

Danti Ram Reang Vs State of Tripura

Court: Gauhati High Court (Agartala Bench)

Date of Decision: June 23, 2010

Acts Referred: Arms Act, 1959 " Section 27

Criminal Procedure Code, 1973 (CrPC) " Section 161, 164

Evidence Act, 1872 " Section 25, 26, 27

Penal Code, 1860 (IPC) " Section 302, 34, 364, 364A

Citation: (2010) CriLJ 4499 : (2011) 1 GLR 13 : (2010) 4 GLT 538

Hon'ble Judges: H. Baruah, J; C.R. Sharma, J

Bench: Division Bench

Advocate: N. Majumder, for the Appellant; R.C. Debnath, Special P.P., for the Respondent

Final Decision: Allowed

Judgement

H. Baruah, J.

In Sessions Case No. 63 (NT/D) of 2003 Appellant alongwith 4 (four) others namely Jipal Tripura, Benijoy Reang, Subodh

Debbarma and Uttam Debbarma was tried by the Additional Sessions Judge, North Tripura, Dharmanagar under the charges u/s 364A/34,

364/34 and 302/34, I.P.C. After due trial, the trial Court recorded a finding of guilt u/s 364 and 302, I.P.C. against the Appellant-Sri Danti Ram

Reang and sentenced him for life imprisonment holding that the victim Kunja Mohan Sahaji had been kidnapped for committing murder and

murdered subsequently. In other words no separate punishment was awarded to the Appellant u/s 364, I.P.C. The trial Court, however, refused to

record guilt of the co-accused tried together in any of the offences charged as indicated above and accordingly they were all acquitted and set at

liberty. It has been indicated that the trial Court was constrained to record acquittal for want of evidence.

2. Being punished thus, the Appellant filed this appeal challenging its legality and correctness.

3. The brief facts involved in this appeal can be recorded as under:

Deceased Kunja Mohan Sahaji was the elder brother of Sri Sona Mohan Sahaji, the informant (P.W. 1) and was a resident of village South

Dhanicherra under Pecharthal police station, North Tripura. On 24-7-2000 at about 7.00 to 7.30 p.m. while deceased Kunja Mohan Sahaji was

sitting at the door step of his north vity, two unidentified tribal youths being armed wearing army uniform came to his residence and forcibly

kidnapped him by gagging his mouth with a piece of cloth unto a jungle on the Southern side of his residence. The villagers made a vigorous search

about his whereabouts but remained unsuccessful. It was suspected that Kunja Mohan Sahaji had been kidnapped by NLFT extremist. On the very

night when the officer in-charge of Pecharthal police station did visit the village of the informant, informant (P.W. 1) made an oral complaint to him

regarding kidnapping of his elder brother, Kunja Mohan Sahaji which was reduced into writing by the officer in-charge Sri K. Bhowmik on 25-7-

2000. Said information in writing (Ext. P-1) was registered as Pecharthal Police Station Case No. 22 of 2000 u/s 364A, I.P.C., 27 of Arms Act

and 10/13 of Unlawful Activities (Prevention) Act (for short Prevention Act). Investigation commenced. On 9-10-2000 when Kamalendu Bhomik

(P.W. 13), the officer-in-charge of Pecharthal police station received an information that Danti Ram Reang, the Appellant would attend his father-

in-law's sradha ceremony, he alongwith other companions raided the house and arrested Danti Ram Reang. After his arrest, he was forwarded to

the Court of Sub-Divisional Judicial Magistrate, Dharmanagar with a prayer for police remand. Police remand was allowed and while in police

custody, he (Appellant) confessed before the police personnel and other independent witnesses that he alongwith Jipal Tripura, Benijoy Reang,

Subodh Debbarma and Uttam Debbarma, Lal Hrem Sanga Darlong alias Rem Sanga and Lala Lusai abducted Kunja Mohan Sahaji from his

house at gun point and also made a statement that he would be able to identify the place where they had buried the body of the victim Kunja

Mohan Sahaji after killing. On such revelation, dead body of Kunja Mohan Sahaji, elder brother of the informant was disinterred from the burial

place as led and pointed out by the Appellant, Danti Ram Reang. Inquest on the dead body was performed. The entire episode of disinterment had

been recorded with the help of video camera, which was subsequently seized alongwith other articles found along side the dead body. After

completion of the investigation charge-sheet was laid u/s 364A/302, I.P.C. and 27 of the Arms Act against Jipal Tripura, Benijoy Reang, Subodh

Debbarma and Uttam Debbarma, Bal Hrem Sanga Darlong alias Rem Sanga and Lala Lusai.

