

F.K
↓

THE HIGH COURT OF SIKKIM : GANGTOK

CRIMINAL APPEAL NO. 3 OF 2005

(Arising out of impugned judgment dated 28.02.2005 passed by Shri B.C. Sharma, Sessions Judge, South & West at Namchi, South Sikkim in Sessions Trial Case No. 5 of 2004)

Prasant Sarkar
Son of Shayamapada Sarkar,
Safai Karmachari,
State Bank of India, Namthang Branch,
South Sikkim
..... Appellant

Versus

State of Sikkim
..... Respondent

For the appellant : Mr. B. Sharma, learned Senior Counsel assisted by Mr. B. Pokhrel, learned counsel, Legal Aid Counsel.

For the Respondent: Mr. J. B. Pradhan, learned Public Prosecutor assisted by Mr. Karma Thinlay, learned Additional Public Prosecutor.

**PRESENT: THE HON'BLE MR. JUSTICE N. S. SINGH, CHIEF JUSTICE (ACTING).
THE HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.**

DATE OF JUDGMENT : 30TH MARCH, 2006.

J U D G M E N T

A. P. Subba, J.

This appeal is directed against the judgment and order both dated 28.02.2005 passed by Ld. Court of Sessions Judge (South & West) at Namchi in S.T. Case No.5 of 2004 convicting

✓

the accused/appellant along with the co-accused under Section 302/34 I.P.C. and sentencing him to imprisonment for life and to pay a fine of Rs. 10,000/- in default to undergo imprisonment for six months.

2. The prosecution case as disclosed during the trial is as follows: -

The present appellant Prasant Sarkar was working as Sweeper-cum-General Attendant in Namthang Branch of the State Bank of India in South Sikkim in the year 2003. The staff of the said branch of the Bank at the relevant time consisted of four persons including the appellant. While the appellant was employed as Sweeper-cum-General Attendant, the deceased Shri Dhan Bdr. Diyali was the Branch Manager, Shri Sanjay Kr. Singh was the Assistant C.A.T. (Cash Accounts and Typist) and Shri Surjay Bdr. Darjee, co-accused was the canteen boy. It was usual for all the staff members to continue their work till 7.00 p.m. i.e. even after normal working hours of the Bank. On the fateful day i.e. on 10.02.2003 also all of them worked over time after the closing of the Bank at 2 O-Clock. On that day, Sanjay Kumar Singh, Assistant (C.A.T.) left the Bank at around 1800 hrs after completing his work. After he left, Prasant Sarkar the appellant sent away the co-accused Surjay Bdr. Darjee to the nearby shop to buy 1 kg of flour for him by giving him Rs. 10/- thereby ensuring that he and the deceased were left alone in the Bank premises. Thus when the co-accused left, the appellant quietly closed the door from inside

and seizing the opportunity picked up the iron rod which was already cut to size and kept concealed underneath the Almira and struck the deceased on the head at a time when he was deeply engrossed in his work. The repeated blows knocked down the deceased flat on his back and he lay there consciousness. However, before the deceased succumbed to the injuries the co-accused returned back from the shop. On his return the appellant allowed him to enter and as he bolted the door from inside he asked the appellant to help him to finish off the deceased lying unconscious and half dead on the floor then, offering him a share of two lakhs with the simultaneous threat that he will meet the same fate as the Bank Manager if he did not oblige. The said co-accused then joined hands with the main accused under such inducement and threat. Then both of them strangled the deceased to death by tying split bamboo strings (choya) around his neck and tightening it. When the deceased was dead they dragged the deadbody to another adjoining room and left the same there. After accomplishing the job the appellant took out keys of the main vault from the pocket of the deceased and opening the vault with the said keys removed all the cash amounting to Rs. 7.00 lakh approximately and concealed in different places.

