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THE HIGH COURT OF SIKKIM : GANGTOK

CRIMINAL APPEAL NO.5 OF 2005

(Against the judgment of conviction and order of sentence dated 29th June, 2005 passed by the Sessions Judge, South & West Districts, Namchi in Sessions Trial Case No.19 of 2004)

Bikash Chhetri,
S/o Bhim Bahadur Chhetri,
R/o Middle Gelling Busty,
West Sikkim
At Present – Sikkim State Jail

(Convict)

..... Appellant.

Versus

State of Sikkim

(Presentor)

..... Respondent.

For the Appellant : Mr. N. K. P. Sarraf, Advocate.

For the Respondent : Mr. J. B. Pradhan, Public Prosecutor.

**PRESENT : HON'BLE MR. JUSTICE BINOD KUMAR ROY, CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE N. SURJAMANI SINGH.**

C.A.V. on May 5, 2006.

DATE OF JUDGMENT : 20TH JUNE, 2006.

J U D G M E N T

N. S. Singh, J.

The judgment of conviction and sentence dated 29th June, 2005 passed by the learned Sessions Judge, South & West Districts at Namchi, South Sikkim in Sessions Trial Case No.19 of 2004 the appellant, Bikash Chhetri for the

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offence punishable under Section 302 I.P.C. and sentencing him to undergo rigorous imprisonment for life are under challenge in this Criminal Appeal.

[2] The facts of the case in a short compass are as follows:-

According to the prosecution, on 5th November, 2003 at around 0930 hrs. a telephonic information was received by Shri R. B. Dahal, P.W.21 from one Shri Deo Kumar Rai (P.W.4), Panchayat President of Samsing-Gelling, West Sikkim to the effect that Miss Arati Rai, daughter of Shri Arun Chandra Rai aged about 19 years, a resident of Middle Gelling, West Sikkim was gang-raped by Bikash Chhetri (the appellant) along with Sanjeev Rai and Binay Rai of the same village on 28th October, 2003 and that Miss Arati Rai was murdered by Bikash Chhetri on 5th November, 2003 at around 07:30 hrs.

On receipt of this information, Shri R. B. Dahal, the Investigating Officer, made an Entry in the General Diary under serial No.63 dated 5th November, 2003 maintained by the Police Station.

While making the above entry, a written complaint dated 5th November, 2003 (marked as Exhibit 3) signed by Mr. Deo Kumar Rai (P.W.4), who is Panchayat President of Samsing-Gelling Gram Panchayat, and Shri Jagat Rai

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(P.W.18), a Panchayat Member of the same Gram Panchayat was lodged in the said Police Station by the said Shri Jagat Rai and, on the basis which a formal F.I.R. (Exhibit 21) was drawn, and being Naya Bazar Police Station Case No.17(11)/2003 dated 5th November, 2003 under Section 302 I.P.C. was registered against Bikash Chhetri.

Immediately, thereafter Bikash Chhetri came with one blood stained 'khukuri' and surrendered before him and confessed that he has committed murder of the said Miss Arati Rai by the said 'khukuri'.

The 'khukuri' so produced with blood stained (M.O.-V) was seized under seizure memo (Exhibit 15) in presence of the seizure witnesses, namely, Shri Gouri Shankar Prasad (P.W.13) and Shri Asar Man Rai (P.W.15) and Bikash Chhetri was formally arrested by the Police.

During course of investigation, the Police conducted inquest on 5th November, 2003 at 12:15 hrs. and thereafter Medico-Legal Autopsy Report (Exhibit 16) was received. The dead body of the victim was discharged for autopsy to the District Hospital, Namchi.

After completion of the investigation, when the Investigating Officer found materials, he submitted

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charge-sheet against Bikash Chhetri for commission of the offence punishable under Section 302 I.P.C.

The Trial Court, upon hearing the parties through the respective counsel and on perusal of the materials available on record, found a *prima facie* case to proceed with the trial thus framing charge under Section 302 I.P.C. against the appellant.

[3] The appellant did not plead guilty and claimed for trial.

