



IN THE HIGH COURT OF SIKKIM

ORDER SHEET

CRIMINAL APPEAL.....No. 6 of 199/ 2003

SANJAY SUBHA.....*Potit/Indet*/Appellant



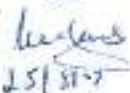
Versus

STATE OF SIKKIM.....Respondent

| Serial No. of Order | Date of Order | Order with Signature | Office Note as to action (if any) taken on Order |
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| 1. 30. | 6.2003 | <p>Present : Mr. N. Rai, Advocate for the appellant.</p> <p>Mr. N. B. Khatiwada, Public Prosecutor assisted by Mr. J. B. Pradhan, Adol. Public Prosecutor, for the state - respondent.</p> <p>--</p> <p>Heard Mr. N. Rai, learned Counsel appearing for the appellant.</p> <p>Admit the appeal.</p> <p>Call for the records.</p> <p>Mr. Khatiwada, learned Public Prosecutor accepts notice, and, as such, no formal notice is called for upon the state-respondent.</p> <p>Registry is directed to prepare paper book. It is made clear that as soon as the paper book is ready, and the related records from the court below are received, the appeal shall be listed for hearing.</p> <p style="text-align: right;"> <i>N. S. Singh</i> (N. S. Singh) Acting Chief Justice 30.6.2003 </p> | <p>Heard & trial Court called for on 1-7-03 <i>hills</i> 11/7/03</p> <p>The appeal is to be listed before the Division Bench</p> <p>B.O. <i>Thapa</i> 5.7.03</p> <p>Paper book is ready.</p> <p><i>Thapa</i></p> <p>The matter is to be listed on 11.8.03 for hearing</p> <p><i>Thapa</i></p> <p>Informed the Advs. through notice</p> <p><i>hills</i> 30/9/03</p> |

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| 2. | 11.8.2003 | <p>Heard learned Counsel for the parties.</p> <p>As requested, put up this case for hearing on 29.8.2003. In the meantime, Mr. Rai undertakes to supply English rendering of FIR.</p> <p>  (N. S. Singh) Judge 11.8.2003 </p> <p>  (R. K. Patra) Chief Justice 11.8.2003 </p> | <p>English Translation 3- FIR in English filed on 25/8/03 by Mr. N. Rai. Adm.  25/8/03</p> |
| 3 | 29/08/2003 | <p>The appellant stands convicted under Section 302 IPC and sentenced to undergo imprisonment for life and also to pay a fine of Rs.5000/- with a default clause by the judgment and order dated 26-4-2003 passed by the learned Sessions Judge, Special Division-II, Sikkim at Gangtok in CrI. Case No.5/2002.</p> <p>2. Today is the date fixed for hearing of this appeal. At the threshold of the hearing, Mr. N. Rai, learned counsel for the appellant brought to our notice that four witnesses namely PWs-16, 17, 18 and 19 were not at all cross-examined because of absence of the defence counsel. He submitted because opportunity to cross-examine those witnesses were not given to the appellant, the matter should go back for retrial. Learned Public Prosecutor fairly states that the appellant should be given an opportunity to cross-examine the above four witnesses.</p> | |



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5. Because of the aforesaid illegality committed by the learned Sessions Judge, the judgment and order passed by him are vitiated in law. We accordingly set aside the impugned judgment and order and remit the matter to the learned Sessions Judge, Special Division-II for limited trial only which means that PWs-16, 17, 18 and 19 should present themselves for being cross-examined by the appellant. The learned Sessions Judge is directed to issue fresh summons to those witnesses and Mr. Rai who is appearing for the appellant in this Court will appear before the learned Sessions Judge and will cross-examine those witnesses on the date fixed.

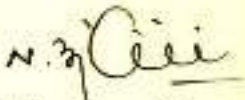
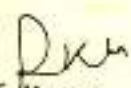
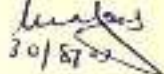
6. It may also be necessary to cross-examine the Investigating Officer as PWs-16 to 19 would be cross-examined by the defence. The cross-examination, if any, however will be limited to the purpose for which the matter is being remitted. The learned Sessions Judge thereafter shall hear the prosecution and the defence and dispose of the matter according to law. This exercise, however, may be completed within two months of the receipt of the lower Court's record.

7. Since the case is going back to the stage where the above illegalities crept in, the appellant shall remain in the same position as he was on 13-2-2003.



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| | | <p>3. It appears from the order dated 13-2-2003 that the defence counsel prayed for adjournment but the learned Sessions Judge took exception to it and refused adjournment. Consequently, the prosecution examined those witnesses. PW-16 is the Doctor who conducted autopsy over the dead body of the deceased. Some of the other witnesses out of the above four seemed to be seizure witnesses. As the appellant was denied the chance of cross-examining those witnesses, there was clear violation of principle of natural justice resulting in failure of justice. In the circumstances, the appellant should be given a fresh opportunity to cross-examine those witnesses.</p> <p>4. We somehow do not appreciate the manner in which the learned Sessions Judge dealt with the situation. If he thought that the defence was asking for adjournment on untenable ground, he should have immediately disengaged the defence counsel and engaged some other counsel in his place. The learned Sessions Judge was aware of the fact that the appellant was being defended on behalf of the Legal Services Authority. Therefore, he could have immediately taken up steps for engagement of some other defence counsel. The appellant, therefore, should not have been allowed to suffer from defending himself in the trial.</p> | |



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| | | <p data-bbox="381 381 1193 505">8. The appeal is accordingly disposed of with the above observations and directions.</p> <p data-bbox="381 529 1193 640">The lower Court records may be sent back forthwith.</p> <div data-bbox="462 652 771 874"><p> (N. Surjmani Singh) Judge 29-8-2003.</p></div> <div data-bbox="876 689 1112 874"><p> (R.K. Patra) Chief Justice 29-8-2003.</p></div> | <p data-bbox="1209 357 1615 652"><i>Trial Court record along with the order dt. 29.8.2003 forwarded to session Judge Sd/- Div. II on 20-8-03</i>  30/8/03</p> |