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THE HIGH COURT OF SIKKIM : GANGTOK

CRIMINAL APPEAL NO. 1 OF 2005

(Arising out of the judgment passed by Shri B. C. Sharma, Sessions Judge, South & West, Namchi in Sessions Trial Case No.18 of 2004)

Yogesh Karki (Chettri),
S/o Late Tika Ram Karki,
R/o Malbasay Busty,
P.S. Soreng,
West Sikkim.
(at present Rongyek Jail) **Appellant**

Versus

State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok,
East Sikkim. **Respondent**

For the appellant : Mr. N. Rai, Legal Aid Counsel
assisted by Ms. Jyoti Kharka,
Advocate.

For the respondent: Mr. J. B. Pradhan, Public
Prosecutor assisted by Mr.
Karma Thinley, Additional
Public Prosecutor.

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

Last date of hearing : 22nd August, 2005.

DATE OF JUDGMENT : 6TH SEPTEMBER, 2005.

J U D G M E N T

A. P. Subba, J.

This appeal is directed against the judgment and order dated 30th September, 2004 passed by the learned Sessions Judge, South & West at Namchi convicting the

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accused-appellant under section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life and to pay a fine of Rs.10,000/-.

2. The facts of the case as set out in the prosecution story brings to light a sad and shocking incident of a son (accused-appellant) killing his own father (deceased) in a small village called 'Malbasay' in West Sikkim. The backdrop against which the whole tragic episode took place is as follows:-

The deceased Tika Ram Karki was a resident of a small village in West Sikkim called 'Malbasay'. He was born and brought up in the same village and was living there with his family. He had married three wives and at the relevant time he had twelve sons and three daughters. All the sons and daughters, except the accused-appellant Yogesh Karki, the youngest of the sons from Smt. Bal Kumari Karki, the second wife of the deceased, had been married.

The deceased owned two plots of land – one dry field measuring 2.2180 hectares at Malbasay Busty and one paddy field measuring .5560 hectares at Suntaley Busty. While the dry field was partitioned amongst the twelve sons, the paddy field was retained by the deceased and his two surviving wives as "jiwani land" for their maintenance



during their life time. However, sometime in the month of January, 2003 the deceased sold away the "jiwani land" to one Saran Singh Chettri (P.W.7) of the same village for Rs.2,02,000/-. Out of this consideration money, the deceased had already received an advance payment of Rs.1,72,000/- from the purchaser and the sale deed executed between them was going to be registered on 1st October, 2003 in the Office of the SDM, Soreng. Since the deceased had not given any share to his second wife Smt. Bal Kumari Karki, from the advance money so received by him she had filed an objection against the registration of the sale deed through the local Panchayat. The accused-appellant was bitterly disappointed at the exclusion of his mother Smt. Bal Kumari Karki from her share of the sale proceeds of the "jiwani land" and was contemplating ways and means to stop the registration of the sale deed. The only course of action he came to decide finally, to stop the impending registration of the sale deed was to eliminate his father before the date fixed for registration of the sale deed. The accused-appellant got such opportunity when the deceased in the early morning of 28th September, 2003 left for the house of the Blacksmith Kharga Bahadur at Mangsari Tarpu for the purpose of tempering and sharpening cutting weapons. Thus when his father left for

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the place of the Blacksmith at Mangsari Tarpu, he followed him and kept waiting at a place called "Halley Khola" at Mangsari for his father to return. When the deceased reached that place at around 1440 hrs. on his way back from the Blacksmith's place the accused-appellant joined him and both of them headed for their house in Malbasay taking a short cut route. When they passed Bhu Khola one Ms. Rojeela Tamang (P.W.2) and Mani Kumar Rai (P.W. 11) who were washing their vehicle saw the deceased and the accused-appellant proceeding towards their residence along the short-cut route. According to them, the accused-appellant was carrying one naked khukuri in his hand. Some 15-20 minutes after they passed, the accused-appellant hurriedly rushed back along the same route, and on reaching the place where P.W. 2 and P.W. 11 were still busy washing their vehicle, he (accused-appellant) blurted out to them that he had finished off his father and since they were the only persons who had earlier seen him passing through that route with his father, they should not divulge the matter to anybody, and if they did so, they will face dire consequences. Thereafter, he headed for his house. On reaching home at around 1600 hrs., the accused-appellant told his mother that he had "brought peace to everybody" and saying so,

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he left for another village called "Tarethang Busty" in East Sikkim on the pretext of visiting his relatives and friends there.

