

**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Criminal Appeal Jurisdiction)

DATED : 11-10-2012

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**HON'BLE MR. JUSTICE PERMOD KOHLI, CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE**

**Crl.A. No. 03 of 2012**

Purna Bahadur Chhetri,  
S/o Late Janga Bahadur Chhetri,  
R/o Manzing, Busty,  
South Sikkim.  
(at present State Jail  
at Rongyek, East Sikkim) ... **Appellant**

Versus

State of Sikkim ... **Respondent**

For Appellant : Mr. A. K. Upadhyaya, Senior Advocate  
with Ms. Binita Chhetri and Ms. Dawa  
J. Sherpa, Advocates.

For State : Mr. Karma Thinlay Namgyal,  
Additional Public Prosecutor with Mr.  
S. K. Chettri, Assistant Public  
Prosecutor.

**J U D G M E N T**

**Wangdi, J.**

This is an Appeal against the order of conviction against the Appellant under Section 302 of the Indian Penal Code (in short "IPC") passed by the Learned Sessions Judge, Special Division - II, East Sikkim at Gangtok, in S. T. Case No.3 of 2010 by judgment dated 20-12-2011 (in short "the impugned judgment") resulting



in him being sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹ 5,000/- and to further undergo simple imprisonment of 2 months in default of payment of the fine.

**2(a).** As per the prosecution, Singtam P. S. Case No.03(1)10 dated 12-01-2010 under Section 302 IPC was registered against unknown persons by the O.C. Singtam Police Station on receipt of a written report from Nk 1425 Kul Bahadur Thapa, I/C Makha O.P, P.W.1, to the effect that at about 0815 hours of 12-01-2010, one Indra Bdr. Rai of Tungtar, P.W.5, appeared at the O.P. and gave verbal information of him having spotted one dead body of an unidentified women with head covered with stones above his house near a Crusher Machine which on verification was found to be true.

**(b)** The consequential investigation taken up by him resulted in the circulation of a hue and cry message to O.Cs and I/Cs for identification of the dead body, seizure of various articles like stones, wearing apparels, a 'chunni' said to have been used for strangulating the deceased, etc. This was followed by the dead body being forwarded to the Medico-Legal Consultant at S.T.N.M.

Hospital, Gangtok, for autopsy and its preservation for identification. During the autopsy, blood sample, MO-XXVII, vaginal swab, MO-XXVI and blood stained underwear, MO-XXIV of the deceased were collected for the purpose of forensic analysis. On 13-01-2010, the dead body was identified as that of Chandri Maya Chettri of Rabongla, South Sikkim, by her brother, Manorath Chettri, P.W.10. Based on the information received from P.W.10, the details of calls made from mobile number 9609854077 registered in the name of the deceased was requisitioned from Vodafone Communication Network, Gangtok, which revealed that the deceased was in frequent contact with an unknown person using Vodafone number 9609860655 on the day of the incident. It was later established that the second Vodafone number belonged to one Purna Bahadur Chettri, the Appellant, of House No.31/C, Yangyang Road, Manzing, South Sikkim. This led to the Appellant being rounded up and his mobile phone seized in presence of witnesses vide Seizure memo Exhibit 3. The prosecution story further goes on to state that the disclosure statement, Exhibit 8, of the Appellant under Section 27 of the Indian Evidence Act, 1872, led to the recovery of one brown rexin ladies handbag in wet

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condition, MO-XIV, which contained a used Nokia mobile charger with a missing PIN, MO-XV, a used Fair Ever cream, MO-XVI, used Lakme Nail Colour, MO-XVII and two Rudraksha Malas, MO-XVIII, from a rivulet at Chachang at Tungtar Busty that were seized vide Seizure Memo Exhibit 9. Further recovery was also made of one white rubber mobile keypad, MO-XIX, one used steel SIM holder/guard, MO-XX and one used battery lid of Nokia mobile from a paddy field near the Tanak bridge and seized vide Seizure Memo Exhibit 10. Recovery was also made of one Nokia battery, MO-XXII, one used mobile phone with missing pad, MO-XXIII, from below the Tanak Bridge, Makha, and seized vide Seizure Memo Exhibit 11. On 20-01-2010, when the Appellant was taken to his house at Manzing, Lingmo, South Sikkim, for further investigation, a suspected blood stained underwear, MO-XXV, was found concealed underneath the mattress of his bed which was seized for forensic analysis by Seizure Memo Exhibit 17 and later the blood sample, MO-XXVIII, of the Appellant was also collected. All these along with the vaginal swab, blood stained panty and the blood sample of the deceased were sent to CFSL, Kolkata, for forensic examination.

