

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.A.(J)12 of 2016

Sri Manik Gour,
son of late Mangu Gour
of East Athaibari, P.S. Khowai,
District : Khowai Tripura

-----Appellant(s)

Versus

The State of Tripura

----- Respondent(s)

For Appellant(s)	:	Ms. R. Purakayastha, Adv.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of hearing	:	15.11.2019
Date of delivery of Judgment & Order *	:	29.05.2020
Whether fit for reporting	:	YES

**HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE Mr. JUSTICE ARINDAM LODH**

Judgment & Order

[Talapatra J]

The appellant was charged under Section 302 of the IPC for committing murder of one Anjan Gour on 06.08.2014 at about 22.00 hrs. and after regular trial, he has been convicted under Section 302 of the IPC by returning the following finding :

* The pronouncement of judgment was deferred for lockdown of the court.

"On careful scrutiny of the evidence of the eye witness (PW-12) and other witnesses (PW-9, PW-11 and PW-13) it is clearly found that the deceased Arjun Gour sustained cut injuries on his neck and other vital parts of his body for which he died on spot and the said injuries were caused by accused Manik Gour by dao and the accused also admitted of killing Arjun Gour to PW-10 and PW-15 by coming to their house on that night. The medical evidence and postmortem report also supported their evidence. So in circumstances of this case no other presumption can be drawn except the involvement of the accused Manik Gour in killing of his nephew Arjun Gour."

2. Pursuant to the said conviction, the appellant was sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.1000/- with default stipulation. The detention that has been suffered by the appellant has been directed to be set off from the substantive period of imprisonment. The said judgment and order of conviction and sentence dated 26.06.2015 delivered in ST 23(T-1) of 2014 by the Additional Sessions Judge, West Tripura, Khowai have been challenged in this appeal.

3. The genesis of the prosecution case can be located in the written complaint dated 04.08.2014 [Exbt.4 and Exbt.8] filed to the officer in charge, Khowai Police Station by one Mallika Gour (Debbarma) revealing that on 06.08.2014 at about 10 o'clock at night she heard the loud of her brother Arjun Gour and she rushed to the culvert in front of the house of Raj Kumar Gour on the road of village East Athaibari. Having appeared there, she saw her uncle Manik Gour, the appellant running towards his own house with a dao in his hand.

She noticed by the light of torch in her hand that her brother Arjun Gour was lying dead in a pool of blood on the road beside the culvert. She shouted by noticing some marks of hacking blow over his throat in the light of torch. The villagers from the nearby village came to the place of occurrence and found her brother dead. In the written complaint she has asserted as under :

"Earlier also altercation took place between my uncle and my elder brother centering an issue over land and he was beaten up and was given threats of killing several times. Yesterday also, my uncle fought with my elder brother centering the issue of land and (he) hacked my elder brother to death by sharp edged 'dao' centering this very land dispute."

Based on the said complaint, Khowai P.S. case No.82/2014 under section 302 of the IPC was registered and taken up for investigation. On completion of the investigation, as it appears from the records the final report was submitted in the court sending the appellant to face the trial. On commitment of the police papers from the court of the Magistrate, the Additional Sessions Judge, West Tripura, Khowai [hereinafter referred to as the trial Judge] took cognizance and framed the charge under Section 302 of the IPC, which was denied by the appellant. Further, the appellant claimed to be tried in accordance with law.

4. The prosecution, in order to substantiate the charge, adduced as many as seventeen witnesses including the complainant [PW-12] and introduced nineteen documentary evidence including the

postmortem examination report [Exbt.9]. After recording of the prosecution's evidence the appellant was examined under Section 313 of the Cr.P.C. to have his response towards the incriminating materials which surfaced in the evidence. The appellant reiterated his plea of innocence and contended that he has been framed malafide. After appreciation of the evidence, the trial Judge returned the said finding of conviction.

5. Ms. R. Purakayastha, learned counsel appearing for the appellant has quite categorically submitted that it would be apparent that the testimony of PW-12 is not only unreliable but she has introduced a concocted story to implicate the appellant. The other witnesses did not see the transaction, but true it is that some of them had appeared in the aftermath of the said occurrence. Even PW-12 did not see the appellant to hack her brother. Her claim is that she saw the appellant by the light of a torch but the said torch light was not seized by the police.

6. PW-17 [the investigating officer] in his cross examination has clearly admitted that he had not seized any torch light in connection of that case. Ms. Purakayastha, learned counsel has submitted that the purported extra judicial confession is completely unreliable inasmuch as PW-15 to whom the said confession was made did not take any action to apprise the police or anyone else. On the

contrary he advised the appellant to go to the police station. Further, the seizure of the shirt [Exbt.MO/1 series] is visited by serious doubt.

Ms. Purakayastha, learned counsel has further submitted that PW-9 is not only a chance witness but his statement that PW-12 met him and stated that the appellant had killed his brother is not trustworthy. Therefore, his statement becomes unreliable.

Even, the statement of PW-11 in the trial is visited by serious doubt, particularly, when he has stated that the appellant had blood stain on his chest.