It is the case of the prosecution that, on reaching a secluded place some distance away from the place where P.Ws 2 and 11 saw them, the accused-appellant seized the opportunity and struck the deceased on the neck with the khukuri from behind nearly severing the head of the deceased from his trunk and thereby causing his death instantly on the spot. Thus it was after he perpetrated the crime that he rushed back to the P.Ws 2 and 11 and divulging to them as to what he had done threatened them not to divulge the same to anybody.

3. On 30th September, 2003 at around 1145 hrs., a written complaint (Ext.I) jointly signed by Tek Bahadur Karki (P.W.5), Nar Bahadur Karki (P.W.12) and Hem Kumar Karki (P.W.13), all sons of the deceased, stating that their father Tika Ram Karki was found lying dead near Bhu Khola and they suspected that he had been slaughtered with a sharp cutting weapon, was received at the Soreng Police Station. On the basis of this written complaint, Soreng P.S. case no.03(9)03 dated 30th September, 2003 under section 302 IPC against unknown person was registered and investigation was taken up. In



the course of the investigation, the I.O. visited the place of occurrence at Bhu Khola where the dead body of the deceased was found lying in a tilting position, resting on the right. The dead body had two deep injuries on the throat nearly severing the head from the trunk. A naked khukuri measuring approximately 21" with handle stained with dry blood was found lying near the dead body. One small bag and an umbrella were also found lying on the spot. Inquest of the dead body was conducted and the dead body was sent to the Namchi hospital for autopsy. The khukuri with dry blood stains on the handle, the umbrella and the small bag which were found at the place of occurrence were seized in presence of two witnesses.

It came to light during the investigation, that the deceased was a resident of Malbasay where he was living with his family since his birth. He had gone to the house of one Blacksmith at Tarpu for tempering/sharpening one khukuri and one Kunzo (a kind of hammer with a pointed end) in the early morning of 28th September, 2003 and had failed to return home. Therefore, the sons of the deceased had been searching for him from 30th September, 2003 and in course of such search they had come upon the dead body of the deceased at Bhu Khola. It also came to light that the accused-appellant, namely,



Yogesh Karki was found missing from home since 28th September, 2003 afternoon. On receipt of this information, the police deployed source to trace him out. Secret information was received to the effect that the said Yogesh Karki had visited his house at Malbasay in the evening of 1st October, 2003. On receipt of the secret source information, a police team rushed to the house of the accused and nabbed him. On seeing the police, the accused-appellant voluntarily confessed that he had killed his father at a place called "Pairaney jungle" near Bhu Khola on 28th September, 2003 with a khukuri and leaving the dead body and the weapon of offence at the scene of crime he had proceeded to Tarethang Busty, East Sikkim. This disclosure was made by the accused-appellant in his house in the presence of his mother Smt. Bal Kumar Karki (P.W.3) and one Lal Bahadur Bhandari (P.W.14). After the confession was made, the accused-appellant was arrested on the spot and taken into custody.

4. Having found *prima facie* case under section 302 IPC against the accused-appellant for causing the death of his father intentionally with a khukuri, the I.O. submitted charge sheet under section 302 IPC against him for his trial according to law.



5. On the case being committed to the Court of learned Sessions Judge, South & West, Namchi, the learned Sessions Judge heard the parties on charge and having found sufficient material, framed charge against the accused-appellant under section 302 IPC and placed the accused-appellant on trial.

6. The plea of the accused-appellant at the trial was one of denial.

7. To bring home the charge against the accused-appellant, the prosecution examined as many as 18 witnesses. After hearing the prosecution and the defence, the learned Sessions Judge came to the conclusion that the circumstantial evidence produced by the prosecution was sufficient to prove the guilt of the accused-appellant for the commission of the alleged crime and accordingly convicted him under section 302 IPC and sentenced him to life imprisonment and to pay a fine of Rs.10,000/-.

