



34

THE HIGH COURT OF SIKKIM : GANGTOK

DATED : 25-11-2011

CORAM

**HON'BLE THE ACTING CHIEF JUSTICE
MR. JUSTICE S. P. WANGDI**

Crl.A. No.06 of 2010
(Jail Appeal)

Mamta Mahanto,
W/o Late Netai Mahanto,
R/o Baro Danga,
P.S. Dinahata, Dist. Cooch Behar,
West Bengal. **... Appellant**

versus

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

For Appellant	: Mr. N. Rai, Legal Aid Counsel with Ms. Jyoti Kharka, Advocate.
For Respondent	: Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with Mr. S. K. Chettri, Assistant Public Prosecutor, Mr. D. K. Siwakoti, Mr. Thinlay Dorjee Bhutia and Ms. Prathana Ghataney, Advocates.

Crl.A. No.08 of 2010
(Jail Appeal)

Ranjit Haldar,
S/o Shri Santi Ranjan Haldar,
R/o Chhoto Nachina, Petla,
P.S. Dinahata, Dist. Cooch Behar,
West Bengal. **... Appellant**

versus

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



For Appellant : Mr. S. S. Hamal, Legal Aid Counsel with Mr. Tashi Wongdi Bhutia, Advocate.

For Respondent : Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with Mr. S. K. Chettri, Assistant Public Prosecutor, Mr. D. K. Siwakoti, Mr. Thinlay Dorjee Bhutia and Ms. Prathana Ghataney, Advocates.

J U D G M E N T

Wangdi, ACJ.

These Appeals are taken up together as they arise out of one charge-sheet and disposed of by a common judgment of the Learned Sessions Judge, Special Division – I, Sikkim at Gangtok dated 29-07-2010 in S. T. Case No.04 of 2010 (hereinafter referred to as the “impugned judgment”).

2(i) The prosecution case, shorn of all details relevant for consideration in this Appeal, is that on 28-12-2004 a FIR was lodged by one Bhola Mahanto, P.W.1 of Boro Danga, P.S. Dinhata, P.O. Petla, Dist. Cooch Behar, W.B., whereby it was stated that his brother Netai Mahanto, Carpenter by profession, who had gone to Lachen, North Sikkim, with his wife and two children along with Ranjit Halder, accused No.1, the appellant in CrI. A. No.08 of 2010 (hereinafter referred to as “A1”), had been murdered by the said Ranjit Halder, A1, Paran



Mandol (juvenile accused), nephew of Ranjit Haldar, and Mamta Mahanto, wife of the deceased, Accused No.2, the appellant in CrI. A. No.06 of 2010 (hereinafter referred to as "A2") and his body concealed under the wooden floor of their rented house at Rabom, North Sikkim.

(ii) On receipt of the FIR, Chungthang P.S. Case No.6(12)2004 dated 28-12-2004 under Sections 302/201/34 IPC was registered against the accused persons and investigation taken up.

(iii) Upon investigation, it was revealed that Ranjit Haldar, A1 also a Carpenter by profession hired by one Gatuk Lachenpa (P.W.6) of North Sikkim, had engaged the deceased Netai Mahanto and two others as his helpers. The deceased Netai Mahanto had taken his wife and two children along with him to the place of work where they lived with A1, Ranjit Haldar, together in a rented accommodation where eventually, A1 and A2 developed illicit relationship. Later, in the month of August, 2004, Ranjit Haldar, A1, was engaged in the house of one Jamyang Bhutia (P.W.5) at Rabom, Chungthang, North Sikkim, where the deceased Netai Mahanto along with his wife A2 and children also



accompanied and again started living in the same rented accommodation. The deceased Netai Mahanto got suspicious of his wife's infidelity and warned her. A2 then informed of this to A1 resulting in a conspiracy being hatched between them to eliminate the deceased Netai Mahanto. In furtherance to the conspiracy, in the night of 25-11-2004 A1 brought some alcohol and offered it to deceased, Netai Mahanto and his nephew, Paran Mandol, the juvenile accused, but the deceased declined to have the alcohol and preferred to have some "Chhang", a local drink, and went to sleep. A1 woke up at midnight and picking up a plane "Randa" (carpenter tool) hit the sleeping victim twice with it on his head in the presence of A2, the wife of the deceased asking her to keep silent. A1 then asked his nephew, Paran Mandol, the juvenile accused, to get the rope lying in the house with which he strangled the unconscious deceased to death with the assistance of A2, Mamta Mahanto and the juvenile accused Paran Mandol. They packed the dead body of the deceased in two gunny bags after tying the body and legs with the ropes. On 26-11-2004, A1 removed the wooden planks from the floor of the room with an iron rod (Gaikhurey) taken with the permission of mason, Ram Bdr. Rai, P.W.7,



