He however deposed that he did not notice any injury on the dead body of the deceased.

13. PW10 is another witness to the Inquest Report. He, however, had deposed that he was also in the search party when the daughter of the informant was found to be missing. He had also deposed that after apprehension of the accused, he was assaulted by the people and thereafter the police had come.

14. PW11 is the Investigating Officer, who had conducted the investigation. He had deposed that on 26.08.2015 at about 10:35 am a GD entry was recorded on information received from one Peter Soren (PW2). On 1:30 pm the body was found and the appellant was found in an injured stage who was assaulted by the public and was accordingly taken to the Pengeree Hospital. He had also stated about doing the inquest at the place of occurrence and at about 4.30 pm the *Ejahar* was lodged.

15. The circumstances against the appellant which came to light after the deposition of the prosecution witness were put to him under Section 313 of the Cr.PC. wherein he had denied the allegations. He had stated that he did not make any confession before the public. He had also stated that he too had joined the search for the missing daughter of the informant. After consideration of the deposition, the explanation given by the appellant under Section 313 of the Cr.PC and the other materials on record which were proved, the impugned judgment has been passed which is the subject matter of appeal.

16. We have heard Ms. B. Sarma, learned Amicus Curiae for the appellant. We have also heard Ms. B. Bhuyan, learned Senior Advocate and Addl. PP assisted by Ms. R. Das, learned counsel.

17. The present is a case where there is no direct evidence and is based on circumstances. A case which is based on circumstantial evidence is required to be proved by an unbroken chain of events which leads and pinpoints to only one conclusion of involvement of the accused and none else.

18. Ms. Sarma, the learned Amicus Curiae has submitted that there is no eye witness to the occurrence and it appears that the conviction has been made on extra-judicial confession made before PWs 2, 4, 5, 6 and 7. She submits that though extra-judicial confession can be one of the links in a case of circumstantial evidence, the same is a weak piece of evidence which is necessarily required to be corroborated with other evidence. She submits that there is no other evidence other than the extra-judicial confession alleged to have been made before the aforesaid witnesses by the appellant. She has also submitted that though the charges were framed both under Section 302 of the IPC and Section 4 of the POCSO Act, in view of lack of evidence so far as the allegation under POCSO Act is concerned, the accused/appellant was acquitted from the said charge. However, the conviction is under Section 302 of the IPC. It is submitted that when the learned Court could have come to a conclusion that there were insufficient evidence to implicate the appellant so far as the charge under POCSO is concerned, the same could not have been held to be sufficient to hold him guilty under Section 302 of the IPC. It is submitted that so far as recovery of the tobacco container is concerned, there are inconsistencies and that by itself cannot be held to be sufficient to implicate the appellant. She accordingly submits that the impugned judgment is liable to be interfered with

and the appellant be acquitted from the same.

19. *Per contra*, Ms. B. Bhuyan, learned APP, Assam has submitted that the evidence on record are sufficient to hold the appellant guilty of the offence. She submits that it is one of the most unfortunate circumstance when a young girl had lost her life and the allegations were of very serious nature. She submits that though the allegation of rape has been held to be not proved in view of the medical evidence, the other aspect of causing death cannot be overlooked. She has submitted that there are as many as 5 (five) nos. of prosecution witnesses who had deposed of the appellant making confession of his involvement and those evidence are consistent and corroborates each other. She submits that apart from the informant father who had deposed as PW 2 and the mother who had deposed as PW 6, there are other independent witnesses, namely, PW 4, PW 5 and PW 7 before whom the appellant had confessed and these witnesses had deposed in clear terms regarding such confession.

20. She has also highlighted the aspect of recovery of the tobacco container belonging to the appellant from the bed of the deceased. She submits that by the said link an unbroken chain has been established and therefore the conviction is required to be sustained.

21. The rival submissions have been duly considered and the materials placed before this Court including the LCRs have been carefully perused.

22. As mentioned above, the present conviction is on the basis of circumstantial evidence where the basic requirement is to ensure that the chain of events is continuous, unbroken and leads to only one conclusion of involvement of the appellant and none others.

23. Before examining the facts and circumstances, it would be convenient if

the 5 principles relating to circumstantial evidence laid down in the landmark case of ***Sharad Biridhichand Sarda vs State of Maharashtra*** reported in ***(1984) 4 SCC 116***, are referred which reads as follows:

> *"7. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :*
>
> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*
>
> *It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 where the following observations were made :*
>
> *"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*
>
> *(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
>
> *(3) the circumstances should be of a conclusive nature and tendency.*
>
> *(4) they should exclude every possible hypothesis except the one to be proved, and*
>
> *(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*
>
> *8. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."*