8. Being aggrieved by the aforesaid order of conviction and sentence passed by the learned Sessions Judge, South & West, Namchi the accused-appellant has come up in the present appeal.

9. Mr. N. Rai, learned legal aid counsel assisted by Ms. Jyoti Kharka, learned counsel for the accused-appellant and Mr. J. B. Pradhan, learned Public Prosecutor



assisted by Mr. Karma Thinley, learned Additional Public Prosecutor for the State-respondent were heard.

10. Mr. N. Rai, learned legal aid counsel for the accused-appellant submitted that the prosecution case is based on circumstantial evidence and the circumstances proved in the case are not such as to point only to the guilt of the accused-appellant. It is his specific submission that the evidence of P.Ws 1, 2, 11 and 14 which have been relied on by the prosecution as proving the extra-judicial confession made to them by the accused-appellant are inadmissible in evidence. According to him, the evidence of P.Ws 1 and 14 cannot be taken into account as the confession made to them by the accused-appellant was in presence of the police officer. As regards evidence of P.Ws 2 and 11, the submission of Mr. Rai is that, the evidence fails to pass the test of reproduction of exact words spoken to by the accused-appellant. The submission of the learned Public Prosecutor, on the other hand, is that, though the prosecution case was based on circumstantial evidence, each and every of the relevant circumstances has been proved by the prosecution by cogent evidence thereby making a complete chain of circumstances which only point to the guilt of the accused-appellant. Even though objection with regard to admissibility of the evidence of

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P.Ws 1 and 14 was not seriously contested, so far as the evidence of P.Ws 2 and 11 are concerned, the submission of the learned Public Prosecutor was that, they are reliable witnesses having no motive to implicate the accused-appellant and, as such, the statement given by them is reliable and can be acted upon even though they do not reproduce the exact words spoken to by the accused-appellant in his extra-judicial confession.

11. In order to appreciate the contentions raised by the parties, it is necessary, in the first place, to notice the facts which have been found by the learned trial Court as having been proved by the materials on record and as forming a complete chain of circumstances so as to lead to the only conclusion that the accused-appellant alone would be responsible for the commission of the alleged crime. The following are the circumstances relied on by the learned trial Court –

- (i) the circumstance of last seen together;
- (ii) recovery and identification of the weapon of offence;
- (iii) medical report supporting the case of the prosecution;
- (iv) conduct of the accused after the incident;
- (v) extra-judicial confession made by the accused to several witnesses; and



(vi) lastly, the motive of the crime.

12. A perusal of the materials on record would go to show that the evidence on the record is sufficient to establish all the above circumstances. The evidence of Ms. Rojeela Tamang (P.W.2) and Mani Kumar Rai (P.W.11) establish the circumstances of the accused-respondent and the deceased being last seen together. They have clearly stated that when they were washing their vehicle on 28th September, 2003 at around 2/3 p.m. in the afternoon, they saw the deceased and the accused-appellant passing through the place and proceeding towards Malbasay busy taking the short-cut route. The evidence of these witnesses in this regard, has not been controverted so as to make it unworthy of reliance. Therefore, the evidence of these two witnesses can be taken as sufficient to establish the circumstances of last seen together.

13. With regard to the recovery and the identification of the weapon of offence, Kharga Bahadur Gazmere (P.W.17) who is the Blacksmith who had tempered and sharpened the khukuri exhibit MO-1 identified the same from the handle which he had made from a special kind of wood called "kharkar wood". He has clearly stated that after tampering and sharpening the weapon and fitting the new wooden handle to the khukuri

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he had handed over the same to the deceased on the relevant day. The evidence of Tek Bahadur Karki (P.W.5) who is one of the sons of the deceased, Tej Bahadur Bhandari (P.W.15) a co-villager of the deceased, Kiran Chettri (P.W.16) another co-villager and that of the Investigating Officer (P.W.18) go to prove the recovery of the khukuri exhibit MO-1 from "Paireney near Bhu Khola" the place where the dead body of the deceased was found lying. The evidence of these witnesses are sufficient to prove the identification and ^{recovery} recovery of the weapon of offence.

