IN THE HIGH COURT OF MANIPUR
AT IMPHAL

Cril. Appeal No. 2 of 2017

Mrs. Kh. YunePoume, aged about 49 years, D/o (L) P. Khosole, R/o TaphaoPhyamei Village, P.O & P.S. Senapati, Senapati District, Manipur. Now lodged in Manipur Central Jail (Women), Imphal.

.... Accused/Appellant

-Versus-

The State of Manipur, represented by the Public Prosecutor,

Govt. of Manipur.

.... Respondent

BEFORE
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the appellant	::	Mrs. N. Elizabeth, Advocate.
For the Respondent	::	Mr. RK Umakanta, PP (HC).
Date of Hearing	::	23.01.2020
Date of Judgment & Order	::	**19.03.2020**

JUDGMENT AND ORDER
(CAV)

(M.V. Muralidaran, J)

This appeal arises out of the judgment in Sessions Trial Case No.10 of 2007 convicting the appellant under Section 302 IPC and sentencing her to undergo life imprisonment for the proved charge of murder of her own father Khosole Poumei.

2. The case of the prosecution is that on 16.4.2003 at about 12.30 P.M., Khosole Poumei was found killed by his daughter viz., the appellant/accused herein by hitting with an axe handle on the head over a family feud at their residence and after the commission of the crime, the appellant ran away to the jungle and concealed herself leaving the weapon of the crime at the spot.

3. On the basis of the complaint lodged by P.W.2-Dale, who was the then Chairman of Taphou Phyamei Village, an FIR Case No.4(4)2003 was registered by Senapati Police Station under Section 302 IPC against the appellant. P.W.3-Investigating Officer took up the investigation of the case and P.W.3, his team rushed to the occurrence place. On reaching the occurrence spot, P.W.3 found the dead body of Khosole Poumei lying in a pool of blood. Thereafter, P.W.3 prepared rough sketch and had conducted inquest on the body of the deceased. P.W.3 examined

the witnesses P.W.2-Dale and P.W.4-K.S.Stephen, the then Secretary of Taphou Pohyamei Village and recorded their statements. P.W.3 had also seized M.O.2-handle of axe, which was used for the crime in the presence of same witnesses under seizure mahazar, where P.W.5-Saloni had also put his signature. Thereafter, P.W.3 sent the body for autopsy.

4. P.W.1-Dr.Adaphro, attached with Senapati District Hospital had conducted autopsy on the dead body of Khosole Poumei and noticed the following external injuries:

- Laceration of the scalp,
- fracture of the scalp bone (occipital bone)

P.W.1-Doctor also found the following internal preferences:

- Scalp laceration (Rt. Occipital area)
- Skull fractured (Rt. Occipital area)
- Meninces and Vessels Severed
- Brain - lacerated

P.W.1 has given opinion as to the cause of death as homicidal in nature. After completing the post-mortem, the body was handed over to the relatives of the deceased for performing last rites. Ex.P1 is the post-mortem certificate issued by P.W.1.

5. On 18.4.2003, on receiving reliable information, the Investigating Officer rushed to the area where the appellant/accused was hiding at about 9.00 AM. on 18.4.2003, the Investigating Officer found the appellant surrounded by the villagers. Thereafter, the Investigating Officer arrested the appellant and obtained her confessional statementEx.P4 in the presence of P.W.2 and P.W.4. The Investigating Officer had also seized a blood stained shirt, which was worn by the appellant at the time of arrest under Ex.P5 in the presence of witnesses. P.W.3 had also sent the blood stained seized shirt of the appellant and the blood stained grey coat of the deceased for chemical examination to the Forensic Science Laboratory and had received a report on 25.11.2003. During the course of investigation, P.W.3 examined P.Ws.1, 2, 4 and 5 and obtained their statements. After completion of the investigation, P.W.3 laid charge sheet against the appellant under Section 302 IPC.