3. On completion of the investigation a common chargesheet was filed against both the accuseds and both of them were put on trial for charges under Section 302/392/34 IPC. Both accuseds pleaded not guilty to the charges. The

matter was then posted for recording prosecution evidence. However before prosecution evidence commenced the co-accused expressed a desire to become an approver and on the application made by the prosecution the Ld. Sessions Judge tendered him pardon on condition that he will make full and true disclosure of all that he knew about the crime in question. The tender of pardon was accepted by the appellant and his statement was recorded. However after his statement was recorded the Ld. Public Prosecutor applied for withdrawal of the pardon granted to the appellant on the ground that he failed to disclose any material facts and circumstances implicating the other accused person involved in the case. The Ld. Court vide order dated 30.09.2003 withdrew the pardon granted to the appellant and directed a separate trial to be held in respect of him by splitting up the S.T. Case No. 6 of 2003.

4. Pursuant to this order the trial was split up and two separate S.T. cases were commenced - S.T. case No. 12 of 2004 being against the co-accused and S.T. case No. 5 of 2004 being in respect of the present appellant. On completion of the trial the Ld. Sessions Judge (South & West) at Namchi found the appellant guilty of the offence of murder under Section 302 I.P.C. and accordingly convicted him and sentenced him to life imprisonment and to pay fine of Rs. 10,000/- as already narrated above.

5. Being aggrieved by the aforesaid order of conviction and sentence passed by the Ld. Sessions Judge (South & West) at

Namchi the accused/appellant has come up in the present appeal.

Mr. B. Sharma, Ld. Senior Legal Aid Counsel assisted by Mr. B. Pokhrel, Ld. Counsel for the accused/appellant and Mr. J.B. Pradhan, Ld. Public Prosecutor assisted by Mr. Karma Thinley, Ld. Additional Public Prosecutor for the State respondent were heard.

6. Shri B. Sharma assailed the impugned judgment on more than one count. In the first place, the Ld. counsel submitted that the recording of the disclosure statement having preceded the formal arrest of the appellant the disclosure statement was not admissible and as such the Ld. Court below was in error in admitting the same. In the next place Shri Sharma pointed out that the medical evidence did not support the prosecution case in as much as even though the prosecution case is that the deceased was strangulated to death by the accused persons there was no opinion in this regard by medical officer who had conducted the post mortem examination. Finally Shri Sharma's contention, in the third place, was that the circumstantial evidence that has come on record was not such as to lead to the only conclusion of the guilt of the appellant and as such the Court below was in serious error in holding that the circumstantial evidence was sufficient to prove the case against appellant and in convicting him thereby. Shri J.B. Pradhan, the Ld. Public Prosecutor on the other hand submitted that the disclosure statement relied on by the Ld. trial court

4

does not suffer from any infirmity and that the absence of medical opinion on the question of death by strangulation is not of any consequence. He then submitted that the circumstantial evidence relied on by the Court below was of conclusive nature and as such no serious error was committed by Ld. Court in relying on the same for convicting the appellant.

7. In support of the first objection relating to the admissibility of the disclosure statement the Ld. defence counsel pointed out that the disclosure statement which has been marked Ext. 68 was recorded at 13.35 hrs. on 12.02.2003 whereas the accused/appellant was formally arrested only at 19.30 hrs on that day. This timing given by the Ld. counsel is borne out by the entry made by the Investigation Officer in the arrest memo and is admitted by the prosecution. The disclosure statement of the accused/appellant was thus admittedly recorded prior to his arrest by the police. The only contention advanced by the Ld. Public Prosecutor in this regard is that the phrase "in the custody of the police officer" occurring in Section 27 of the Evidence Act does not imply formal arrest in the sense of a physical restraint. Hence it was his submission that the disclosure statement even though recorded before formal arrest of the accused was admissible under Section 27 of the Evidence Act. In view of this submission the question that this Court is to decide is whether the disclosure statement (Ext. 68)

thus recorded by the police before the accused was formally arrested is admissible in evidence under Section 27 of the Evidence Act.