from the store room of Jamyang Bhutia, P.W.5, and after digging a pit measuring about 2½ ft. x 3 ft. buried the dead body concealing it. They then replaced the wooden planks and burnt the rope used by them to strangle the deceased in an "Aungiti" (portable local stove) and placed the "Gaikhurey" back in the store room from where it had been taken. On the next day, i.e., 27-11-2004, the accused persons locked the rented house and left for Lachen accompanied by two children of the deceased and stayed in the house of Gatuk Lachenpa, P.W.6 in the rented room there for 4 days. Thereafter, collecting payment of Rs.2,000/- from Gatuk Lachenpa, they went to Pakshek Busty where during their halt A1, on being asked by the other carpenters working there, informed them that the deceased Netai Mahanto had returned to his native village due to some mis-understanding with his wife. After a day's halt at Pakshek Busty the accused persons left for their village in Cooch Behar where Bhola Mahanto, the complainant, P.W.1, the brother of the deceased, enquired from A2 about him and their two children. Inability of A2 in giving a satisfactory explanation got the complainant suspicious prompting him and other carpenters to proceed for Pakshek Busty taking A2 along with them.



On 28-12-2004, the Area Panchayat, Doma Lepcha, P.W.2, Pakshek Busty, asked A2 about her husband and persuaded her to state the truth. A2 then confessed about the entire incident before them resulting in them taking A2 to Mangan P.S. and then to Chungthang P.S. where Bhola Mahanto lodged his FIR. The disclosure statement under Section 27 of the Indian Evidence Act, 1872, made by A2 led to the recovery of the dead body of the deceased Netai Mahanto from under the floor of the rented room of the accused at Rabom. Absconding A1 and the juvenile Paran Mandol were later apprehended. The disclosure statement of A1 under Section 27 of the Indian Evidence Act, 1872, led to the recovery of the "Gaikhurey" used for removing the wooden planks and digging pit and the remaining part of the rope used for strangulating and tying up the body of the victim from the place of occurrence. Similar statement of the juvenile Paran Mandol was also recorded.

3. On completion of the investigation, charge sheet was filed against A1 and A2 and the accused Paran Mandol, later declared as a juvenile, under Sections 302/201/34 IPC.



4. The Learned Sessions Judge, Special Division – I, having found *prima facie* case under Sections 302/201/34 IPC against A1 and A2 framed charges against them to which the accused persons pleaded not guilty and claimed for trial.

5. In order to substantiate their case, the prosecution examined 16 witnesses and on completion of the trial the Learned Trial Court found the accused persons guilty of the offences and by the impugned judgment convicted and sentenced them.

6(i) Mr. N. Rai, Learned Senior Advocate appearing as Legal Aid Counsel for the appellant, Mamta Mahanto, A2 in CrI. A. No.6 of 2010, confined his arguments to the case of A2 alone and submitted that the prosecution has failed to prove beyond reasonable doubt that A2 was guilty of the offence under Sections 302/34 IPC as the circumstantial evidence, appearing in the record upon which the entire prosecution case was based, are such as to establish that she had no role in the death of her husband, deceased Netai Mahanto. In the first instance, Exhibit 1, the FIR written in the Bengali vernacular cannot be said to have been proved because one Krishna