7. Ms. Purakayastha, learned counsel thereafter has pointed out that the house of Raj Kumar Gour is nowhere in the site map, even not in the periphery of the place of occurrence. It would be apparent that around the place of occurrence, there is no hut or habitation except paddy land, jungle and tilla. Thus, the episode as introduced through Raj Kumar Gour [PW-9] cannot be relied on.

8. Ms. Purakayastha, learned counsel has quite succinctly submitted that the prosecution has made an attempt on the basis of the evidentiary materials to make out a case of circumstantial evidence but the circumstances have not formed a chain of episodes, wherein every episode is proved in order to exclude the hypothesis of innocence as pleaded by the appellant. She has placed her reliance in **Babboo alias Kalyandas and Others versus State of Madhya Pradesh** reported in **(1979) 4 SCC 74**. After reading the said

judgment it appears that no point of law has been laid down by the apex court in the said case.

9. However, Ms. Purayastha, learned counsel has relied on **Bakhshish Singh versus State of Punjab** reported in **(1971) 3 SCC 182** where it has been laid down by the apex court as under :

"The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well-settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far 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."

10. Further reference has been made to **Badam Singh versus State of M.P.** reported in **(2003) 12 SCC 792** to demonstrate before this court how to appreciate the testimony of the chance witness and of his having noticed the part of the transaction. It has been observed as follows :

"17. The first striking feature of the case is the highly unnatural conduct of the alleged eye witnesses. It is really surprising that having witnessed a ghastly occurrence all the three started running from the place of occurrence and kept on running till they reached village Achhroni at about 8 p.m. It is difficult to believe that they ran for 2-1/2 hours to cover a distance of about a mile. According to PW-8, the

distance between Kachnaria to Achhroni is about 1-1/2 miles and according to PW-4 the distance from Kachnaria to village Dandala where the occurrence took place is about 1 kilometer. It appears unnatural that the three eye witnesses who were no other than Forest Officer and forest guards got so scared that they started running in such a manner that they did not even bother to go to the nearest village Bandala, two furlongs away or to inform the villagers. Nor did they stop to inform the villagers of the villages through which they passed, so that they may visit the place of occurrence and find out whether the deceased was really dead. Normally, one would have expected them to visit the place of occurrence after the appellant had left if only to verify whether the victim was really dead, and to render help if necessary, since the deceased was known to them. In any event their natural conduct would have been to inform the villagers of the nearest village so that they could go to the place of occurrence and render whatever help was possible. If they really started running at about 5.30 p.m., it would not have taken them about 2-1/2 hours to cover a distance of one mile. It is in the evidence of PW-4 that the occurrence took place at 5.30 p.m. and they boarded the bus at Achhroni at 9.30 p.m. after waiting for about 1-1/2 hours at Achhroni. It is therefore apparent that they had reached Achhroni at about 8.00 p.m. and that they took 2-1/2 hours to cover a distance of one mile, even when they claimed to be running in such manner that they did not even bother to stop in any village even to report the incident to the villagers. To say the least, their evidence does not inspire confidence. Their conduct is highly unnatural. Their version that they kept on running and did not inform anyone about the occurrence, is not believable. If they really did so, they would not have taken 2-1/2 hours to cover a distance of 1 mile. The possibility therefore of having come to the place of occurrence much later, and being told about the occurrence by others, cannot be ruled out."

[Emphasis added]

11. In **Varun Chaudhary versus State of Rajasthan** reported in **(2011) 12 SCC 545** while considering the consequence of

non-sealing of tyre marks which were apparently seized for purpose of comparison with the tyre of the vehicle that was used in carrying out the offence, the apex court had observed as follows :

"23. It is pertinent to note that there is no evidence or even there is no reference to the fact that any one from Forensic Science Laboratory or from the police personnel had lifted marks of the motor cycle tyre from the place of the offence so that the same can be compared with the tyre marks of the motor cycle alleged to have been used in the offence. Unless tyre marks are lifted from the place of the offence and upon comparison with the tyre marks of the motor cycle recovered are found to be the same, it cannot be said that the motor cycle recovered was used in the offence. So as to establish the presence of the motor cycle at the place of the offence, the prosecution must show that the tyre marks which were found at the place of the offence were that of the motor cycle used by the accused. It is also pertinent to note that marks of the motor cycle tyre which were received by the FSL were not in a sealed condition. Aforestated facts clearly denote that the marks of the motor cycle tyre could not have been relied upon either by the Trial Court or by the High Court for establishing that the motor cycle having particular tyre marks was used in the alleged offence."

This report has been relied to contend that the seizure of the blood-stain from the appellant was not sealed and was sent to the State Forensic Science Laboratory (SFSL) and hence, the integrity of the sample became questionable.

12. As regards the principle of admissibility of extra judicial confession and its evidentiary value, learned counsel for the appellant has placed reliance on **Sahadevan and Another versus State of**

Tamil Nadu reported in **(2012) 6 SCC 403** and for making particular reference to the passage as reproduced below :

"15.8. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. Sk. Yusuf v. State of W.B. :(2011) 11 SCC 754 and Pancho v. State of Haryana :(2011) 10 SCC 165.

