Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 2 of 2024

Date of Decision: 30.08.2025

1. Smti. Tiret Mawlong
   Wife of (Late) Kornik Kharthangmaw
   Resident of Village Sohdadek,
   P.S: Mairang
   West Khasi Hills District, Meghalaya

.....Appellant

-Versus-

1. State of Meghalaya
   Through Public Prosecutor

……Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.D. Upadhaya, Legal Aid Counsel

For the Respondent(s) : Mr. R. Gurung, GA

i) Whether approved for reporting in Law journals etc.: Yes/No

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

JUDGMENT

Per W. Diengdoh, J.

1. Judgment and Order dated 29.07.2022 and Sentence dated 02.08.2022 passed in Session Case No. 107 of 2015 under Section

302/34 IPC by the learned Additional Deputy Commissioner (Judicial), West Khasi Hills District, Nongstoin by which the appellant herein stood convicted for an offence under Section 302 of the Indian Penal Code (IPC) and was made to undergo rigorous imprisonment for life with respective fine of ₹ 10,000/-, in default thereof, to further undergo simple imprisonment of six months is under challenge herein in this appeal filed by the convict in the case.

2. On perusal of the memo of appeal, the materials on record and from the contents of the paper-book, what is understood is that an FIR was lodged on 04.06.2015 by one Shri Aiji Mawlong with the Incharge Dongki-ingding Police Outpost under Mairang Police Station, informing the police about the commission of murder of Riket Mawlong on 03.06.2015 at about 11:30 p.m. at the house of Smti Tiret Mawlong.

3. On receipt of the said FIR, police case being Mairang P.S. Case No. 33(6) of 2015 under Section 302/34 IPC was registered and S.I. M.K. Marak has taken up the preliminary investigation. S.I. L.M. Lyngdoh and one Bn constable were deputed to enquire into the matter, however, from the records, it appears that PW-9 S.I. Malcolm K. Marak has completed the investigation.

4. It is also evident that the police went to the place of occurrence and found the dead body of Riket Mawlong outside the house of Tiret Mawlong, whereupon, the inquest was conducted by S.I. Malcolm K. Marak (PW-9) in presence of witnesses. The body was then taken to Dongki-ingding PHC where the post mortem examination was also conducted therein.

5. Two suspects were arrested in connection with the incident, that is, Shri Kornik Kharthangmaw and Smti Tiret Mawlong, both husband and wife. On completion of the Investigating Officer (IO) in conducting the investigation, the chargesheet was filed on 31.07.2015, with a finding that the deceased was murdered by his sister, Tiret Mawlong and her husband Kornik Kharthangmaw with lethal weapons at their residence on 03.06.2015 at about 11:30 p.m. in course of hot altercation regarding dispute of inheritance of property. Therefore, the two accused persons were made to stand trial before the court of law, a prima facie case under Section 302/34 IPC having been made out against them.

6. It is on record that even before the trial commenced, the accused Kornik Kharthangmaw had expired as a result of a motor vehicle accident and as such, the charge was framed only against the accused Tiret Mawlong on 06.05.2016, whereas on being explained the charges to her, that is, one under Section 302 and another under Section 34 IPC, she pleaded guilty.

7. Thereafter, the prosecution, in order to prove its case has examined 9(nine) prosecution witnesses and has exhibited 4(four) documents and two material exhibits being Mat. Exhibit 1 and 2 respectively.

8. On completion of the recording of the evidence of the prosecution witnesses, the learned Trial Court then recorded the statement of the accused/appellant under Section 313 Cr.P.C. and thereafter after hearing the learned counsels for the parties, had delivered the impugned judgment on 29.07.2022 and the sentence was pronounced on 02.08.2022 on a finding that the evidence of the prosecution

witnesses are found to be consistence and reliable to complete the chain of circumstances with reasonable conclusion that the heinous act was committed by none other than the accused/appellant herself and for such an act, she is found to have committed an offence described under the third clause of Section 300 IPC and is therefore liable to be punished under Section 302 IPC.

9. It may also be mentioned that this is the second round of litigation between the parties before this court. When the first appeal was preferred by the appellant herein against the judgment dated 21.03.2018 wherein she was convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment with fine of ₹ 10,000/-, in default thereof, to suffer simple imprisonment of six months, this Court upon hearing the parties has disposed of the same with a direction that the same be remanded to the Trial Court for proceeding afresh from the stage of recording the statement of the appellant accused under Section 313 Cr.P.C. and also for an opportunity to the appellant to cross-examine the PW-5 and PW-6 on their recall for the same.