14. As regards the medical report, the evidence of the medical officer, Dr. K. B. Gurung (P.W.9) goes to show that the nature of the injury found in the dead body of the deceased were of such nature as to show that they were caused by heavy sharp cutting weapon. The medical officer opined that the injuries found on the person of the deceased could be produced by weapon like the khukuri exhibit MO-1. The evidence of the medical officer, therefore, shows that the nature of injuries found on the dead body of the deceased could be produced by the weapon of offence recovered from the place of occurrence. The medical report, therefore, supports the theory put forward by the prosecution.



15. The next circumstance relates to the conduct of the accused-appellant immediately following the incident. Ms. Rojeela Tamang (P.W.2) and Mani Kumar Rai (P.W.11) saw the accused-appellant in a nervous and disturbed state of mind when he came rushing down and blurted out to them that he had killed his father and this should not be divulged to anyone and if they did so they will face dire consequences. The evidence on record clearly establishes that after committing the crime the accused-appellant left his home and became untraceable for sometime. It was only on the basis of a secret information that was received by the police that he could be arrested from his house. It was Lal Bahadur Bhandari (P.W.14) who passed on the secret information to the police about the arrival of the accused-appellant in his house on 1st October, 2003. The evidence of Dhanpati Bhattarai (P.W.6) shows that he had met the accused-appellant at Mamring, Pakyong, East Sikkim where he had absconded after the incident. Thus, the evidence of these witnesses makes it amply clear that, immediately after the incident, the accused-appellant fled away from the place of occurrence and from the locality, making himself untraceable and unreachable for some days, until he was arrested by the police on the basis of



the secret information collected by the sources deployed by them.

16. The next piece of evidence relates to the extra-judicial confession made by the accused-appellant soon after committing the crime. As per the prosecution story, the accused-appellant made the confessional statement to four persons, namely, Rojeela Tamang (P.W.2), Mani Kumar Rai (P.W.11), Lal Bahadur Bhandari (P.W.14), Baldeep Tamang (P.W.1). All these P.Ws have stated that the accused-appellant made his confessional statement to them and in their presence. While Rojeela Tamang (P.W.2) and Mani Kumar Rai (P.W.11) have stated that the accused-appellant made his confessional statement to them soon after the commission of crime, the other P.Ws namely, Baldeep Tamang (P.W.1) and Lal Bahadur Bhandari (P.W.14) have stated that the accused-appellant made his confessional statement to them in presence of the police.

17. In view of the above objection raised regarding the admissibility of the evidence of P.Ws 1, 2, 11 and 14 a closer examination of the evidence of these witnesses is called for.

Even though the question of non-admissibility of evidence of P.W.1 and P.W.14 raised by the defence has



not been seriously contested by the learned Public Prosecutor on account of the same having been made in presence of the police, the contention of the learned Public Prosecutor with regard to the evidence of P.Ws 2 and 11 is that the same stands on a different footing and as such, it was admissible. We may, therefore, take up the evidence of the two witnesses, namely, P.Ws 1 and 14 for discussion at the first instance.

Baldeep Tamang (P.W.1) is a co-villager. He was called by the police to Soreng Police Station on 2nd October, 2003 at about 8 a.m. On reaching the police station, he was informed by the Prosecuting Inspector that the accused-appellant was arrested by the police for murdering his father, the deceased. Thereafter, when he asked the accused-appellant as to why he killed his own father in presence of the police, the accused-appellant confessed to him that he killed his father as because he had sold out "jiwani land" to one Poudyal without the consent of his mother and her children including him.

Lal Bahadur Bhandari (P.W.14) is another witness who was present in the house of the deceased when the accused-appellant made his confessional statement. According to him, when he led the police to the house of the accused-appellant to arrest him, the accused-appellant



told the police that he was about to come to the Police Station on his own. On being asked by the police as to why he wanted to come to the Police Station, he told the police that he had killed his father on the previous Sunday at a place called "Paireney near Bhu Khola". When the police again asked him as to why he had killed his father, he replied that the deceased who was his father had done some injustice to him. Thereafter, the accused-appellant himself brought out a rope and offered the same to police telling them that they may take him to the Police Station. Thereafter, he was taken to the Police Station.

