

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DIVISION BENCH: THE HON'BLE MRS JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

CRL. A. No. 23 of 2023

Thoubalmayum Fajal *alias* Fajal Khan,
Aged about 32 years,
S/o Thoubalmayum Abdul Khan,
Permanent resident of Yairpok Tulibal,
Imphal East, Manipur.
Temporary resident of Marchak, Ranipool, Sikkim
*Presently lodged at Rongyek Jail,
Gangtok, Sikkim.*

..... Appellant

versus

State of Sikkim

..... Respondent

**Appeal under Section 374(2) of the
Code of Criminal Procedure, 1973**

Appearance:

Mr. Thupden Youngda, Advocate (Legal Aid Counsel) for the Applicant.

Mr. S.K. Chettri, Additional Public Prosecutor for the Respondent.

Date of hearing : 27th May, 2024

Date of judgment : 8th July, 2024

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The prosecution has successfully secured conviction and sentence against the appellant under sections 302 and 506 (Para II) of the Indian Penal Code, 1860 (IPC) for life and for a period of one year respectively relying on circumstantial evidence.

2. The first information report (FIR) (exhibit P-1) was lodged by A. Chandrakala Devi (PW-2) - wife of the deceased, against the appellant stating that he had called at around 01:10 a.m. on 03.03.2019 from her husband's mobile number asking her to come out alone to save her husband near the Ranipool petrol pump and when she reached there she found her husband lying dead in the gorge near the petrol pump. She stated that she had the phone recording of the conversation. She further stated that the appellant had threatened her not to inform the police or else she and her children would face dire consequences. The FIR was registered by Karma Dolma (PW-42). The allegation in the FIR was investigated by Police Inspector Deepa Sharma (PW-47) who filed the charge-sheet against the appellant on 28.05.2019 who had been arrested on 03.03.2019 under sections 302, 506 and 509 of the IPC. Thereafter, it was followed by two supplementary charge-sheets on receipt of the DNA report prepared at CDFD Hyderabad and CFSL report of voice sample of CFSL Chandigarh.

3. On 13.08.2021, charges under sections 302, 201 and 506 (Para II) of the IPC were framed against the appellant. The charge under section 302 of the IPC was for murder of the deceased on the intervening night of 02.03.2019 and 03.03.2019. The charge under section 201 was for having dragged the deceased after his murder using the appellant's belt to the nearby jungle below the road with the intention of screening himself from legal punishment. The charge under section 506 (Para-II) of the IPC was for criminal intimidation committed on A. Chandrakala Devi (PW-2) by

demanding that she come to the spot where the murder took place alone and threatening to kill the deceased if she did not. The appellant pleaded not guilty and claimed trial. 47 prosecution witnesses were examined, numerous documents and material objects were exhibited by the prosecution to establish their case. The appellant was examined under section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) when as many as 494 circumstances were put to him. The appellant did not have any evidence to enter in his defence and claimed that he was innocent and falsely implicated. The learned Sessions Judge rendered a judgment on 29.08.2023 convicting the appellant and sentencing him under section 302 of the IPC for life and a fine of Rs.500/- and under section 506 (Para-II) of the IPC for one year.

4. The appellant has preferred this appeal on the ground that the facts, documentary and oral evidence were not correctly appreciated; there were contradictory evidence adduced by the prosecution; and the prosecution had failed to establish the ingredients of the offences charged.

5. The learned Sessions Judge was of the view that the circumstantial evidence produced by the prosecution unerringly proved that the appellant was guilty of the offence under sections 302 and 506 (Para-II) of the IPC. A reading of the impugned judgment reflects that the learned Sessions Judge had held the following circumstances had been fully established and all the facts

so established were consistent only with the hypothesis of guilt of the accused:

(i) The deceased and the appellant were known to each other as they both worked in CAEPHT.

(ii) On 02.03.2019, there was a marriage reception party at Hotel Chakhhum, in which, both the deceased as well as the appellant were present.

(ii) After A. Chandrakala Devi (PW-2), her son Angom Dawnychip (PW-3) and daughter Angom Angelica (PW-4) left the party and reached home, she received a call after midnight from the appellant using her husband's mobile phone threatening her to come to the bridge near the Ranipool Petrol Pump alone if she wanted her husband alive. Thereafter, when A. Chandrakala Devi (PW-2) accompanied by others reached the bridge, she received another call from him questioning her for not coming alone and telling her that her husband would now die.

(iii) The phone conversation between A. Chandrakala Devi (PW-2) and the appellant which was in Manipuri was recorded in her phone by her son Angom Dawnychip (PW-3). It was also circulated on *Whatsapp* and translated by Dr. Chakpram Birendrajit (PW-38).