Kanta Burman, who as per the prosecution had helped the Investigating Officer in getting Exhibit 1 translated in Nepali by rendering oral translation to the scribe Kumar Tamang, P.W.14, was not examined and no one else could read the contents of Exhibit 1 and, that the investigation of the case was taken up only on the basis of the translated version of the FIR. By referring to the statement of P.W.2, Doma Lepcha, it was stated that in her cross-examination, she has clearly deposed that "accused No.2 told me that accused No.1 threatened her that if she did not catch hold of the nose of her deceased husband he would kill her also and so out of fear she caught hold of the nose of her dead husband" and "the accused No.2 also told me that after the incident accused No.1 told her that if she disclosed about the incident to anybody he would kill her also". That by these as per Mr. Rai, two facts had clearly emerged. Firstly, A2 had participated in the murder of her husband under the threat of A1 and that she had not disclosed about the incidents for fear of her also being killed by him. Secondly, her participation in the murder had no consequence as her husband was already dead when she under the threat of A1 had held his nose. The next contention placed by Mr. Rai was that the case of



the prosecution of her having made the disclosure statement leading to the discovery of the dead body from the rented house was doubtful as it has come in the evidence of P.W.8, Phucham Bhutia in her cross-examination that "When the Police came to our house on the relevant day I did not see the lady accused standing in the dock today since she did not come with the Police to our residence. We were told that she was in the vehicle since our house is below the road and the vehicle had been stopped on the road". This statement as per the Learned Senior Counsel stands fully corroborated by the answer given by A2 to question 24 while being examined under Section 313 of the Code of Criminal Procedure, 1973. For convenience, question 24 and the answer thereto by A2 are reproduced below:-

"Q.24 It is further in the evidence of PW 2 that thereafter she received an information from Chungthang Police Station that the dead body of the deceased Nitai Mahanta was to be recovered and for that purpose her presence was also requested and the witness went to the house of a Bhutia gentlemen at Rabom, North Sikkim where the dead body of the deceased Nitai Mahanta was reported to be concealed after his murder and on reaching the said house she saw Police personnel, a doctor and a number of co-villagers already assembled there. What have you to say?

Ans. I do not know as I was kept inside the vehicle."



(ii) By referring to the case of **Sardar Singh etc. etc. vs. State (Delhi Administration, Delhi) : 1993 CRI.L.J. 1489**, it was submitted that the evidence as regards the participation of A2 in the act of committing murder being such as indicated above, charge under Sections 201/34 IPC also cannot sustain, there being no evidence on the record that she had helped A1 in concealing or causing the evidence of the commission of the offence to disappear.

(iii) It was then submitted that the Learned Trial Court had committed an error in relying upon the decision of **Smt. Basanti vs. State of Himachal Pradesh : AIR 1987 SC 1572** to arrive at the conclusion that A2 was guilty of the offence, being clearly distinguishable on the facts of the present case. As per Mr. Rai, in the case of **Smt. Basanti (supra)** contrary to the present case, the fact of the accused having made the statement under Section 27 of the Evidence Act leading to the recovery of the incriminating articles were established. It was then contended that the requirement of Section 34 IPC also was not satisfied against A2 as the evidence reveal that criminal act on her part was clearly not in furtherance of the common



intention with A1 but caused by the fear of A1 who had threatened her. Mr. Rai, summing up his submission, stated that A2, if at all, could only be held guilty of the offence under Sections 201/34 IPC but certainly not under Sections 302/34 IPC and, therefore, prayed for alteration of the charge against her.

7. Mr. S. S. Hamal, Learned Legal Aid Counsel, appearing in Crl. A. No.8 of 2010 on behalf of appellant, A1 reiterating the submission of Mr. N. Rai, Learned Senior Counsel for A2, submitted that from the evidence of P.W.1, Bhola Mahanto and P.W.14, Kumar Tamang the FIR, Exhibit 1 was not proved at all. As per him, the prosecution had failed to prove even the disclosure statements Exhibits 24 and 25 in accordance with law as it has come in the evidence of P.W.6, Gatuk Lachenpa, the witness to the disclosure statement "that Exbt. 24 and Exbt. 25 already marked were already prepared in my absence by the Police and I simply signed therein in Exbt. 25 (a) and Exbt. 24 (a). It is true that it was the Police who opened the room from where material object M.O. VI, M.O. V were recovered. The room was locked and it was opened by the Police by using the key. It is true that I do not know who had removed the dead body



