

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

**ITANAGAR PERMANENT BENCH**  
**(NAHARLAGUN)**

**Crl.Appeal.07(AP)2014**

**Passang Dorjee @ Passang Lama**

S/o Sri Karpu Lama, R/o Village Rambhi, P.O & P.S. Ghom, District Darjeeling(West Bengal) (Currently in Central Jail, Juli).

.....*Appellant*

**- Versus -**

1. The State of Arunachal Pradesh through the Public Prosecutor.
2. Budhi Badhur Tamang, S/o Shri Ram Badhur Tamang. CPL C/o 117 RCC, Location Maratha Ground, Labour Camp, Tawang.

.....*Respondents*

**Advocates for the petitioner:**                      **Shri A. Ganguli**

**Advocates for the respondents:**              **Shri S. Tapin (Govt. Advocate)**

**B E F O R E**  
**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

**Date of hearing**                                      **: 30.05.2019**

**Date of Judgment & order**                      **: 30.05.2019**

**JUDGMENT AND ORDER(Oral)**

The appellate jurisdiction of this Court under Cr.P.C is sought to be invoked by preferring the present appeal against the judgment and order dated 22.09.2013 passed by the learned Addl. Sessions Judge, West Sessions Division, Bomdila in Sessions Case No. 5/2012. By the aforesaid judgment, the appellant has been convicted under Section 304 Part-1 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 7 (seven) years and also to pay a fine of Rs.

10,000/-, in default thereof a further term of simple imprisonment of six months.

**2.** The starting of the present case was by lodging of an F.I.R. by one Shri Budhi Bahadur Tamang, PW-8 dated 20.04.2001 in which it was alleged that his younger brother Saila Tamang had a quarrel with the appellant in which the appellant had stabbed his brother with a knife causing severe injury on his stomach for which he was admitted at the District Hospital, Tawang. On the basis of the said F.I.R., Tawang P.S. Case No. 8/2001 under Section 326 of the IPC was registered. Subsequently, at the time of submission of final form, Section 302 of the IPC was inserted as the injured had succumbed to his injuries in the hospital.

**3.** The prosecution adduced 14 numbers of witnesses to prove their case. Though admittedly, the present is a case of circumstantial evidence, the prosecution also relied upon a confessional statement of the appellant made before the Executive Magistrate who was discharging judicial functions as there was no separation of the Executive and the Judiciary at that time. Certain Exhibits were also presented before the trial Court which included the Seizure List, Inquest Report, Post Mortem Report, Medical Report, Sketch Map amongst others.

**4.** As mentioned above, though 14 members of witnesses were produced by the prosecution, the relevant part of the deposition of the witnesses would be discussed in this judgment.

PW-1 is one Shri Rinchin Lama who was not an eye witness and he has not stated anything about the incident, rather, in his examination he stated that the appellant and the deceased were friends.

PW-2, Smti Thuli Kanchi, has not stated anything about the incident and has further reiterated that she has not even seen the injury marks.

PW-3 Smti Tserging Dolma is the sister of the appellant/accused, she however states that there was a quarrel between the appellant and the deceased and the injury on the stomach was by an axe in the hand of the deceased.

PW-4 is one Shri Laxman Tamang who used to know both the appellant and the deceased. Though he was not an eye witness, he disposed that he has seen the aforesaid appellant and the deceased going inside the soft room and the diseased had an axe in his hand. He further states that he saw the deceased alone injured on his stomach with the axe in his left hand and the sharp portion near his stomach. It is noteworthy that this witness was not declared as hostile.

PW-5 is neither an eye witness and rather he deposes that he did not even see the injury.

PW-6 is the Doctor who has examined the deceased when he was brought to the hospital. She however deposed that one stab wound was found in the abdominal area and such injury could have been caused by a dagger.

The father of the deceased Shri Ram Bhadur Tamang was examined as PW-7. He admittedly, is a hearsay witness and admits in his deposition that he was a blind man and therefore, could not see the injury marks.

PW-8 is the informant and the brother of the deceased. He also admits that he came to learn about the incident from others.

PW-9 is the father of the appellant and there is no implicating statements made by him.

PW-10 Shri K. Tsering was one of the Police Officers of the Tawang Police Station who was connected with this case. In his cross examination, he however makes a statement that though a Dagger was seized and marked as Ext. 1, no blood stain was found in the said dagger.

PW-11 Shri S. Norbu was also another Police Officer who was initially connected with the incident and has done certain investigation. Though he has deposed that as per statement made by the father of the deceased that the appellant had stabbed his son, at the same time the father had also admitted that he was a blind man and could not see anything.

PW-12 is the Doctor who had conducted the Post Mortem on the body of the deceased, wherein, a sharp cut penetrating injury was found in the abdominal area.

PW-13 Shri Demir Tali is the authority before whom the confession was made. At that time, the said PW-13 was discharging his functions as the EAC of Tawang. He deposes that he had given reflection time to the appellant of about 20 to 30 minutes. The confessional statements of 4(four) sheets were proved as Ext. 7. In his cross-examination he has admitted that 3(three) hours time of reflection was not given to the appellant.

PW-14 Shri Abuani Kr. Talukdar is the Police Officer who had immediately attended to the GD entry made on 21.04.2001 and on reaching the Civil Hospital, Tezpur he found the deceased.

The learned Trial Court by relying upon the statements of the witness and the confessional statement of the appellant had held the appellant guilty and has passed the aforesaid sentence which is the said matter of challenge in this present appeal.

**5.** I have heard Shri A. Ganguli, learned counsel for the appellant. I have also heard Shri S. Tapin, learned Sr. govt. Advocate, Arunachal Pradesh acting as the Public Prosecutor of the State.

