Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.7/2022

Date of Order: 30.06.2022

Karlus Kanai Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. N. Khera, Adv with
Mr. T. Marngar, Adv
Ms. A. Syiem, Adv

For the Respondents : Mr.K. Khan, PP with
Mr. S. Sengupta, Addl.PP

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The appellant questions the propriety of the impugned judgment of conviction of August 10, 2021 under Section 302 of the Penal Code and the sentence passed on the same day imposing life imprisonment.

2. Several grounds have been urged on behalf of the appellant. For a start, the appellant says that the entire investigation was faulty since the investigating officer in this case was an Assistant Sub-Inspector who assumed authority as the investigating officer without being conferred the same. The appellant submits that as a general rule, in terms of Rule 36 in

Part V of the Assam Police Manual, which applies to the State by virtue of a notification of July 9, 2015, the Assistant Sub-Inspector could not have acted as the investigating officer. Indeed, the appellant says that the manner in which the investigation was conducted, certain observations were recorded by the investigating officer and, ultimately, his testimony in court would demonstrate that key aspects were ignored that led to a complete miscarriage of justice. The appellant points out that though a murder weapon was supposed to have been recovered from the garden outside the house of the appellant, allegedly at the appellant's prompting, the purported murder weapon was not shown to the eye-witnesses. It is the further contention of the appellant that one of the eye-witnesses testified that the appellant had thrown the murder weapon at the place of occurrence before fleeing therefrom; and, in such circumstances, there was no question of recovering the murder weapon from the garden next to the appellant's residence. Other discrepancies as to the dates of forwarding the appellant for police custody and re-forwarding him are also pointed out.

3. As to the testimonies of the three eye-witnesses, the appellant says that none of them referred to the appellant stabbing the victim or committing the offence with which he was charged. The appellant also brings out the anomalies in the first information report and the oral evidence in course of the trial of the maker of such report and the person who is alleged to have informed such maker of the incident.

4. Most importantly, the appellant seeks to disown and discredit the confessional statement which is attributed to the appellant and which was recorded under Section 164 of the Code of Criminal Procedure, 1973 by an Executive Magistrate. The appellant claims that in course of his examination under Section 313 of the Code, in response to the tenth question put to him pertaining to the evidence of the relevant Executive Magistrate, the appellant had clearly asserted that the appellant was coerced into making such statement and feared at the relevant time that if he did not make such statement then he would be beaten up by the police. Towards such end, the appellant also relies on a medical report, of a day after the appellant was arrested, when the appellant complained of a pain in one of his ankles and he was advised to have the ankle x-rayed. A pain-killer and an antibiotic were prescribed.

5. On the other aspect of the confessional statement, the appellant relies on high authorities to assert that the conditions indicated in Section 164 of the Code have to be complied with in letter and spirit before a confessional statement can be used against an accused. According to the appellant, he was not appropriately warned of the consequences of making the statement, not given the reassurance that he needed for the statement to be considered to be voluntary and the Executive Magistrate mechanically recorded the statement without complying with the essence of the requirements under Section 164 of the Code.

6. The incident occurred on July 21, 2002. It is fairly evident that the incident occurred between 11 and 11:30 am on a Sunday. The FIR was lodged by the Rangbah Shnong of Mootyrshiah Wah at about 4:10 pm at the Raliang Outpost of the Jowai Police Station. The FIR recorded that the victim was killed by the appellant in the house of Pyntngen Sungoh and that the FIR-maker was informed of the incident by one Dringbas Sungoh.

7. It is evident from the FIR that it was received at about 4:10 pm at the outpost, whereupon it was forwarded to the police station where it was received on July 21, 2002, the same day of the incident, at about 9 pm. The Officer-in-Charge of the Jowai PS endorsed at the foot of the FIR that the relevant ASI posted at the outpost had taken up the investigation of the case. It must be noted that by the time the Officer-in-Charge of the Jowai PS received the FIR, it contained the previous noting of the ASI at Raliang Outpost that such ASI had taken up the investigation of the case.

8. The appellant was arrested on the same day of July 21, 2002 and his confessional statement was recorded in Jowai on July 26. The short statement of the appellant made to the Executive Magistrate must be noticed in its entirety:

> "On Saturday 20 July 2002 evening I went with my friend Marley (victim) to my relatives Child naming ceremony, later I heard Marley quarrelling outside and taking out a dagger. I told him not to be foolish, but he said he wanted to be in Jail at least once. After that we had dinner.

> "The next Sunday morning 21 July 2002 @ 11 O'clock, I came out from my home and went to have liquor in a local liquor shop. Marley also came and we had liquor together for another half an hour. Then we left the shop and went to a common friend Brek Laban's house. There we had a quarrel and Marley intended to stab me, and as I saw him taking a dagger from the bag on his back I took out my own pocket knife and stabbed him a couple of times in his stomach. I then threw the knife away and went to tell my mother and nephew. The Police came in the afternoon and placed me in Raliang Out Post. That is all".