10. In compliance with the said order, the learned Trial Court has recalled the PW-5 and 6 respectively and after they were cross-examined and discharged, the statement of the appellant/accused under Section 313 Cr.P.C. was recorded and again, after hearing the argument of the parties, the impugned judgment and sentence was passed.

11. Heard learned Legal Aid Counsel (LAC), Mr. S.D. Upadhaya who has, at the outset, led this Court to the facts and circumstances of the case of the appellant, which is not required to be repeated as the same has been brought out hereinabove.

12. The learned LAC has then read out the evidence of PW-1, Shri Aiji Mawlong who has filed the FIR by reporting to the police about the death of the deceased victim Riket Mawlong. This witness has stated before the Court that on the day when the incident took place, that is, on 03.06.2015 at about 10:00 p.m., at Sohdadek village, he was in his village at Mawlum Khri. It was only on the following day when he received a telephonic call from the Sordar of Sohdadek village informing him that his brother Riket Mawlong has died an unnatural death that he proceeded to the house of the accused persons.

13. This witness has also stated that he has filed the FIR on the day of the incident itself, however, the FIR was dated 04.06.2015, which was on the next date. Further, he has also stated that the post mortem was conducted at the place of occurrence, whereas, it was actually conducted at Dongki-ingding PHC. Again, this witness has also stated that the accused persons confessed that they have murdered his deceased brother, but such extra-judicial confession has not been proved. Not being an eye-witness, the version of this witness cannot help the prosecution, submits the learned LAC.

14. As for the evidence of PW-2, the learned LAC has submitted that this witness has stated that the incident took place on 03.06.2015 and about 12:00 midnight of the same day, the two accused persons appeared at his residence and informed him that they have murdered Riket Mawlong, the younger brother of the appellant herein. The accused persons have also requested him to escort them to the police thanad at Dongki-ingding. This witness has further stated that he accompanied the two accused persons who went to the thanad along with Smti Hir Mawlong, the mother of the appellant and the two minor sons of the

appellant. As to the post mortem, this witness has stated that the Doctor came on 05.06.2015 to conduct the same.

15. However, this evidence of this witness was questioned by the learned LAC as to its authenticity since there is ambiguity and inconsistency in the same, particularly as regard the place where the post mortem was conducted, which was at Dongki-ingding PHC and not at the PO.

16. On the evidence of PW-3, Smti Helut Mawlong, the learned LAC has submitted that she is the mother of the appellant herein and she was the first person to know of the incident as in her statement, she has said that she was awoken by her son-in-law, accused Kornik Kharthangmaw who asked her to wake up as he has murdered Riket Mawlong. On being so awoken, she saw her son lying in a pool of blood and she became unconscious. Therefore, from this evidence, it can be concluded that it was accused Kornik Kharthangmaw who has murdered the victim and not the appellant. As such, no liability can be fastened upon the appellant.

17. The learned LAC has again submitted that the evidence of PW-4 cannot be relied upon since he is a hearsay witness as he has stated that he heard about the incident only from others.

18. PW-5 and PW-6 are the seizure witnesses who have signed in the seizure list. PW-5 has identified the Material Exhibit I, a khasi dao and Material Exhibit -2, a small iron rod. However, he has admitted that he does not know if the police have seized anything from the possession of the accused Tiret Mawlong(appellant).

19. PW-6 has also identified Material Exhibit-1 and 2 in court, however, he has stated that he has not seen from which part of the house the police has seized the said materials and that he does not know if the police have seized anything from the physical possession of the accused person.

20. The learned LAC has submitted that this seizure cannot be accepted for the reason that there is no signature of the officer who has drawn up the said seizure list exhibited as Exhibit-3. The same is not admissible in law.

21. As to the evidence of the Doctor who has conducted the post mortem, in his evidence as PW-7, he has admitted that he has conducted the post-mortem examination of the deceased late Riket Mawlong, the body being brought to the PHC by the police on 04.06.2015 at 7:15 pm. The post mortem examination was conducted on 05.06.2015 and the findings are that the cause of death is hemodynamic shock due to haemorrhage (severe bleeding) from multiple injuries on the body. These injuries may be caused by heavy-sharp object and fairly heavy slender object. However, there is nothing to state as to which injuries are ante mortem and which are post-mortem and also which injuries were caused by heavy sharp object and which were caused by slender object, submits the learned LAC.