The principles

16. Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused :

i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

ii) It should be made voluntarily and should be truthful.

iii) It should inspire confidence.

iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

vi) Such statement essentially has to be proved like any other fact and in accordance with law."

[Emphasis added]

13. Mr. S. Debnath, learned Addl. P.P. appearing for the State has in order to defend the finding of conviction has submitted that on appreciation of the evidence it would be established without any element of doubt that the circumstance in every episode has so meticulously been proved that when it did form the chain of the circumstances it emerged that the hypothesis of innocence has quite substantively and irreversibly been excluded. Mr. Debnath, learned Addl. P.P. has further submitted that testimonies of PWs-9, 10, 11, 12, 14 and 15 are material in the case of the prosecution. The extra judicial confession not only made to PW-15 alone but extra judicial confession was also made to PW-10 as well. That apart, the shirt which was in the wearing of the appellant was seized from the house of PW-15 [Chitta Ranjan Debbarma] on 07.08.2014, at about 08/30 hrs. by preparing the seizure list [Exbt.1] which has been duly identified by the seizure witnesses. The said shirt was sent for serological test along with other samples including the blood sample of the appellant under seal which was seized on 07.08.2014 and 11.08.2014. The wearing apparels of the appellant were also seized by seizure list dated 07.08.2014 [Exbt.17].

14. Mr. Debnath, learned Addl. P.P. has submitted that one blood stained dao was also seized during the investigation on 07.08.2014 from the dwelling hut of the appellant. On the seizure list, the appellant put her signature. On 07.08.2014, the blood stain

collected from the scene of crime from the dead body of Arjun Gour [the deceased] and the sample of blood-stained soil collected from the place of occurrence were seized by the seizure list [Exbt.1]. Mr. Debnath, learned Addl. P.P. has submitted that those samples were sent to the State Forensic Science Laboratory for serological examination and comparison. Those samples were under sealed cover, made of clothes with specimen seal impressions. SFSL assorted those samples in the following manner :

(i) Exhibit -A : One sealed paper envelope contained a few pieces of very small brownish crystal like structures being wrapped with white gauge cloth, said to be blood stain collected from the body of A/P, Manik Gour.

(ii) Exhibit-B: One sealed paper envelope contained few pieces of gauge cloth bearing brownish stain, said to be dry blood sample of the A/P, Manik Gour.

(iii) Exhibit-C: One sealed paper envelope contained few pieces of gauge cloth, said to be control sample of gauge.

(iv) Exhibit-D: One sealed paper envelope contained a piece of gauge cloth bearing brownish stain, said to be blood sample collected from the scene of crime.

(v) Exhibit-E: One sealed paper envelope a piece of gauge cloth bearing brownish stain, said to be blood sample collected from the dead body of the deceased, Arjun Gour.

(vi) Exhibit-F: One sealed paper envelope contained some soil with brownish stain, said to be blood mixed soil collected from the scene of crime.

(vii) Exhibit-G: One sealed paper envelope contained some soil, said to be control sample of soil collected from the scene of crime.

(viii) Exhibit-H: One metallic dao being wrapped with white paper, said to be the weapon of offence collected from near the dwelling hut of the A/P Manik Gour."

15. After the examination, the Scientific Officer cum Assistant Chemical Examiner, SFSL formulated the result in the following manner :

"Results.

(i) Blood stain of human origin could be detected in the exhibits marked as A,D, E, F and H.

(ii) Blood group of the exhibits marked as D, E and H could be determined as 'B' group.

(iii) Blood group of the exhibit marked as B could be determined as 'B' group.

(iv) Blood group of the exhibits marked as A and F could not be determined.

(v) No blood stain could be detected in the exhibits marked as C and G."

16. It is apparent that the metallic dao which was seized from the possession of the appellant was carrying the blood group of the deceased i.e. the blood group B, as well as from the said result it appears that the appellant has the blood group B. But nowhere the appellant has raised a plea that he had any bleeding injury in his body. Thus, Mr. Debnath, learned Addl. P.P. has contended that the blood available in the weapon of assault, blood collected from the body of the appellant and blood collected from the deceased all belong to the same group B.

17. Mr. Debnath, learned Addl. P.P. has submitted that the material witness has made the categorical statement in respect of part of the transaction or the post occurrence elements which appeared material for the prosecution.

18. PW-9 namely Raj Kumar Gour saw the complainant in the aftermath of the occurrence when she stated that the appellant killed her brother Arjun by dao. The evidence that was collected and proved in the trial has perfectly grooved with the postmortem examination report [Exbt.9]. That apart, PW-12 [the complainant] has unwaveringly stated that she saw the appellant with a dao in his hand by the light of torch she brought with her.