6. After completing the formalities, the case was committed to the file of Sessions Court. Since the appellant had no means to engage a lawyer to defend herself, the trial Court appointed Amicus Curiae.

7. Before the trial Court, on the side of the prosecution, 5 witnesses were examined and marked 16 documents. Accused was questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances. In most of the questions, the appellant has stated “no answer”. The appellant has not examined any witness on her side.

8. Upon consideration of the oral and documentary evidence, the Learned Sessions Judge, Manipur West, by the judgment dated 14.6.2010 convicted the appellant under Section 302 IPC and posted the case on 16.6.2010 for hearing on sentence. On 16.6.2010, after hearing the appellant as well as the prosecution, the Learned Sessions Judge sentenced the appellant to undergo life imprisonment.

9. Assailing the judgment of the Sessions Judge, the learned counsel for the appellant submitted that the trial Court mis-appreciated both facts and law of the case in passing the impugned judgment and had also failed to see that the chain of circumstances in the case as disclosed by the prosecution was not completed. She would submit that there was no eye witness to the alleged occurrence and as such the trial Court ought to have

appreciated the available circumstantial evidences properly without its own presumption and summaries.

10. The learned counsel further submitted that the prosecution has failed to prove the motive, knowledge and intention of the appellant to kill the deceased. She would submit that the prosecution did not show the weapon alleged to have been used for the crime to P.W.1-Doctor for obtaining his opinion about the possibility of causing the nature of injuries by the same weapon thereby missing the link between the injury and the seized weapon of the crime. She would further submit that the trial Court mainly relied upon the evidence of P.W.5, which is not corroborated by any other witnesses. Arguing so, the learned counsel for the appellant prayed for setting aside the judgment of the trial Court.

11. Per contra, reiterating the findings recorded by the trial Court, the learned Public Prosecutor submitted that upon appreciating the oral and documentary evidence produced by the prosecution, the trial Court has rightly convicted the accused and sentenced her to undergo life imprisonment; He would submit that since own daughter killed her father, no leniency could be shown to the appellant. In fact, the evidences of P.Ws.1 to 5 makes chain

to the prosecution version and thus, prayed for dismissal of the appeal.

12. Heard the learned counsel for the appellant as well as the learned Public Prosecutor and also perused the materials available on record.

13. The point that arises for consideration is whether the trial Court was right in convicting the appellant/accused for the offence under Section 302 IPC for causing death to the deceased Khosole Poumai, who is the father of the appellant.

14. It appears that P.W.5 is the son of the deceased and brother of the appellant/accused, whose evidence is very much vital to the case of the prosecution. In his evidence, P.W.5 stated that on 16.4.2003 at around 12 noon, he was working in the kitchen garden and at that time he heard some noise sound of argument between his deceased father and his younger sister, the appellant herein. As it was a normal practice, he did not take it seriously and after some time, he heard loud sound of beating inside the room. On hearing the loud sound of beating, immediately, he was running towards the room of his father. Before reaching the room of his father, he saw the appellant running out of the room of his father and went towards the jungle

side. When P.W.5 stopped her, she was not responding. Thereafter, P.W.5 rushed inside the room of his father, where he found his father was lying death beside his bed with bleeding injury on the back side of his head. At the spot, P.w.5 had also found one wooden handle of axe near the dead body of his father. On seeing the dead body, he said that his younger sister, the appellant herein, had committed murder of his father. Thereafter, P.W.5 informed the same to his neighbours, Chairman and Secretary of the Village viz., L.Dale and Stephen to report the matter to the police for taking necessary legal action.

15. The evidence of P.W.5 has been corroborated by the evidence of P.W.2, who had lodged the complaint. In his evidence, P.W.2 deposed that he knew the appellant and during the year 2003, he was serving as Chairman of Taphou Phoimei Village. On 16.4.2003, at about 12.30 P.M., while he was staying his home, the elder brother of the appellant viz., Soloni (P.W.5) reached at his home and informed him that the appellant/accused killed her own father by holding an axe at her own residence. After that he along with P.W.5 rushed to the occurrence place, where he found the deceased lying dead in a full of blood and he had also seen the axe used in the said crime on the spot, but the appellant was not present at that time.

