

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

**Criminal Appeal No. 312 of 2015**

Appellant/Accused ... Chittaranjan Baroi

Respondent .... State of Assam & another

**BEFORE**

**HON'BLE THE CHIEF JUSTICE MR. AJIT SINGH  
HON'BLE MR. JUSTICE MANOJIT BHUYAN**

For the Appellant/Accused ... Mr. SC Biswas & Ms. J Borah,  
learned counsel  
For the Respondents ... Mr. K Konwar, learned  
Additional Public Prosecutor,  
Mrs. BB Ahmed, learned counsel for R-2  
Date of hearing & judgment... 02.01.2017

**JUDGMENT AND ORDER**

*(Ajit Singh, C.J.)*

The appellant - Chittaranjan Baroi is the father of Late Prativa Baroi, aged about 29 years. He has preferred this appeal against the judgment and order of the trial court acquitting the sole accused Shital Das of the charges under Sections 364/302 and 201 of the Indian Penal Code.

2. According to the prosecution case, victim Prativa was working as a teacher in Milky Way English Medium High School, Guwahati, at the relevant time and on 29/5/2009, she went to school at about 8 PM, telling everyone at her house that she would be leaving for New Delhi with the owner of that school, namely, Mrs. Aradhana Medhi (PW-11). Her father Chittaranjan Baroi (PW-1), mother Mina Baroi (PW-2), her brother Chandan Baroi (PW-7) and her sister Kripa Baroi (PW-9) took

her words into good faith and remained with an impression that she would leave for New Delhi with Aradhana (PW-11). Even Pratul Barman (PW-14), the Chowkidar of that school came to her house on that day at about 10 AM and told her mother Mina, that he had safely dropped both Aradhana and Prativa at the Airport. But, Prativa did not inform about her reaching New Delhi to her family members and so, on 31/05/2009, Chittaranjan went to her school and met Pratul and enquired about any news from Prativa. Pratul assured him that she would return shortly. But Chittaranjan got surprised to see Aradhana entering the school premises in her car and when he met her and enquired about Prativa, she denied accompanying her to New Delhi and assured him that Prativa would return soon.

3. Perturbed, the family members of Prativa spent the night. But at about 2:30/3 A.M, a message came from the mobile phone of Prativa to the mobile phone of her sister - Kripa intimating that she had been staying with one Amit Saikia at Jorhat and she had been working at M.M.C. company at Jorhat. After the said message, the mobile phone of Prativa was found to be switched off. Smelling foul play, Chittaranjan lodged the First Information Report (Exhibit-1) at Bharalumukh Police Station, Guwahati on 01/06/2009. It was a missing information report about Prativa and the information was entered as G.D. Entry No.9/09 dated 01/06/2009. Thereafter also, messages continued to come intermittently from Prativa's mobile and on 06/06/2009 a letter was received purportedly from Amit Saikia where it was again informed that Prativa was safe and sound and was with him at Jorhat. At this, Chittarajan again lodged a First Information Report (Ext-2) before the same Police station on 08/06/2009 in continuation of his earlier missing report (Ext-1) fearing that Prativa's life was in grave danger. This report was registered as Bharalumukh Police Station Case No. 163/2009 under Section 366 of the Indian Penal Code.

4. Binoy Kalita (PW-21) was then posted as Attached officer in that police station and he took up investigation. He recorded statement of Chittaranjan and visited the place of occurrence. He also seized the letter vide Exhibit- 3 in presence of Bitul Kalita (PW-13).

5. In the meantime, on 01/06/2009, some members of the Mahila Samittee (womens' organization) of Bhoisokholi village at Goalpara District noticed a newly dug pit amidst the Dosarpara Rubber Bagan (garden) at Rakshashini Reserve gaon (village). In that area, the members of the Mahila Samittee used to plant rubber trees. Bihuti Rabha (PW-4), Haripriya Rabha (PW-5), Nizara Rabha (PW-6) were the members of that Samittee. When the pit was noticed, some local people removed some freshly put soil from the top of that pit only to find a portion of a dead body slightly emerging and then they informed Kelvin Rabha (PW-3) and Pabitra Rabha (PW-15) of that locality. They also smelt bad odor coming from the pit and so they informed the matter to the police.

6. Pawan Kalita (PW-19) was the then attached officer at Goalpara Police Station. He was informed verbally by both Kelvin and Pabitra regarding the discovery of a dead body and after making a G.D. Entry vide no. 09 dated 01/06/2009 (Exhibit-13) he went to the place where the newly dug pit was located. There he found one dao lying near the place and seized the same vide Exhibit-6 seizure list in presence of Kelvin and Pabitra. He also drew the sketch map (Exhibit-12) of that area and informed the officer-in-charge of Goalpara Police Station regarding discovery of a dead body. Hari Chandra Sarma (PW-20) was the then Officer-in-Charge of that police station. On receipt of the information he already instructed Pawan Kalita to investigate. And on being informed about the discovery of a dead body, Rohini Kumar Choudhury (PW-16)-who was at that time working as the Additional Deputy Commissioner at Goalpara-was contacted. He immediately rushed to the place of occurrence. In his presence, the dead body of

a medium built female aged about 30/32 years, half burnt over her upper part including her face was dug out and Rohini Kumar Choudhury conducted the inquest over the dead body in presence of Kelvin, Pabitra and Haripriya and submitted his report vide Exhibit-4 inquest report. He also deputed one Executive Magistrate Nayan Pathak to keep the dead body for 72 hours till it was identified and ordered him either to bury or burn the dead body thereafter.