22. The learned LAC has then referred to the evidence of the Investigating Officer who was examined as PW-9. It is submitted that this witness in his deposition has stated that "*...After reaching the place of occurrence which is the residence of the accused Smti. Tiret Mawlong I found the dead body of (L) Riket Mawlong lying outside the house at*

veranda of the accused persons…". This, according to the learned LAC would mean that the alleged incident happened outside the house while the appellant was inside the house taking care of her three children. Therefore, the appellant has no connection with the alleged offence.

23. As to the motive and intention, the learned LAC has submitted that PW-9 (IO) has stated that on enquiry from the villagers and the headman they have informed him that on the night of the incident, they heard a commotion and quarrelling between the accused persons and the deceased about land dispute. But none of the prosecution witnesses, more particularly the family members like PW-1 and PW-3 have stated anything before the court about either the quarrelling over land dispute, as such, motive could not be imputed as against the appellant herein.

24. On the seizure of the alleged murder weapons, PW-9 has stated that he has found a Khasi dao and one iron rod from inside the house of accused Smti. Tiret Mawlong which she claimed belongs to her and the same were seized in front of witnesses. However, the seizure list exhibited in court has no signature of the IO who has prepared the same and accordingly, the same is not admissible in law.

25. The prosecution has also failed to prove that the above seized materials were used in the commission of offence as they were not sent for forensic examination to detect presence of finger prints of the appellant or of anyone who had handled the said materials.

26. The learned LAC has reiterated that the case of the prosecution is based on circumstantial evidence which is doubtful considering the discrepancies found in the evidence of the prosecution witnesses wherein the chain of events is not complete to link the appellant with the

crime, the fact being that there are no eye-witnesses of the alleged crime, and the evidence of PW-1, PW-2 and PW-4 being hearsay evidence, conviction cannot be based on such type of evidence. Furthermore, since the weapon said to have been used in the commission of the crime could not be connected to have been used by the appellant in the commission of the crime, especially in absence of any forensic examination report, it cannot be said that the appellant had caused the death of her deceased brother.

27. The learned LAC has also advanced his argument to further consolidate the stand of the appellant by submitting that the appellant in her statement made under Section 313 Cr.P.C while answering the query made by the court, she had given a full explanation to all the incriminating evidence and materials alleged against her. Her answer to question Nos. 3, 4 and 5 in particular, has clearly brought out the fact that it was her deceased husband Kornik Kharthangmaw who had killed the victim when he was drunk and could not control himself. The appellant has also clarified that perhaps after the incident her husband woke her up from her sleep to accompany him to report the matter to the police which she had refused as she did not do anything but since the members of the village had already hired one Bolero vehicle to go to the police outpost, she was requested to go there, which she did so, accompanied by her two minor children, her mother, members of the Seng Longkmie and others. To another question put to her as regard the evidence of PW-3, the appellant has answered that "*...It is not a fact that my deceased brother Riket Mawlong used to assault me.*". In support of the appellant's case the learned LAC has referred to the following authorities:

i. State of Punjab v. Kewal Krishan, AIR 2023 SC 3226, para 19 and 21;

ii. Reena Hazarika v. State of Assam, (2019) 13 SCC 289, para 19, 20 and 22;

iii. Abdulwahab Abdulmajid Baloch v. State of Gujarat, (2009) 11 SCC 625, para 37, 40 and 41;

iv. Sangili alias Sanganathan v. State of Tamil Nadu, (2014) 10 SCC 264, para 16, 17 and 18;

v. Sobaran Singh & Ors. v. State of Madhya Pradesh, (2015) 13 SCC 537, para 20 and 21;

vi. Mustkeem @ Sirajudeen v. State of Rajasthan, (2011) 11 SCC 724, para 28, 29, 30 and 31;

vii. Varun Chaudhary v. State of Rajasthan, (2011) 12 SCC 545, para 25, 26, 27, 28 and 29;

viii. Mehboob Ansari v. State of Meghalaya, (2018) 2 MJ 469, para 48;

ix. Rajesh Rabha v. State of Meghalaya, (2016) 2 MJ 498, para 53.

28. Per contra Mr. R. Gurung, learned GA while responding to the argument of the learned LAC has submitted that the prosecution has been able to prove the case against the accused/appellant and therefore the impugned judgment and sentence cannot be faulted. This appeal is liable to be dismissed.