[4] The prosecution examined 21 witnesses in support of its case. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973, but, he claimed that he had no knowledge about the statements made by the prosecution witnesses and that those statements were all false. According to the appellant, the Panchayat and the people of the locality being mostly of Rai community, they gave false evidence against him in order to save Sanjeev Rai and Binay Rai. He also pleaded that the said Sanjeev Rai and Binay Rai had actually murdered Miss Arati Rai. When the Trial Court asked and informed the convict-appellant as to whether he would like to lead any evidence or to produce Defence witnesses in support of his case, he replied in negative.

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The trial was concluded. The learned Trial Judge found the appellant guilty for committal of an offence punishable under Section 302 I.P.C. and accordingly, convicted and sentenced him to undergo imprisonment for life by the impugned judgment.

[5] At the hearing, Mr. N. K. P. Sarraf, learned counsel of the appellant submitted as follows:-

There is no cogent and reliable evidence adduced by the prosecution to establish that the appellant had murdered the deceased Miss Arati Rai on the date of the alleged occurrence. The Trial Court erred in law and failed to appreciate the evidence on record and also the prosecution had failed to prove its case beyond reasonable doubt. The Trial Court had utterly failed to appreciate that the evidence adduced by the prosecution was thoroughly inconsistent. There was no direct evidence to support the alleged occurrence.

Supporting his arguments, Mr. Sarraf drew our attention to the statements of P.W.4 Deo Kumar Rai, P.W.5 Sarbu Lepcha, P.W.10 Amber Rai and P.W.21 Shri R. B. Dahal, the Investigating Officer and submitted that the divergent and contradictory statements of the witnesses regarding the related timings, the prosecution version should not have been and cannot be accepted.

m. j. Gai



The C.F.S.L. report does not support the case of the prosecution *inasmuch* as the Doctor before whom the alleged 'khukuri' M.O.-V was produced has not said that this 'khukuri' was stained with blood. The factum of seizure of this alleged crime weapon 'khukuri' is not free from doubt as P.W. 13 Gouri Shankar Prasad has admitted in his Cross-examination that the 'khukuri' M.O.-V was not seized from the possession of the Bikash Chhetri and it was lying on the table of the office of the Investigating Officer. The deceased Arati Rai had many family members including her parents, elder brother, younger brother and one younger sister, but none of them had appeared as the prosecution witnesses which shows that the appellant was falsely implicated by third persons.

Two persons, namely, P.W. 11 Binay Rai and P.W.12 Sanjeev Rai, in order to avoid responsibility of taking or accepting the deceased Miss Arati Rai, they killed her and it was not the appellant who had killed the deceased Miss Arati Rai.

Mr. Sarraf relied upon a decision of the Rajasthan High Court rendered in **Ajai Singh vs. State of Rajasthan** reported in **2002 Cri.L.J. 3704 (Raj)** and contended that the confessional statement of the appellant is hit by Section 25 of the Indian Evidence Act, 1872. Mr.

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Sarraf also relied upon a decision of the Apex Court rendered in **Gade Lakshmi Mangaraju @ Ramesh vs. State of A.P.** reported in **2001 (3) Crimes 208 (SC)**, and further argued that in the case in hand, the Investigating Officer had failed to obtain related finger prints in course of his investigation. The appellant and the victim were not seen together before the incident and as such, the appellant cannot be implicated. In support of his contention, he relied upon another decision of the Rajasthan High Court rendered in **Dalpat Singh and another vs. State of Rajasthan** reported in **2004 (4) Crimes 147**.

