

GAHC010237192017



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

Criminal Appeal (J) No. 46/2017

Sri Ajit Kumar,
Son of Late Mohan Kumar,
Village: Nopam Barutia, PS: Geleky,
District: Sivasagar.

.....Appellant

VERSUS

1. The State of Assam, represented by P.P.
Assam.

2. Sri Avtar Singh,
Son of Lt Kundan Singh,
R/o: Tinsukia Hijuguri,
District: Tinsukia, Assam.

.....Respondents

- BEFORE -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the Appellant : Mr. R. Dev, Amicus Curiae.

For the Respondents : Ms. S. Jahan, Public Prosecutor,
Assam for respondent No.1.

Date of Hearing & Judgment : 04.08.2023

JUDGMENT & ORDER (ORAL)

[Sandeep Mehta, CJ]

The instant Criminal Jail Appeal under Section 374(2) Cr.P.C. has been preferred by the appellant/convict Ajit Kumar being aggrieved of the judgment and order dated 09.05.2017 passed by the learned Additional Sessions Judge, Dibrugarh in Sessions Case No.278/2013, whereby the appellant herein was convicted for the offence punishable under Section 302 IPC and was sentenced to imprisonment for life and in addition thereto, fine of Rs.5,000/-. In default of payment of fine, he was further awarded Simple Imprisonment (SI) for a period of 1(one) month.

2. Brief facts relevant and essential for disposal of the appeal are noted hereinbelow.

On 19.02.2008, the Officer In-Charge of Moran Police Station received telephonic information that a dead body had been seen in an abandoned truck, which was parked near a hotel at Jhollong area. Upon receiving the said information, the police team rushed to the spot and a dead body was seen in the abandoned truck bearing Registration No.WB-23/A-2527. Pursuant to the discovery, the officers of Moran Police Station, prepared the seizure list (Exhibit-2) on 19.02.2008, whereby the truck mentioned above loaded with mustard seeds was seized. Vide Seizure List (Exhibit-4), a wheel wrench having blood stains, light green and gray colour blanket having blood stains, were also seized.

Inquest of the unidentified dead body (Ext.5) was prepared and blunt injury was noted on his forehead. Autopsy was got conducted on the dead body. In the *post mortem* report (Exhibit 6), opinion was given that the cause of death of the deceased was *ante mortem* blunt injury caused on the head.

The prosecution claims that the appellant herein was found loitering around in Sivasagar town in the intervening night of 19.02.2008 and 20.02.2008 and was apprehended. His personal search was taken and, allegedly, cash amount to the tune of Rs.10,880/- and a Nokia mobile handset were seized from his possession. However, neither the detention memo of the accused nor the seizure memo of the currency notes and the mobile if any prepared by the officers of Sivasagar Police Station were brought on record. It is further claimed by the prosecution that the accused was taken into custody by the officers of the Moran Police Station and the articles allegedly seized by the Sivasagar Police Station were also taken into possession vide Seizure List (Exhibit-3). It is noteworthy that memo pertaining to the custody of the accused being taken by the officers of the Moran Police Station from the Officers of Sivasagar Police Station neither prepared nor exhibited during trial.

3. Be that as it may, the Seizure list (Exhibit-3) prepared by the officers of the Sivasagar Police Station indicates that some of the seized currency notes were bearing blood stains.

4. After the apprehension of the accused, one Avtar Singh (PW-1) lodged a written report to the Officer-in Charge, Moran Police Station (Exhibit-1) alleging inter alia that his truck bearing Registration No.WB-23/A-2527, loaded with 241 bags of mustard seeds, had departed from Sri Ram Industries, Tinsukia on 18th of February and on the way, the truck driver, Lakhan Mandal was murdered by the handyman (khalasi) Ajit who escaped with money and the mobile instrument. It is very important to note that the formal F.I.R. No.17/2008 registered at the Sivasagar Police Station was never exhibited by the prosecution. Investigation was concluded and charge-sheet was filed against the accused for the offence under Section 302 IPC.

5. The offence under Section 302 IPC, being triable by the Court of Sessions exclusively, was committed to the Court of the Sessions Judge, Dibrugarh from where the same was transferred to the Court of Additional Sessions Judge, Dibrugarh for trial. Charge for offence under Section 302 IPC was framed against the accused who pleaded not guilty and claimed trial.