19. Mr. Debnath, learned Addl. P.P. has contended that the non-seizure of the torch light is a mistake of Investigating Officer inasmuch as immediately after the occurrence, the complainant lodged the complaint to the police officer. The occurrence took place at about 1 o' clock on 06.08.2014 and the complaint was filed on 06/05 hrs. of 07.08.2014. PW-12, the complainant has stated in the trial as under :

"Thereafter daroga babu and police also came there. I lodged written ejahar to daroga babu on spot. My ejahar was written by Ranjit Debbarma of our locality."

Therefore, there was no scope of parleys to improve upon the real state of affairs and hence, that lapse cannot over-shadow her testimony.

20. PW-7, Shri Arjun Tripura has categorically made a statement in the trial that about 10-11 p.m. on 06.08.2014, Manik Gour came to his house and called him. He came out from the hut and

saw Manik Gour with a dao in his hand and search light. Thereafter, he has stated as under :

"Accused Manik told me that he killed his nephew Arjun Gour by giving blow by the dao in his hand and also told that he will go to the Police Station. After saying such he left my house. Subsequently, I came to know that due to property dispute accused Manik Gour has killed his nephew by giving blow by dao."

In the cross examination, he denied the suggestion contrary to that confessional statement. The appellant has made the similar confessional statement to PW-15 and assured that he would go to the police station. PW-15 has further stated that at that point of time he asked for a shirt and he had given a full shirt to him. Even PW-14 has in the trial stated that the appellant was shouting by saying that he had killed Arjun Gour [the deceased] and was running towards the tribal basti [the habitat].

21. Mr. Debnath, learned Addl. P.P. has referred to the injuries noticed during the postmortem examination by PW-16. During the course of the postmortem examination, the external injuries which were noticed are as follows :

- (1) multiple lacerated would on the right side of the neck measuring 5 x 4 x 15 cm./obliquely extending to upper part of black;**
- (2) C to C vertebrae, larynx pharynx incised and anterior aspect over left side of neck. Laceration over chin measuring 4 x 3 x 8 cm./obliquely and body of the mandible fracture.**
- (3) laceration over left preauricular area including left ear lobule extending to left side of neck.**
- (4) laceration over both shoulders 3 x 2 x 8 cm. on right side and 3 x 2 x 7 cm. over left side."**

Those multiple lacerated injuries were causes for death which was homicidal in nature.

22. In support of his contention, Mr. Debnath, learned Addl. P.P. has relied on **R. Kuppusamy versus State represented by the Inspector of Police, Ambeiligai** reported in **(2013) 3 SCC 322**. In that case, the apex court was examining a case where the prosecution case was entirely rested on the extra judicial confession. Based on such extra judicial confession, the conviction was returned and the said conviction was challenged. While dilating the principles the apex court has observed on revisiting the **Sahadevan**(supra) as under :

"8. That a truthful extra judicial confession made voluntarily and without any inducement can be made a basis for recording a conviction against the person making the confessions was not disputed before us at the hearing. What was argued by Ms. Mahalakshmi Pavani, counsel appearing for the appellant, was that an extra judicial confession being in its very nature an evidence of a weak type, the Courts would adopt a cautious approach while dealing with such evidence and record a conviction only if the extra judicial confession is, apart from being found truthful and voluntary, also corroborated by other evidence. There was, according to the learned counsel, no such corroboration forthcoming in the present case which according to her was sufficient by itself to justify rejection of the confessional statement as a piece of evidence against the appellant. Reliance, in support of the contention urged by the learned counsel, was placed upon the decisions of this Court in Gura Singh v. State of Rajasthan (2001) 2 SCC 205 and Sahadevan and Anr. v. State of Tamil Nadu (2012) 6 SCC 403.

9. In Gura Singh's case (supra) a two-Judge Bench of this Court was also dealing with an extra judicial confession and the question whether the same could be made a basis for

recording the conviction against the accused. This Court held that despite the inherent weakness of an extra judicial confession as a piece of evidence, the same cannot be ignored if it is otherwise shown to be voluntary and truthful. This Court also held that extra judicial confession cannot always be termed as tainted evidence and that corroboration of such evidence is required only as a measure of abundant caution. If the Court found the witness to whom confession was made to be trustworthy and that the confession was true and voluntary, a conviction can be founded on such evidence alone. More importantly, the Court declared that Courts cannot start with the presumption that extra judicial confession is always suspect or a weak type of evidence but it would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak about such a confession and whether the confession is voluntary and truthful.

10. In Sahadevan's case (supra) a two-Judge Bench of this Court comprehensively reviewed the case law on the subject and concluded that an extra judicial confession is an admissible piece of evidence capable of supporting the conviction of an accused provided the same is made voluntarily and is otherwise found to be truthful. This Court also reiterated the principle that if an extra judicial confession is supported by a chain of cogent circumstances and is corroborated by other evidence, it acquires credibility. To the same effect are the decisions of this Court in Balbir Singh and Anr. V. State of Punjab 1996 (SCC) CrI. 1158 and Jaspal Singh @ Pali v. State of Punjab (1997) 1 SCC 510.