8. As stated above, the contention of the Ld. defence counsel is that a disclosure statement in order to be admissible in evidence must be the one recorded only after the accused is arrested. Thus any statement recorded by the police before such formal arrest does not, according to the Ld. defence counsel, fall within the ambit of Section 27 of the Evidence Act and as such the same would be in-admissible. This submission of the Ld. defence counsel though apparently correct does not reflect the correct position of law on a deeper examination. A decision which throws light on the point is the one reported in AIR 1937 Lah 620. The decision lays down that,

"In order that a statement under S. 27, Evidence Act, be admissible the maker of the statement should be in the custody of the police but that custody need not be a formal arrest. In the case of mere suspects however who have not been formally charged with any offence or arrested under any section of Criminal Procedure Code, their presence with the police under some restraint amounts to 'custody' which is contemplated by S. 27 of the Act. If a statement made by a person in such circumstances leads to the discovery of any matter it is admissible in evidence under S. 27"

The Full Bench decision of Lahore High Court reported in AIR 1940 Lah 129 further makes it clear that the 'custody' which Section 27 of the Evidence Act speaks is not equivalent to arrest and does not necessarily mean detention or confinement.

Handwritten signature

In addition to the above, the following decisions referred to by the Ld. Public Prosecutor throw more light on the point.

In State of Uttar Pradesh -Vs- Deoman Upadhyaya AIR 1960 S.C. 1125 the Hon'ble Supreme Court in paragraphs 7 and 18 of the judgment observed as follows: -

"The expression, 'accused person' in S. 24 and the expression 'a person accused of any offence' in S. 25 have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding. The expression, 'accused of any offence' in S. 27, as in S. 25, is also descriptive of the person concerned against whom evidence relating to information alleged to be given by him is made provable by S. 27 of the Evidence Act. It does not predicate a formal accusation against him at the time of making the statement sought to be proved, as a condition of its applicability".

In Agnoo Nagesia -Vs- State of Bihar, AIR 1966 SC 119 in which similar question came up for consideration the Apex Court held that the expression 'accused of any offence' covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the statement.

In Kanhiya -Vs- State of Rajasthan 1976 Cr.L.J. 1652 where accused was not formally arrested at the time he made the disclosure statement which led to recovery a Division Bench of Rajasthan High Court following the above two decisions repelled the contention of the defence that the accused was not in constructive custody of the police and held that the statement made by an accused before his formal arrest can be read in evidence against the accused by applying

the provision of Section 27 of the Evidence Act if such statement leads to any recovery.

✓ **9.** As it may be seen from the above decisions, it has consistently been held that the word 'custody' in Section 27 does not mean formal custody and as such the phrase 'police custody' occurring in Section 27 of the Evidence Act does not necessarily mean custody after formal arrest. Therefore, it follows that the term 'custody' occurring in Section 27 of the Evidence Act requires to be widely interpreted without restricting it only to the custody after formal physical arrest. Thus if the word 'custody' is not to be interpreted narrowly as to cover only statements recorded after formal arrest, it follows that the examination of the accused/appellant by the police in course of the investigation in which the accused/appellant made disclosure statement squarely falls within the ambit of Section 27 of the Evidence Act and we accordingly hold that the disclosure statement would be admissible in the present case. We would, however, hasten to add that the parts of the statement which do not relate to any discovery shall have to be excluded in terms of the provision contained in Section 27.

Before we pass on to the next question we would like to made it clear that we have also perused the decisions referred to by Ld. defence counsel in support of his submission noted above particularly the decision reported in AIR 2003 SC 2987 and AIR 2005 SC 3010. On such perusal we have, however, come to find that both the decisions deal with different point

✓

and do not support the case of the defence on the question of admissibility of the disclosure statement. While the decision of the Apex Court reported in AIR 2003 SC 2987 deals with the question of reliance to be placed on the evidence as to recovery of allegedly incriminating articles on the basis of disclosure statements, the other decision reported in AIR 2005 SC 3010 deals with reliance to be placed on evidence relating to incriminating articles which were never recovered. Both these decisions, therefore, do not seem to us to be applicable to the facts of the present case where the question at hand is whether a disclosure statement made by the accused preceeding his arrest would be admissible under Section 27 of the Evidence Act.