6. The prosecution examined as many as 7(seven) witnesses and exhibited 10(ten) documents in an endeavor to prove its case.

7. The Statement of the accused was recorded under Section 313 Cr.P.C. The accused denied the

prosecution allegations but did not lead any evidence in defence.

8. This Court is compelled to reproduce the entire text of the statement of the accused recorded under Section 313 Cr.P.C. which would reflect that the trial Judge did not even bother to put the relevant evidences to the accused for seeking his explanation as mandated under Section 313 Cr.P.C. Apart from reproducing a part of the statement of Luk Nath Gogoi (PW-4), the Investigating Officer, no other incriminating material/evidence recorded/exhibited during trial be it the FIR, *post mortem* report or the Report of the Forensic Science Laboratory (FSL), was put to the accused in this statement.

Text of the statement of the accused recorded under Section 313 Cr.P.C. reads as follows:

“Q. P.W. Lok Nath Gogoi has deposed that on 19/02/08 he received an information that a dead body was lying in a deserted truck; that on the next day he received information from Sibsagar Police that the night patrol party of Sibsagar Police Station had apprehended a person; that the said person was the handyman of that truck from which the dead body was recovered and that some blood stained currency notes were recovered from his possession. What do you say?”

Ans. : It is not true.

Q. He further deposed that during investigation he found that you were the handyman of that truck. What do you say?”

Ans. : It is not true.

Q. Will you adduce evidence?”

Ans. : No.

Q. What do you have to say?”

Ans. : The allegations in this case (against me) are false and I am innocent.”

9. After hearing the arguments advanced by the prosecution counsel and the defence counsel and considering the evidence available on record, the learned trial Court proceeded to convict and sentence the appellant as above by the judgment dated 09.05.2017 which is impugned in this appeal.

10. Learned Amicus Curiae Mr. R. Dev has vehemently and fervently contended that there is no evidence worth the name on the record to affirm the conviction of the accused as recorded by the trial Court. He pointed out that finding the evidence of prosecution to be deficient, this Court, by the order dated 16.09.2019 exercised power under Section 391 Cr.P.C. and directed recording of evidence of some more witnesses but even the additional evidence so recorded, does not in any manner implicate the accused for the offence alleged. He urged that GD Entry No.400 dated 19.02.2008 which was registered after discovery of the dead body in the truck was never exhibited by the prosecution and hence, the prosecution has suppressed the true F.I.R. of the incident.

He further contended that no evidence was led by prosecution to establish that the appellant was engaged as a handyman on the truck in question. The informant, Avtar Singh (PW-1) did not identify the appellant as being the handyman of the truck. The witness Ashok Sarma (PW-2) also denied having any

knowledge about the accused or the deceased. Same is the position of the witness Sudhir Sarma (PW-3). The witness Dr. Rahimuddin Ahmed (PW-4) proved the *post mortem* report of the deceased Lakhman Mandal as Ext.6. However, neither the testimony of the Doctor nor the *post mortem* report were put to the accused while recording his statement under Section 313 Cr.P.C. and hence, the evidence of the Doctor cannot be read against the accused.

11. Learned Amicus Curiae took the Court through the evidence of the Investigating Officer, Luk Nath Gogoi (PW-4) [PW-4 has been marked twice on Luk Nath Gogoi (PW-4) and Dr. Rahimuddin Ahmed (PW-4)] and urged that the witness did not prove the GD Entry No.400 dated 19.02.2008. He also did not prove the formal F.I.R., F.I.R. No.17/2008 registered pursuant to receiving the ejahar from Avtar Singh (PW-1). The witness claimed that the accused was arrested and on being searched, some blood stained currency notes were recovered from his possession. However, the witness did not prove the signature of the accused on the seizure list (Exhibit-3). The witness admitted that he did not make any investigation regarding the owner of the truck. He also admitted that he did not make any seizure of the currency notes from the accused.