11. It is unnecessary, in the light of above pronouncements, to embark upon any further review of the decisions of this Court on the subject. The legal position is fairly well-settled that an extra judicial confession is capable of sustaining a conviction provided the same is not made under any inducement, is voluntary and truthful. Whether or not these attributes of an extra judicial confession are satisfied in a given case will, however, depend upon the facts and circumstances of each case. It is eventually the satisfaction of the Court as to the reliability of the confession, keeping in view the circumstances in which the same is made, the person to whom it is alleged to have been made

and the corroboration, if any, available as to the truth of such a confession that will determine whether the extra judicial confession ought to be made a basis for holding the accused guilty.

12. In the case at hand the trial Court as also the first Appellate Court have both found the extra judicial confession attributed to the appellant to be voluntary, truthful and unaffected by any inducement that could render it unreliable or unworthy of credence. Having heard learned counsel for the parties at considerable length and having gone through the evidence adduced at the trial, we are of the view that the conclusion drawn by the Courts below is not vitiated by any error of fact or law. The confessional statement in the case at hand has been made by the appellant almost immediately after the commission of the crime. The appellant is alleged to have gone over to PW-1 S.K. Natarajan, Village Administrative Officer, who was the concerned Village Administrative Officer of Veriappur and narrated to the witness the genesis of the incident leading to his throwing baby Savitha into the well at a short distance from his house. PW- 1 S.K. Natarajan recorded the confessional statement of the appellant, which was marked Exh. P-1 at the trial, and got the same signed from the appellant and took the appellant with him to the jurisdictional police station. At the police station PW-1 S.K. Natarajan got the first information report regarding the incident registered as Crime No.61/05 setting legal process into motion in the course whereof Investigating Officer was taken to the well by the appellant in which he had thrown the child. At the well, the Inspector of police prepared the Mahazar which was signed by the witness including PW-1 S.K. Natarajan himself and took charge of the dead body of the child which had, by that time, been brought out of the well. A towel lying about 20 ft. from the well was also seized.” सत्यमेव जयते

It has been highlighted, in view of the decision in **R. Kuppusamy**(supra) that eventually it is the satisfaction of the court as to the reliability of the confession, keeping in view the circumstances in which the same is made to the person whom it is

alleged to have been made, and the corroboration, if any, available as to the truth of such a confession that will determine whether the extra judicial confession be made a basis for holding any accused guilty.

23. On the aspect of lapse by the Investigating Officer in making the seizure of material object, Mr. Debnath, leaned Addl. P.P. has relied a decision of this court in **Billaram Reang versus State of Tripura** reported in **(2017) 2 TLR 160** where this court had occasion to observe as under :

"17. However, the moot point is whether the failure of the prosecution to prove the seizure of the lathi at the instance of the appellant can otherwise destroy the substratum of their case. In our opinion, failure on the part of the prosecution to prove the recovery of the lathi at the instance of the appellant pales into insignificance, when the other circumstances found by us earlier are sufficient to form the completed chain pointing unerringly to the guilt of the appellant for the death of the deceased. This question reminds us of the following observations of the Apex Court in State of Punjab v. Karnail Singh, (2003) 11 SCC 271:

"12. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law- see Gurbachan Singh v. Satpal Singh : (1990) 1 SCC 445. The prosecution is not required to meet any and every hypothesis put forward by the accused. (See State of U.P. v. Ashok Kumar Srivastava : (1992) 2 SCC 86 A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the

meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh v. State (Delhi Admn.14).] Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also 12 (1990) 1 SCC 445 13 (1992) 2 SCC 86 14 (1978) 4 SCC 161 CRIMINAL APPEAL (J) NO.40 OF 2013 presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in Stirland v. Director of Public Prosecution quoted in State of U.P. v. Anil Singh: (1994) AC 315, SCC p. 692, para 17.) Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. (See: Shivaji Sahabrao Bobade v. State of Maharashtra (supra), State of U.P. v. Krishna Gopal : (1988) 4 SCC 302 and Gangadhar Behera v. State of Orissa: (2002) 8 SCC 381"

24. Having contended thus, Mr. Debnath, learned Addl. P.P. has quite stoutly submitted that the objections raised in this appeal against the finding of conviction are not tenable and hence, no interference in the judgment of conviction or in the order of sentence is warranted.

25. For purpose of appreciating the submissions of the learned counsel for the parties, it would be apposite for us to revisit the evidence as recorded in the trial.

26. PW-1, Biswajit Biswas is a witness of the seizure of one shirt and one pant [Exbt.MO/1 series] and he admitted that those articles were seized in his presence.

27. PW-2, Sunil Debnath another witness of those articles [Exbt.MO/1 series] has admitted that he was witness to such seizure.

28. PW-3, Mohit Kumar Debbarma a constable, who was posted at Kaminipara DAR/SPO camp on 07.08.2013 has stated that at about 00 03 hrs in the mid night, two persons namely Damodar Gour and Mallika Gour [the complainant] came to their camp and reported that Manik Gour [the appellant] had murdered his nephew Arjun Gour by dao. Immediately from the said camp, the occurrence was informed to Khowai Police Station. When it was suggested that he was not telling the truth, he denied such suggestion.

