

Tripura High Court

Shri Khakchang Jamatia vs State Of Tripura on 23 March, 2022

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HIGH COURT OF TRIPURA  
AGARTALA  
CRL.A (J) NO.10 OF 2020

Shri Khakchang Jamatia,  
S/o Sri Bishnu Mohan Jamatia  
Of Passhchim Para, Shilghati,  
P.S. Kakraban, Dist.- Gomati Tripura.

-----Appellant(s)

Versus

State of Tripura.

-----Respondent(s)

For the Appellant(s) : Mr. S. Sarkar, Sr. Advocate.

Ms. P. Chakraborty, Advocate.

For the Respondent(s) : Mr. S. Debnath, Addl. P.P.

Date of hearing : 16.03.2022.

Date of delivery of  
Judgment & Order : 23/03/2022

Whether fit for reporting : NO.

BEFORE  
HON'BLE MR. JUSTICE T. AMARNATH GOUD  
HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER

(T. AMARNATH GOUD)

This is an appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgment and order of conviction and sentence dated 25.02.2019 passed by the learned Addl. Sessions Judge, Gomati Judicial District Udaipur in connection with Case No.S.T.18(GT/U) of 2016 (T-1) convicting the appellant to suffer Rigorous Imprisonment for life and to pay a fine of

Rs.25,000/- for the commission of offense punishable under Section 302 of IPC and to suffer Rigorous Imprisonment of 2(two) years and to pay a fine of Rs.2000/- in default of payment of fine, to suffer R.I. for 1(one) year for the commission of offense punishable under Section 201 of IPC and both the sentences shall run concurrently.

2. The facts of the case in brief, which may be relevant for the present purpose and manifest on the record are that on 05.12.2015, a criminal case was set in motion based on an ejahar lodged by one Birkumar Jamatia(P.W.7), father of the deceased with the officer-in-charge Killa P.S. stating that on 02.12.2015 at about 4.00 p.m his daughter, Binata Jamatia (hereinafter referred to as deceased) left for Maharani Jamtala Bazar from her house but she did not return. So, the informant with his relatives made a search for her but on 05.12.2015, at about 8.00 to 8.30 a.m, one Siddi Kumar Jamatia (P.W.8) of his village informed that the dead body of his daughter was found on the northern side of the new road. So, the informant went there and found the dead body of his daughter lying near a tree. He also alleged that there was sign of blood in various places on the road. He also found the mobile, urna, money bag of his daughter, and one knife. He suspected that someone had killed his daughter.

3. Based on that ejahar, Killa P.S. case No.2015/KLA/020 under Section 302 of IPC was registered and the investigation of the case was endorsed to S.I. Manik Lal Nandi(P.W.29). Thereafter, the investigation was started and on completion of the investigation, charge sheet bearing No.02/2016 dated 10.03.2016 was submitted against the accused-Khakchang Jamatia having found prima facie evidence for the commission of offense under Section 302/201 of IPC.

4. On receipt of the charge-sheet, cognizance of offence punishable under Sections 302/201 of IPC, was taken against the accused Khakchang Jamatia and, thereafter, the case was committed to the Court of Sessions Judge, Gomati Judicial District, Udaipur. Thereafter, the case was transferred to the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur for disposal according to law.

5. On receipt of the case record, charges under Sections 302/201 of IPC were framed against the accused which are reproduced here-in-below in verbatim:-

" Firstly, that you in between 03.12.2015 at about 1600 hours to 05.12.2015 at about 0800/0830 hours at any time at Nizila bari charra under P.S. Killa, did commit murder by intentionally or knowingly causing the death of Binata Jamatia by stabbing her with knife and you thereby committed an offence punishable U/S 302 of IPC and within the cognizance of Court of Sessions.

Secondly, that you on the same date, time and place after committing murder hid the body of Binata Jamatia in a tilla land with covering jungle bush nearby the place of occurrence to cause disappearance of evidence of murder with intention of screening of the offender from legal punishment and you thereby committed an offence punishable U/S 201 of IPC and within my cognizance."

6. Thereafter the contents of the charges were read over to the accused-appellant herein to which, he pleaded not guilty and claimed to be tried.

7. To prove the accusation, the prosecution examined as many as 29(twenty-nine) P.Ws and also exhibited some documents.

8. After examination of P.Ws, the appellant herein was examined under Section 313 of Criminal Procedure Code and after hearing argument of both sides, the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur passed the judgment and order of conviction and sentence on 25.02.2019 convicting the appellant.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 25.02.2019, the convict-appellant herein preferred the instant appeal and prayed for the following reliefs:-

" i. Admit the appeal.

ii. Call for the case records of Case No.S.T.18(GT/U) of 2016(T-1) from the court of learned Addl. Sessions Judge, Gomati Judicial District, Udaipur.

iii. Notify the Public Prosecutor.

AND iv. After hearing both sides Your Lordship would be kind enough to set aside/quash the impugned order dated 25.02.2019 passed by the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur."

10. Heard Mr. S. Sarkar, learned Sr. counsel assisted by Ms. P. Chakraborty, learned counsel appearing for the appellant as well as Mr. S. Debnath, learned Addl. Public Prosecutor appearing for the State-respondent.