12. Learned Amicus Curiae thus urged that there being no evidence pertaining to seizure of the currency notes from the accused, the trial Court committed a grave

error in placing reliance on the circumstance of recovery of the currency notes and the FSL Report as per which the currency notes allegedly gave positive test for B group human blood. Learned Amicus Curiae thus implored the Court to accept the appeal and acquit the accused/ appellant and direct his release from custody.

13. Learned Public Prosecutor, Ms. S. Jahan, on the other hand, vehemently and fervently opposed the submissions advanced by learned Amicus Curiae. She contended that the prosecution has led reliable and wholesome evidence to establish that the accused/ appellant was the handyman on the truck of which the deceased Lakhan Mandal was the driver. The accused murdered Lakhan Mandal and looted the currency notes to the tune of Rs.10,880/- which were recovered when the accused was apprehended by the officers of the Sivasagar Police Station. These currency notes were found to be stained with blood. The blood stained currency notes, the blanket recovered from the truck and spanner (wheel wrench) recovered lying near the truck all were examined at the FSL which issued the report (Exhibit-7) confirming the fact that all the articles tested positive for presence of B group human blood. She submitted that the accused was under an obligation to explain as to how the currency notes seized from his possession were bearing the same blood group as that of the deceased.

14. Thus, as per learned Public Prosecutor, the failure of the accused to offer explanation of this highly

incriminating circumstance leads to the irrefutable inference that he was the assailant who caused injuries and killed Lakhan Mandal for looting the money and the mobile handset of the deceased. On these grounds, she implored the Court to dismiss the appeal and confirm the conviction of the appellant.

15. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned judgment and have minutely re-appreciated the evidence available on record.

16. We may note that a bare perusal of the examination of the accused under Section 313 Cr.P.C. which has been reproduced (supra) clearly manifests that other than the statement of Luk Nath Gogoi (PW-4), the Investigating Officer, the prosecution did not even claim having any evidence so as to link the accused with the crime of murder of Lakhan Mandal.

17. We have gone through the statements of the prosecution witnesses and find that Avtar Singh (PW-1) did not utter a single word that the accused was the handyman (khalasi) on the truck in question. Ashok Sarma (PW-2) was a panch witness of the seizure list (Exhibit-2) by which the truck was seized. However, he did not give any evidence connecting the accused with the crime. Sudhir Sarma (PW-3) gave formal evidence regarding the incident stating that he saw the dead body lying in the truck cabin. The medical jurist Dr. Rahimuddin Ahmed

(PW-4) proved the fact that autopsy was carried on the dead body of the deceased Lakhan Mandal and the *post mortem* report (Exhibit-6) was prepared with the finding that the cause of death of the deceased was coma resulting from head injury caused by ante mortem blunt impact and was homicidal in nature. However, as noted above, the evidence of the doctor and the *post mortem* report were not put to the accused in his statement under Section 313 Cr.P.C. and thus, the same cannot be read against him.

18. The Investigating Officer, Luk Nath Gogoi (PW-4), posted at Moran Police Station deposed that a telephonic information was received on 19.02.2008 from Ashok Sarma (PW-2) at about 8:15 A.M. that a dead body was found in an abandoned truck in Jhollong area. The witness further stated that GD Entry No.400 dated 19.02.2008 was made after receiving this information and then he proceeded to the crime scene and found the abandoned truck bearing Registration No.WB-23/A-2527, wherein a dead body of a male person was lying. He stated that inquest of the dead body was done and it was sent for *post mortem* examination. He further stated that he found a blood stained spanner (wheel wrench) and a blanket in the vehicle, which were seized. He further stated that on the next day, information was received from Sivasagar Police Station that a person named Ajit had been detained on suspicion and that the suspect on interrogation divulged that he was the handyman of the