29. PW-4, Dilip Goswami, a general duty attendant of Khowai Sub Divisional hospital has stated in the trial that on 07.08.2014 the police brought one accused in the emergency block. During that time, Dr. Supriya Debbarma [PW-16] collected blood samples from the body of the accused person. He identified the seizure list of those samples [Exbt.2] in the trial.

30. PW-5, Sambhu Laxmi Debbarma, a staff nurse in the Khowai Sub Divisional hospital, has vouched that on 07.08.2014, the accused namely Manik Gour was produced in the said hospital. The blood samples were collected from him and she witnesses the same. The seizure list has been admitted by her in the evidence.

31. PW-6, Sukanta Debnath, a constable, who was posted at Khowai police station on 07.08.2013 has stated that having received the information from Athaibari that a murder had taken place, he along with other police personnel went to Athaibari under the

command of Palash Datta, Sub Inspector of Police [PW-17]. After visiting the place of occurrence they arranged to transport the dead body of Arjun Gour [the deceased] to Khowai hospital for performing postmortem examination over the dead body.

32. PW-7, Sri Arjun Tripura is another constable who was part of the contingent led by PW-17. He has stated that one person submitted the ejahar to PW-17 and he was sent by the police vehicle to Khowai P.S. for placing the same to the officer in charge.

33. PW-8, Narayan Chakraborty who was the officer in charge of the Khowai Police Station has stated that he had received the ejahar of one Mallika Gour [Debbarma], PW-12 and the same was registered as Khowai P.S. Case No.82 of 2014 under Section 302 of the IPC. After discharging the due formalities for registration of the FIR, PW-17 was entrusted for conducting the investigation. He has admitted the FIR form and the complaint respectively as Exbts.3 and 4.

34. PW-9, Raj Kumar Gour has been discussed in the course of recording the submission of the counsel of the parties. He has stated that one night when he was returning home, he saw Mallika Gour [PW-12] going to her house on crying and saying that :

“Manik Gour has killed her brother Arjun by dao.”

After about an hour, the police contingent came to the place of occurrence where the dead body of Arjun was lying and he

has stated that he saw the marks of injury over neck and face of Arjun Gour [the deceased]. Thereafter, the police transported the dead body to the hospital. He denied the suggestion as projected by the defence during cross examination.

35. PW-10, Pradip Debbarma has stated that on 06.08.2014 at about 10/11 p.m., the appellant came to his house and called him. He came out from his hut and saw the appellant with a dao in his hand and a search light. Thereafter, he made a statement in the trial that the appellant confessed to him that he had killed his nephew Arjun Gour by giving blows by dao. The statement has been reproduced while recording the submission of the counsel of the parties. In the cross examination, he did not deviate from those statements. At the relevant point of time, PW-10 was the Vice Chairman of the village committee.

36. PW-11, Pradip Kumar Debbarma who has stated that he was requested by the police officer to accompany him to the house of Amar Gour and he saw the dead body of Arjun Gour lying on the road. He saw the cut injuries over the neck and shoulder of Arjun Gour. Some people from the locality had already gathered there. He was the witness of the inquest procedure and attested his signature to acknowledge that fact on the inquest report [Exbt.5]. He was also the witness of seizure of blood stain which was so seized by preparing the seizure list [Exbt.6]. He was also present when Manik Gour was

arrested by the police from his house. At the time of arrest, he saw marks of blood stain on the chest of the appellant. Then and there, the police officer searched his house and recovered a dao. The appellant, at that time confessed his crime by stating that he had killed Arjun Gour by giving blow by the said dao. The said dao was seized by preparing the seizure list [Exbt.7]. PW-11, had identified the said dao [Exbt.MO/2] in the trial. He did not deviate from any of the statements during the cross examination.

37. PW-12, Mallika Gour (Debbarna) is the complainant who has clearly stated in the trial that the appellant who happens to be her uncle being the younger brother of her father killed his brother Arjun Gour. Thereafter, she has testified in the trial as follows :

"One night about 10 p.m. I was in my house at that time heard shouting of my brother Arjun towards the road in front of our house then I rushed there and saw that accused Manik Gour was fleeing away by killing my brother by giving blow by dao on my brother. I have seen accused Manik Gour by the light of a torch light. My brother Arjun died on the spot. There was dispute between my uncle and Arjun on landed property. I have seen cut mark injury over neck, shoulder face and hands of my brother. I also raised shouting then some persons of the locality arrived on the spot. Thereafter daroga babu and police also came there. I lodged written ejahar to daroga babu on spot. My ejahar was written by Ranjit Debbarma of our locality. After writing the ejahar it was read over to me then I put thumb impression on it. Daroga babu has written details about the description of the dead body of my brother Arjun on a paper then obtained by thumb impression on the said paper."

In the cross examination, she has further clarified that house of the appellant is close to the said calvert. Her brother Arjun was staying there as he had no house to reside. She has asserted that she had rushed to the place after hearing the cry of her brother Arjun [the deceased] and when she was rushing towards the place of occurrence she had seen the appellant fleeing with dao in his hand. She had denied the suggestion contrary to what she has stated in the examination in chief.

