



**HIGH COURT OF SIKKIM, GANGTOK
(Criminal Appellate Jurisdiction)**

**D.B. : HON'BLE SHRI SUNIL KUMAR SINHA, C.J. &
HON'BLE SHRI S. P. WANGDI, J.**

Crl. A. No. 12/ 2014

Shri Kharga Bahadur Pradhan,
Son of Shri Dakman Pradhan,
Resident of Radhu Khandu,
Dentam,
East Sikkim.
At Present : Rongyek Jail.

Versus

... **APPELLANT**

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

... **RESPONDENT**

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

Appearance :

Mr. N. Rai, Senior Advocate (Legal Aid Counsel) with Ms.
Tamanna Chettri and Ms. Bindu Gurung, Advocates for the
Appellant.

Mr. Karma Thinlay, Addl. Public Prosecutor with Mr. S. K.
Chettri and Ms. Pollin Rai, Assistant Public Prosecutors for
the State-Respondent.



J U D G M E N T
(30.03.2015)

Following Judgment of the Court was delivered by
SUNIL KUMAR SINHA, CJ.

1. This Appeal is directed against the Judgment dated 24.02.2014 passed in Sessions Trial Case No. 816/2013 by the Sessions Judge, Special Division-II at Gangtok, East Sikkim. By the impugned judgment, the Appellant has been convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/- with default sentence of rigorous imprisonment for two years.

2. The facts, briefly, stated are as under:-

2.1 Deceased, Aita Mati Lepcha, was the second wife of Pemtuk Lepcha (PW-1). Man Maya Lepcha (PW-2) is their daughter. The deceased was residing with her husband and daughter in Village: Boom. The Appellant was also residing in the same village in a rented premises. The deceased was missing since the evening of 03.08.2009. She had gone to Kaluk Bazar in the evening but she did not return in the night. Her husband, Pemtuk Lepcha (PW-1) in the said night was in the house of his first wife, which was also in the said village. In the morning, a search was made but when the deceased was not found,



a missing report was lodged by her husband in Kaluk Police Station.

2.2 On 06.08.2009, the dead body of the deceased was found at an open place, known as Amalay Dara in Budang jungle. An information was sent to Naya Bazar Police Station. Inquest of the dead body was prepared and it was sent for post-mortem. The post-mortem examination was conducted by Dr. Somadutta Sharma (PW-19). He found following injuries on the dead body of the deceased: -

- (i) faint incomplete band of ligature mark about 23 x 2 cms. placed horizontally over the front and sides of the neck at the level of the thyroid cartilage with contusion of underlying subcutaneous tissues;
- (ii) two faint contusions 10 x 1 cms. and 8 x 1 cms. on the right shoulder and
- (iii) contusion of the scalp about 8 x 2 cms. on the right fronto-temporal region.

2.3 The injuries were ante mortem and were fresh before death. The dead body was in highly decomposed condition as portions of the small intestine, large intestine, uterus and vagina were not available. According to Dr. Sharma, the cause of death was strangulation by ligature and it was homicidal in nature. Post mortem report is Exbt.P12.

2.4 Admittedly, there was no eye-witness to the incident and the case of the prosecution was based on circumstantial



evidence. The learned Sessions Judge mainly relied on the three circumstances to hold that the deceased was murdered by the Appellant. These circumstances are –

- (i) the deceased was lastly seen in the company of the appellant;
- (ii) the Appellant gave discovery statement (Exbt. P20) under Section 27 of the Evidence Act, leading to discovery and seizure of a shawl, chappal and an empty bottle of rum and
- (iii) deceased had illicit relation with the Appellant and thus, the Appellant had motive to commit murder of the deceased.

2.5 Apart from the above, the Sessions Judge also held some other circumstances to be incriminating, which he described in paragraph 100 of the impugned judgment.