29. The learned GA has also led this Court to the evidence of the prosecution witnesses and has submitted that PW-1 Shri. Aiji Mawlong, is the informant who has lodged the FIR before the In-charge, Police Outpost Dongki-ingding with the information that it has come to the knowledge of the relatives of the deceased Riket Mawlong that he was murdered inside the house of the accused/appellant, Tiret Mawlong on 03.06.2015 at about 11:30 p.m. It is prayed that necessary steps be taken to punish these people in accordance with law. In his deposition before the court as PW-1, this informant has narrated that he came to know of the incident having received a telephone call from the Sordar of Sohdadek Village who has informed him of the same and on reaching the place of occurrence he found the body of his deceased brother lying outside the house of the accused persons in a pool of blood. This witness has further stated that after the accused persons were released from custody, he met both of them and they confessed that they have murdered his deceased brother Riket Mawlong.

30. The learned GA has further submitted that PW-2 Shri. Gisteroy Stepwar who was the Secretary of the village at that point of time, in his evidence has also corroborated the evidence of PW-1 when he said that "*…on 03-06-2015 and at about 12:00 midnight accused Shri. Kornik Kharthangmaw and accused Tiret Mawlong appeared at my resident and call out to me to open the door and when I answer the door both of them told me that they have murdered Shri Riket Mawlong younger brother of accused Tiret Mawlong and also told me to go and escort them to Thanad at Donki Ingding…*"

31. Again, PW-3 Smti. Helut Mawlong, the mother of the deceased as well as that of the appellant herein has also deposed before the court

by stating that on the day of the incident, the date and year of which she could not remember but it was in the month of June, her son-in-law Shri. Kornik Kharthangmaw woke her up from her sleep and informed her that he has murdered the deceased Riket Mawlong. When she woke up, she saw her deceased son lying dead in a pool of blood, submits the learned GA.

32. In view of the evidence of PW-1, PW-2 and PW-3, the learned GA has submitted that the prosecution has been able to prove that the accused persons, that is, the appellant herein and her deceased husband have murdered the deceased since they have admitted to the same on their own accord, such confession being confirmed by the said witnesses mentioned hereinabove.

33. The learned GA has also referred to the evidence of PW-4 Shri. Elingson Mawlong who, on being informed of the incident went to the place of occurrence and reached there at about 12:00 a.m., there he saw the head of the deceased was crushed, the right eye was crushed, and the intestine was bulging out. This piece of evidence was found matching with the post-mortem report filed by PW-7 Dr. H.L. Kharchandy who has conducted the post-mortem and, in his evidence, has referred to his findings as follows:

> "Wounds- Penetrating wound, 2.5 centimeters over the right part of forehead, penetrating deep into the brain matter. Penetrating wound over left eye, penetrating into the eyeball deep into the socket. Penetrating wound 3 centimeters over back of the head (occipital region) penetrating deep into the brain matte. Chop wound, 6 inches over anterior and lateral parts of the neck, revealing the neck soft tissues, the cut vessels, bronchi, partly chopped oesophagus and extend posteriorly. Stab wound (penetrating) with dragged margins 7. inches over left

> hypochondrium and left lumber parts of abdomen revealing the intestines (including the perforated intestines) and torn peritoneal lining with faecal matter leakage from perforated intestines. There was brain membranes torn at the penetrating wound over the (occipital region) and brain matters come out from the wound."

34. As to the manner in which the deceased was murdered, the learned GA has submitted that the evidence of PW-4 and PW-7 have only confirmed the findings of PW-9, the Investigating Officer who, in his evidence has stated that when he visited the PO on 04.06.2015, he has conducted the inquest then and there. His report in this regard reflected that he found the body lying outside the veranda of the accused. He also stated that "…*During inquest I saw that the left eye ball was crushed, from the head white fluid and blood were coming out, his throat was cut and cut mark on the lower abdomen of which intestine bulging out…*"

35. As to the weapon used for the murder of the deceased Riket Mawlong, the learned GA has submitted that PW-5 Shri Shngainlut L. Nonglait in his evidence has stated that he was present at the place of occurrence on the next day of the incident at about 2:00 p.m. when the police arrived at the PO, one khasi dao with handle and one iron rod from the possession of the accused/appellant herein was seized. This witness has appended his signature on the body of the seizure list as a seizure witness and he has also proved Mat. Exhibit-1 and Mat. Exhibit-2 as well as the seizure list when the same was produced in his presence before the court.

36. Similarly, PW-6 Shri Ping Kharkongor is also another seizure witness who has seen the police seized the khasi dao and the iron rod

from the place of occurrence and that he has also signed as one of the seizure witnesses on the body of the seizure list, Exhibit-3.

37. The learned GA went on to submit that from the evidence on record, there is no doubt that the weapons used by the appellant and her husband have been proven to be the one seized from her possession in presence of reliable witnesses and such evidence have not been able to be contradicted by the defence.