(iv) The voice samples of A. Chandrakala Devi (PW-2) and the appellant were taken by the Investigating Officer (PW-47), downloaded in pen drives, packed, sealed and sent for forensic examination along with the mobile phone of A. Chandrakala Devi (PW-2) which had the recorded conversation. The forensic expert opined that the voice in the phone conversation between A. Chandrakala Devi (PW-2) and the appellant matched the voice samples of the respective persons in the pen drives.

(v) The appellant was apprehended on 03.03.2019 and thereafter arrested. His wearing apparels, i.e., jeans and boots which had blood stains on them, were sent for forensic examination which revealed that the blood stains were of the deceased.

(vi) After the arrest of the appellant, he confessed to his crime and in his disclosure statement recorded under section 27 of the Indian Evidence Act, 1872, stated that he would be able to show where he had thrown the stone which he had used to hit the deceased. Pursuant thereto, the stone with blood stains was recovered and sent for forensic examination which revealed that the blood stains on the stone was that of the deceased.

(vii) The post-mortem of the deceased revealed that injuries were ante-mortem in nature and the cause of death was due to

craniocerebral injuries and complications thereof caused by hard and blunt trauma.

6. Mr. Thupden Youngda, learned counsel for the appellant submitted that the prosecution has failed to prove the case against the appellant beyond reasonable doubt. He also submitted that the last seen theory put forth by the prosecution has not been satisfactorily proved. Similarly, the entire investigation has been faulty and contents of document relied upon not proved. As per the evidence led by the prosecution, the point of suspicion of guilt could be upon B. Hemchandra Sharma (PW-1) or one Roshan, who A. Chandrakala Devi (PW-2) had initially suspected, and not the appellant. Further, the prosecution had failed to prove that the jeans and boots seized belonged to the appellant. Therefore, the blood of the deceased found in the jeans and boots by the forensic expert could not be connected to the appellant. According to the learned counsel, this is a case based on circumstantial evidence, however, many of the crucial circumstantial evidence has not been proved by the prosecution. The prosecution has also failed to prove the contents of the phone conversation. The discrepancies pointed out as above by the learned counsel shall be dealt with while considering each of the circumstantial evidence led by the prosecution.

7. Mr. S.K. Chettri, learned Additional Public Prosecutor, submitted that the prosecution has been able to prove their case beyond all reasonable doubt by way of circumstantial evidence. The learned counsel drew the attention of this Court to the various

evidence, both oral and documentary, led by the prosecution to make good his submissions. It is submitted that the appellant has been correctly identified; the prosecution has proved that the appellant had attended the marriage reception party on 02.03.2019; that the appellant was last seen with the deceased; that the appellant had made two calls to A. Chandrakala Devi (PW-2) threatening to kill her husband (the deceased); that the disclosure statement made by the appellant led to the recovery of the stone with which he had killed the deceased; that the wearing apparels of the appellant had blood stains of the deceased on them; and the post mortem examination conducted on the deceased revealed that the injuries were ante-mortem in nature and caused by hard and blunt trauma.

8. The prosecution case in short is that on the night of 02.03.2019 there was a wedding reception of M. Sanju Singh (PW-26) at hotel Chakhhum, a Manipuri restaurant at Ranipool. This was attended by the appellant, deceased and his family members and other Manipuri guests. After a while, the wife of the deceased - A. Chandrakala Devi (PW-2), their son Angom Dawnychip (PW-3) and daughter Angom Angelica (PW-4) left hotel Chakhhum for their home. The deceased stayed on. The appellant and the deceased were last seen together leaving hotel Chakhhum. After reaching home, A. Chandrakala Devi (PW-2) received a call from the appellant using the mobile phone of the deceased at 1 a.m. asking her to come alone to the bridge if she wanted her husband alive. She, accompanied by her son - Angom Dawnychip (PW-3) and

daughter Angom Angelica (PW-4), went towards the bridge along with N. Uma Devi (PW-8) and A. Nirupama Devi (PW-9). At the bridge, A. Chandrakala Devi (PW-2) received another call from the appellant from the mobile phone of the deceased. The appellant was annoyed that she had got her family and friends and had not come alone and threatened to kill the deceased if they did not return home. This conversation was recorded by Angom Dawnychip (PW-3) in A. Chandrakala Devi's (PW-2) mobile phone. Thereafter, they searched for the deceased. B. Hemchandra Sharma (PW-1) who was the owner of hotel Chakhhum verbally informed the Ranipool Police Station, who deployed two officers – Sarita Chettri (PW-28) and Nima Lhamu Bhutia (PW-10), to search for the deceased. The appellant was apprehended in the premises of the College of Agricultural Engineering and Post Harvest Technology (CAEPHT). The appellant tried to mislead the search party by giving different stories. The search party ultimately found the body of the deceased in the jungle below the road. Thereafter, FIR dated 03.03.2019 was lodged by A. Chandrakala Devi (PW-2) at the Ranipool Police Station against the appellant who was working as a staff in CAEPHT.