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(c) Investigation revealed that deceased, Chandri Maya Chettri, a spinster, and the Appellant, a married person, had got acquainted with each other since the first week of January, 2010, and later an extra marital affair developed between them and were in constant touch over phone. They ultimately met on 11-01-2010 at Rabongla Bazar at about 1100 hours and at about 1300 hours of the same day, they left together for Singtam on a hired taxi driven by Madan Kumar Rai, P.W.16. During the trip the Appellant disclosed to P.W.16 his intention to elope with the deceased. At about 1800 hours of the same evening they left for Makha on a taxi driven by P.W.12, Ganga Ram Gurung, and got off at Tanak, Makha, at about 2000 hours. It is further the case of the prosecution that the Appellant had intended to take the deceased as a second wife, a proposal which the deceased refused to accept. Having failed to persuade the deceased, the Appellant took her to an isolated place and strangled her to death with the synthetic 'chunni' she was wearing and thereafter covered her head with stones. He then took the articles belonging to the deceased and threw them at different places, from where they were recovered on the basis of his disclosure



statement, Exhibit 8, and returned home at Manzing Busty which is 10 kms. away from the place of occurrence. The opinion of the Medico-Legal Consultant disclosed that the death of the deceased was caused due to ante-mortem strangulation by ligature. On the basis of the evidence collected the accused was found *prima facie* to have committed the offence under Sections 302/201 IPC and charge-sheet was accordingly filed against him for his trial.

**3.** The Learned Trial Court on consideration of the materials on record and after hearing the parties framed charges under Sections 302/201 IPC against the Appellant to which he pleaded not guilty and claimed to be tried.

**4.** The prosecution examined 21 witnesses in support of its case and the Learned Trial Court on completion of the trial found the Appellant guilty of the charges and accordingly convicted and sentenced him as already stated above.

 **5(a).** Mr. A. K. Upadhyaya, Learned Senior Advocate, appearing on behalf of the Appellant, submitted that the present case is purely based upon circumstantial

evidence and the Learned Trial Court primarily relied upon two circumstances while arriving at the impugned judgment. These are (i) disclosure statement, Exhibit 8, recorded on 17-01-2010 at 1035 hours and, (ii) the deceased last seen alive with Appellant on 11-01-2010 based on the evidence of P.W.12 and P.W.16.

**(b)** As per the Learned Counsel the last seen theory invoked by the Trial Court would not be attracted in the present case in view of the vagueness in the evidence of P.W.12 and P.W.16 and the considerable time gap between the time when the deceased was last seen alive with the Appellant and the time when the deceased was found dead. Referring to the case of ***Bodhraj alias Bodha and Others vs. State of Jammu and Kashmir : (2002) 8 SCC 45***, it was submitted that the theory would come into play only when the time gap between the two circumstances is so small that possibility of any person other than the Appellant being the author of the crime becomes impossible. As per the Learned Counsel, in the present case, while P.W.16 in his evidence has only stated that it was in the month of January, 2010, at around 10.30 a.m. that the Appellant had hired his vehicle and travelled with a girl, he has not mentioned



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the date of the journey. The evidence of P.W.12, on the other hand, is vague in as much as he has neither stated the date nor the month nor the year on which the Appellant had travelled in his vehicle with a lady to go to Makha. It was his further submission that while the dead body was said to have been discovered in the morning of 12-01-2010, there is evidence as to the actual time of death of the deceased and, that even the Medico-Legal Consultant who conducted the autopsy on 14-10-2010, has opined the time of death as varying between two to three days. Such being the nature of the evidence it was submitted that it was erroneous on the part of the Learned Trial Court to have applied the theory of last seen together in the present case. It was further submitted that the Learned Trial Court had also relied upon the disclosure statement, Exhibit 8, in arriving at its conclusion that the Appellant was guilty of the offence which as per him was impermissible being hit by Sections 25 and 26 of the Evidence Act. In support of this contention, reliance was placed on the case of **Aloke Nath Dutta and Others vs. State of West Bengal : (2007) 12 SCC 230** wherein the well-established principle on the ambit and scope of Section 27 of the Evidence Act has been reiterated.