18. It is clear from the statement of the above two witnesses that the police was admittedly present when the accused-appellant made the confessional statement. It is needless to say that it is settled law that a confession made by an accused-appellant to the police or to a private person in presence of Police personnel is inadmissible in evidence. Therefore, the learned Public Prosecutor was right in not seriously contesting the submission of Mr. N. Rai in this regard. Accordingly, the evidence of P.Ws 1 and 14 must be rejected as inadmissible in evidence.

19. We may now take up the evidence of the other two witnesses, namely, P.Ws 2 and 11. As contended by the learned Public Prosecutor, the evidence of these P.Ws

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stands on a different footing. It will be clear from a perusal of the statements made by them that when the accused-appellant made the alleged confessional statement to them, no police personnel was present.

Ms. Rojeela Tamang (P.W.2) stated that on 28th September, 2003, she had accompanied his cousin Mani Kumar Rai (P.W.11) to the river for washing his vehicle. When they were washing the vehicle in the afternoon the accused-appellant and one old man happened to pass through the place. While so passing, they came near them and the accused-appellant even had a talk with her. Besides, the accused-appellant also shook hands with Mani Kumar Rai (P.W.11) before they resumed their onward journey uphill. While the old man was walking ahead the accused-appellant who had a naked khukuri in his hand was following him. After about 20 minutes of their passing through the place, the accused-appellant reappeared at the same place looking disturbed and blurted out to them that he had killed his father. He also commanded that the incident was not to be disclosed to anybody and if they divulged they would face dire consequences. At the relevant time, she noticed some blood stains on his clothings. After this the accused-appellant headed towards the road leading to Jorethang.

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20. Mani Kumar Rai who is the cousin of Rojeela Tamang (P.W.2) was examined as P.W.11. He stated that he had gone to Bhu Khola one day to wash his vehicle at about 2/3 p.m. taking along with him Rojeela Tamang (P.W.2) to take her help for washing the vehicle. While washing the vehicle, the accused-appellant and one old man passed through the place from Mangsari side and proceeded uphill taking the route towards Malbasay. As they passed through, the accused-appellant spoke to him just enquiring whether they were washing the vehicle. At that time he noticed that the accused-appellant was carrying a naked khukuri in his hand, besides the one he was carrying in the sheath tied around his waist. After about 15-20 minutes of their passing through the place the accused-appellant suddenly came rushing down to the same place in a nervous state and blurted out to them that he had killed his father and was thus rushing down. He also said that as they were the two persons who had seen him and his father proceeding uphill together he was warning them not to divulge the same to anybody. After saying so, he headed for the road leading to Jorethang. He then hurriedly finished washing his vehicle and returned home with P.W.2.



21. Both these witnesses have been cross-examined at length by the defence. P.W.2 in her cross-examination has denied the suggestion made to her by the defence that her statement regarding what the accused-appellant had told them was not true. In the reply she stated **"it is not true that the accused-appellant did not tell us about the incident of killing his father by him. It is also not true that the accused-appellant did not threaten us that if we disclose the facts to others we would meet dire consequences after coming out from jail"**. The other relevant statement made by her in the cross-examination is as follows:-

"It is not a fact that the accused did not disclose to us that he killed his father. I had seen that the accused was carrying a khukuri with him. It is not true that I did not notice any blood stains on the clothings of the accused."