9. The Supreme Court in ***Neeraj Dutta vs. State¹ (NCT of Delhi)***, held:

“Evidence that does not establish the fact in issue directly but throws light on the circumstances in which the fact in issue did not occur is circumstantial evidence (also called inferential or presumptive evidence). Circumstantial evidence means facts from which another fact is inferred. Although circumstantial evidence does not go to prove directly the fact in issue, it is equally direct. Circumstantial evidence has also to be proved by direct evidence of the circumstances. Further, letting in evidence should be in accordance with the provision of the Evidence Act by

¹ (2023) 4 SCC 731

the examination of witnesses i.e. examination-in-chief, cross-examination, and re-examination.”

10. The Supreme Court in ***Bodhraj v. State of J&K***², held:

“9. Before analysing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or *factum probandum* may be proved indirectly by means of certain inferences drawn from *factum probans*, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* [(1977) 2 SCC 99 : 1977 SCC (Cri) 250 : AIR 1977 SC 1063] , *Eradu v. State of Hyderabad* [AIR 1956 SC 316 : 1956 Cri LJ 559] , *Earabhadrapa v. State of Karnataka* [(1983) 2 SCC 330 : 1983 SCC (Cri) 447 : AIR 1983 SC 446] , *State of U.P. v. Sukhbasi* [1985 Supp SCC 79 : 1985 SCC (Cri) 387 : AIR 1985 SC 1224] , *Balwinder Singh v. State of Punjab* [(1987) 1 SCC 1 : 1987 SCC (Cri) 27 : AIR 1987 SC 350] and *Ashok Kumar Chatterjee v. State of M.P.* [1989 Supp (1) SCC 560 : 1989 SCC (Cri) 566 : AIR 1989 SC 1890]) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* [AIR 1954 SC 621 : 1954 Cri LJ 1645] it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.”

11. In ***Hanumant Govind Nargundkar***³, the Supreme Court held:

² (2002) 8 SCC 45

"10. In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always a danger that conjecture or suspicion may take the place of legal proof and therefore, it is right to recall the warning addressed by Baron Alderson to the jury in *Reg. vs. Hodge*, (1838) 2 Lewin 227) where he said:

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

It is well to remember that in cases where the evidence is of circumstantial in nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable doubt for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

12. In the light of the profound rendition of the Supreme Court as above, we shall examine the circumstantial evidence led by the prosecution which convinced the learned Sessions Judge that the appellant was guilty of the offence of murder and criminal intimidation.

The deceased and the appellant were known to each other as both worked in CAEPHT

13. B. Hemchandra Sharma (PW-1), A. Chandrakala Devi (PW-2), Yengkhom Thoiba Singh (PW-5), Chongtham Sanjoy Singh (PW-6), Prasanta Singh Laishram (PW-7), N. Uma Devi (PW-8), Devendra Kumar Chettri (PW-20), K. Arun Kumar Singh (PW-24), M. Sanju Singh (PW-26), Y. Guneshwori Devi (PW-37) and Dr. Chakpram Birendrajit (PW-38), confirmed that the appellant worked

³ AIR 1952 SC 343

as a contract labourer in CAEPHT while the deceased was working as Assistant Professor there.

Marriage reception party at hotel Chakhhum on 02.03.2019 and the presence of the appellant and the deceased.

14. B. Hemchandra Sharma (PW-1), A. Chandrakala Devi (PW-2), Angom Dawnychip (PW-3), Angom Angelica (PW-4), Yengkhom Thoiba Singh (PW-5), Chongtham Sanjoy Singh (PW-6), Prasanta Singh Laishram (PW-7), N. Uma Devi (PW-8), A. Nirupama Devi (PW-9), K. Arun Kumar Singh (PW-24), M. Sanju Singh (PW-26), Y. Guneshwori Devi (PW-37), Dr. Chakpram Birendrajit (PW-38) and Philem Roshan Singh (PW-43), all confirmed that on 02.03.2019 there was a wedding reception party organised at hotel Chakhhum, opposite Shanti Complex, Ranipool, by M. Sanju Singh (PW-26). B. Hemchandra Sharma (PW-1) deposed that he was at the wedding reception with the appellant, deceased, Roshan and Sanjay consuming alcohol and after some time Roshan left the hotel. Thereafter, Sanjay, the deceased and the appellant also left the hotel. He further deposed that the appellant and the deceased went towards their house. However, in cross-examination he admitted that he did not last see the deceased and the appellant together. Philem Roshan Singh (PW-43) deposed that while he was leaving the hotel he saw B. Hemchandra Sharma (PW-1), Chongtham Sanjoy Singh (PW-6), the deceased and the appellant were talking about dropping the deceased to his house and that he heard the conversation between the deceased and the appellant that

they would go together. The defence could not demolish the version of Philem Roshan Singh (PW-43).