16. In his evidence, P.W.2 further deposed that on the same day at about 1.30 P.M., he along with the Village Secretary viz., Stephen (P.W.4) went to the Senapati Police Station and lodged a written report against the appellant/accused. P.W.2 specifically deposed that he himself written the complaint and he had also identified his signature found in the complaint. The evidence of P.W.2 is also to the effect that with the help of villagers, they had conducted intensive search to locate the appellant and finally, 0n 18.4.2003, they found the appellant hiding in the nearby jungle and captured her.

17. In his evidence, P.W.4 deposed that on 16.4.2003 while he was .staying in his house, he heard a sound of woman saying that one person was killed. On hearing the said sound, he was running towards the residence of Khosole, where he found that Khosole was lying death in his bed room with bleeding injuries on the back side of the head. P.W.4 had also seen one axe with wooden handle lying near the dead body and the axe was stained with blood. At the relevant time, P.W.2-Village Chairman and son of the deceased viz., P.W.5 were also present at the spot. Thereafter, all of them went to the Police Station, where P.W.2 had lodged the complaint.

18. From the evidence of P.W.5, it is clear that after hearing the sound when he was running to his father's bed room, he saw the appellant coming out of the room and when he stopped her, the appellant did not respond and ran away towards the jungle. To disprove the said version of P.w.5, the appellant has not produced any evidence. On the other hand, during cross-examination of P.W.5, a question was posed to the effect that "did you see how his father was killed", for which, the answer of P.W.5 is, it is not true that he did not exactly see how his father Khosole was killed as he was working at his kitchen garden. Though P.W.5 has not directly seen the killing of the deceased by the appellant by using axe, after hearing the sound when P.W.5 was running to the bed room of his father, he saw the appellant running out of the bed room. The said evidence of P.W.5 would prove that appellant alone was responsible for the cause of death.

19. Since the deceased was proved to have been last seen alive when the appellant was quarrelling with him in the bed room of the deceased father, which facts was stated by P.W.5, it is for the appellant to satisfactorily explain as to what happened to deceased. Observing that if person who was last found in the company of another and if later found missing or dead, then the person with whom he was last found has to explain the

circumstances in which they parted company, in *State of Rajasthan v. Kashi Ram, reported in (2007) 2 MLJ (Crl) 861 (SC)*, the Hon'ble Supreme Court held as follows:

> *"22. ..... Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he failed to discharge the burden cast upon him by Section 106 of Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain' of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and*

which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Re. Naina Mohd. AIR 1960 Madras 218."

20. There is considerable force in the argument of counsel for the respondent State that in the facts of this case as well it should be held that the appellant having been seen last with the deceased, the burden was upon her to prove what happened thereafter, since those facts were within her special knowledge. Though the learned counsel for the appellant contended that at the time of alleged occurrence, the appellant was unsound mind, nothing has been produced to establish that she was in unsound mind on the date of occurrence and therefore, the argument of the learned counsel for the appellant that on the date of occurrence, the appellant was in unsound mind, cannot be countenanced.

21. The case of the prosecution mainly hinges upon the circumstantial evidence. It is well settled principle of law that in cases where the evidence is purely circumstantial in nature, the facts, the circumstances from which the conclusion of the guilt is

sought to be drawn must be fully established beyond any reasonable doubt and such circumstances must be consistent and unerringly point to the guilt of the accused and the chain of circumstances must be established by the prosecution.

22. In the instant case, as rightly observed by the trial Court it is clear that P.W.5, who is the resident of the same compound with the appellant and the deceased, as disclosed by the oral evidence and supported by rough sketch, heard quarrelling sound between the deceased and appellant residing in the same house as usual and after some time, he heard a loud sound of beating which attracted him towards the room of the deceased and just when P.W.5 is to reach to the room of the deceased, the appellant rushed out and ran away paying no heed to his request to stop and thereafter, the appellant disappeared. On the third day of the occurrence, the appellant was arrested from the nearby jungle by the police with the help of villagers. This conduct of the appellant is also accountable in finding out the materials as to the commission of the offence.