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(c) It was then submitted that the articles recovered on the basis of the disclosure statement of the Appellant does not connect the Appellant to the offence. The Learned Counsel submitted that this was a case where admittedly no motive has been established against the Appellant for committing the offence. Relying upon **Babu vs. State of Kerala : (2010) 9 SCC 189**, it was submitted that absence of motive in a case based on circumstantial evidence is a factor that would weigh in favour of the accused. He also referred to the judgment of the Delhi High Court in the matter of **Hira Lal vs. The State : 2011 CRI.L.J. 2088 (Del)** on the proposition that if the motive as set out by the prosecution is not proved beyond reasonable doubt, the other circumstantial evidence may lose its importance leading the Court to draw an inference that the Appellant may not be involved in the commission of the offence.

(d) Rounding up his submission, Mr. Upadhyaya urged that having regard to the doubtful nature of the evidence produced by the prosecution, none of the circumstances set out against the Appellant stands proved. On the principle of circumstantial evidence reliance was placed by the Learned Counsel on the cases

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of **Gorle S. Naidu vs. State of A.P. and Others : (2003) 12 SCC 449** (paragraph 14) and **Sharad Birdhichand Sarda vs. State of Maharashtra : (1984) 4 SCC 116** (paragraphs 121, 142, 162 and 163).

6. Mr. Karma Thinlay Namgyal, Learned Additional Public Prosecutor, appearing on behalf of the Respondent-State, on the other hand, submitted that there was no error in the impugned judgment that called for interference by this Court. As per him, there was no doubt of the offence having been committed on 11-01-2010 in view of the evidence of P.W.10, the brother of the deceased, that he had met the deceased on that day at Rabongla, South Sikkim, but did not return home that evening and came to learn of her death only on 13-01-2010. (i) The last seen theory, as per him, was fully established by the evidence of P.W.10, P.W.12 and P.W.16. The Learned Additional Public Prosecutor submitted that the evidence of P.W.16 was quite specific as regards the date and time as being 11-01-2010 at about 5 p.m. when the Appellant and the deceased had travelled to Makha in his vehicle. This considered along with evidence of P.W.12 and P.W.10 would undoubtedly prove that it was on 11-01-2010 that the deceased had

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travelled to Singtam from Rabong in a Taxi driven by P.W.16 and thereafter onwards to Makha on board the taxi driven by P.W.12. That the dead body of the deceased was discovered on 12-01-2010 which is a day after she was last seen alive with the Appellant is a circumstance that weighs heavily against the Appellant.

(ii) The next is the disclosure statement, Exhibit 8, rendered by him leading to the recovery of the belongings of the deceased at his instance. (iii) The other evidence that clinches the case against the Appellant is the record of phone calls obtained from the Vodafone Communication Network, Gangtok, marked Exhibit 15, which reflects a large number of calls exchanged between the Appellant and the deceased a few days before and on 11-01-2010. (iv) The next incriminating circumstance appearing against the Appellant is the CFSL report which stated that the blood group found on the panty and the vaginal swab of the deceased and the one found on the underwear of the Appellant, were of blood group 'A' which matched with that of the deceased as ascertained from the blood sample extracted from the body of the deceased. Each of these circumstances, as per the Additional Public

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Prosecutor, stand fully established. (v) Finally, the further link adding to the chain of circumstances, as per the Learned Additional Public Prosecutor, are the blunt denials of the circumstances appearing against him in his examination under Section 313 Cr.P.C.

7. There is no manner of doubt that the present case is based solely upon circumstantial evidence. The principle governing cases based upon circumstantial evidence has been settled by a catena of decisions of the Hon'ble Supreme Court of which it may be sufficient to refer to the case of **Krishnan vs. State represented by Inspector of Police : (2008) 15 SCC 430**, relevant portion of which is reproduced below:-

**"15.** ..... This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain 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; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt



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of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir v. State of Maharashtra.*)”

The aforesaid proposition in *Krishnan's case (supra)* has been relied upon in *Babu (supra)*.

**8(a).** We may now consider as to whether in the present case the prosecution has been able to prove the circumstances appearing against the Appellant to bring it within the parameters laid down in the above case.

