THE HIGH COURT OF SIKKIM : GANGTOK

Crl. A. No.2 of 2006

1. Raju Chettri,
S/o Late Dil Bahadur Chettri,
R/o Duli Kaman, Darjeeling,
West Bengal

2. Puran Rai,
S/o Narshing Rai,
R/o Bermiok Kaman,
Darjeeling,
West Bengal
(Both at present Rongyek Jail) ..... **Appellants**

versus

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

For Appellants : Mr. N. Rai, Legal Aid Counsel with Ms. Jyoti Kharka, Advocate.

For Respondent : Mr. J. B. Pradhan, Public Prosecutor, Mr. Karma Thinlay, Additional Public Prosecutor and Mr. Santosh Kumar Chettri, Assistant Public Prosecutor.

PRESENT : HON'BLE MR. JUSTICE A. H. SAIKIA, CHIEF JUSTICE.
HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE.

Last date of hearing : 26-08-2009

DATE OF JUDGMENT : 16-09-2009

J U D G M E N T

Wangdi, J.

This appeal is directed against the judgment of the Learned Sessions Judge, Special Division-I dated 30.03.2004,

passed in Sessions Trial Case No.4 of 2004, by which the appellants were convicted under Sections 302/348,380/341 IPC and sentenced to undergo R.I. for life and to pay fine of Rs.2000/- u/S 302/134 IPC and R.I. for seven years and to a fine of Rs.1000/- u/S 380 IPC against the appellants, directing that sentences shall run concurrently.

2. Substance of the prosecution case is that, in the wee hours of 11.11.2003, at about 4.00 A.M., a patrol party consisting of C/1180 Man Bahadur Chettri and Home Guard Indra Kumar Chettri, saw the appellants near Krishi Bhawan at Tadong, proceeding downhill on foot with bags. Finding their movement to be suspicious, they accosted them and when questioned, the appellants were unable to give reasonable answers. Upon their search at the Tadong O.P. where they were taken by the patrol party, the appellants were found carrying gold ornaments and cash, thereby strengthening their suspicion of the appellants having committed some offence. On being informed telephonically by the I/C Tadong O.P., the Duty Officer from Gangtok Sadar Police Station, proceeded to the O.P. and brought the appellants to the Gangtok Sadar P.S. for necessary inquiries. At the Police Station, on being questioned, they revealed that they were the employees of Sikkim Hotel situated near S.N.T. Bus Terminus, Gangtok and that they had committed murder of the owner of the hotel and her daughter. On such information, the police led by P.M. Rai, Officer-in-Charge, Sadar Police Station went to the hotel to conduct preliminary inquiries accompanied by the appellants. Finding the

hotel locked from outside they called for the local residents and the building caretaker. On their arrival, the police entered the room of the lady owner of the hotel, after breaking the lock open in their presence, and found the floor and the door of the toilet which was found bolted from outside covered with blood stains. On opening the toilet door, they found a lady above 40 years of age lying dead in a pool of blood with multiple cut injuries on her throat, head, hands and face. Another room which was found locked was opened with a key in a bunch found just outside that room and upon entering it which was found to be the TV room, an old lady aged about 70 years was also found dead in a pool of blood with similar injuries. The rooms were found ransacked and in a disarray. The police thereafter suo-moto registered Sadar P.S. Case No.138(11)03 dated 11.11.2003 u/Ss. 302/380/341 IPC against the appellants and endorsed it to the I.O. for investigation.

3. As a part of the investigation, the Investigating Officer visited the place of occurrence where necessary photographs were taken, rough sketch map of the place of occurrence was drawn and the available witnesses acquainted with the facts and circumstances of the case examined and their statements recorded u/S 161 Cr.P.C. Statements u/S 27 Evidence Act, 1872 of both the accused persons were recorded on the basis of which weapons of offence consisting of two 'chedos' (sharp edged heavy cutting knives used in kitchens for cutting meat) and wearing apparels of both the accused persons seized from the scene of crime. Inquest of the dead bodies u/S 174 Cr.P.C. of both the victims was conducted in

presence of witnesses after its necessary identification whereafter the bodies were forwarded to the S.T.N.M. Hospital for post-mortem examination where the wearing apparels, hair and blood samples of the victims were seized in presence of witnesses and sent to CFSL, Kolkata, for its analysis and opinion.

4. Investigation carried out in the case revealed that on 11.11.2003 at about 3.30 a.m. the appellants were intercepted at Tadong, below Krishi Bhavan by a patrol party when they were found walking in a suspicious manner carrying bags and going downhill towards Tadong. On being questioned, the appellants were unable to give satisfactory explanation of their movement in such odd hours of the morning. When they were searched at the Tadong O.P., some gold ornaments and a large amount of cash were found in their possession prompting the I/C Tadong O.P. to inform the Gangtok Sadar P.S. where they were later taken for interrogation.