23. At this juncture, the learned counsel for the appellant pointed out that the appellant is of unsound mind at the relevant point of time and the appellant has not caused the death of her

father. The fact remains that no question and/or questions were put to the witnesses in respect of the unsound mind of the appellant. In other words, it appears that the defence admitted the statement of the prosecution witnesses. The only plea of the defence is that the appellant is of unsound mind and the said plea of unsound mind has not been proved by way of medical evidence.

24. In the course of proceeding of hearing, there is no a single instance which warranted by the behavior of the appellant to cause examination through a Psychiatrist. Further, the appellant was produced in most of the dates of hearing before the Court and there was no complaint of unsound mind.

25. It is settled that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

> *(a) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
>
> *(b) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*

(c) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and non else; and

(d) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consisting with the guilt of the accused but should be inconsistent with his innocence.

26. Admittedly, there is no eye-witness to the occurrence. However, the circumstances stated are strong enough and made out an unbreakable chain which inferred the commission of the offence of murder of the deceased.

27. As to what would be reasonable doubt has been laid down by the Hon'ble Supreme Court in the case of *K.Gopal Reddy v. State of AR, reported in (1979) 1 SCC 355*. In *K.Gopal Reddy* (supra), the Hon'ble Supreme Court held that it stems out of the fundamental principle of our criminal jurisprudence that the

accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. “A reasonable doubt”, it has been remarked, “does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other it does not mean a doubt begotten by sympathy out of reluctance to convict it means a real doubt, a doubt founded upon reason.

28. In the instant case, the prosecution has established the circumstances and as such all the links in the chain of circumstances is so complete pointing to the guilt of the appellant.

Thus, the circumstances originating the guilt are proved beyond reasonable doubt.

29. Coming to the seizure of the grey coat having blood stain and the wooden axe handle by P.W.3-Investigating Officer under Ex.P3, the evidences of P.W.2 and 4 supports the prosecution version. Moreover, the examination of seizure witnesses and seizure of material objects have not been disputed by the appellant.' That apart, the seizure of light blue and white colour silk shirt having blood stain by P.W.3 under Ex.P5 on 18.04.2003 has also not been disputed by the appellant.

30. P.W.3 sent the seized blood stained coat and blood stained shirt to the Forensic Science Laboratory, Pangei for examination and the Expert has given his report that the stains found are human blood group AB. At this juncture, it is to be mentioned that from the side of the appellant it is silent regarding other probabilities of the blood stain on the shirt of the appellant other than that of the deceased and the failure to explain from the side of the appellant how the deceased died in the circumstances of the case, further lead inference of commission of the crime by the appellant/accused.

31. As rightly held by the trial Court, the circumstances in the case infer the probability of human blood of same group AB from same source i.e. the coat worn by the deceased and the shirt worn by the appellant, is that of the deceased. It may be mentioned that the prosecution witnesses deposed that the deceased was lying in a pool of blood from his injuries.

32. The arrest of the appellant and her confessional statement followed with the seizure have not been seriously disputed by the appellant/accused. Ex.P4 is the disclosure statement given by the appellant/accused and pursuant to the same, one light blue and while colour silk shirt having blood stained of the appellant was seized. The disclosure statement and the recovery are strong circumstance connecting the appellant with the offence.

33. As stated supra, the seized articles were sent to the Forensic Science Laboratory and the Expert report reveals that the stains found on the exhibits marked “A” and “B" are human blood of blood group AB. The aforesaid report of the Expert also is a strong circumstance connecting the appellant with the crime.