9. According to the appellant, it is significant that in the document in which the statement was recorded, the relevant Magistrate ticked five of the points under the fifth entry but did not tick the third point pertaining to the warning to the accused that the confession made by him could be used in evidence against him. Significantly, according to the appellant, the third point pertaining to entry 6(b) was also not ticked and such point pertained to the same matter of the accused being warned of the consequences of his confessional statement.

10. In this connection, the appellant has relied on a judgment reported at (1995) 2 SCC 76 *(Shivappa v. State of Karnataka)* and another reported at (2011) 2 SCC 490 *(Rabindra Kumar Pal Alias Dara Singh v. Republic of India)* to emphasise on how a Magistrate should obtain a confessional statement by complying with the provisions of Section 164 of the Code. In the first of the two judgments cited, the conviction was based only on the confessional statement of the accused as would be evident from paragraphs 3 and 5 of the report. There was no corroborating evidence in

such regard and the entire story of a conspiracy and how it was carried through was based on the confessional statement of the accused. Further, as is evident from paragraph 8 of the report, the relevant Magistrate in that case did not disclose to the accused that he was a Magistrate and did not ascertain whether the accused had been induced to make the statement. Indeed, in course of the deposition of the Magistrate at the trial, he could not recollect whether police officials were present in the vicinity of his court at the time that he recorded the statement. On the basis of the testimony of the Magistrate in that case, the Supreme Court was of the view that the Magistrate "did not make any serious attempt to ascertain the voluntary character of the confessional statement." Since the conviction was founded only on the confessional statement and such confessional statement was found to be suspect and the recording thereof was in a cryptic and perfunctory manner, the relevant statement was discarded.

11. In the famous Graham Staines murder case covered by the second report, the conditions that need to be complied with under Section 164 of the Code have been reduced in point-form at paragraph 64 of the judgment. There is no quarrel with the principle of law laid down in the reported judgments, the only issue is whether in the context of how the confessional statement was obtained in this case, any anomaly therein may be found. It is also of some relevance that there was no retraction of the statement made by the appellant herein in course of the trial and it is only

on the appellant's response to a question pertaining to the evidence of the relevant Magistrate, in course of the appellant's examination under Section 313 of the Code, that the appellant purported to deny the confessional statement that he had made.

12. There is no doubt that in terms of the applicable provisions of the Assam Police Manual, the investigation ought to have been endorsed to some superior official than a mere Assistant Sub-Inspector of police. However, the cardinal principle in such regard is that an irregularity of the kind complained of would not annul or vitiate the entire investigation or the subsequent trial unless any manifest miscarriage of justice is demonstrated. In such regard, the appellant has referred to the observation of the investigating officer immediately upon discovering the murder weapon, allegedly after the appellant had pointed out the relevant place. The investigating officer recorded that since the murder weapon had been lying in the open and it had rained in the interregnum, there would be no blood-marks or finger-prints thereon. The point that the appellant makes is that the inexperienced police official in this case did not forward the murder weapon for forensic examination thereof to ascertain whether it bore the finger-prints of the appellant herein.

13. The appellant also insists that the entire investigation was made with the intent of placing the guilt on the appellant. Though the appellant does not attribute any mala fides to the investigating officer, the appellant

hints at the inexperience of the person and his eagerness to complete the investigation without looking into all aspects of the matter. The appellant says that it is inconceivable that the murder weapon could have been discovered from the garden next to the appellant's residence when PW4 clearly stated in his deposition that the murder weapon was lying at the place of occurrence after the commission of the offence and the appellant had fled from the place of occurrence.

14. There is no doubt that there are several anomalies in the evidence, particularly in what was stated in the FIR, the deposition of the FIR-maker, the testimony of PW5 and certain other aspects. However, what is of importance is that the essence of the eye-witness accounts remained unaffected by the peripheral anomalies that the appellant points out. It must also be appreciated that the conviction in this case was not founded only on the confessional statement; rather, the appellant's confession was corroborated by the identical description of the incident by the three eye-witnesses in course of their deposition at the trial.

15. PW2 and PW3 both stated that the appellant and the deceased had come over to their residence at or about 11 am on the relevant Sunday and spent a short time before leaving. Both the witnesses recounted that after the duo left their house but were still on their property, a fight broke out following which the deceased fell on the ground and was seen to be bleeding. PW4 substantially corroborated the description, though it is of

some significance that neither PW2 nor PW3 referred to PW4 being present at the residence of PWs 2 and 3 at the relevant time. PW3 specified that the distance between her and the duo of the appellant and the deceased, at the relevant time, was about 10m. The husband and wife panicked upon seeing the bleeding figure of the victim and raised an alarm. PW4 also claimed to have been frightened and ran away.