38. PW-13, Ranjit Debbarma has stated that the police officer came to his house and told him that Arjun Gour was killed and his dead body was lying on the road near the house of Raj Kumar Gour of their village. He came out with the police officer and saw the dead body of Arjun Gour lying with bleeding injuries on his neck and other parts of the body. He has disclosed that he scribed the complaint [Exbt.8] as dictated by PW-12. The said ejahar was given to the police officer. He is also the witness in the inquest procedure and attested his signature on the inquest report [Exbt.6]. He has made a very definite statement in the following manner:

"Thereafter myself, daroga babu, Panchayat member Pradip Kumar Debbarma with police staff went to the house of the accused Manik Gour and found him in the house. Accused Manik, has brought out a dao from his house and told that he has given blow by the said dao on Arjun Gour. Then daroga babu seized the said dao under seizure list on which obtained my signature and the signature of the witness on the seizure list is marked as Exhibit.7/21 on

his identification. The witness identified the seized dao(Exhibit.MO.2)."

He has denied the suggestions made in the course of cross examination by firmly standing by his version made in the examination in chief.

39. PW-14, Amal Gour a villager from the close proximity of the place of occurrence has clearly stated that one day at about 10 p.m. [eight months before the day he deposed in the trial] he heard shouting of Arjun Gour crying out "ma, ma" towards the eastern side of their house. He has vouched in the trial that he heard the appellant shouting that he had killed Arjun Gour. At that time, he was running towards the tribal basti but he did not come out of his house. On the next day, he came to know from the local people that on the issue of land dispute, the appellant killed Arjun Gour. He identified the appellant on the dock during the trial but it may not out of place to mention here that the identity of Manik Gour has never been challenged by the defence and the independent witnesses are from the same village. He has denied the suggestions as made to him in the course of cross examination.

40. PW-15, Chitta Ranjan Debbarma has been discussed substantially while recording the submission of learned counsel for the parties. He is a school teacher and his credence could not be offended by the defence, nor were his statements dented. PW-15 has

categorically stated on 06.08.2014 at night about 10.30 p.m., the appellant whom he identified in the dock came to his house and called him. Thereafter, he has stated inter alia as under :

"Then I came out from the hut. I have seen accused Manik Gour with a dao in his hand and a search light. He has no shirt on his body. He told me that he killed his nephew Arjun Gour by the said dao and also told that he will go Baijalbari police outpost for surrender. Since he has not shirt on his body so requested me to give a shirt. I have given a terricot full shirt colour rose/white etc. Then he left my house. I also told him to go to the police station immediately. The witness identified his shirt (written Exhibit.MO.1 series)."

41. PW-16, Dr. Supriya Debbarma has narrated about the postmortem examination as conducted by him from 11.15 a.m. to 12.15 p.m. on 07.08.2014 in the Khowai Sub Divisional Hospital. The description of injury has already been reproduced before and hence, the same is not repeated. There had been no meaningful cross examination.

42. PW-17, Sri Palash Dutta is the investigating officer who has narrated in the trial that after being entrusted with the charge of investigation how he conducted the investigation and appeared in the place of occurrence, prepared the inquest report [Exbt.10], seized the blood stained soil from the place of occurrence and the blood from the body of the deceased by preparing the seizure list [Exbt.11]. He had received the complaint at the place of occurrence. He had forwarded the said complaint to the officer in charge, Khowai Police Station. After

registration of the case, he prepared the site map with index [Exbts.12 and 13]. He seized the weapon of offence [Exbt.M.O.2]. After arrest of the appellant, he found blood stain on the body of the accused. On his asking, the accused handed over a sample of such blood stain which he had seized by preparing the seizure list [Exbt.15]. He had seized the wearing apparels of the appellant [Exbt.16] and collected the postmortem examination report. He had also seized the wearing apparels of the deceased. That apart, he had seized the blood sample of the appellant by dint of the seizure list [Exbt.18]. He had examined eighteen witnesses. He had sent the seized materials for forensic examination and he had the report of the Forensic Science Laboratory [Exbt.19] which has been admitted in the evidence under Section 293 of the Cr.P.C. But in the examination in chief, he has made a statement that Amal Gour [PW-14] did not state to him that he heard Manik Gour shouting that he had killed Arjun Gour. In this regard, Amal Gour was not confronted. He denied the suggestion that the murder was committed by someone from across the border.

43. True it is that no person has witnessed the appellant to hack the deceased. But the prosecution leads the evidence quite succinctly on the following episode/aspect :

1) The appellant was seen leaving the place of occurrence with dao in his hand. PW-12 immediately thereafter met PW-9 when she stated that the appellant had killed her brother.

2) PW-3 has categorically stated that on the night of occurrence approximately about two and half hours later, PW-12 had reported to the SPO camp about the murder of his brother. It shows the proximity of informing the police about the identity of the assailant.

3) The appellant made extrajudicial confessions to PWs-10 and 15. The appellant had categorically stated to them that he had killed his nephew, Arjun Gour by giving blow by dao. PW-15 has also stated that the appellant had murdered his nephew with a dao. As the appellant was not having his shirt to cover the upper part of his body, PW-15 gave him a shirt to wear.