from the P.O. I do not know wherefrom the M.O. VI was recovered" and, "It is true that I do not remember whether accused gave his statement to the Police in my presence at Rabom in the house of Zamyang Bhutia" and also in the cross-examination of P.W.7, Ram Bdr. Rai, the witness to the recovery of the material evidence M.O. VI, namely, "Gaikhurey" (iron tool used by Mason) and M.O. V (a white rope) seized vide Exhibit 27, when he stated that "It is true that nothing was recorded in my presence. It is true that before I put my signature in Exbt. 26 and Exbt. 27 already marked the contents of the same were not read over to me and I was simply asked by the Police to put my signatures in these two exhibits marked Exbt. 26 (b) and Exbt. 27 (b) respectively without first understanding what the contents was there in Exbt. 26 and Exbt. 27 respectively." Such being the nature of the evidence, the entire story of the prosecution of the recovery having being made based upon the disclosure statement of A1 becomes doubtful. It was then submitted that even assuming that the recovery of the dead body is to be accepted as proved, there is grave doubt as to whether or not it was the body of the deceased Netai Mahanto as there are conflicting evidence as regards the



state of the body. As per him, one set of evidence indicates that the body was found naked while another indicates it to be clothed. Finally, relying upon the decision of **Smt. Basanti (supra)** it was submitted that it is now a settled position of law that extra-judicial confession of a co-accused cannot be held against the other co-accused and made the basis of his conviction. That even assuming that the extra-judicial confession was indeed made by A2 it could never be the basis of the conviction of A1. On the above premises, Mr. Hamal submitted that since the case of the prosecution was riddled with doubts the conviction and sentenced passed against A1 deserved to be set aside.

8(i) Mr. Karma Thinlay Namgyal, Learned Additional Public Prosecutor, on the other hand submitted that there was no doubt of A1 and A2 having committed the offence under Sections 302/201 IPC in committing the murder of the deceased in furtherance of the common intention to do so and causing disappearance of evidence of the offence as the chain of circumstances fully established by the prosecution leads to the only hypothesis of the guilt of the appellants, A1 and A2 having committed those offences as (a) the



evidence of P.W.5, Jamyang Lepcha, P.W.7, Ram Bdr. Rai and P.W.10, Ganesh Burman fully establishes that A1, A2 and the deceased were living together; (b) A2 gave false and misleading reason to P.W.1, Bhola Mahanto, for the absence of the deceased in their native village in Cooch Behar when asked by the latter; (c) the extra-judicial confession made by A2 at Pakshek Busty on being questioned by Doma Lepcha, P.W.2, is clear, categorical and unambiguous; and (d) the extra-judicial confession of A2 made to P.W.2 and others at Pakshek Busty and the disclosure statements of both A1 and A2 ultimately led to the recovery of the dead body and seizure of the "Randa" vide Seizure Memo Exhibit 6 and "Gaikhurey" vide Exhibit 27.

(ii) It was submitted that it is in the evidence of P.W.6, Gatuk Lachenpa, that when he engaged A1 he noticed that "the accused who was otherwise a good carpenter had finished the making of my table in hurry. His work was rough and he appeared nervous". That the plea of A2 being under threat of A1 was belied by the fact that during the entire period when they proceeded from Cooch Behar for Pakshek Busty A1 was not with them and, therefore, ordinarily she ought to



have come out with the truth at that time. As per the Additional Public Prosecutor, there can be no manner of doubt of the involvement of A2 in the entire episode which can be inferred from her conduct. Reliance was placed by him to the case of ***Ponnusami vs. State of Tamil Nadu : (2008) 5 SCC 587*** more particularly the following:-

"20. This Court in *State of Maharashtra v. Suresh* [(2000)1 SCC 471] opined: (SCC pp.479-80 para 26)

"26. We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act."

21. We have to consider the factual background of the present case in the light of the relationship between the parties. If his wife was found missing, ordinarily, the husband would search for her. If she has died



in an unnatural situation when she was in his company, he is expected to offer an explanation therefor. Lack of such explanation on the part of the appellant itself would be a circumstantial evidence against him.”

(iii) That the extra-judicial confession made by A2 to P.W.2, Doma Lepcha, is categorical, clear and unambiguous and that by itself would be sufficient to convict the accused notwithstanding the fact that there are sufficient corroborative evidence in support of the extra-judicial confession. The case of ***State of U.P. vs. M. K. Anthony : (1985) 1 SCC 505*** was referred to in this regard the relevant portion of which is reproduced below:

“15. However, in *Piara Singh v. State of Punjab* [(1977) 4 SCC 452], this Court observed that the law does not require that evidence of an extrajudicial confession should in all cases be corroborated. It thus appears that extra-judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extrajudicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extrajudicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of



corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extrajudicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon."