[6] The learned Public Prosecutor in reply at the very outset contended that there are strong circumstantial evidence on record for establishing the factum of murder of Miss Arati Rai by the appellant. The prosecution had established the circumstances to form a chain without giving room to any other hypothesis which are consistent with guilt of the appellant for commission of the offence punishable under Section 302 I.P.C. The learned Public Prosecutor drew our attention to the evidence of P.Ws and the statements of the appellant recorded under Section 313 of the Code of Criminal Procedure, 1973 as well as the related Medico-legal Autopsy report (Exhibit 16) and the

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Inquest report (Exhibit 4). He also relied upon the decisions of the Apex Court rendered in **Sivakumar vs. State by Inspector of Police** reported in (2006) 1 SCC 714; **Maghar Singh vs. State of Punjab** reported in (1975) 4 SCC 234; **Lachhman Singh (Dead) by Lrs. vs. Raja Ram Singh and others** reported in (1999) 3 SCC 517; **Leela Ram (Dead) through Duli Chand vs. State of Haryana and another** reported in (1999) 9 SCC 525 and **Joseph vs. State of Kerala** reported in (2000) 5 SCC 197.

He later argued that no interference with the impugned judgment is called for.

[7] We have perused the record.

[8] For just determination of the real points in controversies raised before us, we reproduce paragraphs 32, 33 and 34 of the impugned judgment as hereunder:-

"32. I have given my anxious thought over the submissions made by the learned counsel for the parties and I have perused the case papers particularly the evidence of the witnesses and the documents Exhibited by them. I have also perused the *post mortem* examination report of the doctor and on my careful consideration I find:-

- i. that the accused himself appeared before the Naya Bazaar Police Station with a khukuri in his hand and stated that he killed the said Arati Rai and had come to surrender before the Police Station with the weapon of offence;

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- ii. the weapon of offence i.e. khukuri MO-V was duly seized by the police at the Police Station in presence of witnesses;
- iii. the accused then led the police party to the place where he said to have committed the offence;
- iv. the police party traced out a decapitated body the bodyless head of the victim girl;
- v. the evidence of Amber Rai (PW-10) is extremely vital in the sense that while he was collecting fodder on the relevant morning at the relevant place he heard sound of some persons chasing there in the forest. Out of curiosity he went to the spot and found that the dead body of Arati Rai of their village. He also saw the accused about 200 feet away from the place where the dead body of said Arati Rai was lying. He saw the accused going towards his house carrying a khukuri in his hand. This person is the witness who saw the victim and the accused immediately after the occurrence. According to him the incident took place about 7.00 in the morning;
- vi. then comes Sarbu Lepcha (PW-5). This witness has clearly deposed that at about 8.00 a.m. on the relevant morning i.e. on 5.11.2003 he saw the accused carrying a naked khukuri in his hand. The accused himself said to this witness that he had just cut and assaulted Arati Rai and this witness should attend the funeral. Saying so, he went down below. This witness further stated that his pant and vest was also stained with blood. Here the witness not only saw the accused with a naked blood stained khukuri in his

N. Rai



hand and his blood stained wearing apparels but the accused also confessed that he killed the said Arati Rai;

- vii. it is also seen that the witness Ganga Prasad Chettri (14) in his examination-in-chief stated that he saw the accused in the relevant morning going down towards Naya Bazaar - Gyalshing road and the accused asked for some edibles and subsequently asked for Rs.10/- but the witness did not give him as he did not have the same. Then this witness was declared as hostile witness and he was cross-examined by the learned Public Prosecutor. In his Cross-examination by the prosecution he could not digest the truth and vomited the same when he was asked as to what did the accused tell this witness when he met him. He replied "The accused told me that he cut and killed Arati Rai daughter of Mantaray. I did not believe him as he was a student and he used to have jokes with me". When this witness was asked whether the accused showed anything to him at the relevant time, he stated". The accused said that if I did not believe him I could see a khukuri. Saying so he showed one khukuri from behind and I saw its handle. I also saw blood stains on his wearing apparels...". Similarly when he was asked where did the accused go thereafter. He replied "The accused proceeded towards Naya Bazaar - Gyalshing road".
- viii. Similarly, the evidence of the Investigating Officer, who stated that at about 950 hours the accused himself surrendered before Naya Bazaar Police Station with a blood

N. J. Gali



stained khukuri which was seized by him in presence of the independent witnesses and confessed that he killed the said Arati Rai have vital bearings in his case.