5. Investigation further revealed that in the evening of 10.11.2003, approximately between 4.30 p.m. and 5.00 p.m. the appellants hatched a plan to commit murder of the two ladies, namely, Shoukyi, the mother, and Tsetenkyi, the daughter, under whom they were working as servants, after dinner that night and loot them of their gold ornaments and cash. At about 9.00 p.m. after having dinner, when the two ladies retired in their TV room to watch programmes on the TV, the appellants also went to their beds in the room adjacent and just outside the room of the two

ladies. At about 9.15 p.m. when the daughter, Tsetenkyi, came out of the TV room to go to the toilet, the appellant No.1, namely, Raju K.C. Chettri, hit her on her head, throat and hands with a heavy 'chedo' repeatedly, and slit her throat with a small sized 'chedo'. On hearing her daughter's scream, the mother Shoukyi, came out of the room when she also was hit with the heavy 'chedo' repeatedly on her hands and feet. When the accused persons found the daughter still alive, they caught hold of her by her hair and slit her throat also. The unconscious mother also faced the same fate of her throat being slit by the appellants. After having murdered the daughter, the appellants pushed the daughter back in the toilet and bolted its door from outside. The appellants, knowing that the victim ladies had in their possession gold ornaments and cash, ransacked all the rooms in its search and committed theft of cash amounting to Rs.30,000/- and gold ornaments weighing about 20 'tolas' and left the place from the main door and proceeded towards Siliguri via Tadong, when they were intercepted by the patrol party and brought to the police station.

6. In the aforesaid premises, the Investigating Officer found that a prima facie case u/Ss. 302/380/34 IPC was made out against the appellants. The medical report received from the STNM Hospital further strengthened the case against the accused/appellants as it was found that in respect of the deceased mother, the cause of the haemorrhage on account of which she had died was due to the incised wound on the neck caused by the sharp edged heavy cutting weapon and that the injuries were ante

mortem sufficient to cause death in the ordinary course of nature. In the case of the deceased daughter also, it was opined by the doctor that the cause of her death was due to multiple incised wounds on the neck caused by a sharp edged heavy cutting weapon and that the injuries were ante mortem sufficient to cause death in the ordinary course of nature.

7. Charge-sheet was accordingly filed against the appellants for their trial for committing murder of the two ladies, namely, Shoukyi, aged about 70 years and her daughter, Tsetenkyi, aged about 40 years with the intention to commit theft of cash and gold ornaments from their residence and for having committed theft in furtherance of their common intention. Charge was framed by the learned Sessions Judge, East and North Sikkim at Gangtok, u/Ss. 302/34 IPC and 380/34 IPC against the accused persons, against which they pleaded not guilty and claimed to be tried. It is pertinent to note that during the course of the trial, additional charge sheet u/S. 173(8) Cr.P.C. to bring on record the report of CFSL, Kolkata was filed by the I.O. As per the report, the blood stains found on the weapons, i.e., small and big 'chedos', the wearing apparels of the deceased and the accused persons were confirmed as being human blood. The learned Sessions Judge, after the trial, in consideration of the materials on record, the evidence and upon hearing the Counsels on behalf of the appellants and the learned Public Prosecutor, convicted the appellants and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/- for the offences u/S. 302/34 IPC and rigorous

imprisonment for 7 years and fine of Rs.1000/- for the offence u/S. 380 IPC against both the appellants directing that the sentences should run concurrently by her judgment dated 30.03.2006. By this appeal, the appellants seek to set aside that judgment which shall hereafter be referred to as the impugned judgment for convenience.

8. Before this Court, Mr. N. Rai, learned Advocate, appearing on behalf of the appellants, submitted that the basis of the entire prosecution case was the alleged disclosure statement, which is not valid in the eye of law, since as per him, it was extracted by the police through the use of third decree method and, therefore, one of the essential requirements of a disclosure statement of it being voluntary was found lacking. It was submitted that the use of third degree by the police was established by the medical report as the medical officer when examining the appellant No.1, Raju Chettri, found "abrasion on the wrist (flox) size ½ cm x ½ cm approximately and on the rt. forearm upper, size 2 cm x ½ cm approximately". As per the learned Counsel those injuries were sustained by the appellant No.1, Raju Chettri, when he was under police custody and that the prosecution had failed to explain as to how such injuries could be sustained by the appellant while being under their custody and that in fact those injuries got inflicted on him by the police when he refused to sign on the disclosure statements and some other blank papers when asked to do so by them. As per Mr. Rai, the disclosure statements of the two persons being identical both in language and grammar, serious

doubt arises as regards its authenticity. The disclosure statements which appear to be more like a confessional statement cannot be held to be valid. In support of his submission, Mr. Rai has relied upon the following decisions:–

(i) ***Paulose & Others*** vs. ***State of Kerala*** reported in ***1990 CRI. L. J. 100 (8);***

(ii) ***Jogendra Nath & Others*** v. ***State of Assam*** reported in ***1977 CRI. L. J. 1309 (Gau.);***

(iii) ***Anter Singh*** v. ***State of Rajasthan*** reported in ***AIR 2004 SC 2865*** (paragraphs 11 to 18);

(iv) ***Md. Miayatullah*** v. ***State of Maharashtra*** reported in ***AIR 1976 SC 483*** (paragraphs 11, 14 and 17);

(v) ***Salim Akhtar @ Mota*** v. ***State of U.P.*** reported in ***2003 CRI L. J. 2302*** (paragraphs 8 to 10); and

(vi) ***Babu Das*** v. ***State of M.P.*** reported in ***2003 Cri.L.J. 2356 (SC)*** (paragraph 4).

9. It was next contended on behalf of the appellants that the ornaments that were said to have been seized from the appellants were not proved to be so by the witnesses and, therefore, the ornaments produced in Court during the trial could not have been linked with the appellants. The I.O. admittedly did not put identification marks on the seized articles during the investigation, which makes the identification of those articles in Court doubtful. It was submitted that even if the recovery of the ornaments was held to be valid, it could only be a proof of a case u/S. 380 and not u/S. 302 IPC. Mr. Rai in support of this contention referred to and relied upon the case of ***Nagappa***

Dondipa Kalal v. ***State of Karnataka*** reported in AIR 1980 (SC) 1753.

