



Serial No.08
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.6/2020with
Crl.M.C.No.18/2020

Date of Order: 26.04.2022

Shri Prosteroy Lyngkhoi Vs. State of Meghalaya & ors

Coram:

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

Appearance:

For the Appellant : Mr. H.R. Nath, Adv
For the Respondents : Mr. K. Khan, PP with
Mr. S. Sengupta, Addl.PP

- i) Whether approved for reporting in Law journals etc.: Yes
- ii) Whether approved for publication in press: Yes/No

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

The appellant questions a judgment of conviction of February 27, 2020 and the consequential sentence of life imprisonment with a fine of Rs.20,000/- for the offence he was found to have committed under Section 302 of the Indian Penal Code, 1860.

2. Of the several grounds raised in the appeal, the principal aspect of challenge pertains to the perceived shoddy investigation conducted and the alleged failure by the investigating agency in following the



procedure as laid down by law. The appellant questions the circumstances in which an inquest over the dead body was conducted at a time when the first information report had not been registered; he refers to the dubious circumstances surrounding the purported confessional statement that he made and which was recorded under Section 164 of the Code of Criminal Procedure, 1973 by an Executive Magistrate; he focuses on the fact that he was administered oath at the time that his statement under Section 164 of the Code was recorded, which is contrary to the express stipulation of Section 164(5) of the Code; he emphasises that there is no recorded statement attributed to him of having indicated where the murder weapon could be found; and, he questions the cavalier manner in which several anomalies which resulted in the chain of circumstances being snapped being overlooked by the trial court despite the trial court being critical of the way in which the prosecution conducted the case.

3. The incident occurred on December 15, 2007. As per the prosecution version, an initial information was received by the police over telephone in the early hours of December 16, 2007 at about 1:44 am, but the formal FIR was lodged only in the evening of December 16, 2007, by which time an inquest over the body had already been



conducted after the police reached the place of occurrence at or about 9:30 am on December 16, 2007.

4. The FIR informants were the headman of Lummyrsiang village and another official. These officials indicated in the FIR that they had got the information from one Osperwell Wahlang, who is the brother of the wife of the appellant herein and was also the brother-in-law of the victim. It also appears that the appellant himself surrendered before the police on December 16, 2007 and though the prosecution claimed that he had confessed that he had committed the offence, the confession before the investigating agency had to be disregarded.

5. It transpires from the oral evidence adduced in course of the trial that the appellant herein had gone to Ramkrai jungle near the Lummyrsiang village in the morning of December 15, 2007. He returned shortly thereafter and disclosed to his wife, who was examined as PW 3 at the trial, that the appellant had murdered his brother-in-law, Ningstar Thongni, who was the husband of the sister of the appellant's wife. The wife asserted in her testimony that she fainted upon hearing the shocking news from her husband and when she regained consciousness she rushed to her elder brother, Osperwell Wahlang. Osperwell Wahlang deposed at the trial to the effect that when he was attending church service on



December 15, 2007, his sister came calling him and pleaded with him to come to the sister's house. Upon Osperwell Wahlang accompanying the sister to the sister's house, the sister informed him that her husband had confessed to having murdered Ningstar Thongni earlier that day.

6. Osperwell Wahlang testified in course of the trial that he immediately made out a complaint or a writing in the form of information addressed to the Durbar Shnong and he rushed immediately after receiving the news to inform the headman of the village. It was the headman of the village and another official who lodged the FIR in their names later in the day.

7. It also came out from the oral evidence adduced at the trial that shortly after Osperwell Wahlang reported the matter to the village headman and other officials, the villagers headed to the jungle to find the dead body. One of the witnesses called by the prosecution indicated that they found the victim in a sitting position on a pine tree. However, such description of how the victim was found has to be tempered by appreciating the ability of the rustic witness to express himself and the loss of meaning in course of translating the statement at the trial. However, there is no doubt that at least one of the prosecution witnesses



claimed that it was dark by the time that they found the body and the clothes of the victim were scattered all over the place.

8. The inquest report prepared at 9:30 am or thereafter on December 16, 2007 indicated that the body was found lying face up on the ground with head pointing towards the north and legs towards the south. According to the investigating officer's report, the eyes and mouth were open and there were serious wounds on the left hand, the right shoulder and the front side on the right of the head. However, the report indicated that the victim had his clothes on.