Similarly, P.W.11 also stood by his statement made in the examination-in-chief. He denied the suggestion that P.W.2 was not present with him at the relevant time. He also denied the suggestion that he did not meet the accused at the relevant time and that the accused did not threaten them. He, however, admitted the suggestion that he did not report about the fact told to them by the



accused either to the police or to one J. B. Tamang in whose place he had been staying. He, however, clarified saying that ***"I did not do so as I was threatened by the accused that he would kill us if we divulge the same to anybody. I stayed in the house of J. B. Tamang for about two days from the date when we met the accused at Bhu Khola. After two days of the said date, I along with said J. B. Tamang came to Namchi via Jorethang, South Sikkim. It is true that when one proceeds from 8th Mile, Budang he comes across Naya Bazar Police Station and then Jorethang Police Station and finally Namchi Police Station. From Budang to Namchi it is about one hour journey by a vehicle. I did not tell anybody during the said period."***

22. The submission made by the learned defence counsel in regard to the admissibility and the reliability of the statements made by above two witnesses is that the two witnesses in their statements have not reproduced the exact words spoken to them by the accused-appellant and as such, their evidence was not worthy of credence. In support of this submission, the learned counsel relied on the decisions of Hon'ble Supreme Court in C. K. Ravendran vs. State of Kerala reported in AIR 2000 SC 369,



Bansidhar Nandi vs. State of Orissa reported in 1992 CRI.L.J. 3927 and Surendra Singh alias Babloo and others vs. State of Uttaranchal reported in 2004 CRI.L.J. 4503. We have perused these decisions. However, we find that these decisions do not lay down that reproduction of exact words spoken to by the accused is a must in all circumstances. Indeed, there is no invariable rule that the Court should not accept a testimony which does not give the actual words, but only the substance of the confession. It has been held in a number of decisions that in extra-judicial confession it is not always essential to reproduce and prove the exact words used by the accused. The Apex Court in Mulk Raj vs. State of U.P. reported in AIR 1959 SC 902 has held that "it is true that the Court requires the witness to give the actual words used by the accused as nearly as possible, but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given." Relying on the above decision of the Apex Court the High Court of Orissa in State Court of Orissa vs. Machindra Majhi and another reported in AIR 1964 Orissa 100 has also held that it is not an invariable rule that the evidence regarding extra-judicial confession is not acceptable unless the actual words used are given. It is always a question of fact to be



determined in each case if such evidence is acceptable or not. It is, therefore, not always necessary to reproduce and prove the exact words used by the accused. Proof of the substance of the words used by accused should be taken as enough if the evidence is found reliable.

23. It is, however, true that an extra-judicial confession is usually looked upon as a weak type of evidence. It has been held in Hari Kishan and another vs. State of Haryana reported in 1990 CRI.L.J. 385 that an extra-judicial confession is usually looked upon as a weak type of evidence and therefore, whenever it is sought to be relied upon, the burden lies upon the prosecution to show its trustworthiness. It has been further held that in order to render such confession worthy of belief, regard must be had to:-

- "(i) the person to whom it was made;
- (ii) the connection, if any, of the accused with him;
- (iii) the occasion or reason for the accused to go and make such a confession to him; and
- (iv) the circumstances in which it was made.

Besides all this, the extra-judicial confession must be considered in the overall context of the prosecution case and evidence on record."



24. In State of U.P. vs. M. K. Anthony reported in AIR 1985 SC 48, it has been laid down by the Apex Court that an extra-judicial confession can be accepted and form the basis of confession if-

- (a) it is deposed to by unbiased witnesses.
- (b) The witness narrating it was clear and unambiguous words.
- (c) Those words unmistakably convey that the accused had perpetrated the offence in question, and
- (d) The witness omits nothing which militates against it.

25. Therefore, when the extra-judicial confession in the present case is examined in the light of the above guidelines, we find the same reliable and can be acted upon in the present case. The two P.Ws, namely, P.Ws 2 and 11 who have proved the extra-judicial confession are not totally strangers to the accused-appellant. The accused-appellant spoke to them when he passed through that place with the deceased, on their way up towards their village. This shows that they were known to each other. The reason why the accused rushed back to the same two persons and told them not to divulge after having disclosed to them that he had finished off his father was, as may be seen from the statement of P.W.11, that these two P.Ws were the two persons who had just a little while ago seen the accused-appellant and the deceased in



the company of each other. Since he was returning alone and his purpose was to secure a word from them, albeit under threat, that they will not divulge the information to anybody, he had no option but to divulge the crime committed by him before extracting such undertaking from them. In this view of the matter, we find no reason to disbelieve these witnesses. They do not seem to be interested witnesses in any way. It is relevant to note that the dead body was found in the same place as indicated by the accused in his confessional statement. The weapon of offence and other articles recovered from the place of occurrence are also the same as stated by the accused. It is also notable that the medical evidence supports the extra-judicial confession so far as it relates to the nature of injuries found on the dead body and the weapon used. Besides, the absconding of the accused-appellant from the locality after committing the crime is another relevant aspect. In short, it may be stated that the circumstantial evidence on record corroborates the extra-judicial confession.