vehicle from where the dead body was recovered. The witness claims that on receipt of this information, he proceeded to Sivasagar Police Station and in due course, the person named Ajit was arrested and on being searched, some blood stained currency notes were recovered from his possession. The witness stated that Moran Police Station Case No.17/2008 was registered for the offence under Sections 302/379 IPC on the basis of the F.I.R. lodged by Avtar Singh (PW-1) on 20.02.2008. The blood stained currency notes, blanket and the spanner were forwarded to the FSL for examination. In due course, the FSL report and the *post mortem* examination report were collected and charge-sheet was submitted against the accused for the offence punishable under Section 302/379 IPC. The witness further stated that the FSL report disclosed that the blood marks in the seized material were of human origin and the group of blood was B (Positive). In cross-examination, the witness admitted that he did not make any investigation to find out the owner of the truck and number of drivers of the vehicle. He admitted that he did not make any seizure of the currency notes from the accused person. Prabhat Talukdar (PW-5) did not give any evidence connected to this case. Same was the position of Raju Roy (PW-6). Dipankar Phukan (PW-7) attested the seizure list (Ext.3) and admitted that he put his signatures in the police station on being asked by the police.

19. What is discernible from the entire sequence of evidences recorded by prosecution is that no witness was examined to prove that any recovery was ever made from the accused in this case. No witness from the patrolling team of Sivasagar Police Station, who allegedly detained the accused, was examined either during the original trial or after the direction given by this Court to record additional evidence under Section 391 Cr.P.C. The only remote evidence which prosecution relied upon so as to seek conviction of the accused was the so-called presence of blood stains (B group) on one of the currency notes allegedly seized from him and the spanner and the blanket allegedly seized from the abandoned truck.

However, what is important to note here is that no seizure memo, pertaining to the alleged seizure of the currency notes from the accused by the officers of the Sivasagar Police Station, was ever prepared or proved by the prosecution. Furthermore, the prosecution failed to prove that the articles seized from the abandoned truck, i.e. the spanner and the blanket, were ever sealed so as to establish the sanctity of the articles. Not only this, the Investigating Officer, Luk Nath Gogoi (PW-4), did not utter a single word as to the safe custody of these articles after being seized during investigation. No evidence was led to show the mode of transmission of the samples from the police station to the FSL.

The true FIR of the incident would have been GD Entry No.400 dated 19.02.2008 which was never brought on record. The GD Entry whereby, the detention of the

accused was made by the officers of the Sivasagar Police Station was also not proved by the prosecution. Manifestly thus, the FIR (Exhibit-1) lodged by Avtar Singh (PW-1) on 20.02.2008 is a post investigation document, plain and simple.

20. At the cost of repetition, it may be mentioned that none of the circumstances pertaining to the alleged seizure and the FSL Report, were put to the accused while recording his statement under Section 313 Cr.P.C.

21. As has been noted above, the learned trial Judge did not put any question to the accused regarding the FSL report in his examination under Section 313 Cr.P.C. Even after the trial Court was directed to record additional evidence in compliance of this Court's order dated 16.09.2019, none of the witnesses uttered a single word so as to implicate the accused for the offence. One of the witnesses so examined was Hemanta Baruah (CW-1), the then Officer in Charge of Sivasagar Police Station. This witness neither proved the GD Entry nor did he prove any seizure list prepared relating to seizure of currency notes and the mobile handset from the possession of the accused. The witness admitted that the GD Entry was not being produced despite repeated directions given by the trial Court. The witness stated that one Ajit Kumar was apprehended on the intervening night of 19.02.2008 and 20.02.2008 at about 3:30 P.M. by the patrolling staff of Sivasagar Police Station and one Nokia mobile handset and cash amount to the tune of Rs.10,880/- bearing blood

stain were recovered from him. He further stated that the said person was brought to the Sivasagar Police Station. The witness (CW-1) claims to have interrogated the said person i.e the appellant herein who allegedly confessed that he was the handyman of the truck bearing Registration No. WB-23/A-2527 and that he had killed the driver of the truck and looted the mobile handset and the cash amount. The witness (CW-1) then informed the Officer In-charge of Moran Police Station about the discovery. He proved the document (Ext.10) being the PP Challan, by which the accused, the mobile handset and the cash amount were handed over to the officers of Moran Police Station.

The defence objected to exhibition of the document (Exhibit 10) as the same was prepared by one ASI Mr. Chetia.

We feel that this objection of the defence was absolutely justified because the witness Hemanta Baruah (CW-1), not being the scribe of the document, could not have proved the same.

