
(1972) 11 GAU CK 0002

Gauhati High Court

Case No: None

State of Assam

APPELLANT

Vs

Nanda Kumar Singh

RESPONDENT

Date of Decision: Nov. 22, 1972

Acts Referred:

- Constitution of India, 1950 - Article 20, 21
- Penal Code, 1860 (IPC) - Section 114, 302, 304, 34

Citation: (1973) CriLJ 521

Hon'ble Judges: M.C. Pathak, J; Baharul Islam, J

Bench: Division Bench

Judgement

M.C. Pathak, J.

This is a Reference under Rule 16 of the Rules for the Administration of Justice and Police in the Sibsagar. Nowgong and Mikir Hills Tracts 1937.

2. The accused Nanda Kumar Singh has been convicted u/s 304 Part I and sentenced to undergo rigorous imprisonment for 7 (seven) years by the learned Additional Deputy Commissioner Diphu. The other accused Smt. Kachang Timungpi has been acquitted by the learned Additional Deputy Commissioner.

3. The prosecution case briefly is that Nanda Kumar Singh is the son of Chandra Singh Manipuri (deceased) through his first wife. Mst. Kachang Timungpi is the second wife of Chandra Singh, who married her at Delai in Mikir Hills District, while his first wife was living with the children in Cachar District. A few years before the occurrence which took place on 30.6.67 Chandra Singh came away from his home in Cachar District and settled at Delai and married accused Smt. Kachang Timungpi who is a Mikir. The first wife and her children were hard hit by poverty and therefore all of them came to Delai in search of Chandra Singh, Nanda Kumar Singh studied in school for a year or two at Dimapur and the expenses were borne by his father. Then he had to leave school as his father refused to give him any maintenance.

Nanda Kumar Singh therefore started cultivation work but his father Chandra Singh suspected him to have illicit connection with his second wife. That gave rise to quarrels between them and Chandra Singh asked Nanda Kumar Singh to go away from his house. On 30.6.1967 at about 5.30 P.M. Chandra Singh was returning with Nanda Kumar Singh and Smt. Kachang Timungpi from the cultivation work. On the way all of a sudden Nanda Kumar Singh hacked his father Chandra Singh with a dao and the latter died on the spot immediately. Nanda Kumar Singh and Smt. Kachang Timungpi then dragged the body away from the path and left for home. While going home Nanda Kumar Singh put the dao under knee deep water in the adjoining river. On the following day the dead body was seen by the villagers and the local V.D.P. Secretary Kamal Kro (P.W. 1) lodged the First Information Report Ext. 1 with the Police. The Police registered a case, made investigation and arrested Nanda Kumar Singh and Smt. Kachang Timungpi. Nanda Kumar Singh later On made a confessional statement before the Magistrate giving out the details of the murder. After completion of investigation charge-sheet u/s 302/34 Indian Penal Code was submitted against both Nanda Kumar Singh and Smt. Kachang Timungpi. The learned committing Magistrate framed charges against both the accused under Sections 302/34 Indian Penal Code and committed them to the Court of Session to stand their trial.

4. In the Sessions trial the charges were modified. Accused Nanda Kumar Singh was charged u/s 302 Indian Penal Code and accused Smt. Kachang Timungpi was charged u/s 302/114 Indian Penal Code. Both the accused pleaded not guilty to the charges.

5. The defence plea was that of denial. Accused Nanda Kumar Singh retracted his confessional statement during the trial. The defence in cross-examination suggested to the Investigating Officer P.W. 8 that P.W. 8 threatened the accused Nanda kumar to torture him if he did not confess before the Magistrate which suggestion was denied by P.W. 8.

6. The prosecution examined 9 witnesses including the Doctor (P.W. 4), the Magistrate who recorded the confessional statement (P.W. 9), and the Investigating Officer (P.W. 8.). The defence did not adduce any evidence. On consideration of the evidence on record the learned Additional Deputy Commissioner exercising the powers of a Sessions Judge convicted and sentenced Nanda Kumar Singh and acquitted Smt. Kachang Timungpi, as stated hereinabove.

7. P.W. 4, Dr. B. Barthakur, who was the S.D.M. & H.O. at Diphu Civil Hospital held the post-mortem examination on 3.7.1967 on the dead body of Chandra Singh Manipuri and found the following injuries.

I. Three overlapping oblique incised gaping wounds 8" X 3" dividing the cervical vertebra at 3rd and 4th completely including great vessels on both sides extending from below the left external ear. across the back, to the whole of the right side of

neck, and the head is attached only by a few muscles and skin in front from the trunk.

2. One transverse incised wound 4" ✦ 2" dividing the right maxillary bone and right ear lobe on right cheek. No other external injury could be detected due to onset of decomposition.