33. The above circumstantial evidences coupled with the *post mortem* examination report go to suggest that it was the accused and the accused alone who had committed the offence in this case. I do not see any justifiable reason as to why the witnesses should tell lie against the accused when they deposed in an unequivocal and in clear language that the accused confessed before the witnesses including the Investigating Officer of the case. He even led the police party to the place where he committed the offence. In the presence of above circumstances, I am of the view that the lacuna and discrepancies pointed out by the learned Defence counsel (as discussed above) are such that those are simple due to normal errors of perception or observation and should not, in my opinion, be given due importance and over-throw the above concrete circumstantial evidence. Similarly, errors due to lapse of memory has to be given due allowance if such omission or errors do not go to the root of the case. Here I may mentioned that it is almost impossible in any criminal trial to prove all the elements with a scientific precision. One should not over look that practical aspect of the fact that the witness though wholly truthful he is liable to be overawed by the Court's atmosphere and piercing the Cross-examination made by the counsel and out of nervousness mix up facts and get confused regarding sequence of events. I may further add here that such minor discrepancies would on the other hand, demonstrate that the witnesses are fruitful and natural. With regard to the timings regarding the commission of crime meetings with different persons and finally surrendering before the Naya Bazaar Police Station, I do not find any discrepancy. On the other hand, all the witnesses have given the evidence in most natural way.

N. J. Ali



34. Thus in this case in view of the foregoing analysis and on careful reading of all the evidence of witnesses it would make clear that the prosecution has been able to prove:-

- i. that the accused and one Sanjeev Rai had sex with the said victim girl prior to the incident and when he felt that he would have to take unnecessary responsibility of the said act and would have to accept the said girl he intended to kill the said girl. In view of this the motive of the accused to kill the girl can safely be inferred.

Learned Defence counsel on this issue, submitted that in a case where the prosecution rests its case on circumstantial evidence then the motive for committing such crime has to be established by the prosecution. According to the prosecution, the accused and the said Sanjeev Rai had indulged in sexual affairs with the said Arati Rai prior to the incident. The relative of the said Arati Rai had complained about the said fact to the local Panchayat and stated that the persons responsible should accept the said girl. Since, the accused was one to have sexual relation with the said girl, he apprehended that he would be asked to accept the girl. Hence, in order to get rid of the girl once for all he killed the said girl. Though the prosecution could not prove that aspect to the hilt. Nonetheless some materials were produced for showing the sexual relation by the accused and another with the said girl, and there was a complaint to that effect to the Panchayat. In fact the accused himself admitted the factum of having indulged in sex prior to the incident of murder of said Arati Rai. Only thus far could be established but not further. However, it may be mentioned here that generally it is not a possible task for the

a. j. Ali



prosecution to prove what preciously would have impelled that the accused Bikash Chhetri to kill the said Arati Rai. In most of the cases all that the prosecution can point to is the possible mental element which could have been the cause for murder. In State of H.P. v. Jeet Singh (1999) 4 page 370 it was inter alia held by the Hon'ble Supreme Court at para 33. "No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is the almost and impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.....".

Then coming to the fact again :-

- ii. The accused killed the girl with a knife and then went on telling the people whomsoever he met on his way to Naya Bazaar Police Station. Before Sarbu Lepcha, (PW-5) Amber Rai, (PW-10) and Gangra Prasad Chhetri (PW-14) the accused person made extra-judicial confession. The accused himself surrendered before the Naya Bazaar Police Station with a naked khukuri in his hand at about 9.50 a.m. and disclosed that he killed the said Arati Rai and that he had come to surrender before the police.

n. j. Chhetri



- iii. The accused even surrendered the weapon of offence i.e. the khukuri and the police seized the same in presence of the independent witnesses.
- iv. The opinion of the doctor who conducted the *postmortem* fully corroborates the case of the prosecution."