10. It was next contended that the CFSL report being defective in law could not have been relied upon, in as much as it was not sent by the Director or the Deputy Director or the Assistant Director of the Forensic Science Laboratory as required u/S 293(e) Cr.P.C. which provides that it is only a report that is sent by such authorities that do not require to be proved and that in all other cases reports have to be proved through the examiner. In the present case, as the CFSL report was proved by the Investigating Officer and not by the examiner, it would not be admissible in law and would amount only to be a hearsay evidence. It was further submitted that the CFSL report could not link the appellants with the crime as the report was not conclusive due to the degraded condition of the blood samples and that the only conclusion that the examiner could arrive at was that the samples were confirmed as being human blood. It was further submitted that the messenger who was sent to reach the exhibits to the CFSL, Kolkata was also not examined.

11. Taking support of the judgment in the matter of ***Hardyal & Prem*** v. ***State of Rajasthan*** reported in ***AIR 1991 SC 269***, it was submitted that the CFSL report should clearly indicate that the blood stains tally with the blood of the deceased and that this fact necessarily needs to be proved. This not being done, the CFSL report loses its evidentiary value.

12. Referring to the evidence of PWs 6 and 7, who are the witnesses to the seizure of material Exhibits consisting of the gold ornaments, cash and other articles like rum bottle, yashika camera, walkman and walkman radio, etc., exhibited as MO IV (collectively), MO V, MO VI, MO VII, MO VIII, MO IX, MO X, MO XI, MO XII, MO XIV and MO XVI, it was submitted that their credibility was doubtful as their statements in Court and the one given by them when the search and seizure were made, suffered from inherent contradiction. This as per the learned Counsel is obvious from the seizure memos exhibits P10 and P11 which indicates the time of seizure as 6.25 a.m. and 6.10 a.m. while in the deposition, PW6 has stated it to be 6.30 a.m. and by PW7 as 6.00 a.m. to 6.30 a.m. respectively. Such difference of time, as per the learned Counsel, amounts to material contradictions in the evidence of the two witnesses and, therefore, deserves to be rejected.

13. It was then contended that the evidence adduced on behalf of the prosecution no doubt casts a strong suspicion on the appellants having committed the offence, but lacks the necessary proof of such commission. It was submitted that suspicion, however grave it may be, cannot take the place of legal proof. Mr. Rai relied upon the cases of ***State of Punjab*** vs. ***Bhajan Singh & Others*** reported in ***AIR 1975 SC 258*** and the case of ***Ashish Bathen*** vs. ***State of M.P.*** reported in ***2002 CRI. L. J. 4676 (SC)*** which lay down the proposition of law.

14. It was then submitted that the prosecution has failed to establish the essential requirements prescribed under the law for cases purely based on circumstantial evidence like the instant one. In the first instance it was submitted that the facts which should constitute a chain leading to the only hypothesis of the appellants having committed the offence are not established. As per the learned Counsel, the following facts vital for the prosecution have not been proved: -

(i) The iron rod used for breaking open the lock on the front door had not been produced and proved;

(ii) The keys to the lock of the main door ought to have been recovered from the appellants if the story of the prosecution that the appellants put the lock from outside after commission of the offence is to be believed to be true. The fact that this was not done in the case casts a serious doubt in the prosecution case of the door of the hotel being locked from outside.

(iii) The I.O. did not take finger prints from the weapon of offence.

(iv) The house owner of the building was not examined and not even cited as a witness at all by the prosecution.

(v) PW9 being a friend of the deceased person is an interested witness and, therefore, his evidence cannot be believed.

(vi) The fact that PWs 9, 10, 11 and 15 did not recognise the appellant No.1, Raju Chettri, casts doubt in the prosecution case against him.

(vii) The two bags containing the gold ornaments and cash and seized from the appellants were never produced during the trial and exhibited.

15. It was further contended that when we consider the evidence of PWs 9, 10, 11 and 15, the involvement of the appellant No.2, Puran Rai, in the commission of the offence becomes doubtful. As per the learned Counsel, the statement of PW9 has to be viewed with a great deal of circumspection as she was a close family friend and, therefore, a partisan witness. Secondly, when the witness said "it is true that I cannot say for certain whether the accused persons standing in the dock were still working in Sikkim Hotel as I had seen them two days prior to the incident only", the prosecutions story that the appellants were the servants working in the house of the deceased persons also becomes doubtful. It was contended that the statement of PW10 to the effect that "It was there that I saw the accused Puran Rai working inside the kitchen. I do not know the other accused standing in the dock" and also that of PW11 when he said "It is true that I have seen the accused, Puran Rai, outside the hotel and also inside the hotel. It is true that I have never seen the accused, Raju Chettri" makes it

abundantly clear that the involvement of the appellant No.2 in the commission of the offence is not at all established. This fact stands clearly established by the statement of PW15 also, when he made the following statement:-

> "On 10.11.2003 at around 2.00/2.30 p.m. I saw the accused, Puran Rai in front of Sikkim Hotel.
>
> .....
>
> I do not know the name of younger accused (Chota Ladka)."