22. The witness (CW-1) failed to recollect the name of the ASI concerned who prepared this document. Further examination of the witness was continued on 08.01.2021 when he admitted that GD Entry No.811/2008 of Sivasagar Police Station had not been presented in the Court. The witness (CW-1) admitted in the cross-examination that he did not seize the currency notes from

the accused and that he also did not record any disclosure statement of the accused.

23. We have seen the P.P. Challan (Exhibit-10) available in the case record and find that the same does not bear the signature of the accused. In Column No.3 of the document, where the cash amount is referred, there is no such indication that any of the currency notes bore blood stains. Furthermore, this document does not bear any acknowledgment of any officer of Moran Police Station for taking symbolic custody of the accused and for seizing the currency notes as well as the Nokia mobile handset in connection with F.I.R. No.17/2008. Rather, the document does not give any indication regarding any transfer of custody or seizure. That apart, the document does not bear signature of the accused and hence, otherwise also, it is absolutely of no relevance whatsoever. Manifestly thus, this document is a worthless piece of paper on which no reliance can be placed.

24. Needless to say that mere possession of a sum of Rs.10,880/- and a mobile handset cannot be treated to be a suspicious circumstance and hence, there was no reason whatsoever as to why the accused was at all apprehended by the officials of Sivasagar Police Station. The appropriate person/persons to throw light on the reason for apprehension of the accused would have been the member/members of the police patrolling party. However, none of them was examined during trial. Many of witnesses referred to in the order of this Court dated

16.09.2019, were not examined as they could not be traced out. The case of the prosecution is based purely on circumstantial evidence and hence, it was essential to establish and prove a complete chain of circumstances unerringly establishing the guilt of the accused and inconsistent with the guilt of anyone else.

25. In the light of the discussion made hereinabove, we are of the firm opinion that the prosecution miserably failed to lead any evidence whatsoever, what to say foolproof and reliable links of circumstantial evidence which establish the complicity of the accused in the crime beyond all reasonable doubt.

We rather feel that the accused/appellant has been made a scapegoat in this case and was arrested without any basis whatsoever. The documents/material witness relied upon by the prosecution and the evidence relied upon by the trial Court do not give any indication whatsoever that the appellant herein was the perpetrator of the crime of murder of the truck driver Lakhan Mandal. Rather, in the entire record, there is not a single document which bears the signature of the accused nor did any of the prosecution witnesses state that the accused was employed as a handyman on the truck in question and hence, a grave doubt is created regarding the truth of the prosecution story. It is clear as daylight that the accused herein was falsely implicated in this case by flimsy evidence which could not have been relied upon so as to convict him for the crime.

The conviction of the accused, as recorded by the learned Trial Court vide judgment dated 09.05.2017, is perverse on the face of the record because the trial Court acted upon non-existent material so as to record conviction of the accused.

26. We rather feel that the Presiding Officer of the trial Court had no control over the proceedings and the statement of the accused under Section 313 Cr.P.C. was recorded in an absolutely perfunctory manner because even the statement of medical jurist and the post mortem report were not put to the accused when he was examined under Section 313 Cr.P.C. Rather, the fact remains that the Presiding Officer himself was aware that no incriminating evidence could be placed on record by prosecution and that is why no question even could be framed so as to seek his explanation.

Without any justification and in a grossly illegal manner, the trial Court raised baseless presumptions and assumptions so as to hold the accused guilty of the crime even though there was not even the remotest evidence which could have connected him with the alleged murder. The pathetic manner in which the trial was conducted is evident from the fact that neither the formal F.I.R. was exhibited nor did the trial Court require the prosecution to prove the arrest memo of the accused on record. The prosecution theory of seizure of currency notes from the accused was blindly relied upon without even taking into account the fact that neither any of the witnesses

associated with the seizure was examined nor did the prosecution prove the document, whereby these notes were seized/taken into possession by the officers of the Sivasagar or Moran Police Station. The claim of the Investigating Officer, Luk Nath Gogoi (PW-4) that he seized the currency notes and mobile phone from the accused is false on the face of record because even going by the cooked up prosecution story, this seizure was made by the officers of Sivasagar Police Station, none of whom was examined during investigation or trial. Rather, Luk Nath Gogoi admitted in his cross-examination that he did not effect the seizure from the accused.