16. What is evident from the common version of the incident by the three persons who were within close proximity and claimed to have seen the incident is that a fight broke out between the appellant and the deceased and the deceased thereafter collapsed and was found bleeding.

17. It is true that none of the eye-witnesses referred to who started the fight or who pulled the knife out first or even as to the appellant stabbing the victim. However, what is apparent is that only the appellant and the victim were present at the immediate place of occurrence and there was no other person in the vicinity; and, upon the appellant assaulting the victim, the victim fell down bleeding whereupon the appellant fled the place of occurrence.

18. Thus, whatever may have happened to the victim was only as a consequence of the acts of the appellant as no other person was within the vicinity of the immediate place of occurrence apart from the three eye-witnesses who were at least 10m or so away from the duo. PWs 2 and 3

did not refer to PW4 also being present in their house at the relevant time; equally, there is no evidence of PW4 not being present.

19. The post-mortem report indicated that stab injuries were suffered in the stomach by the victim which led to haemorrhage and the bleeding and the shock of the injuries led to the immediate death of the victim.

20. In the light of the uniform testimonies of the three eye-witnesses and the post-mortem examination report, there is no semblance of any doubt that the death was caused to the victim as a result of the victim being assaulted by the appellant.

21. As to the circumstances in which the appellant came to stab the victim may be discerned from the appellant's confessional statement. However, before adverting to such confessional statement it must be clearly indicated that the commission of the offence by the appellant is evident beyond reasonable doubt from the evidence of the three eye-witnesses and without reference to the appellant's confessional statement. Notwithstanding the appellant seeking to disown such statement, it is such statement which may come to the rescue of the appellant in deciding whether the offence committed by the appellant would amount to murder or would fall within one of the exceptions in Section 300 of the Penal Code.

22. What is evident is that there may not have been previous enmity between the appellant and the deceased. This is particularly apparent from the fact that though the two may not have gone out together to drink on

that Sunday morning, the two of them came out of the same watering hole and went to the residence of PWs 2 and 3. It was in the extremely short time in traversing about a distance of 10m or so beyond the residential building of PWs 2 and 3 that something must have been said which resulted in a fight and culminated in the unnatural death of the victim. Unfortunately, the appellant's confessional statement does not indicate what may have started the fight or whether there was anything untoward said by the victim or what may have impelled the victim to reach for a knife which was apparently in the bag that the victim was carrying.

23. What is apparent is that the appellant perceived that the victim was about to take out his knife and have a go at the appellant which prompted the appellant to reach for his knife in his pocket and stab the victim in the stomach. Though there is no evidence of whether there was a knife or not in the victim's bag or whether the knife was actually brought out or brandished against the appellant, what is evident from the appellant's statement is that there was a serious disagreement that led to the violent conduct on the part of the deceased, whereupon the appellant used his own knife to ensure that the victim had no chance to attack the appellant. It must also not be lost sight of that both the appellant and the victim may have been slightly intoxicated and not in complete command of their senses or in control of their actions.

24. A crucial point that has been made on behalf of the appellant and which is noticed with a degree of concern and regret is that adequate legal advice or representation may not have been afforded to the appellant in course of the trial. This is an aspect that the appellate courts in India are used to handling. Ideally, the defence case ought to be brought out in course of the cross-examination of the prosecution witnesses and suggestions being put in course of such cross-examination that would detract from the credibility of the statements made in the examinations-in-chief. It must be noticed that Legal Aid Counsel do not always conduct matters to the best interest of the accused. Whether this is because of the poor fees offered or some other reasons, it is an institutional issue that must be addressed. It must be acknowledged that several accused who cannot afford appropriate legal assistance suffer because of the way in which Legal Aid Counsel conduct the trial.

25. In such a scenario, the fact that the appropriate questions or suggestions were not put to PW1 or PW5 or even to the investigating officer may not be counted against the appellant herein. But even making allowance for the inadequacy in the legal defence of the appellant at the trial, the facts cannot be wished away. Apart from the common version of the three eye-witnesses, the fact that they had no motive to falsely implicate the appellant herein and were rather surprised at the occurrence

of the incident without there being any reasonable cause, it is the evidence of the relevant Magistrate which clinches the matter.