38. As to the repeated defence sought to be set up by the appellant that it was a case of self-defence, wherein the Investigating Officer, as PW-9 in his deposition has stated that the appellant on being interrogated has confessed that her deceased brother came to her house on the day of occurrence in a drunken state and started quarrelling with her, taking up the issue of land dispute, when she refused to comply with his demand, he started to beat her and in order to protect herself she hit back and her deceased husband on seeing them fighting, he too started to beat the deceased victim, the learned GA has submitted that this witness in his cross-examination has stated that he did not see any injuries on the person of the A-2/appellant. However, the nature of injuries is such that every part of the body of the deceased victim was inflicted with lethal weapons with such injuries sufficient to cause his death, therefore, premeditation and intention to kill having been established, even as the accused persons have confessed their guilt, the plea of self-defence has no ground to stand. The case of N. Ramkumar v. State Rep. by Inspector of Police, 2023 SCC Online SC 1129 at para 15 and 16 was cited to support this contention.

39. We have duly taken note of the contention and submission of the learned counsels for the parties in support of their respective stand vis-à-vis the said impugned judgment and sentence.

40. Before reverting to the submission of the learned counsels, what can be seen is that the prosecution story as was depicted by the IO in his report under Section 173 Cr.P.C, is that on 03.06.2015 at about 11:30 p.m., the deceased victim Riket Mawlong was murdered by the accused/appellant and her husband Kornik Kharthangmaw (since deceased) with lethal weapons at their residence at Sohdadek village after a hot altercation regarding inheritance of family properties.

41. In order to prove this story, the prosecution has examined about 9(nine) witnesses and has brought before the court two material exhibits, being a khasi dao and one iron rod said to have been used as the murder weapons. The seizure list indicating the seizure of such weapons by the IO wherein is found two appending signatures of the witnesses to the said seizure was also produced as Exhibit-3. On inquest being conducted, the report of such inquest was also produced as Exhibit-2. The post mortem report was also exhibited as Exhibit-4.

42. Evidently, nobody has actually seen the accused persons killing the deceased. In order to establish its case, the prosecution has relied mostly only on the fact that the body of the deceased was found at the house of the appellant obviously covered with injuries which has probably caused his death and also on the alleged confession of the accused persons that they have killed the deceased.

43. PW-1 who has filed the FIR is the brother of the appellant and the deceased victim. His knowledge of the incident was only by way of

a telephonic information received from the Sordar of Sohdadek village and that too on the day after the incident. However, he came to the PO and saw the dead body of his brother lying outside the house of the appellant. He also said that the accused persons, that is, his sister and brother-in-law have already been arrested when he arrived at the PO and it was only later that he met them after their release from custody. On his enquiry, he said that they have confessed to him that they have committed the murder.

44. PW-2 is the Secretary of Sohdadek village. This witness has stated in court that on the night of the incident, both the accused persons appeared at his house at 12:00 midnight and told him that they have murdered Shri Riket Mawlong.

45. Even PW-3, the mother of the appellant has also stated in her evidence that she was informed of the incident only when the accused Kornik Kharthangmaw, her son-in-law came to her residence and woke her up from her sleep whereupon he told her that he has murdered Riket Mawlong. Later, when she asked her daughter, the appellant herein, as to the cause of the incident, she was told by the appellant that the deceased used to beat her up and on the day of the incident, he came to her house and started assaulting her. Her husband on seeing this, became angry and started assaulting the deceased resulting in his death. This witness in her cross-examination has reiterated that she thinks that the deceased was murdered by the accused because he (deceased) had seriously assaulted the appellant and that in self-defence, the accused murdered the deceased.

46. This theory of self-defence was also restated by PW-4, one of the brothers of the appellant who has admitted in his cross-examination that he is aware that the deceased used to be a habitual drinker and when he is drunk, he used to create trouble to his sisters and even prior to the incident, he had a quarrel with the appellant. This witness has further opined that it was in self-defence that the accused persons caused the death of the deceased.

47. The version of the incident and the cause thereof as was depicted by PW-3 and PW-4 was also corroborated by PW-9, the Investigating Officer, who in his deposition before the court has stated that during interrogation, the accused persons confessed to their guilt and has told him that on the day of the incident, the deceased came to their house in a drunken state and started assaulting the appellant to which she defended herself by fighting back. Her husband on seeing them fighting, in order to help his wife, he too started to beat the deceased till he died. This witness, in his cross-examination has however stated that there was no intention or preparation on the part of the accused to commit the offence, but the incident happened in the heat of passion and was purely in self-defence as the victim himself went to the house of the accused persons and started assaulting the appellant.

