

**(2007) 11 GAU CK 0015**  
**In the Gauhati High Court**  
**Case No : Criminal Appeal No. 167(J) of 2003**

Laxmimukhiya

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

**Date of Decision :** 22-11-2007

**Acts Referred:**

Penal Code, 1860 — Section 302

Penal Code, 1860 (IPC) — Section 302

**Citation :** (2008) 3 GLT 960

**Hon'ble Judges :** Aftab H.Saikia, J and P.K.Musahary, J

**Bench :** Division Bench

**Advocate :** B.Banerjee, R.D.Mazumdar, Advocates appearing for Parties

## Judgement

Aftab H. Saikia, J.—Heard Ms. Rita Das Mazumdar, learned amicus curiae appearing for the appellant and Mr. B. Banerjee, the learned P.P., Arunachal Pradesh.

2. This criminal appeal from jail is directed against the judgment and order dated 13.9.2002 rendered by the learned Deputy Commissioner, Lower Dibang Valley District at Roing, Arunachal Pradesh, in Sessions Trial No. 07/98 on being committed by the learned Judicial Magistrate 1st Class, Roing dated 29.4.1998 whereby the appellant was found to be guilty of killing one Kama Bdr Jogi on 24.3.97 and accordingly he was convicted under Section 302, EPC and sentenced accordingly to undergo rigorous imprisonment for life.

3. The prosecution case, in short, is that on 3.4.1997 one Sri Ade Pertin (PW 3) lodged an FIR with Roing Police Station to the effect that on 24.3.1997 night one Shri Laxmi Mukhiya, the accused reportedly killed one Kama Bdr. Jogi and secretly buried the dead body at Rukmini Ali near the residence of the accused.

4. On the basis of the above information, the police started investigation and registered Roing P.S. case under Section 302/201, IPC against the accused Laxmi Mukhiya. The Investigating Officer visited the place of occurrence on 4.4.1997

and drew up a rough sketch map of the place of occurrence. Photograph of the place of occurrence was also taken. The secret burial place of the deceased was traced out and prayer was made to the Addl. Deputy Commissioner for exhumation of the dead body. The dead body having been exhumed, was identified by relatives of the deceased as the dead body of late Kama Bdr. Jogi which was, thereafter, sent for post mortem. The I.O. submitted chargesheet against the appellant under Section 302/201, IPC and sent him up to face the trial.

5. Before the trial Court, i.e. the learned Deputy Commissioner to whom the case, being exclusively triable by the Court of Sessions, was committed by the Judicial Magistrate as per law, the prosecution examined as many as nine witnesses and defence examined none.

6. After appreciation of the material evidence on record, both oral and documentary, and after hearing the learned counsel for the parties, the learned Deputy Commissioner by the impugned judgment and order convicted and sentenced the appellant as already indicated above.

7. Challenging the impugned conviction and sentence Ms. Mazumdar, the learned amicus curiae has contended that the learned Judge in appreciation and evaluation of the testimony of the witnesses failed to consider the same in its proper perspective. According to her the learned Judge ought not to have stressed on much reliance on the evidence of PW 6, Smti Uma Devi Jogi, wife of the deceased Shri Kama Bdr Jogi as eyewitness. It is strongly contended by her that the so called eyewitness, the PW 6, so examined by the prosecution was not at all the eyewitness because her testimony both in the chief and in cross were contradictory and uncorroborative each other when she, in her chief, stated that on the day of incidence, being the day of Holi festival, she was invited along with her husband for lunch at the residence of the appellant. They stayed at the residence of the appellant on the night where her husband was strangulated by the appellant. At that time she ate some sweets at the residence of the appellant. At the time of strangulation she got perplexed and she could not shout. She got confused and became nervous. It took 10 to 12 days to regain her sense. During that period she was sheltered by her brother from whom only she could know about her condition. At the same time, she also deposed that her cousin told her that her husband was strangulated by the appellant then why she was fleeing away and accordingly her cousin informed the police. Be it noted herein that curiously enough this witness was not examined and even she also came to know about her condition from the said brother. She also deposed in her deposition that her cousin, without being named any one, told her that when her husband was strangulated by the appellant then why she was fleeing away. In cross, this witness went to the extent of saying that on the night of the occurrence she went to the house of the accused though in her chief she was categorically stating that they were there in the residence of the appellant whole day till night as they were invited along with her husband by the appellant. She

reiterated that she ate some sweets in the house of the appellant and probably due to drugs in the sweets she was completely out of her sense. In her cross it is observed that she projected a new story telling that she ate the sweet after the incident as the sweet was served to her after the strangulation of her husband. In her cross it was stated that immediately after the strangulation by the appellant her husband died. She also stated that she could not say after taking sweet when she became out of mind and so she could not shout. After the incidence she did not know where she left. During 10/12 days she could not recollect anything. On the day of incidence, that night at the place of occurrence the appellant, appellant's wife, herself and her husband were present and no one else were there. However nobody was examined by the prosecution to substantiate this particular story so narrated by her as an eyewitness.