[9] The contention of Mr. Sarraf about the timings given by different witnesses relating to the commission of crime and the meeting of the persons (witnesses) concerned with the appellant and his surrender before the Police at Naya Bazar and the alleged failure on the part of the prosecution to prove its case holds a little water for the following reasons:

The complaint was lodged by three persons, namely Chandra Pal Rai, Jagat Bahadur Rai and Dinesh Rai to the President/Secretary of Gelling-Samsing Gram Panchayat (marked as Exhibit 1) giving the information/report that the appellant along with his friends, namely, Sanjeev Rai, P.W. 12 and Binay Rai, P.W.11 took the victim Miss Arati Rai and gang raped her on 28th October, 2003 at 9/10 p.m. and after the alleged occurrence on 28th October, 2003, the Panchayat President Shri D. K. Rai and each member Shri Jagat Rai lodged a written report dated 5th November, 2003 (Exhibit 3) with the Office-in-Charge of Naya Bazar Police Station, West Sikkim informing about

N. J. Cui



the gang rape by the appellant along with his said two friends in the night of 28th October, 2003 at 9/10 p.m. and also the information about the killing of the said Miss Arati Rai by the appellant on the 5th November, 2003 at 7.30 a.m. From the available evidence on record, it is seen that P.W. 4 Deo Kumar Rai in his Cross-examination has stated that he had written Exhibit 3 at about 10 a.m. P.W. 5 Shri Surbu Lepcha has stated that he had met the appellant at about 8 a.m. in the morning of the day of occurrence who in his Cross-examination has further stated that when he met the appellant on the relevant day it could be about 8/8.30 a.m. and on the other hand P.W. 10 Amber Rai has stated in his Cross-examination that he saw the appellant at about 9 a.m. and whereas the Investigating Officer, Mr. R. B. Dahal P.W. 21, had stated in his Examination-in-chief that the appellant had arrived at Police Station at about 09:50 hrs. and according to P.W.19 Pramod Prasad, the distance between Police Station and the place of occurrence could be about 5/6 k.ms. from the road side and if one had to walk for about 10 to 15 minutes from Police Station to reach the place of occurrence. It is well-settled principle of law that, in criminal cases corroboration with mathematical niceties should not be expected as different witnesses, held, react

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differently and that being the position there cannot be any set pattern of or a rule of human reaction on the basis of non-conformity wherewith a piece of evidence may be discarded. At this stage, a reference is made to a decision of the Apex Court rendered in **Leela Ram (Dead) through Duli Chand vs. State of Haryana and another** reported in **(1999) 9 SCC 525**. In paragraphs 11 and 12 of this, the Apex Court has held as follows:-

"11. The Court shall have to bear in mind that different witnesses react differently under the different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.

12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment - sometimes in their overanxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of turstworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."

M. J. Kishor



[10] In our considered view, the testimony of P.W.4 Deo Kumar Rai, P.W.5 Sarbu Lepcha, P.W.10 Amber Rai, P.W.19 Promod Prasad and P.W.21 R. B. Dahal are trustworthy and we rely on them. We do not find such discrepancy on the basis of which we should throw out or brush them aside on mathematical or technical calculations.

[11] The appellant had admitted the factum of rape on Miss Arati Rai at about 9/10 p.m. on Tuesday dated 28th October, 2003. It has been revealed from his statements recorded under Section 313 of the Code of Criminal Procedure. Question No.6 put to him and his answer to it, which are significant and the same are reproduced below:-

"Q. No.6. It is further in the evidence of this witness that in the said written report Exhibit-1 it was mentioned that on 28.10.2003 which was Tuesday at about 9.00/10.00 p.m. it was learnt that you and your friends viz. Sanjeev Rai and Binay Rai committed rape on the sister of the said Chandrapal Rai whose name is Arati (since deceased).

What have you to say?

Ans. I do not know anything about the alleged report. It is a fact that we had sexual inter course with the said Arati Rai."