16. For the aforesaid reasons, it was submitted that the impugned judgment deserve to be set aside.

17. Supporting the case of the prosecution and the soundness of the impugned judgment, Mr. J. B. Pradhan, learned Public Prosecutor and also the Additional Advocate General, submitted that the prosecution had been able to establish the guilt of the appellants beyond all reasonable doubts by satisfying the parameters prescribed for proof of a case solely depending on circumstantial evidence. As per the learned Public Prosecutor, it has been fully established that:-

(a) The appellants on 11.11.2003 at about 3.30 a.m. were apprehended while walking down towards Ranipool on the National Highway near Krishi Bhawan by PW1, constable, Man Bahadur Chettri and PW2, Home Guard, Indra Kumar Chettri when they were on patrol duty;

(b) That they were carrying a bag each which is proved by PW1, PW2 whose statements were

corroborated by PW4, H. B. Pradhan, ASI Sadar Police Station, on night duty at the relevant time;

(c) That the bags contained gold ornaments and cash as revealed from the evidence of PW1, PW2, PW3 and PW4.

(d) The appellants revealed the fact about the commission of them having murdered the victims in their place of residence and the theft of ornaments, cash and other articles – PWs. 1, 2, 3, 4 and PWs. 12 and 13.

(e) The appellants had made the disclosure statement u/S. 27 of the Evidence Act, ext. XVI and ext. XVII on the basis of which the weapons of offence ext. XIX and ext. XX and blood soaked wearing apparels of the appellants, exts. XXI, XXIV, XXV and XXVI were seized on being led and shown by the police from the place of occurrence. This fact has been proved by the evidence of PW12, Lobzang Tenzing, and PW13, Tshering Dorjee Bhutia who were the witnesses at the time when the disclosure statements were made by the appellants and also by the I.O. PW18 who took down the disclosure statements.

(f) On the basis of the statement given by the appellants, the police led by PW3, P. M. Rai, OC Sadar PS., had made a preliminary enquiry at the place of occurrence and upon entering the residential quarters after breaking open the outside lock, blood stains were found on the floor and on the toilet door. They also found the dead body of a female aged about 40 years lying on the floor of the toilet with severe cut injuries on

her throat and that of an old lady aged about 70 years lying on the floor also with severe injuries on her feet with a pool of blood flowing from the dead body, and thereafter, the PW3, P. M. Rai, OC., Sadar P.S. drew up FIR, ext. 1 suo motu and cases registered against the appellants. These facts have been proved by PW3, P. M. Rai, OC Sadar P.S. whose statement stands corroborated by PW8, Pema Wangda Bhutia.

(g) Inquest was conducted by the I.O. PW18, PI D. M. Subba which has been corroborated by PW8, Pema Wangda Bhutia.

(h) The victim died on account of haemorrhage due to incised wound on the neck caused by sharp edged heavy cutting weapon and that the injury was ante mortem. After the post mortem, the IO handed over the dead bodies to PW8, Pema Wangda Bhutia vide exhibits XII and XIII. These facts have been proved by the evidence of the medico legal expert Dr. S. D. Sharma, PW3 OC Sadar P.S., P. M. Rai and PW8, Pema Wangda Bhutia.

(i) At the STNM Hospital morgue, the police seized ext. MO XXXII - gold earings of the deceased, Shoukyi, MO XXXIII - white purple coloured check cotton nighty and ext. MO XXXIV – a piece of cloth soaked with blood of deceased, Shoukyi, in a plastic container.

(j) PW17 Suresh Babu, Assistant Director, CFSL, Kolkata vide Ext. XX opined that the hair sample found in two Chedo/Bamphok (ext.M.O. No.XIX and XX) and sample collected from the deceased

Tsetenkyi ext. 18 were consistent with human hair and found to be similar with each other. As such these prove that the convict appellant had used M.O. XIX and XX.

(k) PW17 also identified ext.XXII serology examination report as per his evidence all the exts. M.O.Nos. XXI, XXII, XXIII and XXIV tested positive for blood.

(l) The appellants were the employees of the deceased persons. This fact has been proved by PW9, Lakpa Doma Bhutia, PW10, Ashok Gurung and PW11, Sambu Chettri.

(m) The appellants in their statements made u/S 313 Cr.P.C. bluntly denied all circumstances put to them and failed to give any explanation or lead any evidence to explain the circumstances appearing against them.

18. Each of the aforesaid circumstances have been proved beyond all reasonable doubt and those circumstances have formed a chain leading to the only hypothesis that the accused are guilty of the offence of the murder of the deceased, Shoukyi and Tsetenkyi, in the night of 10.11.2003 in furtherance of their common intention to commit those offences.

19. It was further submitted that the charge u/S. 380/34 IPC framed against the appellants were also proved, as it appears from the following: -

PW-1 and PW-2 in their deposition have stated that convict appellant when apprehended were carrying bag each and when the said bag was

searched at O.P., it was found containing gold earrings and money, the evidence of PW-1 has been duly corroborated by PW-2. Further PW-6 Tenzing Bhutia has also deposed and identified the following items which was seized vide Seizure Memo Exbt. 10 (at page 23 to 24):-

(i) M.O. IX – Cash recovered and seized by Police from one of the two bags.

(ii) M.O. V – Two God bangles

(iii) M.O. VI – Gold chain

(iv) M.O. VII – Gold locket

(v) M.O. VIII, IX & X – has silver items and religious beads.

(vi) M.O. XI – Rum bottles

(vii) M.O.XII – Yashika Camera

(viii) M.O. XIII – Walkman

(ix) M.O. XIV – Another walkman with radio

(x) M.O. XV – 5(five) numbers of Audio Cassette

PW-7 Nima Chungda (at pg.81 to 84) in his evidence corroborated the said witnesses. He has proved the Exbt. 11 (at page 24 to 25) by which following items were seized.