8. In view of the above, Ms. Mazumdar, learned amicus curiae has submitted that the evidence of PW 6 is wholly unreliable and cannot be accepted for conviction of the appellant.

9. That apart, we have closely scanned the deposition of other witnesses mainly the PW 1 Adre Linggi, PW 2 Shri Chandra Bdr Tamang, PW 3 Ade Pertin, PW 4 Surja Bahadur Bhujel, PW 5 Surja Bdr Chetry. It appears from the perusal of the evidence of those witnesses that one Shri Tiro Mihu, who was, being the main person, named by PW 2, Chandra Bdr Tamang as being the person to whom the appellant told that the appellant committed murder of the deceased at his cultivation field, was totally ignored by the prosecution to examine him. He was named almost by all the witnesses.

10. According to P W1, he was informed by said Tiro Mihu on 3.3.97 at about 4.30 p.m. when he was in the residence telling that Shri Laxmi Mukhia committed murder to the deceased.

11. PW 2 in his deposition also mentioned the names of said Tiro Mihu along with one Surja Bdr Bhujel who was examined as PW 4 and one Saila Tamang stating that they went to the cultivation field of PW 1. In cross he also mentioned that when he went to the house of the accused, said Tiro Mihu, Surja Bdr Tamang and Saila Tamang were also with him. As per this witness, he went to the extent to say that the appellant confessed about his guilt before the villagers about 10 times and specifically when Tiro Mihu asked the appellant about the incident in Hindi language, "Turn kyon mara hai" (why you have killed), then the accused replied that "Hamara kuch bath tha isliye mara hai". (I got something because I killed). This witness (PW 2) categorically stated that nobody except Tiro Mihu asked him about such killing to which the appellant confessed about 10 times repeating the same. We are really surprised as to why this witness was preferred not to be examined by the prosecution.

12. PW 3 on the other hand also narrated in his deposition by saying that at about 4p.m. Shri Tiru Mihu came to his residence and informed him that one Shri Laxmi Mukhia killed one Kama Bdr Jogi (deceased) and buried at Moru/Rukmini

Ali. This witness in his cross said that the accused appellant replied in Nepali saying that he had killed the deceased and buried him. When villagers asked him the same question he also stated that he could not say how many times the villagers asked him the same question and he replied.

13. PW 7, Dr. M.K. Baruah in his medical examination on the person of the dead body of the deceased found the following injuries:

"On examination external appearance of body swollen and decomposed, foul smell emanating. Face flattened and altered beyond recognition. Post mortem blisters present. Skin peeled off in several places. Rigor mortis absent. Ecchymosis observed in the subcutaneous tissue on the anterior aspect of the neck. Rest part of the body are found healthy and no more abnormal found."

Doctor in his opinion stated that the death was caused due to strangulation and occurred more than 96 hours before the time of conducting post mortem.

14. The learned P.P., Mr. Banerjee, has supported the impugned conviction and sentence. According to him, the testimony of the all witnesses especially the evidence of PW 6, the wife of the deceased was wholly reliable, trustworthy and the same was sufficient to rope in the appellant under Section 302, IPC for commission of murder of the deceased. As such the trial Court was correct and justified in convicting the appellant.

14(a). We have given our thoughtful consideration to the arguments advanced on behalf of the parties. We have also meticulously examined and appreciated the testimony of the witnesses examined by the parties.

14(b). It is established principle of law that in cases where evidence is purely circumstantial in nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn, must be fully established beyond any reasonable doubt and such circumstances must be consistent and must unerringly point to the guilt of the accused and the chain circumstances must be established by the prosecution. (See AIR 2003 SC 2846 para 6 Golakonda Venkateswara Rao Vs. State of A.P.) Each and every piece of incriminating circumstances must be clearly established by reliable and clinching evidence and circumstances so proved must form such a chain of events as would permit no conclusion other than the one of guilt of the accused and such circumstances cannot be explained on any hypothesis other than the guilt of the accused to convict the accused on circumstantial evidence. The Court has, therefore, to be cautious and avoid risk of allowing mere suspicion, however strong to take place of proof. 14(c). On overall consideration of the facts and circumstances of the case in its entirety and having based on the deposition of the witnesses as also discussed above, we are of the firm view that the deposition of the witnesses cannot said to be credible and reliable and therefore, on the basis of the evidence, the impugned conviction can not be sustained.

15. Accordingly we are of the view that prosecution has failed to prove its case

against the appellant beyond reasonable doubt.

16. Consequently the impugned conviction and sentence is hereby set aside and quashed.

17. We direct the appellant be released forthwith if he is not otherwise connected in any other case.

18. In the result, this appeal succeeds and stands allowed.

19. LCR be send down immediately.

20. Before parting with the case at hand, we would like to put on record our appreciation to Ms. R.D. Mazumdar, learned amicus curiae for rendering her valuable assistance and help in arriving at the aforesaid decision and accordingly we order that she is entitled to get her professional fees which is quantified at Rs. 3,000/.