48. From the above, what can be understood is that the defence has sought to put up a case of self-defence in the commission of the said offence while the prosecution has maintained that it is not a case of self-defence but of intentional murder, the manner in which the deceased victim was killed and the weapons used, indicating this state of mind of the accused persons, including the appellant herein.

49. Admittedly, death has occurred inasmuch as there is no contradiction made to the fact that the deceased victim was found lying dead outside the house of the appellant and her husband. There are visible injuries mark on his body. His body was later taken to Dongki-ingding PHC where his post mortem was conducted there by the doctor (PW-7). His death can therefore be said to be homicidal.

50. The appellant has been found by the Trial Court to have committed the offence of culpable homicide, such culpable homicide amounting to murder and thereby fits the description of the offence of murder as found in Section 300 IPC.

51. The findings of the learned Trial Court are that the plea of self-defence, that is, the appellant on being assaulted by her deceased brother, she had defended herself cannot be believed in the light of the manner in which the deceased was killed. Therefore, the accused/appellant had participated in the murder of her brother for which she was eventually convicted and made to suffer punishment as per Section 302 IPC.

52. It can also be said that this is a case which can only be proved by circumstantial evidence since there are no eye-witness(es) who have actually seen the appellant and her husband or only her husband or only the appellant committing the murder. In such a situation, in the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, the Hon'ble Supreme Court has laid down certain principles of how evidence is to be appreciated in a case based on circumstantial evidence, at para 153 it was held as follows:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] where the following observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

53. An analysis of the circumstances surrounding the death of the deceased brother of the appellant, at the initial stage cannot be explained, that is, how he allegedly came to the house of the appellant and whether he was actually drunk and has assaulted the appellant. The picture that was presented by the witnesses is that it was the appellant who has told

them that she along with her husband had killed her brother because he had assaulted her in a drunken condition for which she has to defend herself. However, this piece of evidence was allegedly forthcoming only on the confession of the appellant to PW-1, PW-2 and PW-3. But this would only be in the realm of 'extra-judicial confession', which expression will be discussed further herein. Therefore, such circumstances cannot be determined, more so, cannot form the basis to establish the guilt of the appellant.

54. Even if the evidence on record is perused, the evidence of PW-3 who is the mother of the accused/appellant would connect the death of the deceased to the action of the deceased husband of the appellant as this witness has stated that it was the deceased husband of the appellant who had woken her up from her sleep and had told her that he had killed the deceased. He has never said anything about the participation of the appellant in the commission of such act. The appellant has also stated in her statement under Section 313 while replying to one of the questions put by the court that after the incident her husband woke her up from her sleep and told her to accompany him to the police station. To another question she has answered that she does not know the condition of her deceased brother at the time when he died as she did not go to see him even though he was lying dead in her compound.

55. In view of such circumstances, it is the opinion of this Court that there is no evidence which proved circumstances to be of a conclusive nature pinpointing to the guilt of the appellant in the alleged commission of the murder. There are no credible or possible hypothesis to connect the appellant to the said murder.

56. The contents of the post mortem report cannot be doubted as PW-7 who is the doctor who had conducted the post mortem and who has filed the related report has clearly opined that the manner of death is homicidal, the cause of death is haemodynamic shock due to haemorrhage (severe bleeding), from multiple injuries on his body and these multiple injuries may be caused by heavy-sharp object and fairly-heavy slender object.

57. The discovery of the alleged murder weapons was said to have been made from the house of the appellant and the IO had accordingly seized the two objects that is, one khasi dao and one iron rod. However, the seizure list said to have been prepared by the IO has not been actually signed by him to certify its genuineness. Even though the two seizure witnesses who have proved the said seizure list, in different versions, they have stated that they did not see from where the two materials were actually seized. Moreover, these materials have not been sent for forensic examination to determine as to whether there is any blood found in them, either of the deceased victim or the appellant. Under such circumstances, legally, the said weapons or materials cannot be linked or connected to the appellant or even to her deceased husband. This is where the case of the prosecution fails in this regard.

58. Coming to the issue of extra-judicial confession, this Court would rely on some authorities and case laws which has brought some clarity in this area, particularly as regard the culpability of the person who has made such confession to whom and under what circumstances.