9. Though the nature of injuries observed in course of the inquest matched the post-mortem report which was made on December 17, 2007, the appellant questions the very purpose of the inquest and the veracity of the recording therein of the victim being found with his clothes on when it was the clear testimony of at least one of the prosecution witnesses that the victim's clothes lay scattered all around.

10. The appellant's statement of confession under Section 164 of the Code was recorded on December 20, 2007. The recording appears to be coherent and the appellant seems to have narrated the entire incident and as to the reason which impelled the appellant to commit the crime. According to such statement, the victim was the appellant's brother-in-



law who used to burn charcoal with the appellant in the jungle. Apparently, the appellant was in possession of a saw which the victim had given him and the victim wanted the appellant to return the saw to the victim. When the appellant refused to return the saw, the victim threatened to kill the appellant saying that he would wait for the appellant on the way and would kill him. The appellant recalled that such threat was given on December 14, 2007.

11. The confessional statement, thereafter, went on to say, in the exact words of the appellant,

“Next day that is on 15th December, 2007 at around 9-10 am. I went to the jungle and saw him there. On seeing him I was very angry as he had threatened to kill me. So with a *dao* that I had in my hand I straightaway went to him without saying a word and hit him on his shoulder and head. Before he fell down I heard him said (*sic, say*) ‘I was only teasing’. After this I washed the *dao* with water from a stream nearby and went home to tell my wife. I instructed her to tell the other villagers/relatives while I decided to go to Nongstoin Police Station. Straightaway I went to the police at Nongstoin P.S. and surrendered myself.”

12. The statement was signed both by the appellant and by the Executive Magistrate who recorded it.

13. It is customary in the State for a statement under Section 164 of the Code to be recorded in a format. All the safeguards which are incorporated in Section 164 of the Code are reflected in the printed form



to remind the official obtaining the statement to follow the detailed procedure and caution the maker of the statement at every stage. It is evident that the Executive Magistrate in this case asked the appellant, before recording his confessional statement, as to whether the appellant knew who such official was; as to whether the appellant knew that such official was not a police officer; as to whether the appellant knew why he had been brought before such official; as to whether the appellant was willing to make a confession voluntarily; as to whether the appellant was aware that his confession could be used against him; and, as to whether the appellant would be telling the truth.

14. Though it is submitted on behalf of the appellant that the confessional statement cannot be looked into since it was casually recorded and without meeting the parameters or cautioning the maker as is mandated in the relevant provision, there does not appear to be any anomaly in the recording thereof. The further case made out is that the statement was recorded under oath and it does not appear that the appellant was made aware of the nature of the statement or the effect or consequence thereof at the time of making the same.

15. Much has been made of the fact that despite Section 164(5) of the Code excluding the requirement of an oath in the case of a



confession, in this case the statement was said to have been recorded under oath. The general law of the land, in accordance with the principle embodied in Article 20 of the Constitution, is that no person would be required to give evidence against himself or make a self-incriminating statement. There are legal consequences of a statement being made on oath. The effect of Section 164(5) of the Code, particularly, the words in parenthesis is that in case of a confessional statement, the stringent consequences of making a statement as in any judicial proceedings would not be faced by the maker of such statement because oath is not required to be administered. Section 164(5) of the Code dispenses with the requirement of oath for the confessional statement; but it does not follow that if oath is accidentally administered before a confessional statement is obtained, such confessional statement would lose its evidentiary value or that the same cannot be relied on at all.

16. All that Section 164(5) does is that it gives an escape route to a maker of confessional statement to retract therefrom at a later stage without being bound by the consequences of having earlier made the statement on oath. The fact that Section 164(5) of the Code requires a confessional statement not to be recorded on oath is only to ensure that it is made voluntarily and not when a person is required to state the truth



by reason of being under oath. The exclusion of the oath is only to highlight the voluntary nature of the statement and it cannot be said that if a confessional statement is recorded under oath, the statement loses all meaning or effect or cannot be relied upon for any purpose.