(iv) The Learned Additional Public Prosecutor went on to submit that the conduct of the accused persons would also be relevant in view of Section 8 of the Evidence Act irrespective of whether or not the appellants had made the statement under Section 27 of the Evidence Act, when there is evidence of them having pointed out to the police officer where the dead body was found and on their pointing out the dead body was exhumed. In support of his contention the case of **A. N. Venkatesh and Another vs. State of Karnataka : (2005) 7 SCC 714** was referred to and relevant portion of which is reproduced below:

"9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand v. State (Delhi Admn.)*."



(v) The other decisions on the above proposition of law cited by Mr. Karma Thinlay Namgyal, Additional Public Prosecutor, need not be cited as being repetitive, but suffice it to observe that as per him there was no doubt of A2 having made the extra-judicial confession leading to the lodging of the FIR, of A1 and A2 making statements under Section 27 of the Evidence Act that led to the exhumation of the dead body of the deceased and recovery of the weapons of murder and other incriminating articles from the place of occurrence. That the circumstances stand fully established and form an unbreakable chain leading to the only hypothesis of the appellants of having committed the offence of murder of the deceased Netai Mahanto. The Learned Additional Public Prosecutor in reply to the doubt raised as regards the FIR, drew the attention of this Court to the endorsement Exhibit 29A of P.W.14 who had scribed Exhibit 29 the Nepali version of Exhibit 1 (in Bengali) which reads as -

"Original FIR written in Bengla vernacular was translated into Nepali by Krishna Kanta Verma and the same was reduced into Nepali vernacular by Kumar Tamang.

1. Signed by Kumar Tamang

2. Signed by Sri Krishna kanta
Burmian"



(vi) That this also stands corroborated by the evidence of P.W.4, Phurba Lepcha, husband of P.W.2 clearly establishing the factum of the FIR Exhibit 1 having been lodged and, therefore, the questions raised as regards its authenticity could not be sustained.

(vii) The Learned Additional Public Prosecutor in reply to question of identity of the dead body raised by Mr. Hamal, submitted that it has come in the evidence of P.W.3, Rabi Dey who is a Carpenter working in Mangan, North Sikkim, that he was one of the witnesses to the recovery of the exhumation of the body and stated that "I could prominently notice a swelling towards the right forehead of the dead body". This as per the Learned Additional Public Prosecutor corroborates the statement of the accused persons under Section 27 of the Evidence Act that A1 hit the deceased twice with "Randa" on his head.

9(i) Upon hearing the Learned Counsels for the parties, I am inclined to concur with the submissions made on behalf of the Learned Additional Public Prosecutor that from circumstances that appear to be fully proved, there can be no doubt that A1 and A2 in furtherance to their common intentions committed the



murder of the deceased, Netai Mahanto and thereafter concealed the evidence of such offence. Since the Learned Counsels appearing on behalf of the Appellants have confined their submissions only on limited aspects of the prosecution case with the rest being admitted, we may only deal with those in *seriatim* to set the matter at rest.

(ii) On the first point raised on behalf of both the Appellants with regard to the FIR, there is no doubt Exhibit 1 is the first written complaint received by the Chungthang P.S. and is concededly scribed in the Bengali vernacular that could not be read by anyone else. However, this gets clarified by the fact that it was scribed in Nepali by Kumar Tamang, P.W.14, on being orally translated by one Krishna Kanta Burman. As pointed out by the Learned Additional Public Prosecutor, there is an endorsement by Kumar Tamang, P.W.14 on the translated version Exhibit 29 which has been reproduced above while dealing with the submission of the Learned Additional Public Prosecutor. From this, there can be no doubt of Exhibit 1 having been lodged by the complainant, Bhola Mahanto, P.W.1, and had been acted upon based upon its translated version.



(iii) On another aspect on the question, I may allude to the principle laid down by a Division Bench of the Hon'ble Calcutta High Court in **A.W. Khan vs. The State : AIR 1962 Cal 641** where Their Lordships have also held that "the First Information Report is not an indispensable requisite for the investigation of a crime specially where the accused was committed to sessions, the charge was framed and explained to him and he was tried on the charge. The lack of First Information Report in such a case would not and cannot vitiate the trial outright". In view of the facts in the present case, I am inclined to concur with the above views and hold that the point raised by the Learned Counsels for the Appellants cannot succeed.