**6.** Shri Ganguli, learned counsel for the appellant submits that the basic principles of criminal jurisprudence have been totally overlooked while passing the impugned judgment. When admittedly, there is no eye witness, the requirement to maintain a conviction based on circumstantial evidence is that there has to be an unbroken chain of

events which leads to only one conclusion regarding the guilt of the accused. By relying upon the principle laid down by the Hon'ble Supreme Court on the subject, it is submitted that if the chain is not complete to conclusively arrive at the guilt of the accused, no conviction can be awarded.

**7.** In the instant case, it is submitted that no circumstances have been able to be established to show the involvement of the appellant with the offence in question. None of the prosecution witnesses were eye witnesses and in such situation, the burden is even more on the prosecution to prove their case which they have miserably failed to do.

**8.** Heavily criticising the investigation and terming the same to be faulty one, it is submitted that though the dagger allegedly used is said to be seized by the Police, the same did not contain any blood stain. No effort was made to send the said weapon for further examination by the Forensic Science Laboratory. In absence of any evidence to link the use of Dagger in question with the offence and secondly, to come to the only conclusion that it is the accused and accused alone who had used the same to cause the injury, no conviction can be awarded. In the instant case it is seen that the police officer in his evidence have deposed that there was no blood stain in the weapon and no efforts were made even to make forensic examination. The weapon in question, Dagger being a normal household instrument, it is natural for every household to have such an instrument.

**9.** As regards that confessional statement, Shri Ganguli by relying upon the provision of Section 164 of the Cr.P.C submits that the mandatory requirements of law for recording such confession as explained by a number of judicial pronouncements have been blatantly followed.

**10.** Criticising the manner in which the so called confessional statement was recorded, Shri Ganguli, learned Counsel by referring to the confessional statement itself (Ext. 7) and the deposition of the learned Magistrate submits that admittedly a reflection time of only 20

to 30 minutes was given to the appellant. Though there cannot be a strait jacket formula as regards the duration to be given for reflection, 20 to 30 minutes, by any standards, cannot be deemed to be adequate or reasonable. It is seen that normally at least 3(three) hours time for reflection is granted for making a confession which has not been done in the instant case. The further criticism regarding the confessional statement is that the Ext. 7 reveals that the reflection was allowed to be done in presence of an armed Constable which goes to the root of the matter. The question arises is whether such manner of reflection would lead an accused to voluntarily make a statement or the entire exercise would be a mechanical process.

**11.** This Court is in agreement with the submissions made that the confession which has been relied upon in the instant case cannot be a confession in the eye of law.

**12.** Shri S. Tapin, learned Sr. Govt. Advocate has fairly submitted that the role of a Public Prosecutor is not to take an adversarial side but to assist the Court to come to a just and fair conclusion by following the principles of law. Shri Tapin has submitted that since there are materials on record to establish that at the time of the incident it was the deceased and the appellant alone who were inside the room, that by itself is sufficient to come to a conclusion of involvement of the appellant. He further submits that in every case there may not be an eye witness and if the prosecution is able to prove the case on the basis of circumstantial evidence which in this case is done, a conviction can be sustained on such basis.

**13.** There is no dispute to the proposition of law advanced by the learned Public Prosecutor. However it is to be seen as to whether there are corroborative materials to support the evidence regarding applicability of the theory of "last seen together". In the instant case, the weapon which has been alleged to be used though seized was not sent for any forensic/serological test. It is further evident that no blood stains were found in the Dagger in question. That being the position,

one cannot come to a conclusion that it was the Dagger alone which was used to cause the injury and death.

**14.** As regards the confessional statement, the learned Public Prosecutor however, fairly submits that the principles of the law laid down do not appear to be meticulously followed while recording the alleged confession, both on the ground of inadequate time for reflection as well as presence of armed police constable while the appellant was given time for reflection.

**15.** The aforesaid faults are fatal in nature and render the entire statement not to be a voluntary one. In support of his submission, the learned counsel for the appellant has relied upon the following judgments:

*(i). AIR 1957 SC 637 (Sarwan Singh Rattan Singh Vs. State of Punjab).*

*(ii). (1996) SCC(Cri)1158 (Balbir Singh & Anr. Vs. State of Punjab).*

*(iii). (2011) 2 SCC 715 (Subash Vs. State of Haryana)*

*(iv). (2013) 1 GLT 563 (Biren Vs. State of Assam)*

*(v). (2013) 1 GLT 566 (Chanika Karlong Vs. State of Assam).*

*(vi). (2013) 1 GLT 375 (Kinu Choi & Ors. Vs. State of Assam)*

*(vii). (2009) 3 GLT 622 (Julius Ekka Vs. State of Arunachal Pradesh).*

*(viii). (2013) 2 GLT 953 (Kamal Hazarika Vs. State of Assam).*

The aforesaid judgments are on the point of principles involving the confessional statements, the necessity for sending seized materials

for serological test and in general the relevant points which are to be considered in cases involving circumstantial evidence.

**16.** As stated above, the principal elements of which the conviction is based are the confession and weapon seized. The aforesaid circumstance and factors as has been discussed in detail above are not enough on its own to sustain a conviction in absence of other necessary steps which should have been taken by the investigation. Apparently, the investigation in the instant case is found lacking and wholly inadequate.

**17.** In view of the aforesaid facts and circumstance and the discussion made, the impugned conviction and the sentence of the learned trial Court are not found to be justified and accordingly set aside.

**18.** Consequently, the appellant is acquitted from the charges against him. Shri Ganguli submits that at this stage the appellant is on bail. On such acquittal, the bail bond stands discharged.

**19.** This Court, before parting would like to record the valuable assistance by the learned Sr. Govt. Advocate, Mr. S. Tapin acting as the Public Prosecutor.

**JUDGE**

Victoria