N. J. Chai



[12] From the available evidence on record, it is proved that the appellant first had sex with Miss Arati Rai on that day at the relevant time and later on Sanjeev Rai, P.W.12 had also sex with her but, their friend Binay Rai, P.W. 11 did not have any sex with her. These facts are well-proved by the deposition of the P.Ws 11 and 12 and statement of the appellant recorded under Section 313 of the Code of Criminal Procedure, 1973. The evidence available of the record shows that the appellant surrendered before the Police and admitted his guilt. Sufficient evidence for the seizure of the crime weapon in presence Gouri Shanker Prasad, P.W.13 and Asar Man Rai, P.W.15 finds its place on the record which could not be controverted by the Defence. Mere discrepancy in the statement of P.W. 13, Gouri Shanker Prasad in his Cross-examination that the crime weapon M.O.-V was not seized from the possession of the appellant and his statement that it was lying on the table of the Officer-in-Charge, Naya Bazar Police Station at the relevant time shall be read with the evidence on record that the appellant surrendered with the crime weapon before the Police and it was on the table of the Officer-in-Charge of the Police Station and also the testimony of the seizure witnesses as well as the statement of the Investigating Officer about

N. S. Chaudhary



the seizure of the crime weapon with blood stained cannot be ignored. Hence, it can be safely concluded that, at the relevant time, the appellant was present in the Police Station and the crime weapon 'khukuri' M.O.-V was also seized at the relevant time from the convict-appellant. The another main seizure witness, Asar Man Rai (P.W.15) has categorically stated that on 5th November, 2003, the Officer-in-Charge, Naya Bazar Police Station seized M.O.-V the crime weapon 'khukuri' from the appellant under seizure memo Exhibit 15. This important piece of evidence exists and it could not be demolished by the Defence in the Cross-examination of the said seizure witness. The Investigating Officer, R. B. Dahal, P.W.21 also categorically stated that the appellant surrendered before Naya Bazar Police Station at his own carrying with the blood stained 'khukuri' who had confessed before him saying that he had killed Miss Arati Rai with the said crime weapon 'khukuri' M.O.-V. at the place of occurrence and this fact is corroborated by the other witnesses, namely, Gouri Shanker Prasad, P.W.13 and Asar Man Rai, P.W.15 to the extent that the appellant was present at the Police Station at the relevant time.

[13] The factum of surrender of the appellant before the Police at the relevant time with the crime weapon as

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seen in the evidence on record and the confession of the appellant is relevant under Section 8 of the Indian Evidence Act, 1872. We refresh the decision of the Apex Court rendered in **Maghar Singh vs. State of Punjab** reported in **(1975) 4 SCC 234**, wherein the Apex Court held as -

"..... The evidence furnished by the extra-judicial confession made by the accused to witnesses cannot be termed to be a tainted evidence and if corroboration is required it is only by way of abundant caution. If the Court believes the witnesses before whom the confession is made and it is satisfied that the confession was voluntary, then in such a case conviction can be founded on such evidence alone as was done in *Rao Shiv Bahadur Singh v. State V.P.* (AIR 1954 SC 322), where their Lordships of the Supreme Court rested the conviction of the accused on the extra-judicial confession made by him before two independent witnesses, namely, Gadkari and Perulakar. In the instant case also, after perusing the evidence of PW 3 and PW 12 we are satisfied that they are independent witnesses before whom both the appellant and accused Surjit Kaur made confession of their guilt and this therefore forms a very important link in the chain of circumstantial evidence. In our opinion the argument proceeds on fundamentally wrong premises that the extra-judicial confession is tainted evidence."

[14] We Court also perused and examined the manner of investigation of the case by the Police, including the related reports and document, namely, Inquest Report (Exhibit 4), Written Complaint (Exhibit 1), Medico-Legal Autopsy Report (Exhibit 16), C.F.S.L. Report and find that

M. J. Gai



these reports and document have been proved by the prosecution. The Medico-Legal Autopsy Report (Exhibit 16) highlights the fact that ante-mortem multiple injuries sustained due to heavy sharp cutting weapon on the body of Miss Arati Rai were the cause of the death.