(iv) The next point that was raised on behalf of the A2 is that she had no role to play in the entire episode and that her silence was induced by fear of A1 who had threatened her. This defence is belied by the fact that she did not disclose of the incident to her brother-in-law, the complainant, P.W.1, or anyone else even when she was alone with them throughout the journey from Cooch Behar, West Bengal to Pakshek Busty, North Sikkim, and chose to render her extra-judicial confession only upon



being questioned by the Panchayat of the Area, Doma Lepcha, P.W.2. It is also in evidence that after the incident, she had accompanied A1 to Lachen where the latter had been engaged in the house of Gatuk Lachenpa, P.W.6, to make a table where she stayed with him for 4 days. Nothing had prevented her during this period to make a get away and approach the law enforcing agencies. Such conduct on her part unerringly leads to the reasonable inference of her having participated in the commission of the offence willingly. Therefore, the contention on this account also stands rejected.

(v) The next is the question as regards the doubt raised on the disclosure statement being made by A2 leading to the recovery of the dead body relying upon the evidence of Phucham Bhutia, P.W.8 whose statement has been extracted above while dealing with the submission of Mr. N. Rai, Learned Senior Counsel for A2. In my view, the fact of A2 having made to the statement under Section 27 of the Indian Evidence Act stands well-established from the over-whelming evidence appearing to the contrary. P.W.2, Doma Lepcha, has stated firmly of such statement having been



made by A2 that stands corroborated by the fact that A2 had led the police party and the witnesses to the place of occurrence and pointed out the spot where the dead body had been concealed. We may refer in this regard to the statements of P.Ws 1, 2, 3, 5, 6 and 8 who remained unshaken while being cross-examined. The point, therefore, stands rejected as being unsustainable.

(vi) The submission of Mr. Hamal on behalf of A1 seeking to indicate the deficiency as regards the disclosure statements Exhibits 24 and 25 also cannot be sustained. It has been clearly established from the evidence adduced on behalf of the prosecution that the statements made by A1 led to the recovery of the "Gaikhurey", M.O. VI, a white rope, M.O. V, on him leading the Investigating Officer and the witnesses to the place where they had been concealed. I do not see any reason to disregard such evidence and, therefore, reject the contention.

(vii) The question of the doubtful identity of the dead body raised by Mr. Hamal also cannot be accepted as it has been clearly established by P.W.3, Rabi Dey also a carpenter, identifying the dead body as that of



the deceased, a fact which has remained uncontroverted and undemolished.

(viii) Having dealt with the limited contentions raised on behalf of the Appellants, I am of the view that the circumstances appearing against the accused persons are unimpeachable and fully established by the prosecution. While concurring with the circumstances indicated by the Learned Additional Public Prosecutor in his submission which are not repeated for brevity, I may add that the injury on the forehead of the dead body as stated by P.W.3, Rabi Dey, is corroborated by the medical evidence, Exhibit 25 which reads as "is a combined effect of ante-mortem head injury produced by blunt force and ante-mortem strangulation by ligature" apart from the other injuries.

(ix) The principles of law placed and the decisions cited on behalf of the Appellants are well-settled and accepted but, those are applicable on the facts obtaining in those cases and, in the facts and circumstances of the present case they clearly do not apply. The case of **Smt. Basanti (supra)** referred to by the Learned Legal Aid Counsels for the Appellants is clearly distinguishable as in that case the disclosure statement under Section



27 of the Indian Evidence Act was made by only one of the accused persons and it was under such circumstances that it was held that conviction of a co-accused could not be based upon the extra-judicial confession of the other co-accused. Quite distinctly, in the case before us both the accused persons have made such statements and, for the reasons already indicated earlier, they having made the statements also stand established. The decision, therefore, is not of any assistance to the Appellants.

10. In the result, the Appeals are dismissed.
11. No order to costs.
12. The records of the Court below be returned forthwith.

(S. P. Wangdi)
Acting Chief Justice
25-11-2011

Index : Yes/No

Internet : Yes/No