**(b)** Upon careful examination of the evidence on record, the rival contentions of the learned Counsels and on careful reading of the impugned judgment, we find that the primary circumstance held against the Appellant are (i) the deceased seen last alive with the Appellant on 11-01-2010 and her having found dead on the next day, i.e., on 12-01-2010 and (ii) the disclosure statement of the Appellant recorded under Section 27 of the Evidence Act, based upon which the recoveries of incriminating articles were made at the instance of the Appellant. There are other circumstances also, but we shall deal with them later at an appropriate stage.

**(c)** In order to establish the first circumstance of the deceased having been last seen alive in the company

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of the Appellant, the prosecution has relied upon the evidence of Manorath Chettri, P.W.10, who is the brother of the deceased, Gangaram Gurung, P.W.12, a taxi driver and Madan Kumar Rai, P.W.16, also a driver plying a taxi. As is apparent from the impugned judgment, the learned Trial Court has accepted their evidence as having proved the circumstance finding them to be convincing. We are, however, of the contrary view as the evidence of these witnesses are not of such a character as to inspire our confidence for the reasons as shall be dealt with hereafter.

**(d)** We find that the evidence of Manorath Chettri, is relevant only to the extent that his sister, Chandri Maya Chettri went to Rabongla Bazar on 11-01-2012 around 6.30 a.m. and that when he also went to the bazaar he met her there around 11.00 a.m. and that she did not return home that night. It is also relevant to the extent that on 13-01-2012 he was informed of the death of his sister, the deceased, by his younger brother and he having identified the dead body from the photographs shown to him by the police at the Singtam P.S.

**(e)** P.W.16, Madan Kumar Rai, has no doubt found to have deposed that in the month of January, 2010,

around 10.30 a.m. the Appellant had hired his vehicle and at 11.30 a.m. he received a call on his cell phone from him asking to be picked up from a hotel and, thereafter enroute to Singtam, they gave a lift to one girl at Namchi Phatak. The witness also has deposed of the Appellant telling him that the girl was eloping with him and that he had dropped them at Singtam. The evidence of this witness has no doubt remained unshaken in his cross-examination and that he was able to identify the deceased from the photograph shown to him as the same girl who was given lift by the Appellant but, we still find the evidence to be quite obscure as there is no mention of the date when the Appellant and the deceased had so travelled.

**(f)** The evidence of the other witness, Gangaram Gurung, P.W.12, is found to be more sketchy from what will appear in the extract of his evidence reproduced below: -

"I personally do not know the accused standing in the dock but I had seen him when he boarded my vehicle from Singtam to go to Makha. During relevant period, I used to drive a vehicle bearing No.SK04/8769 (Maruti Van). I cannot remember the date and the month, it was last year at around 5 p.m. at Singtam, accused along with one lady hired my vehicle for Rs.500/- to go to Makha. I then dropped accused and the

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lady at Makha near the bridge at around 5:30 p.m. and then returned to Singtam."

**(g)** Obviously from a bare reading of this, the witness neither mentioned the date, nor the month nor the year when the two had travelled to Makha on his vehicle. As per the learned Additional Public Prosecutor, the date on which the deceased and the Appellant had travelled together requires to be read with the evidence of P.W.10, Manorath Chettri, where he has stated that he met the deceased at Rabongla Bazar at about 11.00 a.m. on 11-01-2010. That the evidence of P.W.12 and P.W.16 have to be read to establish the series of incidents that took place on 11-01-2012 after P.W.10, Manorath Chettri, had encountered the deceased. In our view, this proposition is too risky to be accepted, considering the vagueness of the evidence of P.W.16 and P.W.12, as the possibility of the Appellant and the deceased having travelled in their vehicles on some other date or dates also cannot be ruled out.

**(h)** There is another aspect of this that we find quite striking. From the evidence of P.W.16, the deceased and the Appellant had started their journey to Singtam from Rabongla at about 11.30 a.m. or shortly

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thereafter. The road from Singtam to Rabong is a frequently travelled route and judicial notice can be taken of the fact that it takes just about 1 to 1½ hours time to cover the distance. We can, therefore, reasonably presume that the two had reached Singtam not later than 01.00 to 01.30 p.m. As per P.W.12, the two had left for Makha at about 5.00 p.m. where they arrived at about 5.30 p.m. In other words, the Appellant and the deceased were in the company of each other commencing from 11.30 a.m. to at least 5.30 p.m. even if we are to accept the evidence of these witnesses as being relevant for 11-01-2010. However, we find Ext.15 in the records which is the call record pertaining to the cell phone number 09609860655 of the deceased and, from this we find that the Appellant and the deceased had been speaking to each other over phone on 11-01-2012 from about 6.00 a.m. to 5.27 p.m. at least 20 times, the number of the Appellant being 09609854077. It is, therefore, not understood as to why the two should be speaking over phone when they were physically in the company of each other. This makes the evidence of P.W.12 and P.W.16 most improbable as being relevant for 11-01-2010. It, therefore, cannot be said that the