(i) M.O. XVII – Rs.15,000/- (Rupees Fifteen Thousand) in different denomination.

(ii) M.O. XVIII – Two ladies watches.

The I.O., PW-18 also identified the above seizure memo stolen article i.e., M.O. V to XVI and XVIII.

20. It was thus submitted considering the evidence which have come on record, it stands firmly established and proved that the appellants have committed the offence of murder and that of theft of the stolen articles found in their possession.

21. Mr. Jagat Pradhan, learned Public Prosecutor, placed reliance in the case of ***Ganeshlal*** vs. ***State of Rajasthan & Others*** reported in ***(2002) 1 SCC 731*** to support his contention that in a case raised on circumstantial evidence, the failure of the accused to offer a satisfactory explanation to the incriminating circumstances appearing against him in his statement u/S. 313 Cr.P.C. infer that he is guilty of the offence and would amount to a circumstance capable of inculpating him. Mr. Pradhan has specifically drawn the attention of this Court to the following extracts of the judgment:-

> "Para12 .....
> Where offence, more than one have taken place has part of one transaction, recent un-explained possession of property belonging to the deceased may enable its presumption being raised against the accused that he is guilty not only of offence of theft or dacoit but also of other offences forming part of that transaction.
>
> Para 15 .....
> In such case the explanation offered by the accused for its possession of the stolen property assume significance. Ordinarily, purpose of Section 313 of the CRPC is to offer the accused an opportunity of offering an explanation of incriminating circumstance appearing in prosecution evidence against him. It is not necessary for the accused to speak and explain. However, when the case raised on circumstantial evidences the failure of the accused to offer a satisfactory explanation for his possession of the stolen property though not incriminating circumstance by itself would yet enable and

> inference being raised against him because the fact being in the explaining knowledge of the accused it was for him to have offered an explanation which he failed to do.
>
> Para 16 .....
> This Court held that a false answer offered by the accused on his attention being drawn to such circumstance renders the circumstance capable of inculpating him. The Court went on to say that in situation like this such false answer can also be found providing a missing link" for computing chain of circumstantial evidences."

22. The case of ***Joseph*** vs. ***State of Kerala*** reported in ***(2002) 5 SCC 197*** was also cited, wherein it has been held that total denial and/or blunt denial provides a missing link to the chain of circumstances leading to the guilt of the accused. It has thus been submitted that there was no infirmity in the judgment of the learned trial Court for this Court to interfere and that the appeal should be dismissed.

23. We have heard the rival contentions of the parties both oral and those contained in their respective written submissions and examined the entire evidence on record. It is an admitted position that the present case is purely based on circumstantial evidence. The law as regards the decision of a case based on circumstantial evidence is well-established by successive decisions of the Supreme Court. One of such decisions is the case ***Vinay D. Nagar*** vs. ***State of Rajasthan*** reported in ***(2008) 5 SCC 597*** where in paragraph 9 the principle has been succinctly laid down which reads as under:-

> **"9.** The principle of law is well established that where the evidence is of a circumstantial nature, circumstances from which the conclusion

> of guilt is to be drawn should in the first instance be fully established, and the facts, so established, should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and they should be such as to exclude hypothesis than the one proposed to be proved. In other words, there must be chain of evidence so complete as not to leave any reasonable ground 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."

The above being the established position of law we need not refer to other cases which reemphasises the very same position. In the backdrop of the above, we may now examine the contentions which were raised by the counsel on behalf of the appellants set out earlier.

24. The Principal attack raised by Mr.N. Rai, ld. Counsel, against the prosecution case was the validity of the disclosure statement which as per him is the cornerstone of their case. As can be seen from the substance of this contension set out above, it is the case of the appellants that the disclosure statement lacks the essential requirement prescribed under section 27 Evidence Act of it being a voluntary one. We are afraid that the submissions do not impress us. The use of force or coercion has not in any manner been established by the appellants. On the other hand, the prosecution has been successful in firmly establishing that the appellants had voluntarily made the disclosure statements Exhibits 16 and 17 through the Investigating Officer PW18 who had recorded the disclosure statements, a fact corroborated by the PW12 and PW13 in whose presence such statements were recorded. Their evidence

have not been demolished on any of the material facts in their cross-examination. That apart, no such plea was taken by the appellants in their statements recorded u/S 313 Cr.P.C. On the contrary, the several questions put to them on that issue have been replied by them simply by saying "it is not true". We may refer to questions No.44, 47, 48, 49, 55, 56 and 57 in respect of the appellant No.1 and questions No.43 to 49 and 55 to 57 put to the appellant No.2. Consistent with the disclosure statements, the Appellants led the police to the place of occurrence where on being shown by the Appellants the police recovered the incriminating articles like the weapons of offence, M.O.XIX and M.O.XX vide seizure memo Exhibit 14, the blood stains wearing apparels of the appellants, M.O.XXI to XXVI vide seizure memo Exhibit 14, green and steel coloured locks and keys vide seizure memo Exhibit 15. Reference to the injuries on the body of the appellant No.2 as an evidence of the use of third degree by the police in extracting the disclosure statements do not in our view assist the appellants in the face of those glaring evidence.