15. B. Hemchandra Sharma (PW-1), Yengkhom Thoiba Singh (PW-5), Chongtham Sanjoy Singh (PW-6), Prasanta Singh Laishram (PW-7), N. Uma Devi (PW-8), A. Nirupama Devi (PW-9), K. Arun Kumar Singh (PW-24), M. Sanju Singh (PW-26), Dr. Chakpram Birendrajit (PW-38) and Philem Roshan Singh (PW-43), confirmed that the appellant as well as the deceased were at the wedding reception on 02.03.2019.

Incriminating phone call made by the appellant to A. Chandrakala Devi (PW-2) on the date of the incident.

16. A. Chandrakala Devi (PW-2), Angom Dawnychip (PW-3) and Angom Angelica (PW-4) deposed about the two phone calls between A. Chandrakala Devi (PW-2) and the appellant who was using the mobile phone of the deceased. A. Chandrakala Devi (PW-2) identified the mobile phone (MO-2) as the mobile phone of the deceased. The mobile phone (MO-2) was seized by the Investigating Officer (PW-47) vide seizure memo (exhibit P-24) on 03.03.2019 from above the place where the dead body of the deceased was found in the presence of Dawa Lepcha (PW-19) and Nabin Daween (PW-30) who identified their signatures on the seizure memo (exhibit P-24). The Investigating Officer (PW-47) deposed that she had seized the mobile phone (MO-1) of A. Chandrakala Devi (PW-2) after preparing a seizure memo (exhibit P-3). She proved the seizure of the mobile phone (MO-1) seized by her. Sima Singh Lama

(PW-16) who was a seizure witness turned hostile. During cross-examination by the learned Prosecutor, she however, admitted that she had stated to the police about the seizure of the mobile phone (MO-1) in the presence of another witness - Komal Singh (PW-17). She also admitted having stated that the mobile phone had been packed and sealed in their presence. She admitted signing the seizure memo (exhibit P-3) and identified it but refused to recognise the mobile phone. Komal Singh (PW-17) confirmed the seizure of the mobile phone (MO-1), the preparation of the seizure memo (exhibit P-3) and her signature thereon. During cross-examination, he confirmed that on the relevant day the mobile phone was in possession of A. Chandrakala Devi (PW-2). The seizure of the mobile phone of A. Chandrakala Devi (PW-2) is unquestionable.

Phone conversation between A. Chandrakala Devi (PW-2) and the appellant which was in Manipuri was recorded in her phone by her son Angom Dawnychip (PW-3). It was also circulated on *WhatsApp* and translated by Dr. Chakpram Birendrajit (PW-38).

17. Both A. Chandrakala Devi (PW-2) and her son Angom Dawnychip (PW-3) deposed that the conversation between the appellant and A. Chandrakala Devi (PW-2) was recorded by Angom Dawnychip (PW-3) in her phone. Dr. Chakpram Birendrajit (PW-38) deposed that on the following day A. Chandrakala Devi (PW-2) forwarded the conversation between the appellant and her to him and other Manipuris through *WhatsApp* and he translated the conversation which was in Manipuri to English and typed it in his computer and thereafter handed it over to the police. The Investigating Officer (PW-47) confirmed this fact and deposed that

she had seized the translation (exhibit P-26) in the presence of independent witnesses vide seizure memo (exhibit P-25). The seizure memo (exhibit P-25) has been proved by Investigating Officer (PW-47) and the seizure witness – Devendra Kumar Chettri (PW-20). The translation (exhibit P-26) has been proved by Dr. Chakpram Birendrajit (PW-38). During the cross-examination of Dr. Chakpram Birendrajit (PW-38), the defence confirmed that A. Chandrakala Devi (PW-2) had in fact forwarded the conversation to him. The above facts have been sufficiently proved by the prosecution.