Accordingly we answer the first point raised by the Ld. counsel regarding admissibility of disclosure statement in the negative.

10. As regards the second point relating to absence of medical opinion with regard to death by strangulation it is conceded by the Ld. Public Prosecutor that no opinion has been given by medical officer in this regard. The question, however, is whether absence of such opinion makes the prosecution case unreliable on the point. It is not disputed that even though part of the prosecution evidence indicates strangulation of the deceased by the accused, the rest of the evidence shows that there were fatal injuries inflicted on the deceased before he was strangled. The evidence of Dr. K. B. Gurung (PW-7)

Medico Legal Consultant who had conducted the medico legal autopsy found the following antemortem injuries: -

Lacerated injury 2 x 1 cm. on the back portion of the body.

Head & Neck.

- (1) Lacerated injury of the skull seen over the top and back portion of the skull.
- (2) Fracture of the top and back portion of the skull.
- (3) Brain matter were coming out from the fracture side.
- (4)

The cause of death as given by the Medico Legal Expert was the "antemortem head injuries produced by blunt weapon (all the injuries were fresh)".

11. The above evidence and the opinion of the Medico Legal Expert make it clear that the deceased had received serious injuries in his person before his death and the cause of death of the deceased were the same antemortem injuries. The above opinion of the Medico Legal Expert has not been challenged during the trial. The cross examination of this witness done by Ld. defence counsel does not show that any question was put to him regarding his opinion or for that matter regarding absence of his opinion on the question of death by strangulation. The question regarding death by

M

strangulation and absence of any opinion by the Medico Legal Expert seem to have been raised for the first time in this court. Therefore we are hardly convinced with the contention raised by the Ld. defence counsel that the absence of any opinion on the question of death by strangulation of the deceased would be fatal to the prosecution case.

12. This brings us to the next ground relating to the sufficiency or in- sufficiency of the circumstantial evidence on the record. We have already held above that the disclosure statement made by the accused appellant does not suffer from any infirmity on account of its being recorded before the formal arrest. We have also held that the absence of medical opinion with regard to death by strangulation in the facts and circumstance of the case will also be of no consequence. In the circumstances whether any serious fault can be found with the Ld. trial court for holding the circumstantial evidence sufficient and basing its conviction thereof is the next question that needs to be thrashed out.

13. The Ld. trial court has dealt with the issue in paragraph 23 of the impugned judgment as follows: -

"23. I have carefully examined the submission made by the learned counsel for the parties and made the thorough scrutiny of the documents including the evidences of the witnesses. It is true that it is a case based on circumstantial evidence. In this case I could gather the following broad circumstances on record : - (1) the accused was an employee of the said bank; (2) being an employee he had the detail knowledge about the number of staffs and their working hours, mode and manner and functioning of the bank, the facts about the mode and manner and keeping the cash amount at

the bank, the way of opening the Strong Room, safe, locker etc. It is seen that the accused was the sweeper-cum-frash in the said Bank; (3) the disclosure statement made by the accused in presence of independent witnesses viz. Bal Govind Rasaily (PW- 10) and Birendra Pradhan (PW-12)."

14. With the above observation the Ld. court proceeded to narrate the contents of the disclosure statement Ext. 68 and has duly furnished cogent reasons for accepting the same. The relevant portion of the judgment is as follows: -