26. Therefore, taking all the above facts and circumstances into consideration, we are inclined to take the view that extra-judicial confession made by the

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accused-appellant to P.Ws 2 and 11 stands proved by the evidence of these P.Ws and it can be acted upon.

27. Lastly, so far as the motive of the crime is concerned, it is seen that the deceased had three wives and he used to ill-treat the children from his second wife, the accused-appellant being one of them. It has clearly come in evidence that the deceased sold out the paddy field which was set apart as "jiwani land" for the deceased and his two wives without the knowledge and consent of the second wife i.e. the mother of the accused. The accused-appellant was, therefore, looking for ways and means to stop the registration of the sale deed in respect of the land in question. As per the evidence on record, the date fixed for registration of the sale deed was 1st October, 2003 and the accused-appellant finished off his father before the above date fixed for the registration of the sale deed. This is suggestive of the fact that the accused-appellant was bent upon stopping the registration of the sale deed at all cost.

Therefore, there is no doubt that all the above circumstance go to prove motive of crime in the case.

28. It is thus clear that the circumstances relied on by the learned trial Court while convicting and passing the order of sentence, stands established by the evidence on

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record. A Division Bench of this Court relying on the law laid down by the Hon'ble Supreme Court in several decisions has held in *Sonam Zangpo Bhutia vs. State of Sikkim* reported in 2005 CRI.L.J. 1937 that the proved circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. In other words, it must be consistent only with the guilt of the accused and should be such as to exclude every hypothesis, but the one proposed to be proved. On examination of the materials on record, in the present case, in the light of the above principle of law, we find no reason to doubt that the circumstances established in the case unerringly point towards the guilt of the accused-appellant.

29. We may in this regard also refer to another recent decision of a Division Bench of this Court rendered in *State of Sikkim vs. Milan Kumar Diyali* and another decided on 9th August, 2005. The Division Bench relying on the decision of the Apex Court in *Sahadevan @ Sagadevan vs. State* represented by Inspector of Police Chennai reported in (2003) 1 SCC 534 has held that, once the fact of last seen together is proved, a duty is cast on the accused to explain the circumstances in which they parted company. As already noted above the circumstances of last seen together stands established on



the basis of the relevant materials on record in the present case. The circumstance of last seen together having thus been established, it was obligatory on the part of the accused, as per the above principle of law, to explain the circumstances in which he parted company with his father, the deceased. However, it is pertinent to note that the accused-appellant miserably failed to discharge his duty when such opportunity was given to him in his examination under section 313 of Code of Criminal Procedure. In his answer to all the relevant questions put to him, the accused-appellant has replied saying "It is false". This shows that the accused-appellant has but failed to satisfactorily explain the circumstances in which he parted company with the deceased. Such failure on the part of the accused-appellant, according to the above decision, has to be taken as supplying missing link in the chain of circumstances. Even though, there is no missing link in the chain of circumstances in the present case, the above failure of the accused-appellant to explain the circumstances in which he parted company with the deceased may well serve as additional link in the chain of circumstances thereby fortifying the prosecution case.

30. Hence, on a consideration of the materials on record in the circumstances of the case, the conclusion is




irresistible that the circumstances established in the case unerringly point to the guilt of the accused. In the circumstances, we do not think that conclusions drawn by the learned trial Court are unjustified and the same call for any interference by this Court. Therefore, we find no fault with the finding recorded, and the conviction and order of sentenced passed by the learned trial Court.

31. For the reasons stated above, we find no merit in this appeal. 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.18 of 2004.

32. No order as to costs.


(**A. P. Subba**)
Judge
06-09-2005

33. I agree.


(**N.S. Singh**)
Chief Justice (Acting)
06-09-2005