25. In the case of ***Lakshmi Singh*** vs. ***State of Bihar*** reported in ***(1976) 4 SCC 394*** while dealing with injuries on the accused persons it has been held as under:-

> **"8.** Non-explanation of injuries by the prosecution will not affect the prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the part of prosecution to explain the injuries. As observed by this Court in *Ramalagan Singh* v. *State of Bihar* prosecution is not called upon in all

> cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In *Hare Krishna Singh* v. *State of Bihar* it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witnesses examined on behalf of the prosecution are believed by the court in proof of guilt of the accused beyond reasonable doubt, question of obligation of prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature. In the case at hand, trifle and superficial injuries on accused are of little assistance to them to throw doubt on veracity of the prosecution case."
>
> (Emphasis supplied).

The aforesaid decision has been cited with approval in the case of ***Shajahan and Others*** vs. ***State of Kerala*** reported in ***(2007) 12 SCC 96*** to reemphasise that position of law. Although that was a case where right of self-defence had been set up by the accused, yet the principle will certainly apply in equal force in the present case also. In fact, the situation is worse here because the plea of the statement being extracted under coercion, was not at all taken by the appellants during the course of the trial.

26. The other cases cited at the Bar on the point also do not assist the appellants as they are applicable on the facts obtaining in those cases and, therefore, clearly distinguishable. In the case of ***Paulose and Others*** vs. ***State of Kerala*** reported in ***1990 CRI. L. J. 100*** the Single Bench of the Kerala High Court found that the trial Court had convicted the appellant only on the basis of the statement that had been made with the object to invoke Section 319(1) of the Cr.P.C. in violation of the proviso to Section 132 of the Evidence Act, when such statements pertain to persons other than the accused persons during the course of an enquiry into, or trial, an offence if from the evidence. It was held that the statement, even if it were to be accepted, no other evidence, oral or documentary, were found available to show that the appellants were guilty of the crime. This is not the case at hand where there are sufficient proven circumstances when read with the disclosure statements form a complete chain leading to the hypothesis of the guilt of the appellant having committed the offence.

27. In the case of ***Jogendra Nath and Others*** vs. ***State of Assam*** reported in ***1977 CRI. L. J. 1309*** the Division Bench of the Gauhati High Court has laid down that it is only a statement made to a police officer by a person in police custody leading to the discovery of the material objects in pursuance of the said statement that will alone be admissible u/S 27 of the Evidence Act. The further statements of the accused to the effect that they attacked and killed the deceased with certain weapons could not have been

admitted. It has also been reemphasised in that case that it is not permissible for the Court to reject a portion of the confession and act upon the rest in all cases and that it can be done so only in cases where there are other acceptable evidence in the light of which the inculpatory portion of confession can be acted upon. We are in complete agreement with this view and following that principle in the present case, it has been found that the prosecution has relied upon only that portion of the disclosure statements that have led them to the discovery of the incriminating articles like weapons of offence and blood stained wearing apparels of the appellants. There being no conflict in the action of the prosecution with the proposition set out in that case reliance thereon on behalf of the appellants, in our view is misplaced.

28. In the case of ***Anter Singh*** vs. ***State of Rajasthan*** reported in ***AIR 2004 S.C. 2864*** the Supreme Court has re-stated the scope and ambit of Section 27 of the Evidence Act with which there can be no dispute. The requirement of that Section summed up in paragraph 16 of the judgment is a law which is binding upon this Court. As already stated above, in the facts and circumstances of the present case we find no digression from the said proposition. The disclosure statements made by the appellants and the discovery of the incriminating articles on the basis thereon form well-established link in the chain of circumstances unerringly pointing at the guilt of the appellants of them having committed the crime. In paragraph 17 of the very same judgment, it has been laid down as follows:-

> **"17.** As observed in Pulukuri Kottaya's case (supra) it can be seldom happen that information leading to the discovery of a fact forms the foundation of the prosecution case. It is one link in the chain of proof and the other links must be forged in manner allowed by law. To similar effect was the view expressed in K. Chinnaswamy Reddy v. State of Andhra Pradesh and another (1962 SC 1788)."

The decision, therefore, is of no help to the appellants.

The cases of ***Mohd. Miayatullah*** vs. ***State of Maharashtra*** reported in ***AIR 1976 S.C. 483*** and ***Salim Akhtar alias Mota*** vs. ***State of U.P.*** reported in ***2003 CRI. L. J. 2302*** reiterates the principles of law laid down in the ***Anter Singh's*** case ***(supra)*** and, therefore, need not be alluded on.

29. In the case of ***Babu Das*** vs. ***State of Madhya Pradesh*** reported in ***2003 CRI. L. J. 2356 (S.C.)*** the Supreme Court had found that the disclosure statements and the recovery made consequent thereto were based on unreliable evidence, which is not the case in the facts and circumstances obtaining in the case at hand and, therefore, is of no help to the appellants.

For the reasons aforesaid we have no hesitation in rejecting the contention with regard to the sanctity of disclosure statements in the present case.

30. The next plea with regard to the inadequacy in the proof of the ornaments raised on behalf of the appellants do not appear to have any merit and therefore, unsustainable as the identity of the ornaments as the ones seized from the appellants during the investigation stands clearly established and we do not

find any reason to unsettle that. PWs 6 and 7 who are the witnesses to the seizure of the ornaments have remained firm in their statements and could not be shaken at all in their cross-examination. They have corroborated in full measure the evidence of PW18, the Investigating Officer, as regards the search and seizure of those ornaments. Under such circumstances, we find that the recovery of the ornaments which constitutes only one link in the chain of other circumstances stands proved by the prosecution beyond all reasonable doubts. In the case of ***Nagappa Dondipa Kalal*** vs. ***State of Karnataka*** reported in ***AIR 1980 S.C. 1753*** relied on by Mr. N. Rai, learned counsel on behalf of the appellants, seizure of the ornaments which was found to be defective in law, was the only circumstance relied upon by the prosecution from which the commission of offence by the appellant was sought to be inferred. This is not the case here. Therefore, this case is also of no help to the appellants.