According to the Doctor the injuries were ante-mortem and the death was due to shock and haemorrhage from the fatal injuries on the head and neck as described.

8. From the evidence of the Doctor it is quite clear that Chandra Singh Manipuri met with unnatural death and his death was due to the injuries described above which were caused on his person.

9. The next point for determination is as to who caused the injuries which resulted in the death of Chandra Singh.

10. There is no eye witness to the occurrence. The learned trial court has relied on the confessional statement made by the accused Nanda Kumar Singh and other evidence on record.

11. P.W. 9 D.P. Baruah stated that in 1967 he was Magistrate at Diphu competent to record confessional statement of accused. On 5.7.1967 Nanda Kumar Singh was produced before him for recording the confessional statement. At the beginning P.W. 9 explained to the accused that he was not a Police Officer but a Magistrate and that he was not bound to make a confession and that if he so did that might be used against him. Then the accused was left for reflection for about 3 hours or so in charge of the court peon. Thereafter he was again cautioned as required under the provisions of law. When P.W. 9 was satisfied that the accused was ready to make the confession voluntarily he recorded his confessional statement which is Ext. 5 in the case. The confessional statement was read over to the accused who put his signature on it.

12. The confessional statement was made in Assamese and it was recorded in Assamese and the accused also signed in Assamese. It is a pretty long statement made by the accused.

13. The accused stated in his confessional statement that while he was reading in Class I his father left Cachar for doing service elsewhere. There was no information from him for about 3 years and his father did not send money also. While the accused was reading in Class III his father went to Cachar and put him in a family to work as a servant. The accused accepted the job with the hope that he would be able to continue his study besides attending his job. But while he was promoted to Class V he had to leave school as the person with whom he was residing wanted him to do his job only. Thereafter he tried to prosecute his studies but due to want of money he failed to prosecute his studies further and in that very year due to famine the accused and the other members of the family had to live on banana trees etc.

for about six months and at that time his father came to Cachar and the third boy was born. The father did not pay any money to them. The accused somehow managed to read up to Class IX with the help of his maternal uncle and from the proceeds of the cultivation. But he got plucked in examination as he had no money to purchase books.

Thereafter he went to Dimapur in search of service and there he came to know that his father had married a Mikir girl and was living at Delai. At Delai his father failed to recognise him and so the accused wept much in grief. When the accused introduced himself, the father recognised him and agreed to educate him in school. Then the accused went to Cachar and after giving information there he came back to Dimapur in the first week of January last year (1966). The accused got himself admitted in Government H. E. School at Dimapur. rented a house at Manipuri Basti @ Rs. 10/- P.M. and his father and himself used to reside there. His father worked as a carpenter at a daily wage of Rs. 8/- and squandered away the money by taking opium, ganja, wine and in gambling and did not help the accused in purchasing books, papers etc. So the accused could not appear in the First Terminal Examination for want of books. When the accused asked for money, the father was angry. Thereafter on repeated request the father gave Rs. 15/- to purchase three books. But he stopped to give him expenses for food. His father also became angry with the step mother who gave the accused 5 or 6 kilograms of rice. Having seen his miseries the step mother gave him a banian and a pant and for this also his father became angry with the step mother again and tore out his long pant.

The accused for want of books got plucked in Class IX and he served as a Mohorir at Rangapahar at Rs. 50/- per month but it was not sufficient for maintenance. So he went to the step mother at Delai and requested her (help) for the continuance of his study. The step mother asked him to do cultivation and to continue his studies with the money received from the cultivation. The accused cultivated about 3 Bighas (halisa) of land and took one maund of paddy from Deuri Master for his consumption. The father scolded him again and asked the step mother not to allow the accused to remain at home and to take food. The father told accused. "You are not, my son. you need not study and do not stay here." The father could not tolerate the accused going to cultivation with the step mother and the accused was told that the step mother was his wife. The accused was mortified and replied that according to Manipuri custom mother and son might go together and there was no restriction of it. But the accused did not know about the Mikir custom. Then the father told him to go away from the house and saying so he rushed at him with a dao to cut the accused. Then there was some altercation between the father and the accused for keeping two wives one Mikir and the other Manipuri. The accused asked the father to go to Cachar which the father refused to do. The accused then told the step mother that he would commit murder of his father.

14. After making the above introductory statement in his confessional statement, the accused stated as follows:

Accordingly on Friday at about 6 O'clock in the dusk while father, step mother and I returned from the field, I murdered my father on the way by giving 3 dao blows at the neck. In the previous night father was holding a dao in the whole night to cut me and also on the day of occurrence there arose a big quarrel between father and the step mother in the field regarding me. My step mother helped me in keeping aside the dead body of my father by the road side. Yesterday, I presented myself in the Bokajan Police Station and admitted my fault. I have felt very sorry for murdering my father and I would never commit such an act if I am acquitted for this time. I am still a student and want to continue my study.