"These two witnesses are independent witnesses. Before the said two witnesses the accused disclosed when he was in police custody as to how he assaulted the said branch Manager after he sent the other accused Surjya Bahadur Darjee to the nearby shop to get one Kg. Of Atta for him. He has also disclosed that he had prepared the weapon of offence i.e. the iron rod after cutting the same with a hacksaw blade and making it handy for assault. When he got the said branch Manager alone in the Office he hit him on his head at the back. Thereafter the other accused Surya Bahadur Darjee came to the spot. He also disclosed that he also threatened the said Surjya Bahadur Darjee not to disclose this fact in lieu of this he offered him a sum of Rs. 2,00,000/- But if the said Surya Bahadur Darjee would disclose this fact the accused threatened him that he would face the same consequence as that of Branch Manger. The accused then handed over the said iron rod to the said Surya Bahadur Darjee who also assaulted the said Branch Manger and when they felt that the Branch Manager had not died even after their assault they tied with the Choya(splited bamboo rope) on the throat of the branch Manager and pulled the said Choya from opposite directions. When they were sure that the said Branch Manager breathed his last they took out the key from his pocket, opened the vault and took out cash amount available there. The accused also disclosed that he concealed the same amount in a drawer and some inside the files. He also disclosed that another cash amount of Rs. 50,000/- was wrapped in a newspaper and placed it inside a polythene bag which the accused concealed at Hitti Gally inside the wall. He also disclosed that he threw the iron

rod inside the empty septic tank behind the bank building. All these articles were duly recovered in presence of witnesses as disclosed by the accused person and all these places were not easily accessible to public".

15. In addition to the above, the Ld. court has categorically observed that 'there is absolutely nothing on the record as to why these two witnesses would falsely implicate the accused persons by sparing the real culprits in the case'.

16. In order to satisfy ourselves about the correctness of the above conclusion we perused the evidence of the two attesting witnesses in considerable detail. We find it appropriate to reproduce the relevant portion of the statement made by Shri Birendra Pradhan (PW-12) one of the two attesting witnesses in his examination in chief. With regard to the disclosure statement he deposed as follows:

"During the course of his statement he stated that on 10-202003 the Branch Manager Dhan Bahadur Diyali (since deceased) Cashier Sanjay Kumar Singh and he himself and accused Surjya Darjee worked whole day from 10.00 a.m. till 6.00 p.m. in the evening. After his work was over Cashier Sanjay Kumar Singh left for his residence. After cashier Sanjay Kumar Singh left for his residence the accused Prasant Sarkar sent accused Surjya Bahadur Darjee to bring Atta fro him for Rs. 10/-. He further said after the accused Surjya Bahadur went out to purchase Atta he closed the door and took out a rod hidden by him from below the drawer measuring about 17 inches and hit the Branch Manager with it on his head while the Branch Manager was working and sitting by the fire. He further said that he had kept that rod about 4/5 days before the incident. He struck the branch manager with the rod from behind two/three times and as a result he fell on the ground. In the meantime the

accused Surjya Bahadur came there and knocked on the door. He switched off the light, opened the door and allowed the said Surjya Darjee to come inside. He again closed the door. He threatened the said accused Surjya Darjee that if he does not help him to murder the Branch Manager he would also face the same consequences. If he (Surjya Bahadur Darjee) would help him then he would give him a sum of Rs. 2.00 lakhs. Saying so he (Prasant Sarkar) handed over the iron rod and asked him to deliver some blows on the Branch Manager. The accused Surjya Bahadur Darjee also hit him two or three times on the said Branch Manager. In spite of the several blows delivered by them with the iron rod the Branch Manager was still breathing. Saying this he asked the said Surjya Bahadur Darjee to bring rope from inside. The accused Surjya Bahadur Darjee brought 'Choya' (splitted bamboo rope) used for tying charcol bag and with the help of it both of them tied on the throat of the said Branch Manager and pulled by them from opposite directions. When they were confident that the said Branch Manager was already dead they removed the dead body of the Branch Manager holding him by the leg by Surjya Bahadur Darjee inside another room. It was done so as the Branch Manager's dead body did not allow the door of the room to be closed. Thereafter they took out the keys of the Bank (strong room) from the pocket of the Branch Manager, and opened the vault and took out cash amounting to Rs. 6.00/7.00 lakhs approximately and hidden the said money in different places, and they were: - in a secret place below the drawer of cashier's table, in the files of the stationery room, in between the gap of the wall on the way to hiti dhara, the weapon of offence i.e. iron rod which he said to have thrown inside the empty septic tank behind the bank building and that he would show the same and get it recovered if he was allowed to do so".