34. The circumstances of the case as disclosed by the witnesses never show probability of any other person coming to

the place of occurrence at the relevant point of time. There was no other person except the appellant who had entered the room of the deceased. The said plea of the prosecution was supported by the evidence of P.W.5. Moreover, the narration of P.W.5, who is the elder brother of the appellant, has never been denied by the appellant by letting in evidence. There is no reason to falsely implicate the appellant by her own brother P.W.5. The heavy sound as stated by P.W.5 is also supported by the evidence of P.W.4.

35. Taking us through the evidence of PWs 1, 2 and 5, learned counsel for appellant contended that there are several contradictions and inconsistencies in the evidence of those witnesses which would vitally affect the prosecution. She argued that when evidence of witnesses is beset with contradictions, the Court may not rely upon such evidences.

36. Not all discrepancy in the testimony of a witness are fatal to the case of the prosecution. In *State of Rajasthan v. Smt. Kalki, reported in (1981) 2 SCC 752*, the Hon'ble Supreme Court held:

> *"8. In the depositions of witnesses there are always normal discrepancies however honest and*

truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person....”

37. The main thing to be seen is, whether such inconsistencies relating to the appellant would go to root of the matter. Despite cross-examination, nothing worth was elicited shaking the credibility of PWs 1, 2, 4 and 5. The Court should not disbelieve the evidence of PWs 1, 2, 4 and 5 altogether as their evidence is trustworthy in respect of the overt act of the appellant. In our considered view, such discrepancy regarding presence of the appellant would not vitally affect the consistent version PWs 1, 2, 4 and 5, more particularly, P.w.5 as to the overt act of the appellant.

38. Evidence of PWs 1, 2, 4 and 5 stands amply corroborated by the objective findings by Investigating Officer about the scene of occurrence, detection of human blood in the blood stained clothes seized from the scene of occurrence and the

detection of human blood in the seized material objects which lends assurance to the prosecution version of the guilt of the accused/appellant.

39. Coming to Ex.P1-post-mortem report, the same has not been disputed and/or denied by the appellant. In fact, P.W.1-Doctor who had conducted the autopsy had noted the aforesaid internal and external presences and after completion of the autopsy given his opinion to the following effect:

> *"After completion of the post-mortem I have my opinion as to the cause of death as of Homicidal in nature and the time since death was approximately 6 hrs and the nature of injuries was of anti-mortem and age of the injury was 5 hours. After filling up the details of the post mortem report with my own hand writing, I pout my signature in the said post mortem report and thereafter, I submitted the post mortem report to the Chief Medical Officer, Senapati District Hospital for further necessary action. The age and address of the dead body was 85 years and Tapohou Phlyamai village, Senapati District. "*

40. From Ex.P1-post-mortem report, it can be inferred without any doubt that it was the appellant/accused and none else who had murdered her own father, the deceased herein.

41. As rightly said by the trial Court everybody will be shocked to hear such an incident of killing of an aged father by her own daughter. The materials produced as also the other evidence adduced by the prosecution would prove that before the occurrence, there was a quarrel between the appellant and the deceased and that the appellant committed murder of her own father. It is to be mentioned that at the age of 85 years where the service and assistance of children and near ones are required for survival of the rest of the life, without thinking that much, the appellant has killed the deceased. In such circumstances, for the offence committed by the appellant, the sentence as imprisonment is justified.

42. Upon analysis of the evidence, we are of the view that the prosecution has succeeded in proving its case. Accordingly, the prosecution has proved the circumstances cumulatively in the form of a complete chain of events unerringly pointing the guilt on the appellant. Upon evaluation of the evidence, the trial Court has rightly convicted the appellant for the

offence under Section 302 IPC and we find no error in the judgment of the trial Court. We find no valid grounds to interfere with the judgment of the trial Court as well as the sentence imposed.

43. In the result, the appeal is dismissed.

JUDGE **CHIEF JUSTICE**

FR/NFR

Sushil

WAIKHOM TONEN MEITEI

Digitally signed by WAIKHOM TONEN MEITEI
Date: 2020.03.20 12:04:21 +05'30'