15. On going through Ext. 5 in original we find that the learned Magistrate who recorded the confessional statement did not note the time and place of the arrest of the accused. The Magistrate of course recorded that the accused was sent to him from Bokajan Police Station on 5.7.1967 on which date the confession was recorded. It is also found that the accused was brought to the court of the Magistrate at Diphu on 5.7.1967 at 11.45 A.M. to have his confession recorded. The Magistrate at the bottom of the confessional statement has written that the accused was forwarded to the Senior Magistrate after recording that he was satisfied that the statement was voluntarily made. The Magistrate however did not note at what time the recording of the confessional statement was completed or when the accused was sent to the Senior Magistrate. But for these irregularities the confessional statement though retracted cannot be rejected if from the evidence on record it is found that the confessional statement was voluntary and corroborated in material particulars and therefore true.

16. From the evidence of P.W. 9 the Magistrate, who recorded the confessional statement it is found that he put several questions to the accused and from the answers given by the accused to his questions. P.W. 9 was satisfied that the accused made the statement voluntarily. The confession was read over to the accused who admitted it to be correct. The accused read up to Class IX of High School. There was no allegation of torture or influence by Police before the Magistrate. The details of the domestic life and affairs of Chandra Singh and his family including the accused as given by him are clearly from his personal knowledge and there does not appear any probability of tutoring by Police. Even the other accused Smt. Kachang Timungpi who is a Mikir living at Delai cannot be said to have personal information in detail about the affairs of the domestic life of Chandra Singh in Cachar as stated by the accused in the confessional statement. On consideration of the lengthy description of the domestic affairs of the accused leading to the actual fact of murder as disclosed in the confessional statement which also shows that he was repentant for murdering his own father and also considering the surrounding circumstances in the instant, case we agree with the learned trial court that the confessional

statement in the instant case is a voluntary one.

17. In the instant case we also notice that the learned Additional Deputy Commissioner failed to put the confessional statement to the accused while examining the accused u/s 342, Criminal Procedure Code which is a wrong way of doing the thing. Of course from the cross-examination of the Investigating Officer P.W. 8. we find that the accused retracted his confessional statement and it was suggested to P.W. 8 that the confessional statement was made out of fear of torture from Police and from this the trial Court has treated the confessional statement as a retracted confession. On going through the confessional statement itself and the other relevant evidence on record as discussed herein we find that the confessional statement in the instant case is a voluntary one.

18. The injuries found on the dead body as deposed by P.W. 4 are incised wounds and these are found to be caused by sharp cutting weapon like dao. The confessional statement so far as the injuries are concerned, is found to be corroborated by the medical evidence.

19. From the inquest report Ext. 2 it is found that the dead body of Chandra Singh Manipuri was found at a distance of about 1 kilometre south of the village Sinthong Ingti inside a jungle (bushes of Jarmany plants) in a deserted homestead by the side of a path leading to the field at a distance of 13 west of the said path. The confessional statement to the effect that the accused cut his father while returning from the field and he with the help of his mother kept aside the dead body by the road side is corroborated by the evidence of P.W. 8 who found the dead body and held the inquest, as stated above. The occurrence took place on 30.6.1967 in the evening and the inquest was held on 2.7.1967 at 7 A.M. From the inquest report it is found that when the dead body was turned upside down it was found that the back of the neck was completely cut the back bone of the neck was hanging by nearly 4 rift, there was another cut injury visible which was beginning from the corner of the right eye stretching upto the back of the neck after cutting the lobe of the right ear and there was a deep injury on the right cheek cutting the teeth of the right cheek.

20. From the seizure list Ext. 4 and the evidence of P.W. 8 it is found that the accused led the Police and produced the dao from under water at a distance of about 1 furlong south of the house of accused on 7.7.1967 at 7.30 A.M. in presence of Haren Terang P.W. 2 and two others.

21. P.W. 2 Haren Terang stated that he knew both the accused persons. Chandra Singh, the father of accused Nanda Kumar Singh, used to stay in their village, he stayed there for 4 or 5 years. Accused Smt. Kachang Timungpi was staying with Chandra Singh as his wife, Nanda Kumar Singh also stayed with Chandra Singh, Chandra Singh died on 30.6.1967. On 1.7.1967 while P.W. 2 was ploughing in his field he came to learn that a dead body was found and the people present there decided to inform the V.D.P. personnel. Then P.W. 2 along with the V.D.P. personnel

and others went to the place and found the dead body inside a jungle at a place about 1 kilometre from the village. He could recognise the dead body as that of Chandra Singh. Then the V.D.P. personnel informed the Police. A few days after the Officer-in-charge brought the accused Nanda Kumar Singh, who showed the Police where the dao was kept and that the accused himself showed the dao hidden below the water near the ghat, and the dao was brought out from under the water. The dao is material Ext. 1.