[15] The extra-judicial confession of the appellant after the commission of the crime while going to surrender to Naya Bazar Police Station while on meeting with Sarbu Lepcha (P.W.5) and Ganga Prasad Chhetri (P.W.14) have been fully proved which evidence could not be demolished by the Defence. It is significant to recall and reproduce the relevant statements of Sarbu Lepcha (P.W.5), Ganga Prasad Chhetri (P.W.14) and Amber Rai (P.W.10):-

P.W.5 Sarbu Lepcha

"..... The accused Bikash Chhetri was going down from a house carrying naked khukuri in his hand. When he saw me the accused himself said at his own '*Arati Lai ahilay katoko chhu, malmi janu*' (in literal English - I have just cut and assaulted Arati and you should attend the funeral). Saying so he went down below. His pant and the vest were also stained with blood at the relevant time. As there was a puja being performed at my house I did not go to attend the funeral of the deceased Arati Rai. After about an hour or so there was talk in the village that the deceased was cut and killed by the accused person."

P.W. 14 Ganga Prasad Chhetri

N. S. Chhetri



"Qn. No: 4 When you met Bikash Chhetri on the relevant day what more did he tell you?

Ans: The accused told me that he cut and killed Arati Rai daughter of Mantary. I did not believe him as he was student and he used to have jokes with me."

P.W. 10 Amber Rai

"I know the accused present in the dock as he is my co-villager.

I do not remember the exact date but the day was Wednesday about nine months ago I had gone for collecting fodder for my cattle in the morning at about 7.00 a.m. While I was collecting fodder in the forest of Devethaney I heard the sound of some persons chasing there in the forest in the cliff of Devethaney forest. On hearing this I went to the place from where the above sound was coming. I found the dead body of a female lying in a pool of blood. From the wearing apparels of the deceased I could recognize it to be that of Miss Arati Rai of our village. I saw the accused about 200' away from the place where the dead body of Arati Rai was lying. I saw him going towards his house carrying a khukuri in his hand. Before I could see the dead body of Arati Rai and at the time when I heard the sound of chasing there I also heard a male voice of shouting someone in a fit of anger. I also heard a sound 'Chak Chak' (sound like cutting something). The said cutting sound of something was heard above the place where the dead body was lying. I saw the accused with khukuri in his hand in the Devethaney forest after I heard the said sound of cutting something out of nervousness I did not see minutely the dead body of the deceased. The blood was oozing from the dead body."

N. P. Chhetri



[16] It is also seen that the appellant in his examination under Section 313 of the Code of Criminal Procedure, 1973 has bluntly denied the factum of surrendering before Naya Bazar Police Station at 0950 hrs. on 5th November, 2003 and being present in the Police Station at the relevant time. The relevant questions, namely, question Nos.40, 49 and 75 and the answers of them are important and are quoted below:-

"Q. No.40. It is in the evidence of Gouri Shakar Prasad (PW-13) of Jorethang that on 5.11.2003 at about 1.00/11.00 a.m. he had gone to Naya Bazaar Police Station in order to hand over one letter to the Officer-In-Charge, Naya Bazaar Police Station. At the relevant time he saw you at the Naya Bazaar Police Station.

What have you to say?

Ans. It is not true. I was not at the Nayabazar Police Station."

"Q.No.49 It is in the evidence of Asharman Rai (PW-15) who identified you that on 5.11.2003 the Officer-In-Charge, Naya Bazaar Police Station seized one khukuri having its handle made up of bamboo root from your possession which is marked MO-V vide seizure memo Exhibit-15.

What have you to say?

Ans. It is not correct."

"Q.No.75 It is further in the evidence of this witness that after registration of the case he himself took up the investigation after drawing a First Information Report under Section

N. Rai



154 Code of Criminal Procedure which is marked Exhibit-21. According to him at about 0950 hours you yourself surrendered before the Naya Bazaar Police Station and you were carrying a blood stained khukuri with you.

What have you to say?

Ans. It is not correct that I surrendered before the Naya Bazar Police Station at 950 hours. Carrying khukuri having blood stains."