17. Indeed, since the law does not require such a statement to be made under oath, despite a confessional statement being recorded under oath, if the maker of the statement retracts therefrom, he does not expose himself to the consequences of perjury and the like as he would otherwise have faced in the usual course. Thus, the only consequence of a confessional statement being obtained under oath is that the rigours of the law that attach to a statement made under oath would not apply; and not that the statement would have to be disregarded if it is made under oath. Simply put, the administration of oath was unnecessary; but merely because such redundant procedure was followed, would not, ipso facto, rob the confession of its admissibility or evidentiary value.

18. On the basis of the evidence that was before the trial court, particularly the fact that the appellant himself had surrendered before the Nongstoin Police Station and he admitted such position in response to the sixth question put to him in course of his examination under Section 313 of the Code, it was an open and shut case. Though the appellant had



a routine answer in the nature of denial to most of the other questions put to him in course of his examination under Section 313 of the Code, when he was asked as to whether he had voluntarily surrendered to the police, he accepted that he had.

19. The appellant in this case revealed the motive for his action. The appellant also disclosed that it may have been a mistake on his part to have taken the threat of the slain brother-in-law seriously and the dying words of the victim were that he had only teased the appellant. The guilt and remorse that the appellant would naturally have felt in such circumstances drove him to return home and confess to his wife and do the next right thing by requiring his wife to inform the village officials and relatives of the incident. On his part, the appellant surrendered before the Nongstoin Police Station without undue delay.

20. In such circumstances, the perceived irregularity in the information received at 1:44 am on December 16, 2007 not being reduced in writing and registered as an FIR pales into insignificance. In the further light of the sequence of events immediately after the incident and the same being in consonance with the conduct of an offender overcome with remorse after committing the offence for an apparently trivial cause, there was little to investigate into. It is a fact that the



appellant made the statement under Section 164 of the Code at a time when the appellant was in judicial custody, but he made no attempt to retract therefrom or even cross-examine the Magistrate who deposed at the trial. It must also be remembered that the investigating agency thought it appropriate to produce the appellant before the proper official for his confessional statement to be recorded since any confession that the appellant may have made to the police personnel would have had to be disregarded under Section 25 of the Evidence Act, 1872.

21. It is not imperative that a statement made by the accused as to where the murder weapon may have been kept must be recorded in writing before any attempt is made to discover the same. It is evident in this case from the dispassionate versions rendered by the independent witnesses that it was the information received from the appellant herein that led to the discovery of the *dao* from behind a shed. There is a specific reference to the *dao* being the murder weapon in the appellant's confessional statement and also to what the appellant did with the *dao* after committing the offence.

22. In the overall perspective, there does not appear to be any merit in the several grounds urged on behalf of the appellant, particularly in the light of the appellant's lucid narration of the incident, including the



motive leading to the murder of the victim. The appellant's conduct thereafter in confessing to his wife and requiring her to inform the villagers and relatives and the appellant himself immediately surrendering to the police were duly corroborated by the prosecution witnesses, several of whom were not connected with the victim or the appellant.

23. This was not a case where the trial court merely went on the basis of the confessional statement of the accused. The evidence adduced unmistakably points the arrow of guilt at the appellant. The appellant's wife and the wife's brother corroborated each other in how the information was transmitted first to the wife and from the wife to her brother. The brother informed the village headman and other officials, whereupon the villagers discovered the body in the Ramkrai jungle and the initial information was communicated over the phone to the police at 1:44 am on December 16, 2007. The inquest and the post-mortem followed thereafter before the confessional statement was recorded on December 20, 2007. The only unfortunate aspect of the matter was that the charge-sheet was filed some 13 months after the incident when it appears that most of the investigation ought to have been completed by or about the end of December, 2007.



24. There is no merit in the appeal. There is no iota of doubt that it was the appellant who committed the offence punishable under Section 302 of the Code. In the light of the fact that an innocent man may have lost his life for merely teasing the appellant, the sentence awarded and the fine imposed are in accordance with the statutory provisions. Neither the judgment of conviction nor the order sentencing the appellant to life imprisonment and imposing a fine of Rs.20,000/- calls for any interference. It is beyond reasonable doubt that it was the appellant who murdered the victim and the appellant has been served the just desserts by the trial court in accordance with law.

25. CrI.A.No.6 of 2020 is dismissed.

26. CrI.M.C.No.18 of 2020 stands disposed of.

27. Let a copy of this judgment be immediately made available to the appellant free of cost.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
26.04.2022
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