2.6 On the basis of the said circumstances, the Appellant was convicted and sentenced as above. Hence, this Appeal.

3. Mr. N. Rai, learned Senior Counsel appearing on behalf of the Appellant, has argued that the circumstance of last seen was not established; that apart there was a long time gap between the deceased allegedly seen alive in the company of the Appellant and the dead body found; the alleged disclosure/discovery statement (Exbt. 20) was a confession to the police officer and, in fact, nothing was discovered from it; the articles like shawl, chappal and an empty bottle of rum were already discovered by the villagers, which were found at a nearby place of the dead body; those articles were not identified to be that of the deceased; there is no evidence on



record to show that either the deceased was pregnant or there was any other reason to commit the murder, therefore, even if the Appellant was having illicit relation with the deceased, there was no motive for him to commit her murder.

4. On the other hand, Mr. Karma Thinlay, learned Additional Public Prosecutor appearing on behalf of the State, has opposed these arguments and supported the judgment passed by the Sessions Court. He also took us to many other circumstances taken into consideration by the Sessions Court.

5. We have heard learned Counsel for the parties.

6. In a case based on circumstantial evidence, the circumstances set forth by the Prosecution should be fully established. Those circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one to be proved. The circumstances so established should not be capable of being explained and the chain of circumstantial evidence must be complete leading to the proof of singular fact of guilt of the accused.

[*vide Dhananjoy Chatterjee vs. State of W.B. : (1994) 2 SCC 22; Bodh Raj alias Bodha and others vs. State of Jammu and Kashmir : AIR 2002 SC 3164 and State of Goa vs. Sanjay Thakran & Anr. : 2007 (4) SBR 321*].

7. Now, we shall discuss the circumstance of 'last seen together'. Let us firstly go by the principle in this regard laid down by the



Supreme Court in **Bodh Raj** (supra). In the said judgment, it was held that the last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

8. In the instant case, it was alleged that the deceased was lastly seen in the company of the Appellant in the evening of 03.08.2009 in Kaluk Bazar. The Prosecution has examined a solitary witness to prove the above circumstance. He is Chup Tshering Lepcha (PW-8). He was *jeth* of the deceased and was residing in the neighbourhood of the deceased. He deposed that on 03.08.2009, in the evening at about 6 p.m., he saw the deceased at Kaluk Bazar. She was well dressed at the relevant time. Seeing this, he asked her where she was going. Later on, when he was returning to the village, he saw that the deceased was travelling in the vehicle of the Appellant, being registration No.SK-02A/3299. This vehicle was driven by the Appellant and it was proceeding towards Rinchenpong Bazar. On the following day, i.e. 04.08.2009, in the morning at about 8 a.m., the



daughter of the deceased came in search of the deceased and he told her that the deceased was travelling in the vehicle of the Appellant on the previous evening.

9. Chup Tshering Lepcha (PW-8) was a close relative of the deceased, being her *jeth*. He was the solitary witness of lastly seeing the deceased in the company of the Appellant. Thus, his evidence has to be scrutinized with great care and caution. In cross-examination, he admitted in the first line that his statement (under Section 161 Cr.P.C.) was recorded by the Police on 07.08.2009. Though the dead body of the deceased was found on 06.08.2009 and the investigation has already commenced, he did not disclose about the factum of last seen to the police prior to 07.08.2009. He claims that he had told the daughter of the deceased (PW-2) that her mother was travelling with the Appellant in his above vehicle, but when this fact is appreciated in light of the evidence of daughter of the deceased, namely, Man Maya Lepcha (PW-2), the same appears to be false. It nowhere comes in her evidence that either she met Chup Tshering Lepcha (PW-8) on 04.08.2009 or PW-8 had informed her that her mother (deceased) was with the Appellant in Kaluk Bazar.

10. That apart, if this fact would have been stated by Chup Tshering Lepcha (PW-8) to Man Maya Lepcha (PW-2), there was no reason for Man Maya Lepcha (PW-2) not to disclose it to her father (PW-1) whom she informed that her mother did not return in the



night. We further note that in missing report lodged by Pemtuk Lepcha (PW-1), nothing has been mentioned about all this and a simple report of missing was lodged. This creates a suspicion on the testimony of Chup Tshering Lepcha (PW-8). On a careful scrutiny of his evidence, we do not find his evidence to be wholly reliable.