17. This witness is also attesting witness to the recoveries made by the police following the disclosure made by the accused/appellant. The following are the relevant extracts from his deposition: -

"After the disclosure statement was recorded myself, Bal govind Rasaily, Namchi P.S.P.I. and both the accused persons went to various places and accused Prasant Sarkar first showed that he had kept Rs. 4,46,040/- in a secret place below the drawer of Cashier's table. On being pointed out by him a cash amount of Rs. 4,46,040/- was recovered from the table drawer of SBI Namthang Branch and the same was seized vide seizure memo exhibit 69 in my presence and in presence of Bal Govind Rasaily".

.....
 "Thereafter on the same day i.e. on 12-2-2003 the accused Prasant Sarkar showed 4 packets of Rs. 500/- currency notes amounting to Rs. 2,00,000/- from inside the files in the stationery room. Mo-XXVI is the said cash amount of Rs. 2,00,000/- recovered after being pointed out by the accused Prasant Sarkar".

.....
 "On the same day the accused showed the place on the way to Hiti dhara and one packet of Rs. 500/- denomination amounting to Rs. 50,000/- was recovered which was wrapped in paper and polythene of light blue colour".

.....
 "On the same day i.e. on 12-2-2003 the accused Prasant Sarkar showed the septic tank behind the SBI building Namthang where he stated to have thrown the weapon of offence. On being pointed out by him one rod ()weapon of offence) having length of 17.5 inches of 20 mm rod containing blood stains on it was recovered from inside the empty septic tank".

.....
 "On the same day on being pointed out by the accused two brass door locks were recovered from the drain in front of SBI Namthang Branch and the said locks were seized vide seizure memo exhibit 76 in my presence".

.....
 "On the same day the wearing apparels of accused Prasant Sarkar were seized by the Investigating Officer in my presence and in presence of Bal Govind Rasaily".

.....
 "On 12-2-2003 the Investigating Officer seized cash amount of Rs. 695/-, cash balance book of SBI Namthang Branch containing cash

balance of Rs. 7,00,735/- at page No. 275 of 10-2-2003 and one emergency light".

.....
"On 12-2-2003 the accused Prasant Sarkar also made a disclosure statement in my presence and in presence of witness Bal Govind Rasaily stating that two brass locks of the main shutter of SBI Namthang were thrown by him after the commission of murder in the drain in front of the Bank building".

18. Thus, this witness has not only proved the disclosure statement made by the accused but has also duly proved the seizure memo. The evidence of the other witness Shri Bal Govind Rasaily is to the same effect. He is a Panchayat Secretary, 15 Maneydara Gram Panchayat Unit. He also proved the disclosure statement made by the accused and the seizure of the various article including the weapon of offence. Since his evidence is more or less on similar lines as that of PW-12 we propose to avoid duplicacy by reproducing any part of his evidence. We find it sufficient to observe that the evidence given by these two witnesses is sufficient to prove the disclosure statement made by the witness and also the recovery of the weapon of offence and other items. Thus we find no error in the impugned judgment with regard to the evidentially value attached to the disclosure statement by the Ld. trial Court.

19. Now coming to the third and the last point relating to circumstantial evidence it may be recalled that the submission made by the Ld. defence counsel is that in cases where the case of prosecution rests solely on circumstantial evidence it



would not be enough if the circumstances raise only suspicion as because a suspicion, however, grave cannot take the place of proof. However before we deal with this issue we find it necessary to indicate the circumstances that stand established by the evidence on record. On the basis of our foregoing discussion we are of the view that the evidence on record establishes the following circumstances: -

- (i) that the appellant and the deceased were working in the same Branch of the State Bank of India namely Namthang Branch at Namthang South Sikkim at the relevant time;
- (ii) that in the said Branch the staff of the bank used to work over time and on the fateful day also i.e. on 10.02.2003 all the four staff worked over time till 7.00 p.m. and at the end of the day the appellant and the deceased were left alone at the Branch after Sanjay Kr. Singh Assistant C.A.T. left the bank around 1800 hrs and after the appellant sent away Surjay Bdr. Darjee the co-accused to nearby market for making some purchase after the departure of Sanjay Kr. Singh;
- (iii) That the deceased who was the Branch manager was found lying dead in the said bank premises in early hours of the next day;
and



- (iv) That the weapon of the offence and various other articles were recovered on the basis of disclosure statement made by the appellant.