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circumstance of deceased having been last seen alive with the Appellant on 11-01-2010 by P.Ws. 12 and 16 stands proved beyond all reasonable doubt. This is notwithstanding a serious contradiction that we have noticed in the evidence of the I.O. and P.W.16 as regards the departure of the couple from Singtam and their arrival at Makha.

(i) Coming to the other circumstance as regards the disclosure statement based upon which the recovery of the incriminating articles were recovered at the instance of the Appellant, we find that the learned trial Court has taken on record the entire confession by marking it as Exhibit 8, thereby incorporating both the admissible and the inadmissible parts thereof together. In ***Aloke Nath Dutta (supra)***, the Hon'ble Supreme Court has deprecated such practice while observing as under: -

"53. It is, however, disturbing to note that a confession has not been brought on record in a manner contemplated by law. Law does not envisage taking on record the entire confession by marking in an exhibit incorporating both the admissible and inadmissible part thereof together. We intend to point out that only that part of confession is admissible, which would be leading to the recovery of dead both and/or recovery of articles of Biswanath; the purported confession proceeded to state even the mode and manner in which Biswanath was allegedly killed. It should not have been done. It may influence the mind of the court. (See State of Maharashtra v. Damu, SCC at p. 282, para 35.)"

[emphasis supplied]

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In paragraph 54, while re-emphasising the principle on the ambit and scope of Section 27, it has further been observed as under: -

"54. In *Anter Singh v. State of Rajasthan* it was stated: (SCC p.663, para 11)

"11. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in *Pulukuri Kotayya v. King-Emperor* in the following words, which have become locus classicus: (AIR p.70, para 10)

'[I]t is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.' "

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(j) In the present case, we find from the impugned judgment that the Learned Trial Court has placed heavy reliance upon the inculpatory portion of the disclosure statement, Exhibit 8, the relevant portions of which we may reproduce below: -

"43. During interrogation of accused by the I.O., he disclosed that he murdered deceased Chandri Maya Chettri by strangulation with the help of synthetic chunni worn by her. The detailed disclosure statement of accused was recorded by I.O. in a document marked Ext. 8 in presence of two attesting witnesses namely Laxmi Kumar Chettri and Lakpa Dorjee Tamang. P.W. 13 Laxmi Kumar Chettri identified accused as he had seen him at Singtam P.S. on 17.01.2010 and deposed that on the same day accused disclosed to the police in his presence and another person to the effect that on 11.01.2010 at Ravangla Bazaar at around 12 noon, accused met Chandri Maya Chettri at Ravangla and thereafter came to Singtam Bazaar in a read Alto car and reached Singtam at around 2 p.m. It is also in the evidence of P.W. 13 that accused further disclosed that in the evening at around 5 p.m., he along with deceased Chandri Maya Chettri hired one taxi van and went to Makha and at around 8 p.m. they reached Makha near Tanak Bridge. It is also in the evidence of P.W. 13 that accused also disclosed before the police in their presence that thereafter accused and Chandri Maya went to Tung Tar where there are two houses below the road and above the road, there was a flat land and accused took deceased Chandri Maya towards the hill side on the flat land where he throttled Chandri Maya to death with chunni which she was wearing.

44. It is also in the evidence of P.W.13 that accused also disclosed that he laid her body on the ground in prone position and took the belongings of Chandri Maya such as ladies bag containing two rudraksha mala, nail polish, mobile charger and one cream and thereafter threw the bag containing the above articles in kholcha. P.W. 13 also deposed that accused also disclosed that on the way, he took out the mobile of Chandri Maya which he had carried and then removed the SIM and steel SIM guard, thereafter

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he broke them including the cover and threw them in the paddy field near Tanak Bridge.

45. P.W. 13 further deposed that the mobile and the battery which were thrown by accused below Tanak Bridge, he agreed to show the places where he had thrown the above articles. P.W. 13 further deposed that the disclosure statement of accused was recorded by the police marked Ext. 8 where he had signed as a witness. ....