7. Dr. Bhaskar Jyoti Baishya (PW-18) conducted the post mortem on the dead body of and found 64% - 2<sup>nd</sup> degree burn injuries in a decomposed state. According to his opinion Exhibit -11 Post Mortem Report, the victim died due to asphyxia and the burn injuries were ante-mortem in nature.

8. Kelvin, Pabitra and one Nareswar Rabha jointly lodged a First Information Report before the Goalpara Police Station on that day itself narrating the entire facts of discovery of the dead body which was registered as Goalpara Police Station case no. 174/09 under Sections 302/201 of the Indian Penal Code.

9. On 28/06/2009 Sub-Inspector Binay Kalita (PW-21) of Bhralumukh Police Station arrested one Shital Das (the sole accused) and brought him to Goalpara. According to him, Shital Das confessed of committing murder of Prativa and concealing her body at some place of Goalpara. When he was taken to Goalpara, Shital Das did show the place where he concealed the dead body of Prativa. It was the place where the dead body was found on 01/06/2009 by the locals. He also led the police to the place where he threw the vanity bag of Prativa and the same was seized by Binay Kalita vide Exhibit-7 in presence of her brother Chandan (PW-7) and Atul Rajbongshi (PW-8)-a tenant of Chittaranjan. Both of them accompanied Binay Kalita to Goalpara at the request of Binay Kalita when the dead body was recovered and the accused was arrested so that they could identify the dead body and affirm as to whether the dead body was that of Prativa's.

10. Chandan identified the articles seized by the police to be that of Prativa's and from the photographs taken of the dead body before being disposed of in absence of persons claiming the same, he also identified the dead body to that of his sister's i.e. Prativa's. In the vanity bag found under a culvert, one salwar, one dupatta and one golden lady's watch belonging to Prativa were found. Two mobile sets were also seized from Shital Das vide Exhibit-8 in presence of Kripa (PW-9).

11. On the basis of investigation and disclosure statement (Exhibit-15), Shital was arrested and his handwritings were taken for expert opinion. Those were examined by Mrigendra Narayan Bora (PW-17), Deputy Director, Questioned Documents Division, Forensic Science Laboratory, Assam. In his opinion (Exhibit-9), he has categorically stated that the person, who wrote the sample writings, also wrote the questioned writings. And this opinion was derived by comparing the styles, slants, movements, alignments, skill and spacing of the letters.

12. It may be worth mentioned herein that at the first sample of handwritings sent for opinion, no sufficient capital letters were found and hence as requested by him, Deputy Superintendent, Pandu Division, Guwahati City vide letter dated 15/07/2009 (Exhibit-10) forwarded fresh sample writings containing capital letters and the opinion was derived on examination and comparing those freshly received writings with the questioned writings found in the letter purportedly written and sent by Amit Saikia of Jorhat.

13. On completion of investigation, Binay Kalita (PW-21) submitted charge-sheet against Shital Das under Section 302 of the Indian Penal Code vide Exhibit-16 and sent for trial. However the trial court framed charges under Sections 364/302/201 of the Indian Penal Code. Shital Das abjured his guilt during the trial and in his statement under Section 313 of the Code of Criminal Procedure his plea was of complete innocence. He only admitted of seizure of two mobile sets by police vide Exhibit-8 and rests were all denied. After conclusion of the trial, the

trial court acquitted him of the charges, the same being not proved beyond reasonable doubt and being aggrieved, this appeal has been preferred by Prativa's father.

14. Upon carefully examining the materials available on the records and upon hearing the parties, we are of the considered view that the appeal deserves to be dismissed for want of sufficient evidence against accused Shital Das. Admittedly, this is a case where there is no direct evidence against Shital Das. The prosecution has tried to establish its story only on the basis of circumstantial evidence against him. The circumstances by which the prosecution tried to link Shital Das were having a love affair with Prativa and her refusal to marry him when he proposed, letter written by Shital to Prativa's father in the name of Amit Saikia after her missing, matching of his handwritings with those of samples taken in the hand of Shital, messages sent from the mobile of Prativa to her family, disclosure statement of Shital and extra-judicial confession made by him before police, Chandan and Atul Rajbongshi.

