

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**ITANAGAR PERMANENT BENCH**

**Crl.Appl.(J) 05 (AP)/2018**

**Shri Guddu Tanti**, S/o Late Garu Charan Tanti, Vill-Photojan,  
Beisakopei TE(Line No. 17), P/o & P/s Doom Dooma, District-  
Tinsukia(Assam)

*.....Appellant/Convict*

-Versus-

1. **The State of Arunachal Pradesh** represented by the Public Prosecutor.
2. **Smti. Boijyanti Deori**, W/o Lt. Jotin Deori, Vill. Sompoi No. 1, P.O/P.S. Diyun, Distt. Changlang, A.P.

*.....Opposite parties*

**Advocate for the Petitioner** : Shri T.T.Tara, Amicus Curiae  
**Advocate for the respondents** : Ms. L. Hage, Addl. P.P

**:::BEFORE:::**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**  
**HON'BLE MR. JUSTICE NANI TAGIA**

Date of hearing : **02.07.2019**

Date of judgment :

**JUDGMENT & ORDER (CAV)**

*(S. K. Medhi, J.)*

1. The present Appeal has been preferred from Jail under Section 374 (2) of the Cr.P.C. against a judgment and order dated 07.05.2015, passed by the learned Sessions Judge, East Sessions Division, Tezu, Lohit District in Sessions Case No. 49 (CLG)/2012. By the impugned judgment and order, the appellant has been convicted under Section 302 of the IPC and sentenced to undergo rigorous imprisonment for life.

**2.** We have heard Shri T. T. Tara, learned counsel appearing as Amicus Curiae for the appellant as well as Ms. L. Hage, learned Additional Public Prosecutor, State of Arunachal Pradesh.

**3.** The brief facts of the case may be narrated as follows.

**4.** An FIR was lodged on 20.11.2011 by one Smt. Boijayanti Deori (PW-1) stating that on the said date, her husband Jotin Deori (deceased) had gone out to the cultivation field with his servant known as Goddu (the appellant herein) and did not return till the evening. As a result, she along with her brother-in-law, Shri Chandra Deori (PW-2) had gone out in search and found the dead body of her husband half buried in the cultivation field with the head missing. The servant was found missing from the place of occurrence.

**5.** Accordingly, the investigation started and on the next morning, the head of the deceased was found from the place nearby the place of occurrence which was identified by the appellant, who was found hiding in the nearby field. After investigation, charges were framed and the trial had started.

**6.** The prosecution side had examined 16 (sixteen) numbers of witnesses including Shri Dakto Riba, Judicial Magistrate, before whom a confession under Section 164 of the Cr.P.C. was made.

**7.** Admittedly, the present is not a case where there were eye witnesses and it is a case where the conviction is based on circumstantial evidence. As has been held by the Apex Court in a number of decisions that it is the duty of the Court while considering a case based on circumstantial evidence to see whether the chain of events leading to the guilt of the accused is a continuous one without any break, wheresoever and the conclusion regarding the involvement of the accused is the only conclusion that can be reached. With that backdrop, the present conviction has to be examined by us acting as the Appellate Court. Moreover, as an Appellate Court, we cannot be oblivious of the other facts which were on record and needed to be taken into consideration.

**8.** Since there were no eye witnesses in this case, detailed narration of the depositions may not be necessary for disposal of this Appeal. However, it would be prudent to put the gist of the depositions of the witnesses and the materials which were before the learned Trial Court.

**9.** As stated above, PW-1 is the informant, who is the wife of the deceased. She had proved the FIR and stated that at about 12.00 noon, her husband had gone out to the cultivation filed along with the accused and as he did not come back by the evening, on search made along with her brother-in-law (PW-2), the beheaded body of her husband was found in the evening. PW-2, who is the brother of the deceased, corroborated the version of PW-1 and also deposed to have found 2 (two) numbers of spades on the spot having blood stains and that the appellant was missing. He had further stated that on the next morning, the appellant was arrested from the jungle area near the place of occurrence having full of blood on his body and face where he had admitted to have killed the deceased. Upon his arrest by the Police, he had brought back the head of the deceased. PW-3 is a cousin of the deceased, who also corroborated that the appellant had taken the people to the place where the head of the deceased was hidden. PW-4 is the son-in-law of the deceased, who had brought the accused as a household servant to the family of the deceased. PW-5 is the daughter of the deceased, who had deposed on the basis of the information received by her. PW-6 is a co-villager and was present when the head of the deceased was found on being pointed out by the appellant. PW-7 is a witness in the Seizure Report as well as the Inquest Report. PW-8 had also corroborated the version of the other witnesses and had visited the place of occurrence at the time of seizure. PWs-9, 10, 11 & 12, all are hearsay witnesses. However, it is seen that in cross-examination, suggestions were given regarding the previous mental condition of the accused appellant.