[17] According to us, on the basis of the relevant facts in existence and evidence on the record, the learned Trial Court has rightly held that all the prosecution witnesses had adduced evidence in most natural way and it was the appellant, namely, Bikash Chhetri, who had committed the offence thus killing the victim girl, namely, Arati Rai, now deceased, with the crime weapon and after committing the crime the appellant had surrendered before the Police along with the crime weapon (the weapon of offence). There is strong circumstantial evidence, as discussed above, for establishing the fact that the appellant had committed the offence of murder.

[18] As discussed above, the evidence of P.Ws., namely, P.W. 5 Sarbu Lepcha and P.W.14 Ganga Prasad Chhetri (though declared as hostile witnesses), their evidence pertaining to the extra-judicial confession to the effect that the appellant said to the witnesses Sarbu

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Lepcha that he had just cut and assaulted Arati Rai and Sarbu Lepcha should attend the funeral and at the relevant time, the witness not only saw the appellant with the naked blood stained 'khukuri' in his hand and blood stained wearing apparels and his confession to Sarbu Lepcha that he killed the said Miss Arati Rai and other evidence of P.W.14 Ganga Prasad Chhetri to the effect that the convict-appellant told Ganga Prasad Chhetri P.W.14 that he had cut and killed Miss Arati Rai, daughter of Mantary, and similarly, the evidence of P.W.10 Amber Rai who saw the victim and appellant immediately after the occurrence remains unshaken and are perfectly admissible under the Indian Evidence Act, 1872. We hereby recall the relevant decisions of the Apex Court rendered in **Sivakumar vs. State By Inspector of Police** reported in **(2006) 1 SCC 714** and **Sidharth vs. State of Bihar** reported in **(2005) 12 SCC 545** wherein the Apex Court laid down the related law on the issue as hereunder:-

"44. Extra-judicial confession may or may not be a weak evidence. Each case is required to be examined on its own fact. In *Sidharth v. State of Bihar* a Division Bench of this Court held:

"He had also made extra-judicial confession to PW 8 Arko Pratim Banerjee. The confession made by appellant Arnit Das was not under any inducement, threat or promise and is voluntary in nature. Therefore, it is perfectly admissible under the Evidence Act."

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[19] We are also of the view that, in the light of the trustworthiness of the prosecution witnesses and their natural testimony, it will not be a good cause for drawing any adverse inference against such witnesses. In this connection, reference is being made to a decision of the Apex Court rendered in the case between **State of Rajasthan vs. Teja Ram and Others** reported in **(1999) 3 SCC 507**. If such taking or obtaining of related finger prints is to be held to be mandatory in the case in hand, according to us, the same would afford the appellant complete immunity from being held guilty or from being punished. What is therefore required in law to base a conviction for an offence of murder is that there should be reliable and plausible evidence that the offence of murder like any other factum of death was committed and it must be proved by direct or circumstantial evidence albeit the related finger prints may not be taken or examined. In the case in hand, there are ample and sufficient evidence on record which enable the prosecution to establish and prove the case of murder against the appellant beyond reasonable doubt. Mere failure on the part of the Investigating Officer to obtain related finger prints in the course of his investigation as argued Mr. Sarraf and the lapses on the part of the Investigating Officer shall not

Mr. Sarraf



make out a case of doubt and it will not weaken the case of the prosecution. Moreover, the decision relied up by Mr. Sarraf do not help the case of Defence.

[20] The motive, conduct of the appellant in the case in hand, his version and meeting with those witnesses as discussed above are relevant facts under Section 8 of the Indian Evidence Act, 1872 which have been established and proved by the prosecution.

[21] For the aforesaid reasons, we uphold the conviction and sentence of the appellant.

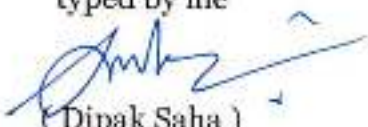
[22] In the result, this Criminal Appeal is devoid of merit and accordingly, it is hereby dismissed.


(**Justice N. S. Singh**)

[23] I fully agree.


(**Justice B. K. Roy**)
Chief Justice

Dictation taken
and
typed by me


(**Dipak Saha**)