26. The standard printed form that is used in the State for recording confessional statements copiously refers to the safeguards indicated in Section 164 of the Code so that any reasonable person in the responsible post of a Magistrate would, on a plain reading of the form, realise the enormity of the responsibility cast on such official while obtaining a confessional statement, even if such official were completely ignorant of the requirements in Section 164 of the Code. In this case, it is evident that the relevant Magistrate applied her mind to the task at hand and in course of her evidence she asserted that she had explained the matter to the appellant herein and was satisfied that the statement had been made voluntarily by the appellant. A sentence or two from the Magistrate's deposition may be noticed:

> "Before recording the statement I have explained to the Accused the procedure of section 164 and Accused stated he wanted to confess. The Accused was brought @ 11AM to my office chamber and after explaining to him, I have given the Accused Reflection time of 3 hours. ...
> ...
> "I have explained to the Accused that he was not bound to make a confession, and if he does it will be used against him. The Accused himself wanted to confessed *(sic)* and was very remorseful of what he had done."

27. The first of the two excerpts is from the examination-in-chief of PW7 and the other from her cross-examination. It is apparent, therefore,

that the relevant Magistrate, who had no motive to act against the appellant herein, was aware of what she was required to do. In the opinion of the relevant Magistrate, the statement was voluntarily made after the appellant was made aware of the consequences thereof. In the perception of the Magistrate, the appellant even appeared to be remorseful. In the light of the manner in which the statement was recorded and the description of such manner by the Magistrate in course of her deposition at the trial, there is little room to detract from the confession, never mind which box she ticked and whatever other mark she put on the document. The appellant was afforded three hours to reflect and the appellant was steadfast in making the statement.

28. Given the circumstances in which the statement was made and the evidence in such regard, the mere allegation in course of the appellant's statement under Section 313 of the Code that he had been coerced to have made such statement would not stand. It is in the same light that the injury complained of by the appellant to one of his ankles must be seen. The records reveal that the appellant obtained bail after a few months of his initial arrest. There is no material to show that the appellant had suffered a fracture on the relevant ankle or the appellant needed treatment therefor after he was released on bail since the appellant claims that the ankle was not x-rayed nor was any follow-up action taken by the police authorities. The appellant did not complain of being beaten up nor show any mark of

such assault. Though the appellant refers to the arrest memo, which is routinely filled up without any reference to any injury, and the fact that some form of injury was found on the next day, the court cannot immediately jump to the conclusion that the appellant was beaten up black and blue by the police which prompted him to make the confession some four days later so as not to suffer the assault any further.

29. If such was the case, the detraction should have come immediately upon the appellant obtaining bail. Even if some latitude is given since the appellant does not appear to be lettered or worldly-wise, the appellant would invariably have interacted with defence counsel prior to or at the time of the trial and it is unbelievable that the appellant would want to detract from his statement or would refer to having been assaulted by the police for obtaining his confessional statement and such fact would not come to light in course of the trial.

30. It is true that the impugned judgment of conviction may not have referred to several anomalies or sifted the essential from the incidental while arriving at the conclusion that it was beyond reasonable doubt that the appellant had committed the offence. Equally, no thought appears to have gone into, in course of the impugned judgment, the possibility of the appellant being entitled to any benefit under the fourth Exception in Section 300 of the Penal Code. While, in a sense, the trial court cannot be faulted since the defence did not make out a case of the incident being

covered by the fourth Exception in Section 300 of the Penal Code, when the liberty of a citizen at stake, it is the duty of the court to provide such assistance as may be necessary, particularly to a less-privileged accused.

31. There was no enmity between the appellant and the deceased and no evidence of premeditation. The appellant's action was a reaction to the appellant's perception that the victim had reached for his bag to take out a knife therefrom. Though it may have sufficed for the appellant to merely bring out the knife from his pocket, take a step back and show the victim that the appellant also had a weapon to defend himself, given the suddenness of the quarrel and it immediately turning violent, the appellant may have perceived that causing an injury to the victim would be the only way to desist the victim from attacking the appellant. The appellant may have been slightly intoxicated, but the fact that the appellant stabbed the victim in the stomach and openly claimed to have done so in course of his confessional statement would also indicate that the appellant may have been aware that such injury could cause death to the victim. There is, however, no evidence of the appellant taking undue advantage or acting in a cruel or unusual manner as the eye-witnesses claimed that the appellant merely fled upon the victim falling to the ground.

32. In the circumstances, the appellant is entitled to his action being regarded as within the fourth Exception in Section 300 of the Penal Code

and the appellant being entitled to the lesser punishment under the second part of Section 304 of the Penal Code.

33. Accordingly, the sentence of life imprisonment is reduced to one of imprisonment for 10 years, including the time already spent in detention. The judgment of conviction and sentence of August 10, 2021 stand modified accordingly.

34. Crl.A.No.7 of 2022 is disposed of.

35. Let an authenticated copy of this judgment and order be immediately made available to the appellant free of cost.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
30.06.2022
"Lam DR-PS"