48. P.W. 18 Lakpa Dorjee Tamang is another attesting witness to the disclosure statement of accused. He identified accused as he had seen him at Singtam P.S. and deposed that in the month of January, 2010 accused was in the custody of Singtam P.S. It is also in the evidence of P.W. 18 that accused disclosed that he committed murder of one lady near Tung Tar below Makha before the police and in their presence. Ext. 8 is the disclosure statement of accused bearing his signature marked Ext. 8 (c). It is also in the evidence of P.W. 18 that he along with police personnel, accused and one more witness went to Tung Tar below Makha. On reaching Makha, accused pointed out the spot where he had killed the lady and concealed the dead body with the stones. It is also in the evidence of P.W. 8 that accused, thereafter, took them to another place and pointed out the jhora and stated that it was the same jhora where he had thrown the bag of the deceased lady.

49. Based on the disclosure statement of accused and at his instance, police recovered and seized one bag from jhora which contained one rudraksha mala, nail polish, mobile charger and cream vide Ext. 9 bearing his signature marked Ext. 9(b). The above exhibits marked M.O. XIV, XV, XVI, XVII and XVIII were identified P.W. 18. This witness also identified his signatures in the disclosure statement of accused and material exhibits in the Court. P.W. 18 further deposed that accused also disclosed before the police and in their presence that he broke mobile phone and pointed out the place, i.e., above Tanak Bridge, Tung Tar in the paddy field.

51. .... The evidence of P.W. 18 that when he reached Singtam P.S., accused was in the custody of police is not disputed. The evidence of P.W. 18 made in chief could not be demolished. The evidence of above attesting witnesses to the disclosure statement

proved that accused disclosed before the police that he committed murder of Chandri Maya Chettri. ....

56. In the instant case, the conduct of accused taking the deceased lady to an isolated place above the road in the late evening where she was strangled to death with her own chunni. ....

63. .... Moreover, in the instant case, as per the disclosure statement of accused, he took the deceased lady to an isolated place above the road in the jungle that too in the late hours in the evening where she was strangled to death with her own chunni. This fact has been proved by the attesting witnesses beyond all reasonable doubt. The injury detected on the deceased is sufficient in ordinary course of nature to cause death. All these circumstances are sufficient to connect the accused with the commission of murder of Chandri Maya Chettri."

[emphasis supplied]

In our view, the findings in the impugned judgment relying upon the inculpatory portion of the disclosure statement will have to be discarded as being prohibited under Sections 25 and 26 of the Evidence Act and the law laid down in ***Pulukuri Kottaya and Others vs. Emperor*** : ***AIR 1947 PC 67*** referred in ***Aloke Nath Dutta's*** case (supra).

**(k)** Apart from the above, we find from the evidence of P.W.13, Laxmi Kumar Chettri and P.W.18, Lakpa Dorjee Tamang, the witnesses to the disclosure statement and the recovery of the incriminating articles at Tungtar, Makha, read along with the disclosure statement, Exhibit 8, we find that the places said to have

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been shown by the Appellant are not inaccessible to others being a jhora, i.e. a brook, a paddy field at Tungtar and below the Tanak Bridge. Moreover, it has not been stated anywhere by the Appellant that he had concealed those articles. In a similar circumstance it was observed by the Hon'ble Supreme Court in **Varghese vs. State of Kerala : 1998 (2) Scale 247** "it clearly appears from the Mahazar that the knife and gloves were found lying in open in a paddy field. In absence of any statement indicating concealment by him of any weapon or other incriminating articles, the statement of A.2 cannot be regarded as sufficient for his conviction."

(l) In the case of **Bhojraj (supra)** while re-emphasising the principle underlying Section 27 of the Evidence Act, it has been held *inter alia* that "It is now well settled that recovery of an object is not discovery of fact envisaged in the section" and that "Mere statement that the accused led the police and the witnesses to the place where he had concealed the article is not indicative of the information given."

(m) In **Bakshish Singh vs. The State of Punjab : AIR 1971 SC 2016** it has been observed as under:

"8. Therefore the only incriminating evidence against the appellant is his pointing the place where the dead body of the deceased had been thrown. This, in our opinion, is not a conclusive circumstance though undoubtedly it raises a strong suspicion against the appellant. ...."