4. As indicated trial Court having had the prima facie materials framed charge against the Appellant and others. Trial commenced. Prosecution

examined as many as 10 (ten) witnesses including the medical officer and police personnel.

5. Mr. N. Majumdar, the learned Counsel and Mr. R.C. Debnath, learned Special P.P. appearing for the Appellant and the State Respondent

respectively were heard at length.

6. Mr. N. Majumder, the learned Counsel appearing for the Appellant at the very outset of his argument criticised the findings of the learned trial

Court contending inter alia that it committed error and illegality in recording the finding of guilt in view of the facts and circumstances of the case

and evidence on record. It was argued by him that the trial Court failed to interpret and marshal the evidence on record in its proper perspective in

arriving at a decision against the Appellant. Mr. N. Majumdar, in view of the facts and evidence on record, had not disputed the factum of

kidnapping of the victim Kunja Mohan Sahaji, the elder brother of the informant (P.W. 1) on 24-7-2000 at about 7.00 to 7.30 p.m. from his

residence. But criticised the findings of the trial Court in respect of making of a statement by the Appellant inculcating himself as one of the

abductors and murderers and also in regard to the identification of the dead body as alleged to have been disinterred from the graveyard at the

instance of the Appellant. Mr. Majumder had also not disputed the recovery of a dead body from Sidhangcherra forest by police personnel on

being led by the Appellant and shown, but the factum of discovery of dead body, according to Mr. Majumder is hit by Section 27 of the Evidence

Act, since the discovery statement divulged to the police officer in presence of others as well had not been recorded so as to receive a sanction

from Section 27 of the Evidence Act. It was argued by Mr. Majumder that such a statement is always to be recorded in verbatim of the maker and

if the police fails to record the statement of the accused in verbatim and prove at the trial, factum of recovery of the dead body on being led and

shown by the Appellant would not be admissible in evidence. In such a situation it was obligatory on the part of the Investigating Officer to record

the statement of the Appellant so as to avoid a conflict with Section 27 of the Evidence Act. The prosecution witnesses more particularly P.W. 1,

P.W. 8, P.W. 9, P.W. 10 and P.W. 13 deposed before the trial Court that Appellant-Danti Ram Reang led the police personnel unto the place

where per his statement victim Kunja Mohan Sahaji had been buried. As shown by the Appellant, they (witnesses) divulged that the dead body of

Kunja Mohan Sahaji had been discovered. They also deposed before the trial Court that Appellant with the assistance of a sweeper dug the

graveyard and disinterred the dead body therefrom in a decomposed state. In order to justify such discovery, it was argued by Mr. N. Majumder

that a compliance of provisions of Section 27 was required to be adhered to, unless such a compliance is proved, the fact of discovery would be

inadmissible in evidence. Admittedly we find no such recordance of a discovery statement of the Appellant basing on which police discovered by

the dead body of the victim from the graveyard. Now, the issue before us is whether minus such statement of the Appellant, discovery of a dead

body at the instance of the Appellant can be disbelieved or in other words inadmissible in evidence. From the evidence of prosecution witnesses

we have noticed that the Appellant made such a statement before the police personnel and others in the nature of oral statement. A discovery

statement made orally cannot, however, be thrown away simply because such a statement has not been reduced into writing and proved during

trial. Section 27 of the Evidence Act requires or enjoins recording of such statement. Some of the prosecution witnesses very categorically and

unambiguous term stated in their evidence that Appellant made such a statement on the basis of which a decomposed body of a person (as per

evidence dead body of Kunja Mohan Sahaji) was discovered from the graveyard as led and shown by the Appellant. Therefore, the fact of

discovery of the dead body at the instance of the Appellant cannot be held to be inadmissible simply because Appellant's statement was not

reduced into writing. It is in the evidence that on the basis of his oral discovery statement police discovered the dead body of the victim in presence

of the witnesses. Argument advanced by Mr. N. Majumder that fact of discovery of the dead body would not be admissible in evidence since the

same has received departure from the provisions of Section 27 of the Evidence Act. Mr. Majumder, learned Counsel for the Appellant to reinforce

his argument relied in the decision rendered by a Division Bench of this Court in the case between Pandav Koya v. State of Assam, reported in

2006 (1) GLT 267, wherein in para 22 held as under:

22. To attract Section 27 of the Act, the statement of the accused leading to discovery of the fact is required to be recorded and that too in first

person singular. Unless the confession or statement through which the accused leads the police or Magistrate to the place where he concealed the

dead body is reduced in writing, it is unsafe to believe and rely upon it. The exact statement of the accused person leading to information and

discovery is needed to make it admissible in evidence u/s 27 of the Act. In the instant case, neither the record nor the testimony of the witnesses

does reveal that such statement of the Appellant who is in police custody confessing the murder of the deceased and information leading to

discovery of the incriminating articles used in committing the crime was ever recorded either by P.W. 6, the Magistrate or P.W. 8, the I.O. and

hence the applicability of Section 27 of the Act cannot be brought in the case at hand.

The Division Bench in the case (supra) emphasised the recording of discovery statement made by an accused that too in first person singular unless

such statement to which the accused leads the police or the Magistrate to the place where he concealed the dead body is reduced into writing, it is

unsafe to believe and rely upon it. In our present case also it has been brought on to the record through evidence that Appellant made a discovery

statement before the police on the basis of which at his instance dead body of Kunja Mohan Sahaji was discovered. As we noticed, there is

recordance of such statement divulged to police by the Appellant, Mr. Majumder, the learned Counsel for the Appellant, therefore, in view of the

law laid down by this Court in the case (supra) emphasised that the trial Court ought not to have acted upon such a discovery statement made by

the Appellant. The trial Court, therefore, committed error and illegality in accepting the fact of discovery of the dead body ascertaining the guilt of

the Appellant, but a full bench of this Court while dealing with the case of Rajiv Phukan and Another Vs. The State of Assam, partially

disapproved the law laid down in the case of Pandav Koya (supra) rather affirmed the decision rendered by a Division Bench of this Court in the

case Troilokya Gogoi v. State of Assam, reported in 2002 (1) GLT 407. The full bench of this Court while dealing with the case (supra) held that

recording the discovery statement though not satisfactorily required, prudent demands that Investigating Officer should record at least that part of

the statement which is likely to lead the discovery of a fact. It further held non-recovery of such statement, however cannot lead the Court to refuse

to bring on record or brush aside the statement or the evidence in that regard. Admittedly the discovery statement so made to the Investigating

Officer was not reduced in writing but fact remains that on the basis of such statement a dead body in a decomposed state was discovered from a

graveyard from inside the forest, namely, Sidhangcheera at the instance of the Appellant, identity of which remains doubtful. The core intention

employed in Section 27 of the Evidence Act is to discovered a fact on the information supplied to police while in custody and if on the basis of

such information obtained from the prisoner/accused that such discovery is a guarantee that the information so supplied by the accused is true. The

ratio laid down by the Full Bench of this Court to our considered view would be applicable in this instant case though a claim has been made by

the counsel of the Appellant that such discovery statement is required to be reduced in writing to become admissible in evidence. We, therefore,

do not find any force in the argument advanced by Mr. N. Majumder in regard to admissibility of the fact discovered on the basis of Appellant's

statement.

7. The second leg of N. Majumder's argument is in respect of identification of the dead body. Mr. Majumder taking aid of the evidence of P.W.

13 urged this Court that the trial Court committed error and illegality in holding the dead body so discovered to be dead body of the victim Kunja

Mohan Sahaji. P.W. 13, the Investigating Officer when in the witness-box deposed that the dead body disinterred from the grave in a

decomposed state was unidentifiable and, therefore, finding of the trial Court that it was the dead body of the victim was palpably wrong. Mr.

Majumder further argued that discovery of a dead body from the graveyard at the instance of the Appellant cannot lead to a conclusion that it was

the dead body of the victim Kunja Mohan Sahaji unless such dead body is identified properly by the relatives of the deceased which was

discovered in an unidentifiable condition. Most of the witnesses particularly P.W. 1, P.W. 8, P.W. 9, P.W. 10, P.W. 12 and P.W. 13 stated in

their evidence that the dead body of the victim was discovered at the instance of the Appellant. There is no acceptable testimony by what source

and basis witnesses like P.W. 1, P.W. 8, P.W. 9 could identify the dead body to be the dead body of Kunja Mohan Sahaji. P.W. 2 is Smt. Bilashi

Sahaji. She is the wife of the victim Kunja Mohan Sahaji, she in her evidence stated when her husband had been abducted he was wearing a short

pant and a towel (gamcha). In her cross-examination she stated that her husband was wearing a green colour striped towel (gamcha). Investigating