15. Although Chittaranjan and Mina deposed equivocally that Prativa had a love affair with Shital and he proposed her to marry which she refused, the same does not in any manner link Shital to the offence. The fact of having an affair has been denied by Shital although Ratna Choudhury (PW-10) and Aradhana (PW-11) had categorically corroborated this piece of evidence of Chittaranjan and Mina that she had an affair with Shital. Pratul (PW-14) had also stated that he heard that Prativa had an affair with some person named 'Das', but he could not identify Shital to that 'Das' and the principal of that school Jitender Kumar Singh (PW-12) also only deposed that he heard that Prativa had an affair with Shital. But not a single witness except Chittaranjan and Mina deposed that Shital proposed to marry Prativa and the latter refused. Not even the brother and sister of Prativa deposed to that effect. There is hardly any whisper that due to the refusal of his proposal,

Shital seeded a grudge against Prativa and so he had a motive to commit her murder. Although it is the evidence of Binay Kalita (PW-21) that he seized two mobile handsets from Shital vide Exhibit-8 and Kripa (PW-9) corroborated that piece of evidence, but neither Binay nor Kripa deposed that one of those handsets belonged to Prativa. Rather, it is the evidence of Binay that he did not find the mobile of Prativa. Shital could have possessed as many as mobile handsets as he desired to possess. It does not in any manner point the finger of guilt to him. Besides, Binay Kalita (PW-21) in his cross-examination had deposed that he arrested Shital on the basis of call records of mobile phone number. 97061-24495 and it is the evidence of Atul (PW-8) that this number was taken by him which he gave to Prativa for use as per her request. But there is no evidence that this SIM card was inserted in either mobile phones seized from Shital vide Ext-8 and Kripa (PW-9) also categorically deposed that she did not know which mobile handset was used to send messages from the SIM card used by Prativa. Besides, the prosecution had neither produced the call records nor proved the fact that one of those handsets was used for sending messages by inserting Prativa's SIM card. As Prativa had an affair with Shital, it was very natural for her to talk over mobile with Shital and the fact that she used to talk over mobile has also been clarified by the witnesses. Therefore, there is no concrete evidence to link Shital for sending the messages to the family members of Prativa after her missing.

16. So far, the matching of handwriting of Shital is concerned, it is the evidence of Mrigendra Narayan Borah (PW-17) that he matched the sample handwritings with the questioned handwritings after collecting the samples vide Exhibit-10 letter by which the samples containing capital letters purportedly written by Shital was obtained. However, Shital denied giving such samples in his statement under Section 313 of the Code of Criminal Procedure. Besides, the officer in whose presence such samples were taken and the officer who forwarded the same to Mrigendra Narayan Borah were not also examined by the prosecution. In absence

of such supporting evidence, it is totally unsafe to rely the opinion of the handwriting expert and base a conviction on such opinion alone. Even if the opinion is taken into reliance, then also it does not complete the missing link amongst the circumstances to relate Shital to the offence.

17. Atul (PW-8) had deposed that Shital made an extra judicial confession before him and Chandan that he committed murder of Prativa while he was taken by them along with the police at Goalpara and he also led them to the place where the dead body was discovered. He also deposed that on being so led by Shital, police recovered the articles of Prativa. But, Chandan had not corroborated the evidence of Atul to the effect that Shital confessed about his guilt and made such an extra-judicial confession. Besides, such a confession made before strangers that too in presence of police official is not admissible in evidence and hence cannot form the basis of conviction. So far disclosure statement (Exhibit-15) of Shital is concerned regarding the recovery of the vanity bag of Kavita, that too is also not sufficiently reliable as the same was found in open area under a culvert close to the place where the dead body of Kavita was discovered and was accessible by any person. It was not such a secret place that only Shital could have the knowledge and none else. Therefore, such a disclosure statement cannot form the basis of conviction where the other circumstances are not proved beyond reasonable doubt.

18. It is the evidence of Chittaranjan and Mina that Prativa went to school on the fateful day saying that she would go to New Delhi with Anuradha, which was out and out false as Anuradha denied such an event. Even Pratul denied that he told Mina that he dropped both Prativa and Anuradha at the airport although both Chittaranjan and Mina deposed so. Rather Pratul said that he saw Prativa in school and she requested him to bring an auto rickshaw and he was instructed by her to inform her family that she was going to the temple after the school hours which he

accordingly did. Not a single witness had deposed that he saw Shital going with Prativa. Therefore, there is no evidence that Shital took her with him. Shital was neither noticed by any person with Prativa later on also and he was only arrested on the basis of call records of Shital only. Although, it is the evidence that Prativa had an affair with Shital, but there is no evidence that Shital incubated some kind of grudge against her and there was no motive at all for him to commit such an offence. Besides, the disclosure statement is also doubtful and the so called extra-judicial confession made before Chandan and Atul in presence of police is also not admissible in evidence.

19. In view of the above, the circumstances against Shital have not been proved beyond reasonable doubt and the chain of circumstances is also not complete. It is no more res-integra that in a case based on circumstantial evidence, the independent facts and circumstances must be proved beyond reasonable doubt and the chain connecting those circumstances must be completed without any break and such chain of circumstances must point the finger of guilt to the accused only and none else. In the instant case, the same is lacking and hence, it is held that the prosecution has failed to prove the case against Shital beyond reasonable doubt. As such, the appeal has no merit and accordingly dismissed.

**JUDGE**

**CHIEF JUSTICE**

*skd*