**10.** PW-13 is the medical officer who had conducted the post-mortem. He, however, admitted that no forensic tests were conducted on the weapons/tools. PW-14 is the Investigating Officer, who has, however, clearly deposed that when the appellant was caught hiding, he led the team to a place about 50 meters from where the severed head of the deceased was recovered. He had also stated that as per information given to him by the accused, he was earlier also suspected in a murder case and was convicted and whereafter, he had undergone treatment for his mental condition. PW-15, who is the Circle Officer-cum-JMFC, before whom the alleged confessional statement (P. Exh-9) was recorded. The said PW-15 further disclosed that he was aware that the appellant was earlier in mental hospital. He had also clearly deposed that there was no separate provision for judicial custody and the accused was accommodated in

the same building of the Police Station. As regards reflection time before making such confession, it was deposed that not less than half an hour was given for such reflection. PW-16 is the Police Officer who had submitted the Charge-Sheet in this case.

**11.** In the examination under Section 313 Cr.P.C., against question No. 27, the appellant accepted that the separated head was brought by him on the direction of the Police.

**12.** As stated above, the learned Sessions Court after examination of the depositions and materials on record had convicted the appellant under Section 302 of the IPC and sentenced him to undergo rigorous imprisonment for life.

**13.** Shri T. T. Tara, learned counsel acting as Amicus Curiae, has submitted that the conviction is not in accordance with law and therefore warrants interference. On the other hand, Ms. L. Hage, learned Additional Public Prosecutor, State of Arunachal Pradesh, submits that there are sufficient materials against the accused appellant to come to a finding of guilt and accordingly no interference is called for.

**14.** We have carefully examined the depositions and the materials before us. The LCRs have also been perused. Admittedly, the present is a case of circumstantial evidence. Two corroborative factors which would be relevant is the confession made under Section 164 of the Cr.P.C. and the applicability of Section 27 of the Indian Evidence Act with regard to discovery of the severed head at the instance of appellant. There is yet another significant factor which would be require some attention of this Court, namely, the mental condition of the appellant/accused. Let us first examine the evidentiary value of the confession so far as the instant case is concerned. The confession report does not indicate that prior to the same, the accused was given the required time and environment to bring in voluntariness in his confession. It is also not stated under whose company or supervision the accused was kept during the time of reflection. On the other hand, it is on record that no separate judicial custody was available in that building and the accused was straight away brought for the confession from the building which was a Police Custody. The learned Magistrate himself has said that not less than half an hour time was given for reflection. This, in the opinion of the Court is not an adequate or reasonable time. Though,

no strait jacket formula can be applied as to what would be a reasonable time, various judicial pronouncement have laid down that at least three hours is considered to be a reasonable time. We are, further of the opinion that no environment was made which can be termed as free and un-influenced by any coercion inasmuch as the accused was brought straight from the Police custody. In that view of the matter, conviction based on the aforesaid confession would not be justified at all.

**15.** The second point is the applicability of Section 27 of the Indian Evidence Act. The said Section is quoted herein below -

*"27. How much of information received from accused may be proved.-*

*Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

**16.** There are sufficient materials to show that it was the accused appellant who had led to the discovery of the separated head of the deceased. In fact, such statement is also admitted by the appellant in his examination under Section 313 of the Cr.P.C. It is a settled principle of law that a conviction can be based on the doctrine of "leading to discovery". Therefore, in view of the existence of sufficient materials, the conviction can be sustained on the basis of Section 27 of the Indian Evidence Act.

**17.** The last question which arises for consideration is the mental condition of the appellant accused. Though Chapter IV of the Indian Penal Code lays down "General Exception" including Section 84, it has to be examined whether the basic ingredients to get the benefit of such general exceptions are fulfilled in the instant case.

For ready reference, Section 84 of the IPC is quoted herein below -

*"84. Act of a person of unsound mind.- Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."*

**18.** The Hon'ble Apex Court in the case of *Elavarasan Vs. State*, reported in (2011) 7 SCC 110, has held that the benefit of Section 84 would be entitled to

an accused only when the unsoundness of mind is established by credible evidence. It has further been laid down that mere fact that no motive was proved or that an offender did not attempt to run away does not indicate that he was insane.

**19.** In the instant case, though certain suggestions appear to have been given to the witnesses regarding the mental condition of the appellant accused, in our view those may not meet the standards of "credible evidence". In fact, no defence witness was produced in this case. However, it is seen from the depositions as well as the conduct of the appellant that he does not appear to be a person of a sound mind and admittedly, he was in custody in another case and after coming out thereof, he had undertaken treatment of mental unsoundness.

**20.** On an specific query, the learned Amicus Curiae has submitted that from the date of arrest which was immediately the next date of the date of occurrence, the appellant was arrested and is in custody. It is further informed that the case of the appellant in the Trial Court was conducted by State defence.

**21.** In view of the above, interest of justice would be served if the conviction is altered from Section 302 to Section 304 Part II IPC and the sentence is modified to a period which has already been undergone by the accused appellant. In view of the same, the appellant be released from custody forthwith, if not required to be in custody in connection with any other case. Since the appellant appears to be mentally unstable and without any family, steps may be taken to put him in an Asylum or Care home where he can be given proper treatment.

**22.** Before parting, we put on record the appreciation for the assistance rendered by Shri T. T. Tara, learned Amicus Curiae, who shall be entitled to a fee of Rs. 7,500/- (Rupees seven thousand five hundred) to be paid by the State Legal Services Authority.

Appeal is accordingly disposed of.

**JUDGE**

**JUDGE**

*Lipak*