31. With regard to the infirmity in respect of CFSL report pointed out by on behalf of the appellants, we do not find any substance as the Serological Report, Exhibits 20 and 22 were prepared by one Mr. Suresh Babu who is the Examining Officer and also the Assistant Chemical Examiner to the Government of India which were forwarded by the Director, Central Forensic Laboratory, Kolkata, vide Exhibits 21 and 23 respectively. Quite contrary to the submission that the CFSL report was proved by the I.O., it was the very Assistant Chemical Examiner as PW17 who did so thereby fully complying with the provisions of Section 293(4)(e) Cr.P.C. The

submission being factually incorrect and mis-conceived is, therefore, rejected.

32. Relying upon the case of ***Hardayal and Prem*** vs. ***State of Rajasthan*** reported in ***AIR 1991 S.C. 271*** Mr. Rai submitted that there was no finding that the blood stains found on the weapon of offence tallied with the blood stains of the victims and, therefore, the vague finding that it contained human blood was not sufficient to link the appellants in any manner with the offence. In our view, the submission is fallacious as the decision is clearly distinguishable in the facts and circumstances obtaining in the case at hand. In the above case the circumstances set up by the prosecution were found to be wanting in credible proof and, therefore, the only surviving evidence, i.e., the Serological Report that the blood stains found on the weapons of offence as being human blood, was considered insufficient to convict the appellants. In the case under consideration, all other circumstances having been fully established, the Serological Report that the blood stains found on the weapons of offence as being human blood assumes the character of a corroborative piece of evidence and, therefore, a link in the chain of circumstances leading to the hypothesis of the appellants being guilty of the crime. Therefore, these contentions raised by the Ld. Counsel fail to impress us and stands rejected.

33. The contradictions with regard to the time of recovery sought to be made out from the statements of the PWs 6 and 7 is of minor character, quite trivial having no consequences at all to

the substance of the prosecution evidence with regard to the seizure. This plea would not be available to the appellants on another account also. Section 145 Cr.P.C. prescribes the manner in which a previous statement of a witness may be contradicted. For convenience we may usefully reproduce below Section 145 Cr.P.C.:-

> **"145. Cross-examination as to previous statements in writing.**- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."
>
> (Emphasis supplied).

As the necessary requirements of confronting the witnesses with the contradictory statement as required 145 Cr.P.C. have not been complied with at the appropriate stage, it is now not open for the appellants to raise the point. It is a settled position of law that minor contradictions appearing in the evidence cannot vitiate the prosecution case unless it affects the substance thereof. As stated already, the prosecution witnesses have withstood the test of cross-examination and have given unfaltering statements with regard to the search and seizure of the ornaments from the persons of the appellants. The contradictions indicated on behalf of the appellants in our view, are trivial having not affect on the substance of the

evidence. The principle of law laid down in the case of ***Bhajan Singh (supra)*** and ***Ashish Bathen (supra)*** are well-established. In the case under consideration it is a matter proven circumstances and not suspicion that have formed a definite chain leading to the only conclusion of the appellants having committed the crime. The submission is, therefore, rejected.

34. The next contention raised by Mr. N. Rai, learned counsel on behalf of the appellants, to the effect that the prosecution has failed to establish the circumstances in the manner required under law do not impress us. Dealing with the different circumstances set out by him which, as per the learned counsel, the prosecution has failed to prove, it may be stated that at the first instance, those circumstances in our view are not vital as submitted by the learned counsel, but are rather peripheral and quite insignificant on the face of the established material facts forming the most essential links in the chain of circumstances leading to the guilt of the appellants of them having committed the offence. Dealing with the so called vital circumstances projected by the learned counsel on behalf of the appellants, it is found that the circumstances stated in (i) and (ii) as it appears from the evidence available on record appear to be fully established for the following reasons:-

(a) PW3, the Officer-in-Charge, Sadar Police Station, Gangtok, who was the person to break open the lock of the front door, has identified the two locks Exhibit 1 and

Exhibit 2 and the bunch of keys Exhibit 3. There was no denial to the locks and the keys having been seized from the place of occurrence. Even the seizure of those articles has not been denied. The relevant evidence as it appears from the statement of PW-3 is as follows:-

> " Re-examination by the Prosecution.
>
> (Two locks are produced from Malkhana shown to the witness). Ext.No.I is the same steel coloured lock which was found on the main door of the place of occurrance and which had to be broken open for entry into the place of occurrance. The dent mark noticed on it was caused at the time of its being broken open.
>
> Ext.No.II is the same lock which was found on the door leading to the living room of the place of occurrence which I had opened for entry therein and Ext.No.III is the same bunch of keys which I had notice lying on the table nearby at the P.O. and with the help of one of the keys in the said bunch which the lock Ext.No.II was opened by me.
>
> Re-cross exam. By the accused No.1 through Shri. D.R. Thapa.
>
> XXX
>
> It is true that I did not seize Ext.I and II and III.
>
> It is true that one iron rod was used to break open the Ext.No.I by the constable."

Under such circumstances, these facts remain established.

PWs 12, 13 and 18 have in their depositions corroborated the above evidence of PW3 in most categorical terms.