59. The Hon’ble Supreme Court in the case of Ramu Appa Mahapatar v. State of Maharashtra, (2025) 3 SCC 565, at para 20, 21

and 26 has expounded the proposition of extra judicial confession by observing as follows:

> "20. In State of Rajasthan v. Raja Ram [(2003) 8 SCC 180], this Court explained the concept of extra-judicial confession. Confession may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or a court. Extra-judicial confessions are generally those that are made by a party before a private individual who may be a judicial officer also in his private capacity. As to extra-judicial confessions, two questions arise: firstly, whether they are made voluntarily and secondly, are they true? If the court is of the opinion that the confession was not made voluntarily but was a result of an inducement, threat or promise, it would not be acted upon. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind and if it is not caused by any inducement, threat or promise having reference to the charge against him proceeding from a person in authority. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case judged in the light of Section 24 of the Evidence Act, 1872 (briefly "the Evidence Act" hereinafter). The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary. At that stage, the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity and voluntariness of the confession, the court may refuse to act upon the confession even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession is deserving of the highest credit because it is presumed to flow from the highest sense of guilt.
>
> 21. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the reliability of the witness to whom it is made and who

gives the evidence. Extra-judicial confession can be relied upon and conviction can be based thereon if the evidence about the confession comes from a witness who appears to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused. The words spoken by the witness should be clear, unambiguous and unmistakenly convey that the accused is the perpetrator of the crime and that nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

26. Upon an indepth analysis of judicial precedents, this Court in Sahadevan [(2012) 6 SCC 403] summed up the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused: (SCC pp. 412-13, para 16)

> "16…(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."

60. In the said case of Ramu Appa Mahapatar (supra) at para 19, it has been observed that extra-judicial confession is one of several

instances of circumstantial evidence and has to be proved as such, that is, that the chain must be complete and found to be consistent only with the hypothesis of the guilt of the accused. This para reads as follows:

> "19. Extra-judicial confession of an offence made by the accused before a witness is one of the several instances of circumstantial evidence; there are other circumstances, such as, the theory of last seen together; conduct of the accused before or immediately after the incident; human blood being found on the clothes or person of the accused which matches with that of the accused; leading to discovery, recovery of weapon, etc. As we know, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. The chain must be complete and each fact forming part of the chain must be proved. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances would not only have to be proved beyond reasonable doubt, those would also have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. All these circumstances should be complete and there should be no gap left in the chain of evidence. The proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. The circumstances taken cumulatively must be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. While there is no doubt that conviction can be based solely on circumstantial evidence but great care must be taken in evaluating circumstantial evidence. If the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted."

61. Again, as to the evidentiary value of an extra-judicial confession, the Hon'ble Supreme Court in the case of Harjinder Singh @ Kala v.

State of Punjab, vide order dated 22.01.2025 in SLP(Crl.) No(s). 8944 of 2022, a case where facts and circumstances are almost similar to the case herein, has acquitted the appellant/accused who has approached the court on his being convicted by the trial court and on appeal before the High Court, his appeal was rejected.

62. However, it would be worthwhile to briefly mention the story of the said case in the context of the case in hand. On 14.08.2014, one Narain Dass was found lying lifeless in his cot with injury marks made by sharp weapons on the right side of the face and abdomen. An FIR was filed and a case registered. On 19.08.2014, Harjinder Singh approached the village Sarpanch and tendered an extra-judicial confession to the effect that he has murdered Narian Dass. The Sarpanch convinced him to surrender to which he does and was arrested and again, during investigation, he made a disclosure to the Investigating Officer whereby the knife which was used to commit the crime was recovered. Charges were framed against the appellant therein under Section 302 IPC and on conclusion of the trial, he was found guilty of the said offence and sentenced to undergo life imprisonment with fine of ₹ 5000/- with default clause.

63. At para 16 & 17 of the said case of Harjinder Singh(supra), the Hon'ble Supreme Court dealing with the issue of extra-judicial confession has observed as follows:

> "16. It is a cardinal principle of criminal jurisprudence, that an extra-judicial confession must be accepted with great care and caution. If found reliable and convincing, an extra-judicial confession may be used as corroboration for other evidence to record conviction of the accused. This Court had the occasion to deal with the evidentiary value of an extra-judicial confession in

Sahadevan v. State of T.N. [(2012) 6 SCC 403], wherein it was held that:-

> "14. It is a settled principle of criminal jurisprudence that **extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence**. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. **In such circumstances, the court would be fully justified in ruling such evidence out of consideration**.
>
> 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 and 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 supplied)

17. In Kalinga v. State of Karnataka [(2024) 4 SCC 735], this Court further deliberated upon the evidentiary value of an extra-judicial confession, and held therein:-