18. The translation (exhibit P-26) of this conversation which has been proved by Dr. Chakpram Birendrajit (PW-38) makes it evident that the appellant was with the deceased when he made the phone calls to A. Chandrakala Devi (PW-2). It also proves that he had, as deposed by A. Chandrakala Devi (PW-2), called her and asked her to come alone and was irritated and angry when she was accompanied by others. It reflects that in fact the appellant was at a vantage point and could notice that A. Chandrakala Devi (PW-2) had not come alone as the appellant had asked her to but with others. The conversation also records that at least on two occasions the appellant had threatened to kill the deceased. The recorded phone conversation is incriminating against the appellant.

The phone conversation between the appellant and A. Chandrakala Devi (PW-2) recorded in her phone matched their voice samples.

19. The Investigating Officer (PW-47) deposed that she had requisitioned the In-charge of Psalms Studio, Metro Point Tadong, on 23.04.2019 to record the voice sample of A. Chandrakala Devi (PW-2) and the appellant and thereafter sent it for forensic examination to CFSL, Chandigarh, through the Superintendent of Police, CID. Enoch Lingdong (PW-13) deposed that he had recorded the voice sample of the appellant in his studio, downloaded the same in two pen drives (MO-6) and handed it over to the Investigating Officer (PW-47) who prepared the seizure memo (exhibit P-10) bearing his signature. K. Arun Kumar Singh (PW-24) and Yengkhom Thoiba Singh (PW-5) were the seizure witnesses to the seizure memo (exhibit-10) by which the pen drive were seized. Although, Yengkhom Thoiba Singh (PW-5) was not sure why he had signed on the document he identified his signature thereon. K. Arun Kumar Singh (PW-24), however, stated that the Investigating Officer had seized the pen drive vide seizure memo (exhibit P-10) and also identified his signature thereon. Enoch Lingdong (PW-13) also deposed about receiving a requisition (exhibit P-19) from the Investigating Officer which bears his signature. The requisition (exhibit P-19) which bears his signature has been proved by Enoch Lingdong (PW-13) and the Investigating Officer (PW-47) has also deposed about the same. The pen drives containing the voice sample of A. Chandrakala Devi (PW-2) was seized by the Investigating Officer (PW-47) vide seizure memo (exhibit P-20). Tilak Gajmer (PW-22) and Balaram Prasad (PW-23) were the seizure

witnesses of the pen drive. Although, Tilak Gajmer (PW-22) was not sure whether the pen drive shown to him in Court was the same pen drive seized, Balaram Prasad (PW-23) proved the seizure of the pen drives and that the same had been packed and sealed in his presence. He identified the signature on the white envelope (MO-13) in which the pen drives had been packed and sealed. Dr. Aanchal Dwivedi (PW-45), Scientist at CFSL, Chandigarh, holding a PhD in Physics, deposed that he had received one sealed cloth parcel from the Superintendent of Police, CID, Gangtok, with the mobile phone and the pen drives. He deposed about examining the same and concluded that the voice samples of the appellant and A. Chandrakala Devi (PW-2) matched with the recording in the mobile phone of A. Chandrakala Devi (PW-2) to a high probability which was also reflected in his report (exhibit P-41). Additionally, Enoch Lingdong (PW-13) also identified the voice of the appellant recorded by him in the pen drives (MO-6).

20. Dr. Anchal Dwivedi (PW-45), the Forensic Expert, through forensic report (exhibit P-41) proved that the recording of the conversation in the mobile phone was between A. Chandrakala Devi (PW-2) and the appellant as it matched their voice samples recorded in the pen drives which were also examined. The prosecution has been able to prove that the person who made that incriminating conversation with A. Chandrakala Devi (PW-2) – wife of the deceased, immediately before the dead body of the deceased was found was the appellant and no other.

The seized wearing apparels of the appellant which he was wearing on that day were smeared in blood of the deceased.

21. A. Chandrakala Devi (PW-2), Yengkhom Thoiba Singh (PW-5), A. Nirupama Devi (PW-9) and Md. Kudus Khan (PW-27) – the appellant’s Uncle and also working in CAEPHT, confirmed that the appellant was apprehended in the College Campus by them. According to them, the police thereafter took the appellant with them. The Investigating Officer (PW-47) deposed that she arrested the appellant and forwarded him for medical examination. The arrest memo (exhibit P-28) is dated 03.03.2019 and the time of arrest is reflected as 08:25 hours. The Investigating Officer (PW-47) deposed that she seized the wearing apparels of the appellant having blood stains on it, i.e., blue jeans (MO-9), T-shirt (MO-10), white PT vest (MO-35), shoes along with socks (MO-11) collectively, one mobile phone vide seizure memo (exhibit P-23) in the presence of independent witnesses. Investigating Officer (PW-47) proved the seizure memo (exhibit P-23) and her and the appellant’s signatures thereon. The seizure memo (exhibit P-23) reflects the time of seizure as 12:30 hours on 03.03.2019. The cross-examination of the Investigating Officer (PW-47) on this aspect did not yield any fact which would prove the evidence of the Investigating Officer (PW-47) about the seizure to be untrue. Arun Pathak (PW-18) - the seizure witness, deposed that the Investigating Officer (PW-47) had seized the wearing apparels of the appellant duly preparing the seizure memo (exhibit P-23) which bears his signature. However, during cross-examination he stated that those articles seized were lying on the floor of the Ranipool P.S. and it was the Investigating Officer