(b) Circumstance (iii) to the effect that the Investigating Officer did not take finger prints from the weapons of offence is of no consequence since weapons as being the weapons of offence have been proved by the prosecution beyond any reasonable doubt as would appear from the disclosure statements Exhibits 10 and 11 that have been proved by PWs 12, 13 and 18. We find from the unshaken evidence of those witnesses that they have no confusion at all as to the identity of the incriminating articles.

(c) Circumstance (iv) indicated by Mr. N. Rai on behalf of the appellants in our view is immaterial and also of no consequence. The prosecution has produced reliable witnesses to prove the facts which the house owner also would have given evidence of if he had been cited as a witness. It is well-settled that it is not the quantity but quality of the evidence which is relevant. In the present case, the house owner would only have been an additional witnesses to the facts proved by the other witnesses of equal credibility. In such circumstances, the house owner not having been cited as a witness is of no consequence to the prosecution case.

(d) Circumstance (v) placed by learned counsel that PW9 being a friend of the deceased persons is an interested

witness and, therefore, an unreliable witness, in our view is not sustainable.

It is a settled position of law that the evidence of an interested witness need not necessarily be rejected. All that is required in such a case would be to scrutinise the evidence of such a witness with more care. On such scrutiny, if it is found that there is substance in the evidence given by them, it is permissible for the Courts to act on it.

In the case of ***Ashok Kumar Choudhary*** vs. ***State of Bihar*** reported in ***(2008) 12 SCC 173*** this established position of law has been reemphasised in paragraph 12 which being relevant is reproduced:

> **"12.** Very recently in *Namdeo* v. *State of Maharashtra*, one of us (C.K. Thakker, J.) has said that a close relative cannot be characterised as an "interested" witness. He is a natural witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."
>
> (Emphasis supplied).

Apart from the above, there are catena of other decisions on the same point which need not be cited but the proposition of law remains firmly established and unaltered. In the light of the settled position of law,

when we examine the evidence of PW9 we do not find any infirmity in it. The witness PW9 has in no uncertain terms identified the appellants as the persons working as servants in Sikkim Hotel run by the two deceased ladies. This part of the evidence has not at all been demolished. Therefore, when we consider it along with the evidence of PWs 10, 11 and 15, the fact that the appellants were working as servants in the Hotel run by the deceased persons stands firmly established.

(e) Circumstance (vi) indicated by the learned counsel cannot be sustained for the reason that the evidence of the prosecution considered as a whole clearly establishes the complicity of the appellant No.1, Raju Chettri, in the commission of the offence.

(f) Circumstance (vii) of the two bags containing the gold ornaments and cash not being produced in Court during the trial is also in-consequence to the prosecution case as the existence of those bags stands fully proved by PWs 1, 2, 3 4, 6 and 7. It has never been the case of the appellants that the two bags did not exists at all. In fact, when we consider the prosecution evidence as a whole, the fact of the two bags containing ornaments and cash has been substantially admitted. Even assuming that what is being contended by Mr. Rai is accepted to be true, we do not think that such

inadequacy in the evidence would in any manner vitiate the other evidence available on record and the omission would be quite insignificant. The fact that cash and gold ornaments and other articles were contained in those two bags have been categorically established by the evidence of PWs 1, 2, 3, 4, 6, 7 and 18.

In the aforesaid circumstances, the deficiency in the prosecution evidence set out by the learned counsel is not such that would vitiate the substance of the prosecution evidence and the material circumstances which are found fully established as required under the law.

35. We agree with the submission on behalf of the learned Public Prosecutor that each of the circumstances appearing against the appellants have been proved. We may add that certain facts of vital significance appearing in the statement of the PW18, the Investigating Officer of the case, have not at all been dealt with in the cross-examination. By those statements, the Investigating Officer has most succinctly set out the substance of the investigation which would be useful to be reproduced for convenience. It reads as follows:-

> "..... Investigating revealed that the two accused persons were working as cook and waiter in the Hotel run by the two deceased ladies. Accused Raju Chettri was working as Cook and accused Puran Rai was working as a Waiter. With the motive of committing theft of cash and jewellery from the belongings of the two

> deceased, accused persons on the evening of the incident. Investigation also revealed that the two accused persons also used to reside in the same floor of the Hotel as the two deceased ladies. On the evening of the incident the two accused persons with the common object of committing theft of cash and other valuables of the deceased ladies first caused injury on the head of deceased Tsetenkie when she had come out of the toilet room of her flat. On hearing the cries Tsetenkie, her aged mother Shouki came out of her room both the accused persons had caused injuries on the head of the deceased Shouki. Fearing that the injured ladies may raise hue and cry the two accused ensured their death by slitting the neck of the two deceased ladies with the weapon of offence M.O-XIX and M.O-XX. Thereafter, the two accused persons were trying to flee away when they were apprehended by the Home Guard and a constable of Tadong O.P. on early following day morning."

It is of significance to note that none of the above statements have been put to the test in the cross-examination of Investigating Officer thereby persuading us to draw a presumption that those statements stand admitted. That apart, the aforesaid statements have been fully corroborated by the other witnesses produced by the prosecution which we do not find it necessary to allude on as they have already been dealt with in the foregoing paragraphs.

36. Considering the facts and circumstances, we are of the view that there is no merit in this appeal.

37. In the result, the appeal stands dismissed.

38. Let the records of the Court below be returned forthwith.

(Justice S. P. Wangdi)
Judge
16-09-2009

(Justice A. H. Saikia)
Chief Justice
16-09-2009