(n) It can therefore be concluded that even assuming that the recovery of the articles were made in pursuance to the disclosure statement of the Appellant, no nexus is found to have been established between such recovery and the death of the deceased. It at best is a circumstance causing a strong suspicion against the Appellant but suspicion cannot take the place of proof.

(o) The other circumstance relied upon by the prosecution and accepted by the learned trial Court is the CFSL report pertaining to the blood sample of the deceased, MO-XXVII, her vaginal swab, MO-XXVI and the blood found on the underwear, MO-XXIV of the Appellant. It is opined in the report that the blood group found in all the three articles belong to Group 'A' thereby connecting the Appellant with the death of the deceased. In our view, the conclusion appears to be quite perverse, in as much as, in the first instance it is nobody's case that the Appellant had committed rape of the deceased and, in the second instance the Learned Trial Court appears to

have overlooked two very important aspects on this. Firstly, the possibility of the blood group of the Appellant also being 'A' cannot be ruled out as his blood sample MO-XXVIII could not be detected as it was found disintegrated. The other aspect is that the Appellant is a married person, and, therefore, in order to rule out any other possibilities, it was incumbent upon the prosecution to have taken the blood sample of his wife also. This having not been done, it cannot be said that the blood found on the underwear of the Appellant is of none other than that of the deceased. We, therefore, have no hesitation in rejecting this part of the impugned judgment.

**(p)** There is also another important feature of the case which in our view has a serious consequence on the prosecution case. In the charge-sheet and in the evidence of the I.O., P.W.21, we find that the motive of the Appellant in committing the offence was said to be the refusal of the deceased to accept his proposal to be his second wife. On going through the entire evidence on record, we do not find any material to support this and, therefore, it naturally deserves to be discarded. The serious consequence on the prosecution case that we

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have referred to is that motive having not established, the benefit of this would go in favour of the Appellant in view of the observation of the Hon'ble Supreme Court in **Babu (supra)** where it has been held as under: -

"26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide *Pannayar v. State of T.N.*)

.....

59. In a case of circumstantial evidence, motive must be established at least to a certain extent. ...."

(q) It is settled principle of law which we find re-emphasised in **State through Central Bureau of Investigation vs. Mahender Singh Dahiya : (2011) 3 SCC 109** that "Where the case of the prosecution has been proved beyond reasonable doubt on the basis of the material produced before the court, the motive loses its significance. But in cases based on circumstantial evidence, motive for committing the crime assumes great importance. In such circumstance, absence of motive would put the court on its guard to scrutinise the evidence very closely to ensure that suspicion, emotion or conjecture do not take the place of proof." In that very case it has also been held as under:-

"24. We have examined the submissions made by the learned counsel for the parties, particularly keeping in view the gruesome nature

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of the crime and the complexities presented in the investigation, as also at the trial of this particular case. Undoubtedly, this case demonstrates the actions of a deprived soul. The manner in which the crime has been committed in this case, demonstrates the depths to which the human spirit/soul can sink. But no matter how diabolical the crime, the burden remains on the prosecution to prove the guilt of the accused. Given the tendency of human beings to become emotional and subjective when faced with crimes of depravity, the courts have to be extra cautious not to be swayed by strong sentiments of repulsion and disgust. It is in such cases that the court has to be on its guard and to ensure that the conclusions reached by it are not influenced by emotion, but are based on the evidence produced in the court. Suspicion no matter how strong cannot, and should not be permitted to take the place of proof. Therefore, in such cases, the courts are to ensure a cautious and balanced appraisal of the intrinsic value of the evidence produced in court."

(r) Again, in **Gorle S. Naidu (supra)** it has been held that "The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."


9. On close examination and careful consideration of the entire evidence and the overall facts and circumstances of the case, we find that the prosecution has failed to prove the primary circumstances set out

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against the Appellant beyond all reasonable doubts, and, therefore, even if those circumstances do form a chain, it cannot be said that the chain is so complete as to lead to the sole hypothesis of the offence having been committed by the Appellant and none other.

**10.** In the result, the Appeal is allowed. Resultantly the impugned judgment stands set aside and the Appellant acquitted of all charges.

**11.** Let a copy of this judgment and the original records of the case be remitted forthwith to the Learned Trial Court for its compliance.

  
( **Permod Kohli** )  
**Chief Justice**

11-10-2012

  
( **S. P. Wangdi** )  
**Judge**

11-10-2012

Approved for reporting : Yes/No

Internet : Yes/No