(PW-47) who had told them that it belonged to the appellant. Buddha Mukhia (PW-29) – the second seizure witness, also deposed about the seizure of the wearing apparels of the appellant in their presence and the preparation of the seizure memo (exhibit P-23) where he too had endorsed his signature. During cross-examination, he however, could not say whether the wearing apparels seized belonged to the appellant definitely and where it came from. Although the seizure witnesses could not say with certainty that the wearing apparels seized did belong to the appellant, the evidence of the Investigating Officer (PW-47), the endorsement of the signature of the seizure witnesses in the seizure memo (exhibit P-23) and their evidence that the seizure was effected and prepared in their presence read with the seizure memo (exhibit P-23) convinces us that seizure did take place in the manner deposed by her and that the wearing apparels seized did belong to the appellant. We find that the evidence of the Investigating Officer (PW-47) is genuine and there is credibility of the seizure. There was no reason for the Investigating Officer to falsely implicate the appellant.

22. On 23.03.2019, on the requisition of the Investigating Officer (PW-47), Dr. O.T. Lepcha (PW-31) confirmed that the Medical Superintendent directed the Head of the Department, Pathology, for necessary action pursuant to which blood sample of the appellant was drawn in filter paper, packed and sealed in an envelope. Thereafter, he filled up the biological specimen authentication card for DNA testing (exhibit P-30) in which passport size photograph of the appellant was also affixed. This was then

forwarded for forensic examination. The Investigating Officer (PW-47) deposed that the blood sample along with other seized exhibits were packed and sealed in a white carry bag (MO-12) which was thereafter forwarded for forensic examination to CFSL Kolkata along with other exhibits, however, it was returned and thereafter, it was forwarded to CDFD, Hyderabad, for forensic examination vide letter dated 23.09.2019 (exhibit P-48). The forensic report from CDFD Hyderabad and CFSL Chandigarh were filed through supplementary charge-sheet. Pooja Tripathy (PW-46) - DNA Examiner at Centre for DNA Fingerprinting and Diagnostic Hyderabad who had a MSc. Degree in Bio-Technology and experience of nine years, deposed about receiving the exhibits in a sealed condition. She concluded that the source of various exhibits from the crime scene and the black pair of shoes with socks of the appellant, stone seized from the crime scene, stone with hair strands and blood stains seized from the crime scene, two stones with blood stains seized from the crime and mud from blood seized from the crime scene are from source of blood sample soaked gauze, scalp hair, nail clippings of the deceased. It is thus clear that the shoes and the socks of the appellant seized on 03.03.2019 at 12:30 hours at the Ranipool Police Station from the appellant in the presence of Arun Pathak (PW-18) and Buddha Mukhia (PW-29) immediately after his apprehension from CAEPHT and arrest had blood stains of the deceased which he refused to explain during examination under section 313 Cr.P.C. When a specific question regarding the seizure of his wearing apparels with blood stains was put to the appellant, he skirted the issue and answered "I do not know".

23. This fact establishes that the appellant was with the deceased at the time of the incident providing a vital link to the chain of circumstances put forth by the prosecution.

Disclosure statement under section 27 of the Indian Evidence Act, 1872 and the recovery.

24. Section 27 of the Indian Evidence Act, 1872 provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

25. In *Himachal Pradesh Administration vs. Shree Om Prakash*⁴, the Supreme Court had occasion to examine the provision of section 27 of the Indian Evidence Act, 1872. It was held that:

"8. we are not unaware that section 27 of the Evidence Act which makes the information given by the accused while in custody leading to the discovery of a fact and the fact admissible, is liable to be abused and for that reason great caution has to be exercised in resisting any attempt to circumvent, by manipulation or ingenuity of the Investigating Officer, the protection afforded by Section 25 and Section 26 of the Evidence Act. While considering the evidence relating to the recovery we shall have to exercise that caution and care which is necessary to lend assurance that the information furnished and the fact discovered is credible.

.....