Officer, P.W. 13 though seized the video camera and other materials found with the dead body did not specifically mentioned about the materials

so found with the dead body. P.W. 9, Sri Narayan Bhomik is the father-in-law of the victim Kanju Mohan Sahaji. He also stated in his evidence

that the Appellant disinterred the body of his son-in-law from the graveyard. P.W. 1, the younger brother of the victim also stated that Danti Ram

Reang, the Appellant dug the grave and recovered the body of his deceased brother. P.W. 9 in his cross-examination stated that the body was

partly decomposed and the ear and eyes of the victim were present. When the evidence of P.W. 13 gives an indication that the dead body was in

totally decomposed state and not identifiable condition, identification of P.W. 1 and P.W. 9 in particular remains doubtful. Per evidence and the

First Information Report (Ext. 1), kidnapping took place on 24-7-2000 at about 7.00 to 7.30 p.m. P.W. 13 in his cross-examination basing on the

statement of the Appellant stated that victim was killed on 14-8-2000 and the same was recovered on 13-10-2000. Therefore, at least 3 (three)

months later from the date of missing rather abduction a decomposed dead body was discovered at Sidhangcherra forest from a graveyard at the

instance of the Appellant. During this time the body completely got decomposed and was in unidentifiable state. Evidence of the prosecution

witnesses, therefore, more particularly the evidence of P.W. 1 and P.W. 9 cannot form a basis that it was the body of the victim Kunja Mohan

Sahaji abducted on 24-7-2000. We have given our anxious consideration to the facts and evidence of record on this point and also to in the

argument advanced by Sri N.. Majumder, learned Counsel appearing for the Appellant. We are of the considered view that in the face of the

evidence of P.W. 13, evidence of other witnesses particularly P.W. 1 and P.W. 9 cannot be accepted to hold that it was dead body of the victim.

A doubt, therefore, creeps into our mind as to the identity of the dead body to that of victim Kunja Mohan Sahaji. We find no scope to brush

aside the argument advanced by Mr. N. Majumder.

8. The third leg of argument of Mr. N. Majumder, learned Counsel for the Appellant is in regard to extra-judicial confession made by the

Appellant. It was argued that confession allegedly to have been made by the Appellant in the context of abduction/kidnapping and killing of the

victim before the witnesses cannot receive any sanction of law since the same was made in immediate presence of police personnel. Therefore, a

confession made before police would be inadmissible in evidence since the same would be hit by Section 25 of the Evidence Act. Mr. Majumder,

therefore, tried to put emphasis that the trial Court committed error and illegality in accepting the confessional statement of the Appellant. A

confession made during police custody to the police personnel in presence of others (not police personnel) cannot form a basis of conviction of an

offender. A confession made by an accused would be relevant if the same is made in absentia of police personnel without inducement promise,

threat, coercion etc. Such evidence is missing in this case. Mr. Majumder, therefore, strenuously urged that the finding of the trial Court is

erroneous and illegal. To reinforce his argument Mr. Majumder on this point put reliance in the decision of the case in between State of Assam Vs.

Anupam Das, A Division Bench of this Court in the case (supra) held that the confession made by the accused to a doctor in the custody of the

police would be inadmissible in evidence since it was not made in immediate presence of a Judicial Magistrate. In the aforesaid judgment the

Division Bench also interpreted the expression ""Magistrate"". According to Section 26 of the Evidence Act it held that expression ""Magistrate

would mean only a Judicial Magistrate but not an Executive Magistrate. Therefore, a confession made to a person by an offender/accused minus

the presence of a Magistrate (Judicial Magistrate) without any inducement, threat or promise would be branded as extra-judicial confession and

the same can be accepted rather admitted in evidence while assessing the complicity of the offender/accused. In our present appeal we have

noticed from the evidence of P.W. 13 that the Appellant was apprehended on 9-10-2000 while he came to attend the sardha ceremony of his

father-in-law at Joymani Para under Pacherthal police station. While he was in police custody he confessed before some other person that he

alongwith Jipal Tripura, Benijoy Reang, Subodh Debbarma and Uttam Debbarma, Lal Hrem Sanga Darlong alias Rem Sanga and Lala Lusai

abducted Kunja Mohan Sahaji from his residence at gun point and thereafter killed him and buried him at upper Sidhangcheria area. This

statement was admittedly made by the Appellant to the persons present in immediate presence of police officer. There is no evidence to show that

at the making of such statement by the Appellant a Judicial Magistrate was also present. Therefore, such statement made by the Appellant to

persons in presence of a police officer(s) would not be admissible in evidence and it would have no legal bearing in ascertaining the guilt of the

Appellant.