22. P.W. 8 the Investigating Officer also deposed that the dao Ext. 1 was produced by the accused Nanda Kumar Singh which was seized as per seizure list Ext 4.

23. Thus the confessional statement is found to be voluntary. Though retracted it is found to be corroborated in material particulars by independent evidence on record. On consideration of the entire evidence on record we find that the confessional statement is voluntary and true and it may be legally acted upon.

24. The discovery of the dao from under water as shown by the accused, the nature of the injuries found on the dead body of Chandra Singh, the detailed account of the domestic affairs of the accused as given by him and the clear statement of the accused as to how and why he caused the death of his father Chandra Singh, and the other relevant evidence on record lead to the irresistible conclusion that it was the accused Nanda Kumar Singh only who gave the dao blows on Chandra Singh on vital parts of his body and caused his death.

25. From the details as given in the confessional statement it appears that by the continuous and deplorable neglect of the accused, his own mother, brother and sister by his father, the accused was ultimately deprived of the power of self control and caused the death of his own father and in view of the facts and circumstances of the case, the learned Additional Deputy Commissioner correctly held that the accused Nanda Kumar Singh was guilty u/s 304 Part I, Indian Penal Code. The sentence of 7 (seven) years" rigorous imprisonment in the facts and circumstances of the case is also found to be justified.

26. In the result we confirm the conviction of the accused u/s 304 Part 1, Indian Penal Code and the sentence of rigorous imprisonment for 7 (seven) years under that section. The Reference is accordingly accepted.

27. Before parting with the case we like to observe that in a number of cases coming from the States of Nagaland, Meghalaya the Union Territories of Arunachal Pradesh (NEFA) and Mizoram (Mizo Hills District), and also Mikir Hills District and North Cachar Hills District (United District of Mikir and North Cachar Hills), where the Code of Criminal Procedure is not strictly applicable but the spirit of the Criminal Procedure Code is only applicable with a few exceptions it has been found that the provisions of Section 164 read with Section 364 Criminal Procedure Code while recording the confessional statements are not strictly followed sometimes even overlooking the spirit of these sections. Even though the spirit of the Criminal

Procedure Code is only applicable in these areas, a Magistrate while recording the confessional statement is expected to substantially comply with the requirements of Section 164 read with Section 364 Criminal Procedure Code for the ends of justice. When an accused is brought before the Magistrate for recording his confessional statement, the Magistrate should ascertain whether he has been brought direct from Police *hajat* or from the judicial custody. If the accused has been brought for the purpose of recording the confessional statement directly from Police custody, the Magistrate should see that before recording the confession the accused remains in judicial custody at least for 24 hours in order to be sure that the accused gets a chance of his mind becoming free from all actual and possible fear of torture and intimidation from Police and/or from inducement.

When the Magistrate is satisfied that the accused has been produced from judicial custody or jail *hajat* after keeping him there for at least 24 hours, the Magistrate should then give the accused sufficient time for reflection and thereafter only the Magistrate should proceed to record the confessional statement. Before recording the confessional statement, the Magistrate by putting necessary questions in substantial conformity with the provisions of Section 164 read with Section 364, Criminal Procedure Code, should be satisfied that the accused is going to make the confessional statement willingly and voluntarily and not out of any fear of torture or inducement from Police or any other quarter. It also should be clearly brought home to the accused that if he makes a confessional statement before the Magistrate that statement may be used against him as evidence at the time of his trial. The Magistrate also should ensure that while the accused is allowed time for reflection in his custody as well as at the time of recording the confessional statement, no Police personnel including the Police Prosecution Officers are present and/or visible to the accused. After recording the confessional statement the Magistrate should remand the accused to judicial custody or jail *hajat*. A Magistrate recording the confessional statement even in those places where the spirit of the Criminal Procedure Code is only applicable should follow the above directions for the ends of justice and also to satisfy the requirements of Articles 20 and 21 of the Constitution of India.

28. If a confessional statement is not recorded substantially following the provisions of Section 164 read with Section 364, Criminal Procedure Code as observed hereinabove it becomes difficult for a Court of law to accept a confessional statement and to act upon it even though the case may come from an area where the spirit of the Code of Criminal Procedure is only applicable.

29. We would also like to impress upon the Court trying a criminal case including a Sessions case that if there is any confessional statement made by an accused and it is proved in the case, the trial Court shall while examining the accused u/s 342. Criminal Procedure Code, bring the confessional statement to the notice of the accused and ask him whether he made such a confessional statement before the

Magistrate and whether he has got to say anything in this regard.

Baharul Islam, J.

30. I agree.