27. We have no hesitation in holding that without there being any evidence so as to connect the accused with the crime, he has been made to suffer incarceration for a period more than 8(eight) years on the sheerly fabricated case presented by the prosecution. It was expected from the trial Court to appreciate the evidence in the true sense rather than, blindly following the case projected by the prosecution in the charge-sheet. However, the Presiding Officer failed to perform his duty as required by law and did not even refer to the facts elicited from the cross-examination of the witnesses. Only extracts from the charge-sheet were reproduced in the judgment and hence, the impugned judgment is grossly illegal and cannot be sustained on the face of the record.

28. In the wake of the discussions made hereinabove, the impugned judgment dated 09.05.2017

passed by learned Additional Sessions Judge, Dibrugarh in Sessions Case No.278/2013, arising out of G.R. Case No.321/2008, corresponding to Moran Police Station Case No.17/2008, being perverse and unsustainable on the face of the record, is hereby quashed and set aside.

The accused/appellant, Ajit Kumar, Son of Late Mohan Kumar is acquitted of the charges. The accused is in custody. He shall be released from prison forthwith, if he is not required to be detained in connection with any other case.

29. As we have concluded that it is a case wherein, the accused was made a scapegoat and was falsely implicated resulting into his incarceration for a period more than 8(eight) years, we hereby direct that the State of Assam shall pay compensation to the accused/appellant for false accusation and unjustified prolonged incarceration in prison. The accused/appellant shall be treated to be a victim for all purposes and shall be paid compensation which is quantified at Rs.1,00,000/- (Rupees one lakh).

Copy of this order shall be placed before the Director General of Police, Assam for necessary action.

30. Before parting, we would like to observe that the manner in which the trial of the case was conducted and the case was decided, leaves a lot to be desired. The failure of the trial Judge to put appropriate questions to the accused in his examination under Section 313 Cr.P.C. and in relying upon such omitted circumstances has caused great prejudice to the accused and has also vitiated the

trial. Thus, copy of this judgment shall be circulated amongst all Grade-I officers in the State of Assam, Arunachal Pradesh, Mizoram and Nagaland for information and necessary corrective measures.

31. We also find that no structured details of the custody period of the accused are available on the lower court record. Thus, before transmitting the records to the High Court when summoned in an appeal, the trial Court shall mandatorily prepare a "warrant of commitment on a sentence of imprisonment or fine" in terms of Form No.34 prescribed under Schedule Second to the Cr.P.C. This warrant shall also contain additional information as indicated below:-

"CUSTODY CERTIFICATE

_____ District Central Prison –Jail _____,
certified that

1. Detail of custody of the case which is being required by the Hon'ble Court as on _____

1	Name of convict/ accused and father, age and sex	
2	Address	
3	Case No// PS Case No.	
4	Convicted by the Ld Court of _____ with date of judgment and tenure. Term of sentence, if any	
5	Custody in crime no/ sl no	

2. Detail of custody period in the case

Sl No.	Particulars	Period
1	Custody as undertrial	
2	Custody after conviction	
3	Parole, Home Leave Availed (-)	
4	Details of overstay, absence from	

	<i>parole, home leave</i>	
5	<i>Actual custody period of after conviction [Sl No.2 (4 & 5)]</i>	
6	<i>Actual undergone period including custody as undertrial [SL No.1+5]</i>	<i>UTP- CTP-</i>
7	<i>Remission awarded</i>	
8	<i>Total sentence (including period of remission)</i>	<i>Under-trial period- Conviction period- With remission period total sentence</i>

32. It is further directed that a detailed custody certificate of every accused convicted and committed to prison shall be maintained by the Superintendent of the Central Jail/District Jail concerned. Immediately upon presentation of an appeal/revision against conviction, the Registry of this Court shall procure such custody certificate which shall be attached with the memorandum of appeal/revision as the case may be.

The appeal is allowed accordingly.

LCR be returned to the trial Court.

Sd/- S.P. Khanna
JUDGE

Sd/- Sondeep Mehta
CHIEF JUSTICE

Comparing Assistant

TRUE COPY

15/3/24
Administrative Officer (Judl.)
Criminal Appeal Section
Gauhati High Court
Guwahati

15/03/24