9. In the case of Dharani Pradhan Vs. State of Orissa, their Lordships" of the Apex Court in paragraph 7 held as under:

7. Extra-judicial confession which forms the foundation for conviction in the case at hand has to be discarded as the same was made in presence of

police as would be evident from a reading of the evidence of P. Ws. 4 and 5. Therefore, the so-called extra-judicial confession is of no assistance

to the prosecution. It is true that the extra-judicial confession, if found credible and cogent and believable can form the sole basis of conviction. But

the confession in presence of police is of no evidentiary value and does not constitute legal evidence.

Therefore, extra-judicial confession which can form the foundation for conviction of an accused would stand the test of admissibility only when the

same is made in absence of police. If such confession is made in immediate presence of police personnel, it would have no bearing at all in

ascertaining the complicity of the accused. In our present case we have come across that the Appellant made a confession before police in

presence of others that he alongwith several others whose names find place in previous paragraphs abducted/kidnapped Kunja Mohan Sahaji

from his residence at gun point and subsequently killed and buried in Sidhangcheera forest and would be capable of leading the police to the place

where the dead body is buried. Such statement, therefore, appears to be not made to the presence (witnesses) minus the presence of police. We

have also noticed from the evidence that a statement was given by the Appellant while in police custody hence such extra-judicial confession would

not be admissible in evidence and it cannot form the foundation for conviction. The trial Court, however, put emphasis on such extra-judicial

confession while recording conviction of the Appellant. We, therefore cannot, subscribe our view to the decision of learned trial Court on this

point.

10. In regard to making of such a confessional statement by the Appellant, P.W. 13, P.W. 1, P.W. 8 and P.W. 9 without any ambiguity and

hesitation stated before the trial Court that Appellant made such a confessional statement while in custody. Section 25 of the Evidence Act speaks

of a confession made to a police officer, which shall not be proved as against a person accused of any offence. Section 26 of the Evidence Act

also speaks that no confession made by the person whilst he is in the custody of a police officer unless it be made in the immediate presence of a

Magistrate shall be proved as against such person. Therefore, these two sections put a complete bar in the admissibility of a confession made to a

police officer or a confession made in absence of a Magistrate while in custody. In the case between State of Andhra Pradesh Vs. Gangula Satya

Murthy, The Apex Court in paragraph 19 of the judgment held as under:

19. The other reasoning based on Section 26 of the Evidence Act is also fallacious. It is true any confession made to a police officer is inadmissible

u/s 25 of the Act and that ban is further stretched through Section 26 to the confession made to any other person also if the confessor was then in

police custody. Such "custody" need not necessarily be post-arrest custody. The word "custody" used in Section 26 is to be understood in a

pragmatic sense. If any accused is within the ken of surveillance of the police during which his movements are restricted then it can be regarded as

custodial surveillance for the purpose of the section. If he makes any confession during that period to any person be he not a police officer, such

confession would also be hedged within the banned contours outlined in Section 26 of the Evidence Act.

The Apex Court in the case (supra) also held that any confession made during custodial surveillance to any person be he not a police officer is in

admissible in offence. The word "custody" used in Section 26 is to be understood in a pragmatic sense the Apex Court held. Therefore, the

statement made by the Appellant before the police officer in immediate presence of any independent witness would be in admissible in absence and

on the basis of it, which is a weak piece of evidence, conviction cannot be legally warranted. No argument was forthcoming from the side of the

learned special prosecutor that such confession statement is not hit by either Section 25 or Section 26 of the Evidence Act. The evidence of the

witnesses, evidence of P.W. 1, P.W. 8, P.W. 9 and P.W. 13 in particular, therefore, cannot be acted upon in regard to the confession made by

the Appellant. We, therefore, find sufficient force in the argument advanced by Mr. N. Majumder.