20. The law regarding circumstantial evidence is well settled. In State (Delhi Administration) -Vs- Gulzarilal Tandon AIR 1979 SC 1382 relied on by the Ld. defence counsel it has been observed as follows:

"It is also well settled that the accused can be convicted on circumstantial evidence only if the circumstances are wholly inconsistent with the innocence of the accused".

A Division Bench of this court relying on the law laid down by the Apex Court in several decisions has held in Sonam Zangpo Bhutia -Vs- State of Sikkim 2005 Cr.L.J. 1937, in State of Sikkim -Vs- Milan Kr. Diyali and another 2005 Cr.L.J. 4097 and in Yogesh Karki (Chettri) -Vs- State of Sikkim 2006 Cr..L.J. 509 that in order to base a conviction on circumstantial evidence the first requirement of law is the establishment of primary or basic facts and the second requirement is that the established pieces of circumstances taken together must forge such a chain that no inference other than the guilt of accused can be drawn. In the present case we have already enumerated above the different circumstances which stand proved and established by the evidence on record. The only question that remains to be determined is whether the established circumstances taken cumulatively form a complete



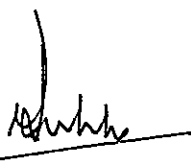
chain and whether they are of such tendency as to unerringly point towards the guilt of the accused.

21. It is relevant to note that the accused was seen by Jagat Bahadur Chettri (PW-9) locking the shutter of the Bank at about 7.00 p.m. on 10.02.2003 i.e. the night of occurrence. The witness found that the electric light of the front portion of the Bank was put off. Not only this he also had a talk with him before he left. Then in the early next morning when Mohan Kumar Rai (PW-3) who is the driver of the deceased went to the Bank accompanied by two others found the locks of the shutter missing and on opening the shutter after the arrival of the police the deceased was found lying dead inside with fatal injuries in his person. The locks of the shutter were recovered from the place shown by the accused. The evidence on record thus rules out the possibility of any one else intruding into the Bank premises and committing the ghastly offence. In these circumstances the fact that the accused and the deceased were working in the same Branch of the State Bank of India at the relevant time, that on the fateful evening the accused so manoeuvred circumstances that he was left alone with the deceased in the office premises so as to secure for himself the opportunity of executing his plan of committing robbery of huge amount, that the presence of the deceased in the Bank as a stumbling block on the way of the accused appellant in the execution of his plan, that the accused being seen in the premises in the late hours on the fateful day, the recovery of

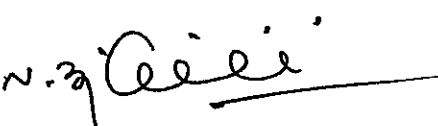
the weapon of offence used by the appellant in committing the crime and the huge cash amount and other articles from different places pointed out by the accused, unerringly point towards the guilt of the accused. All these circumstances, in our view, cannot be explained on any hypothesis other than the guilt of the accused.

22. Hence, on an examination of the materials on the record in the present case we find no reason to doubt that the circumstances established in the case unerringly point towards the guilt of the accused/appellant. In the circumstances, we do not think that the conclusions drawn by the Ld. trial court are unjustified and the same call for any interference by this court.

23. In view of the above we find no fault with the finding arrived at by the Ld. trial court and the conviction and order of sentence passed by it. Accordingly, the appeal is rejected thus affirming the impugned order of conviction and the sentence passed by the learned Sessions Judge (South & West) at Namchi in Sessions Trial Case No. 5 of 2004.


(A. P. Subba)
Judge
 30.03..2006

24. I agree.


(N. S. Singh)
CHIEF JUSTICE (ACTING)
 30.03..2006