11. Apart from the above, we note that the deceased was allegedly seen alive in the company of the Appellant on 03.08.2009 and her dead body was found in abandoned condition in Budang jungle on 06.08.2009. Thus, there was a long time gap between the deceased lastly seen alive and the dead body found and in such situation, a possibility of any third person coming in between cannot be fully ruled out. We are of the view in light of the above facts and circumstances, the Sessions Judge was not justified in holding that the circumstance of last seen was fully established against the Appellant. We hold that the said circumstance was not fully established.

12. The learned Sessions Judge has held that the Appellant gave discovery statement (Exbt. 20) and certain articles were discovered and seized at his instance. This does not appear to be correct. The alleged discovery statement (Exbt. 20) is in 3 (three) pages. In fact, the entire part of the said document appears to be confessional. The Sessions Judge has held that in the last paragraph of this long statement, the Appellant had stated that the vehicle that he had taken for all these acts was Alto and the registration number of the



vehicle was SK-02A/3299 and it was belonging to him. The seizure of shawl, chappal and an empty bottle of rum have been also taken to be leading to above statement.

13. We find from the record that all these articles (except the vehicle owned by the Appellant) were found at open places and, in fact, they were already discovered by the witnesses prior to the above statement made by the Appellant. Therefore, there was no discovery at all and it cannot be held that either the articles were seized on the discovery made by the Appellant or the place of occurrence was discovered only after his statement.

14. So far as 'motive' is concerned, the learned Sessions Judge has held that as there was illicit relation between the Appellant and the deceased, there was 'motive' for the Appellant to commit her murder. Even if we take that there was illicit relationship between the Appellant and deceased, how that itself would be the 'motive' for the Appellant to commit her murder. Motive must be informing certain reasons and should be sufficient and relevant to commit such a heinous offence like murder. Only on account of illicit relation between the two, in absence of any other positive reasons, one cannot have 'motive' to commit murder of the other.

15. The other circumstances, taken into consideration vide paragraph 100, were not incriminating. The Sessions Judge has held that the soil found on the tyres of the vehicle and seized from the



place of occurrence were similar. How it can be incriminating? There is no evidence that such kind of soil was not found in any other area except near the area of place of occurrence. It was also held that the Appellant had procured sulphuric acid. However, there is no evidence to the effect that acid burns were found on the dead body of the deceased or the acid was found in the viscera. It was further held that Laxman Tamang (PW-13) deposed that he had heard shriek of a lady at the waiting shed in the night of 03.08.2009 around 11 p.m. and he saw something like a small vehicle parked on the road near the waiting shed. We note that he did not depose that either he saw the Appellant or the deceased in the waiting shed. It was further held that the driver of the Appellant deposed that the car of the Appellant was driven in the night as he noticed that the parking place of the car was changed and that the fuel was less compared to what he had refilled on the previous evening. Even if we take that the above facts were rightly noticed, how they may go against the Appellant. It was the car belonging to the Appellant and he might have used the same in the intervening night of 3rd and 4th of August, 2009.

16. All above circumstances and many others mentioned in paragraph 100 were not fully established. These circumstances were not of conclusive nature and tendency and almost all the circumstances were capable of being explained. Thus, it was a case



in which nothing was conclusively established against the Appellant and the Appellant was entitled to benefit of doubt.

17. For all these reasons, we allow this Appeal and set aside the conviction and sentences imposed against the Appellant. The Appellant is acquitted of the charges framed against him under Section 302 IPC. It is stated that the Appellant is in jail. He be released forthwith, if not required in any other case.

Sd/-

(S. P. Wangdi)
Judge

Sd/-

(Sunil Kumar Sinha)
Chief Justice