11. It is visible in the evidence of P.W. 13 that no prayer was made to the concerned Sub-Divisional Judicial Magistrate to record a confessional

statement of the Appellant u/s 164, Code of Criminal Procedure since the dead body of the victim was allegedly discovered on the basis of the

oral discovery statement made by the Appellant. On this point we like to introduce our opinion that the investigation conducted by the Investigating

Officer (P.W. 13) was perfunctory in nature when he (Appellant) evidently made a confessional statement before him and others regarding

abduction of the victim, his (victim) killing and burial at upper Sidhangcherra forest. A confession recorded u/s 164, Code of Criminal Procedure

by a Judicial Magistrate in the manner as required in the law would perhaps have a bearing to warrant conviction of the Appellant. The

Investigating Officer (P.W. 13) even in spite of making a confessional statement did not feel it necessary to make a prayer to the Sub-Divisional

Judicial Magistrate for recording the confessional statement. We have already indicated that the Ext. P-3, the seizure memo prepared by P.W. 13

is silent in respect of the kinds of the articles seized except the video cassette. Therefore, in absence of any specification, Court would be unable to

hold what kind of articles had actually been seized by P.W. 13. Had the articles seized properly been described in the seizure memo (Ext. P-3) it

could have perhaps lend support to the evidence of the witnesses in respect of identification of the dead body so disinterred at the instance of the

Appellant, to remove doubt from the mind of the Court. Since nothing substantial is forth coming from the evidence in regard to identification of the

dead body, we are constrained to hold that the identification of the dead body is doubtful.

12. Mr. N. Majumder, further argued that the evidence of P.W. 7 cannot entail any help in favour of the prosecution since he turned hostile. It was

argued by him that though in the cross-examination made by the prosecution with reference to his earlier statement recorded u/s 161 of the Code

of Criminal Procedure, the same cannot over shadow the evidence appearing in the cross-examination made by the defence. Moreover, the

prosecution failed to confirm the same from the Investigating Officer (P.W. 13). At any rate, evidence of P.W. 7 cannot play a role in the

assessment of guilt of the Appellant.

13. In regard to the charge u/s 364, which is held to have been proved by the trial Court against Appellant it was argued by Mr. N. Majumder, the

learned Counsel for the Appellant that to prove such a charge, evidence from the prosecution side is totally absent. To identify tribal extremists as

stated by PW-1 and PW-2 in particular who allegedly kidnapped the victim on 24-7-2000 at 7.00 to 7.30 p.m. at gun point who came in army

uniform is wholly insufficient. About 3 (three) months later the dead body of the victim was allegedly disinterred from a grave of Sidhangcheera

forest at the instance of the Appellant. As stated by the Appellant before the police and the others they kidnapped the victim and killed him and

buried at the place where from he disinterred. Except such statement no other evidence is forthcoming in respect of abduction/kidnapping of victim

Kanju Mohan Sahaji. We have already discussed that the confession made by the Appellant cannot be branded as extra judicial confession since it

was made in presence of police personnel while in custody. If such statement is subtracted from the evidence of the witnesses so produced in

combination of doubtful identity of the dead body there would remain nothing to show complicity of the Appellant in regard to the commission of

charge u/s 364, I. P. C. We are of the considered view that the learned trial Court committed error and illegality in accepting the confession

(extrajudicial confession) made by the Appellant as is found in the evidence of the prosecution witnesses. It appears to us that the trial Court failed

to see the admissibility of such statement made by the Appellant and wrongly convicted the Appellant on the basis of inadmissible evidence on

record. Doctor, who conducted autopsy on the dead body, so disinterred at the instance of the Appellant at the place itself indicates that person

died as a result of cardio respiratory failure due to haemorrhage and shock, due to liver injury following blunt injury over right lower part of the

chest. He discovered a black mark at the right lower part of the chest extending from above the transpiloric plain and lateral mid clavicular line of

size 14 cm. x 4 cm. He also opined that the weapon used was hard and blunt. He also discovered furro at right lob of the liver of size 6 cm. x 3

cm. x 4 cm. and black peritorineal cavity. Therefore, the dead body disinterred and discovered from the grave at the instance of the Appellant was

of a person who succumbed to the injuries as discovered by the PW-16. We have already expressed our opinion about the identity of the dead

body and also in regard to the admissibility of the extra judicial confession made by the Appellant. Learned trial Court committed error in accepting

the evidence available on record and erroneously recorded a finding of guilt of the Appellant. We are unable to accept the findings of the learned

trial Court and, therefore, inclined to interfere with the conviction and sentence so impugned. It is accordingly interfered.

14. Appeal is accordingly allowed. Appellant is acquitted on benefit of doubt. Send down the Lower Court Records.

Appeal allowed.