"15. The conviction of the appellant is largely based on the extra-judicial confession allegedly made by him before PW 1. So far as an extra-judicial confession is concerned, **it is considered as a weak type of evidence and is generally used as a corroborative link to lend credibility to the other evidence on record**. In Chadrapal v. State of Chhattisgarh, this Court reiterated the evidentiary value of an extra-judicial confession in the following words:

"11. …This court has consistently held that an extra-judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, **ordinarily conviction for the offence of murder should not be made only on the evidence of extra-judicial confession**. As held in State of M.P. v. Paltan Mallah, the extra-judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. **In absence of any substantive evidence against the accused, the extra-judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra-judicial confession** of the co-accused."

16. **It is no more res integra that an extra-judicial confession must be accepted with great care and caution**. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra-judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and

> that the contents of the confession were true. **The standard required for proving an extra-judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt**. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra-judicial confession."

64. In circumstances similar to this case, the Hon'ble Supreme Court at para 34, 35 & 36 of the Harjinder Singh case has said the following:

> "34. It is further noteworthy that the Investigating Officer, S.H.O. Bhagwant Singh(PW-7) did not state that the knife, which was allegedly recovered at the instance of the appellant, was sealed and thereafter forwarded to the FSL for forensic examination, which makes the recovery of the alleged murder weapon inconsequential. Thus, the recovery of the knife purportedly used in commission of murder, is of no avail to the prosecution.
>
> 35. In addition, thereto, it is the case of the prosecution that the blood-stained pyjama allegedly worn by the appellant at the time of the incident was also recovered in furtherance of his disclosure statement. However, the FSL report produced on record does not indicate any positive conclusion of blood grouping which could connect the weapon i.e., the knife and the clothing (stained pyjama) with the blood group of the deceased. This is again a material rift in the case of the prosecution and makes their entire case doubtful.
>
> 36. No other evidence was led by the prosecution to bring home the guilt of the appellant. Therefore, we find that the prosecution has failed to prove even one of the so-called incriminating circumstances attributed to the appellant so as to affirm his guilt."

65. In view of the above findings and observations, we are of the view as was held in the case of Manthuri Laxmi Narsaiah v. State of Andhra Pradesh, (2011) 14 SCC 117 at para 6 that:

> "6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence"

66. To reiterate the factual situation of the case herein, what is apparent is that the accusation of the deceased victim being murdered was directed at the appellant and her deceased husband. Though the husband has since died even before charges could be framed against him, nevertheless, the narrative of the prosecution as to his culpability or complicity in the case cannot be ignored on account of his death which is a subsequent development in the case.

67. From the stage of framing of charge to the recording of evidence of the prosecution witnesses, the prosecution has sought to make out a case only against the appellant herein. In spite of evidence pointing to the presence of the deceased husband of the appellant and his so called confession before PW-3 of having killed the deceased and also the fact that PW-1 and PW-2 have also stated that it was the two of them, that is, the appellant and her husband who had killed the deceased, if such evidence is even valid or considered by this Court, the question of who has actually dealt the fatal blow has not been determined. Motive and intention not being proved, therefore the appellant cannot even be said to be having a common intention with her husband to kill the deceased. This is apparent when the learned Trial Judge has thought it fit not to implicate the appellant under Section 34, but only under Section 302 IPC. Under such circumstances, the link in the chain is broken and as such, the accused must get the benefit of doubt, which we are hereby inclined to do so.

68. It may be reminded that the authorities cited and relied upon by the appellant and the prosecution has been acknowledged herein, however, only what is relevant to the issues involved and taken up in this hearing have been taken due note of.

69. On a final analysis of the facts and circumstances of the case of the appellant, we are of the considered view that the prosecution has not been able to make out a case for conviction of the appellant and the impugned judgment of conviction, including the sentence thereof is liable to be set aside and quashed which is done so herein.

70. The convict/appellant is hereby acquitted and is directed to be henceforth set at liberty without any liability as far as this case is concerned, if not wanted in any other case.

71. Let copy of this order be issued upon the Superintendent, District Prisons and Correctional Home, Shillong for necessary compliance.

72. Trial Court's record to be sent back after the mandatory period of appeal is over.

73. Appeal disposed of.

(B. Bhattacharjee)
Judge

(W. Diengdoh)
Judge

Signature Not Verified
Digitally signed by
TIPRILYNTI KHARKONGOR
Date: 2025.08.30 13:28:21 IST