11. Mr. Sarkar, learned Sr. counsel appearing for the appellant herein argued that the call data record between the accused and the deceased as relied upon by the prosecution is not certified. In this regard, learned Sr. counsel as relied upon Section 65 of the Indian Evidence Act which is reproduced herein under:-

"65. Cases in which secondary evidence relating to documents may be given.--Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:--

(a) When the original is shown or appears to be in the possession or power-- of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1[India] to be given in evidence2; 1[India] to be given in evidence2;"

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. In case

(b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case

(g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

12. Mr. Sarkar, learned Sr. counsel to further strengthen his argument relied upon Para-14, 15, 16 & 20 of the Apex Court Judgment passed in Anvar. P.V. Vs. P.K. Basheer and ors. reported in (2014) 10 SCC 473, which are reproduced hereunder:-

"14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record.

The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2). Following are the specified conditions under Section

65B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

20. Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65A of the Evidence Act, read with

Sections 59 and 65B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65B of the Evidence Act. That is a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield."

13. Learned Sr. counsel further contended that the chain of the circumstance of the prosecution case is not completed and in this regard, Mr. Sarkar, learned Sr. counsel has relied upon para-153 of Apex Court Judgment in Sharad Birdhichand Sarda Vs. State of Maharashtra reported in (1984) 4 SCC 116 which is reproduced herein below:-

"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 & Anr. v. State of Maharashtra [SCC para 19, p.807:SCC (Cri) p.1047]where the following observations were made:

"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"

14. Learned Sr. counsel further stated that the post mortem report does not support the confessional statement of the accused-appellant regarding the neck cutting, stabbing, and throttling of the deceased by the accused person herein and the same cannot be relied upon. In this regard, he has relied upon Section 27 of the Indian Evidence Act which is reproduced herein under:-

"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."

15. Mr. S. Debnath, learned, Addl. Public Prosecutor appearing for the State-respondent while defending the judgment and order of conviction passed by the Court below relying upon the evidence of P.W.1, P.W.3 & P.W. 22 has submitted that 'the last seen theory' has been proved since all of this above-mentioned witnesses has categorically submitted that they have seen the accused and the deceased together before that incident.

16. Mr. Debnath, learned Addl. P.P. submitted that the disclosure statement of the accused has been corroborated by the evidence of the other prosecution witnesses which completes the entire chain of circumstances.

17. On the point of special knowledge, Mr. Debnath, learned Addl P.P. has relied upon Section 106 of the Indian Evidence Act, 1872 which is reproduced here-under:-

"106. Burden of proving fact especially within knowledge.--When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

18. Learned Addl. P.P. further submitted that the call data record between the accused and the deceased prove that on 02.12.2015, at around 4.00 P.M., the victim girl received a phone call from the accused.

19. Learned Addl. P.P. referring to the examination of the accused under Section 313 of Cr.P.C., wherein in reply to the question No.4(i),9, 14, 16 & 17 the accused denied to know the deceased has referred to the Para 28 of the Apex Court Judgment in Harivadan Babubhai Patel Vs. State of Gujrat reported in (2013) 7 SCC 45 which is reproduced herein below:-

" Another facet is required to be addressed to. Though all the incriminating circumstances which point to the guilt of the accused had been put to him, yet he chose not to give any explanation under Section 313 CrPC except choosing the mode of denial. It is well settled in law that when the attention of the accused is drawn to the said circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances. (See State of Maharashtra v. Suresh) In the case at hand, though number of circumstances were put to the accused, yet he has made a bald denial and did not offer any explanation

whatsoever. Thus, it is also a circumstance that goes against him.

20. Learned Addl. P.P. further submitted that the P.W.3 has not been properly cross-examined. Learned Addl. P.P. further argued that the items seized by the investigating officer from the place of occurrence and other places upon the instruction of the accused clearly proved towards the guilt of the accused.

21. Learned Addl. P.P. while concluding his argument stated that the chain of the circumstance has been completed in terms of evidence on record and urged to Court too upheld the judgment and order of the conviction as passed by the Court below.

22. He have heard both the parties and scrutinized the evidence on the record.

23. The call data record dated 02.12.2015 between the accused and the deceased, the fact that P.W.1, P.W.3, and P.W.22 has seen the deceased and the accused in the company of each other just before the incident in the evening, the strength of the examination of the accused under Section 313 of Cr.P.C., circumstantial evidence and the deposition of the P.W.7, the father of the deceased supported by other prosecution witnesses specially P.W.13, Sri Haradhan Sarkar and P.W.23, Sukumar Debnath both the meat sellers and P.W.20, Sri Chandan Debnath, the Auto driver, all put together completes the chain and link is not missing. Further, it has been proved that the accused-appellant had an illegal relationship with the deceased and when it came to his knowledge that she is in a relationship with some other person, he got aggrieved and he thought of putting the life of her(deceased) to end. Accordingly, he succeeded in killing the girl(deceased) by using the paper cutter knife. Thus motive has been made out. Further recovery of the items by the investigating officer from the place of occurrence and different places upon the instruction of the accused-appellant and circumstantial evidence made out clearly prove towards the guilt of the accused-appellant herein.

24. Accordingly, this instant appeal stands dismissed. The judgment and order of conviction and sentence dated 25.02.2019 passed by the learned Addl. Session Judge, Gomati Judicial District Udaipur in Case No.S.T.18(GT/U) of 2016(T-1) stands confirmed. As a sequel, miscellaneous applications pending, if any shall stand closed.

Send down the LCRs.

(ARINDAM LODH, J)

(T. AMARNATH GOUD, J)

suhanjit