24. In the instant case the learned Court below has acquitted the appellant from the charge under POCSO and therefore the allegation of committing rape has not been established and in view of the fact that there is no cross appeal, this Court will not go into the correctness of that aspect. The challenge is only

with regard to the conviction under Section 302 of the IPC. In the instant case, we have noted that PW2, PW4, PW5, PW6 and PW7 had deposed that the appellant has made confession of his involvement. It has been emphasized on behalf of the State that apart from PW2- the father and PW 6- the mother, there are 3 (three) other independent witnesses who had deposed of confession made by the appellant. Extra-judicial confession is a weak piece of evidence which requires corroboration. In the instant case, apart from the aspect of recovery of a tobacco container allegedly belonging to the appellant, there is no other corroboration. Finding the appellant with mud stain on the previous night may not be a sufficient evidence which solely can implicate him. So far as the tobacco container is concerned, the colour of the same itself was found to be inconsistent as the PW6, the mother had deposed that the colour was green which is not corroborated by the other witnesses. In fact PW7 in his cross-examination had stated that the material Ext.-1 which was seized by the police was not the same colour which was shown to him. Further, PW8 who was declared hostile in his cross-examination by the defence has deposed that the mother of the deceased (PW6) had told him that the tobacco container was pink in colour. It is also on record that such tobacco container is very common in the village and most of the villagers use the same. It is also on record that the PW2 father had deposed that he used to take tobacco from the same container which was used by the appellant.

25. Now, as regards the confession said to have been made before the aforesaid witnesses, it would be required to examine the admissibility of the same. The witnesses nos. 4, 5, 6, 7 & 10 has clearly stated that before such confession was made, the appellant was assaulted by the villagers and because of such assault, he had confessed.

26. For ready reference, the relevant part of the deposition is extracted herein below:

> "*PW4 (Cross-Examination): "On the next day of occurrence, the accused was found in his house. The accused was gheraod by around 30 people of the village. 3/4 persons also assaulted the accused and he was rebuked by the villagers. Till arrival of the police, the accused was gheraod by around 30 people of our village."*
>
> *PW5 (cross-examination): "More than 150 villagers apprehended the accused on the date of incident. One Monu Gurung and Sita Gurung were also among the villagers. Accused was assaulted by the people assembled there. We apprehended the accused until arrival of the police."*
>
> *PW6 (cross-examination): "Villagers detained the accused whole night till arrival of the police. He was also assaulted by the villagers, as a result of which, he disclosed that he committed the offence."*
>
> *PW7 (cross-examination): "Whole night the accused was detained by the villagers and he was also assaulted by the villagers. As a result of which, the accused has disclosed that he has committed the offence."*
>
> *PW10 (Chief Examination): "People had apprehended the accused there and he was also assaulted by them. By that time, police also arrived there and apprehended the accused."*

27. That apart PW11 the IO had also stated that the appellant had to be taken to the Pengeree Hospital as he was badly assaulted. For ready reference the relevant deposition is extracted below:

> "*Around 1.30 o'clock, on that day itself Peterson Soren came and informed us that they found the dead body of his daughter near No. 3 Dibrujan river and*

that the people had kept the accused apprehended there. The we immediately went to the place where the dead body was recovered. We recovered Sunil Manky Mura from the people while he was being assaulted by them and brought him to the PS. As he was assaulted badly, we took him to Penegeree Hospital."

28. Section 24 of the Indian Evidence Act reads as follows:

"***24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.-***

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

Under the aforesaid Section, though a confession made can be taken as a piece of evidence, such evidence would be relevant only when the confession is made voluntarily without any coercion, duress or inducement. In the instant case, confession has been made after assault caused to the appellant. Under such circumstances, it would be difficult to accept such confession as relevant piece of evidence as it would be hit by Section 24 of the Indian Evidence Act.

29. If the aspect of such confession is held to be inadmissible in evidence, there will be no other substantial material to implicate the appellant. As observed above, finding the appellant's hands stained with mud will not be the sole ground of his conviction. We have also noted that no injury marks were found in the medical evidence on the body of the deceased.

30. The only aspect which would remain is with regard to the suspicion upon the appellant towards his complicity with the offence in question. The question therefore arises is as to whether a conviction can be made only on the basis of suspicion. The answer obviously has to be negative as an accused is deemed innocent unless proved to be guilty beyond all reasonable doubt. The doubt as such has to be reasonable and not fanciful or imaginary. At this stage, it would be beneficial to refer to the case of **Sujit Biswas Vs State of Assam** reported in **2013 12 SCC 406** wherein the following has been laid down:

> "*13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that `may be' proved, and something that `will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between `may be' and `must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between `may be' true and `must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between `may be' true and `must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.*"

31. It is also settled principle in criminal jurisprudence that when two views

are possible the one pointing to the innocence of the accused should be adopted. In this context, one may gainfully refer to the case of the Hon'ble Supreme Court of ***Kali Ram v. State of Himachal Pradesh*** reported in ***AIR 1973 SC 2773***, wherein it was observed as under:

> *"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 where in the guilt of the accused is sought to be established by circumstantial evidence."*

32. The aforesaid discussions and the materials on record would, in our considered opinion not be sufficient to come to the conclusion of the involvement of the appellant and none else in the offence in question. That being the position, the benefit of doubt has to go to the appellant as the materials before the Court would not conclusively lead to holding the appellant guilty of the offence.

33. Accordingly, the appeal stands allowed and the appellant is acquitted.

34. The appellant is accordingly directed to be released forthwith unless he is wanted in any other case.

35. Send back the LCRs.

36. Before parting we would like to record out appreciation for the assistance rendered by the learned Amicus Curiae and she would be entitled to the prescribed fee.

JUDGE **JUDGE**

Comparing Assistant