4) PW-14, Amar Gour appearing in the trial has stated that he heard Arjun shouting "Ma Ma" from the eastern side of their house. He heard the appellant as well shouting that he had killed Arjun Gour.

5) On 07.08.2014 at 05/40 hrs. in presence of witnesses namely Pradip Kumar Debbarma [PW-11] and Ranjit Debbarma [PW-13] the blood stained dao was recovered by the police on search in presence of the appellant. The appellant has also signed on the seizure list [Exbt.7]. Both PWs-11 and 13 have proved the seizure by indentifying their signature and by narrating how the dao was recovered [Exbt.M.O.2 series]. Later on, the blood stain available in the said dao

was forensically proved to belong to blood group-B which has been the blood group of the deceased. Even though the appellant has the blood group-B, but there is no evidence that he had received any injury on that day from the use of that dao. All these incriminating materials were searched and seized within five to ten hours of the occurrence.

6) The postmortem doctor has categorically stated that the nature of injuries as reflected in the postmortem examination report is homicidal in nature. The ring of circumstances has been laid by the prosecution.

44. All these circumstances have been legally proved. The contention as raised that the extra judicial confession cannot be utilized for recording a conviction is not tenable. If the extra judicial confession made voluntarily and without any inducement that can be made the basis of conviction. The extra judicial confession according to this court is a piece of evidence and such evidence cannot be ignored as always as tainted evidence. If the court finds that the witness to whom confession is made to be trustworthy and the confession was true and voluntary, a conviction can be founded on that confession alone.

45. PWs-11 and 13 are independent witnesses. They had no bias either for prosecution or for the defence. They are the village-elders and they have narrated the truth of the appellant's making extra-judicial confession to them. Moreover, the content of those

confession has been supported by the other evidence. In **Sahadevan**(supra), the apex court has categorically observed that wherever the court upon due appreciation of the entire prosecution evidence intends to base a conviction on a extra-judicial confession it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If the extra judicial confession suffers from the material discrepancies or the inherent improbabilities and that does not appear to be cogent, the court will run a risk to base a conviction on such confession.

46. In this regard, the decisions of the apex court in **Balwinder Singh versus State of Punjab** reported in (1996) SCC (Cri) 59, **Pakkirisamy versus State of T.N.** reported in (1997) 8 SCC 158, **Kavita versus State of T.N.** reported in (1998) 6 SCC 108, **State of Rajasthan versus Raja Ram** reported in (2003) 8 SCC 180 and **Aloke Nath Dutta versus State of W.B.** reported in (2007) 12 SCC 230 may be referred.

47. In **Sansar Chand versus State of Rajasthan** reported in (2010) 10 SCC 604 it has been held as follows :

"29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [vide **Thimma and Thimma Raju versus State of Mysore** reported in (1970) 2 SCC 105, **Mulk Raj versus State of U.P.** reported in AIR 1959 SC 902, **Sivakumar versus State** reported in (2006) 1 SCC 714, **Shiva Karam Payaswami Tewari versus State of Maharashtra** reported in (2009) 11 SCC 262 and **Mohd. Azar**

versus State of W.B. reported in (2008) 15 SCC 449].”

48. The paramount question that requires consideration in this appeal is that whether the prosecution has been able to prove the circumstances to form a chain in exclusion of the hypothesis of innocence and whether, on appreciation of the circumstances as noted above, those are of conclusive nature and have tendency to prove a complete antithesis of innocence of the appellant.

49. Before the evidence for this purpose is appreciated, one ancillary objection as raised by the counsel for the appellant needs to be attended. Since, the torch light by which PW-12 has claimed to have identified the appellant was not seized by the investigating officer, whether the identification can be based for returning conviction against the appellant. In this case, there are evidence in exclusion of the said identification to hold that the appellant had committed the murder under reference. But so far this question is concerned this court has observed that failure on the part of the prosecution to prove the recovery of any material [in **Billaram versus State of Tripura** the object was “Lathi”] pales into insignificance when the other circumstances are sufficient to form the complete chain pointing unerringly to the guilt of the accused. The question therefore is that whether such failure of the prosecution would destroy the substratum of their case. The answer must be in

the negative in the present case as all the afore-noted circumstances have been proved by the prosecution beyond reasonable doubt. The report of SFSL has clearly established the link of the weapon of assault (dao) as recovered from the house of the appellant, in presence of respectable local witnesses, with the murder of Arjun Gour. Even the blood soaked wearing apparel has been recovered from the house of PW-11 who had given the appellant a shirt to wear which was duly identified by PW-15. Thus, the chain, even the identification by PW-12 is taken aside, has been established by the independent episodes pointing out to the guilt of the appellant.

Hence, we find no infirmity in the finding of the conviction. As consequence of the said finding, the appeal fails and accordingly, the same is dismissed.

The appellant shall serve out the remaining period of sentence.

Send down the LCRs.

JUDGE

JUDGE