10. In our view the evidence relating to recoveries is not similar to that contemplated under section 103 of the Criminal Procedure Code where searches are required to be made in the presence of two or more inhabitants of the locality in which the place to be searched is situate. In an investigation under section 157 the recoveries could be proved even by the solitary evidence of the Investigating Officer if his evidence could otherwise be believed."

⁴ (1972) 1 SCC 249

26. Further, the Supreme Court in ***Praveen Kumar vs. State of Karnataka***⁵ held that section 27 does not lay down that the statement made to a police officer should always be in the presence of independent witnesses. Normally, in cases where the evidence led by the prosecution as to a fact depends solely on the police witnesses, the Courts seek corroboration as a matter of caution and not as a matter of rule. Thus, it is only a rule of prudence which makes the Court to seek corroboration from an independent source, in such cases while assessing the evidence of the police. But in cases where the Court is satisfied that the evidence of the police can be independently relied upon then in such cases there is no prohibition in law that the same cannot be accepted without independent corroboration.

27. The Investigating Officer (PW-47) deposed that during the course of investigation she interrogated the appellant where he disclosed of having disposed one of the weapons of offence in the surrounding areas of the place of occurrence and she recorded his statement under section 27 of the Indian Evidence Act, 1872 in the presence of two witnesses. The Investigating Officer (PW-47) proved the disclosure statement (exhibit P-22), identified the signatures of the appellant as well as the two witnesses therein. The disclosure statement (exhibit P-22) is in Hindi which reveals that the appellant had confessed to the crime; that he had grabbed a stone and hit the deceased on his head; and that he had thrown that stone in the

⁵ (2003) 12 SCC 199

location of the incident which he could show. Thereafter, she along with the appellant and the two witnesses went to the place of occurrence and recovered the weapon of offence, i.e., stone bearing blood stains and hair strands (MO-22) at the instance of the appellant. This was seized, packed and sealed in the presence of the witnesses. She identified the stone (MO-22) recovered by her vide seizure memo (Exhibit P-21). Bharat Sharma (PW-14) and Subash Sharma (PW-15) – the seizure witnesses, confirmed that the appellant had made the disclosure statement (exhibit P-22) in their presence pursuant to which they had proceeded to the place of occurrence where the stone was recovered. They also confirmed that the stone was seized, sealed and packed vide seizure memo (exhibit P-21).

28. Both the seizure witnesses, however, identified the stone marked as MO-4 as the one recovered at the instance of the appellant and not the stone which was identified by the Investigating Officer (PW-47). The seizure memo (exhibit P-21) reflects the date of seizure of the seized stone (MO-22) as 03.03.2019. The Investigating Officer (PW-47) deposed further about seizure of other stones with blood stains vide seizure memos (exhibit P-37 & P-38) both dated 03.03.2019. Passang Bhutia (PW-40), Deo Kumar Chettri (PW-41) and Bijay Pradhan (PW-44) were the seizure witnesses to the seizure memos (exhibit P-37 & P-38). Passang Bhutia (PW-40) deposed about the seizure of a stone, one bunch of keys, belt and blood along with mud lifted from the new road vide seizure memo (exhibit P-37) on 03.03.2019. Deo Kumar

Chettri (PW-41) deposed about those articles and the stone seized by the police vide seizure memo (exhibit P-37). He also deposed about seizure made by the police vide seizure memo (exhibit P-38). Bijay Pradhan (PW- 44) deposed that the police had seized some stones containing blood stains on it from the place of occurrence vide seizure memo (exhibit P-38). He deposed further that the police had then packed and sealed the same in his presence and in the presence of another witness. The seizure memo (exhibit-38) reflects the seizure of two stones long with other evidence on 03.03.2019. Apparently, the two stones seized vide seizure memo (exhibit-38) were MO-4.

29. It is apparent that the prosecution as well as the two seizure witnesses - Bharat Sharma (PW-14) and Subash Sharma (PW-15), wrongly identified MO-4 as the stone seized vide seizure memo (exhibit-21) when according to the Investigating Officer (PW-47) it was MO-22 which was seized vide seizure memo (exhibit-21). The signatures of the Investigating Officer (PW-47) and the two seizure witnesses - Bharat Sharma (PW-14) and Subash Sharma (PW-15), on the seizure memo (exhibit-21), convinces us that they had rightly deposed about the seizure of MO-22 vide seizure memo (exhibit-21) in their depositions. The incorrect identification of MO-4 which was also a stone with blood stains from the place of occurrence on the same day as the stone seized vide the seizure memo (exhibit-21) does not, in the given circumstances, fatally affect the prosecution case. Moreso, when all the stones seized by the Investigating Officer (PW-47) from the place of occurrence have

been proved to have the blood of the deceased on them by Pooja Tripathi (PW-46) – the Forensic Expert, i.e., DNA Examiner at Centre for DNA Fingerprinting and Diagnostic at Hyderabad, which is reflected in her report (exhibit P-43).

30. Keeping in mind the opinion of the Supreme Court above, we are of the considered view that the prosecution has been able to establish that a stone with blood stains and hair strands (MO-22) was seized by the Investigating Officer (PW-47) pursuant to the disclosure statement (exhibit P-22). Further, the prosecution has also been able to establish that the seized stone with blood stains and hair strands (MO-22) had the blood of the deceased.

The cause of death has been proved to be due to craniocerebral injuries and complications thereof

31. Dr. Karma Mingur Diki Bhutia (PW-33) who conducted the post mortem of the deceased on 04.03.2019 proved the autopsy report (exhibit P-33) prepared by her and Dr. Ashim Mishra. They noted that the post-mortem of the deceased revealed that he had sustained multiple external injuries on the frontal eminence, left glabella, left upper eye-lid, left temporal region, over left ear, over anti-helix and helix, over right eye, over right zygoma, over lower lip, over chin at centre, on neck, over right chest, above umbilicus, over left chest, over left loin, over left knee, below left knee over left leg, over left mid thigh, over right knee, over left elbow dorsal aspect and over left leg. Internal injuries were also noticed over left frontal, occipital and right frontal area, vertex to left parietal

eminence, left middle ear bone and ribs. Dr. Karma Mingur Diki Bhutia (PW-33) examined the dark brown belt with dried blood stains, two flat stones of varied dimension with blood stains, triangular stone with a pointed tip with dried blood stains and scalp hair and a flat and heavy stone with dried blood stain forwarded by the Investigating Officer (PW-47) and deposed that the external injuries were anti mortem in nature; all injuries were caused by hard and blunt trauma. Dr. Karma Mingur Diki Bhutia (PW-33) also opined that one of the injuries corresponds to strangulation ligature and could be possible by the belt which was of a fatal nature and sufficient to cause death and the other injury could be possible by the triangular stone. It was opined that the deceased died due to craniocerebral injuries and complications thereof.

32. Dr. Karma Mingur Diki Bhutia (PW-33) also deposed that they had examined the dark brown belt with blood stains; two flat stones with dried blood stains; a triangular stone with pointed tip with dried blood stains and scalp hair and; a flat and heavy stone with dried blood stain.

33. We are of the opinion that the prosecution has been able to prove successfully that the deceased died due to external injuries which were ante-mortem in nature caused by hard and blunt trauma causing craniocerebral injuries. The prosecution has also proved beyond reasonable doubt that these injuries were caused by the use of the stone (MO-22) which had the blood stains of the deceased with his scalp hair.

34. We have noticed that the defence has attempted to raise doubts about the guilt of the crime upon others by putting suggestions to the prosecution witnesses, however, unsuccessfully. All circumstantial evidence led by the prosecution leads us to believe that it was the appellant and the appellant alone who was guilty of the act of murder of the deceased and criminal intimidation of A. Chandrakala Devi (PW-2). The contradiction appearing in the depositions of the prosecution witness are not fatal in nature. We also notice that the deposition of Angom Dawnychip (PW-3)- son of the deceased, has exaggerations which we have chosen to ignore and not consider.

35. We have considered each of the above circumstances and are of the opinion that each of them has been fully established. These circumstances are of conclusive nature. The chain of evidence is interconnected without any broken link. It leaves no reasonable doubt on the prosecution case. These circumstances proved by the prosecution establishes the conclusion of guilt against the appellant and shows that within all human probability the act was done by the appellant and no other.

36. The conviction of the appellant under sections 302 and 506 (Para-II) of the IPC for the murder of the deceased are upheld.

37. The learned Sessions Judge has sentenced the appellant to undergo imprisonment for life and pay a fine of Rs.500/- for commission of the offence under section 302 IPC. The punishment

prescribed for murder under section 302 is punishment with death, or imprisonment for life, and also with fine. Keeping in mind the circumstances and the nature and gravity of the offence, we uphold the sentence. For the offence of criminal intimidation under section 506 (Para-II), the learned Sessions Judge has sentenced the appellant to undergo imprisonment for a period of one year only. The sentence under section 506 (Para-II) is also upheld.

38. Appeal dismissed and disposed off accordingly.

39. Copy of this judgment along with Trial Court records be remitted forthwith.

(Bhaskar Raj Pradhan)
Judge

(Meenakshi Madan Rai)
Judge

Approved for reporting : **Yes/No**
Internet : **Yes/No**

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