

THE HIGH COURT OF SIKKIM: GANGTOK

CRIMINAL APPEAL NO. 3 OF 2004

(Arising out of the judgment and order dated 29.4.2003 passed by Shri Tashi Bhutia, Sessions Judge, Special Division-II, Sikkim at Gangtok in Criminal Case no. 9 of 2002).

> Arjun Rai, S/o Lokpal Rai, R/o Rhenock Bazar, P.S. Rhenock. East Sikkim. (at present in Rongyek Jail,

> > Appellant

VERSUS

State of Sikkim

.... Respondent

For the appellant: Narendra Rai and Jyoti Kharka,

Advocates.

For the respondent: J. B. Pradhan, Public Prosecutor.

PRESENT: THE HONBLE SHRI JUSTICE R. K. PATRA, CHIEF JUSTICE. THE HON'BLE SHRI JUSTICE N. SURJAMANI SINGH, JUDGE.

Date of judgment: 23rd August, 2004.

JUDGMENT

R. K. PATRA, C.J.

This appeal is directed against the judgment and order dated 29.4.2003 passed by T.W. Bhutia, Sessions Judge, Special Division-II. Sikkim at Gangtok in criminal case No.9 of 2002 convicting the appellant under section 302 I.P.C. and sentencing him to undergo imprisonment for life and to pay a fine of Rs.5000/- (with a defaulting clause of imprisonment) for having committed the murder of his wife, Maya Rai.



2. The case of the prosecution is as follows:

The appellant at the material time was a police constable and was staying in a rented house with his wife and children at Burtuk. His landlady was Purnamaya Gurung (PW4). On 2.2.2002 in the evening at about 6 p.m. PW4 on hearing some noise like breaking of flower pots and banging of doors from the rented accommodation of the appellant came to find out as to what the matter was. On her arrival she found the door of the residence of the appellant was closed from inside and his children were outside and they were crying. PW4 knocked at the door and called the appellant but there was no response. Finding no other alternative she informed over telephone to the Sub-Inspector of Sadar Police Station, Gangtok, (PW1) to the effect that the appellant and his wife were quarrelling inside the house leaving their children outside. She requested him to send the police to the spot. On receipt of the said information PW1 made necessary entry in the station general diary and deputed Head Constable Pahalman Gurung, (PW2) and two other constables, Chandra Prasad Sharma, (PW3) and B.B. Tamang (PW5). On reaching they found that the door of the appellant's house was bolted from inside and one window of the house was open. The Head Constable (PW2) peeped through the window and saw the appellant lying on his cot and his wife lying on the floor of the house. He then called the appellant and asked him to open the door. When the appellant opened the door, PW2 went inside and found that the appellant's wife was lying on the floor dead having sustained multiple injuries on her body. PW2 by asking the other two constables PW3 and PW5 to stay there and guard the dead body

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returned to the police station and lodged the FIR Exhibit P-1. On the basis of the said FIR investigation was taken up and after its completion the appellant was placed on trial which has ended in his conviction as stated above.

- The plea of the appellant was one of denial.
- 4. To bring home the charge, the prosecution examined thirteen witnesses out of whom PW5 (constable), PW8 and PW9 (sons of the appellant) were simply tendered. There is no eye witness to the occurrence. The learned Sessions Judge has convicted the appellant on the basis of circumstantial evidence which consists of the fact that none was found in the house except the appellant sleeping on his bed with the door of the house closed and his wife lying dead on the floor with multiple injuries on her body.
- 5. PW11 is the doctor who conducted post-mortem examination on the body of the deceased. Exhibit P-5 is the post-mortem report. He detected the following injuries on the body:
 - 41. Contused abrasion red in colour in an area of 12 x 5 cms. over the right side of the face with the cuticle pealed off.
 - Healing abrasion 1 x .5 cms. with hard brown scab and surrounding bluish contusion over the bridge of the nose.
 - Contused abrasion red in colour 4 x 3 cms. over the left side of the forehead.
 - Healing abrasion .5 x .6 cms. on the left upper eye lid with soft brown scab.
 - Extra-vasation of blood in the left upper eye lid red in colour.

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- Multiple irregular contusions over the left side of the face and upper part of the neck, red in colour.
- Irregular contusion in an area of 6 x 5 cms, red in colour over the left shoulder.
- Multiple small abrasions red in colour over the right elbow.
- Healing contusion bluish in colour in an area of 7 x 5 cms. over the right forearm.
- Laceration 1 x 5 cms. with surrounding contused abrasion in an area of 5 x 3 cms. on the dorsum of the right hand, red in colour.
- Multiple small abrasions, red in colour over the left elbow.
- Multiple grazed abrasions, red in colour in an area of 20 x 6 cms. over the right hip.
- Multiple grazed contused abrasions red in colour mixed with healing abrasions with soft brown scab in an area of 20 x 8 cms. over the left lumber region posteriorly.
- Grazed abrasion red in colour in an area of 20 x 4 cms. over the left sacral region.
- Multiple haematomas over the scalp red in colour scattered over the occipital region."

According to him, the cause of death was shock as a result of multiple antemortem injuries caused by blunt force.

The doctor PW11 further stated that on 2.2.2002 Dr. T. Peggy,
Medical Officer on duty at STNM Hospital examined the appellant and
opined that he had consumed alcohol and was mildly under its effect.

There was no external injury on his person. Exhibit P- 6 is the medical
report concerning the appellant. From the above evidence of the doctor

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PW11, there can be no doubt that the wife of the appellant (hereinafter referred to as the deceased) had homicidal death.

6. The crucial question is who was the author of the crime. PW4 the landlady stated that on the day of the occurrence at about 6 p.m. after hearing some noise like breaking of flower pots and banging of doors from the rented accommodation of the appellant she rushed to the spot to find out as to what the matter was. On arrival she found the door of the house of the appellant was closed from inside and his children were outside and were crying. She called the appellant from the outside and knocked at the door but there was no response. She thereafter contacted the Sub-Inspector, Sadar Police Station (PW1) over telephone, informed him that the appellant and his wife were quarrelling inside the house and requested PW1 to send police to the spot. PW4 further deposed that within fifteen to twenty minutes, the police personnel arrived and arrested the appellant. The Sub-Inspector (PW1) deposed that on receiving the telephonic message from PW4 he deputed Head Constable PW2 and two other constables, PW3 and PW5. PW2 the Head Constable deposed that on being detailed by PW1 he along with two constables, PW3 and PW5 went to the house of the appellant. On arrival they saw that the door of the house was bolted from inside and one window was open. He (PW2) looked through the window and saw the appellant lying on his cot and his wife lying on the floor of the house. He called out the appellant and asked him to open the door. When the appellant opened the door he went inside and found that the appellant's wife was lying dead on the floor with multiple injuries on her body. He therefore asked the two

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other constables to remain at the spot and he himself came to the Police Station to lodge the F.I.R. PW3 the constable who was detailed along with the other constable (PW5) fully corroborated the evidence of PW2. He stated that PW2 went inside the house and came out and told them that the appellant's wife was lying dead inside. He further stated that he and the other constable PW5 looked inside the house from the window which was open and found the appellant's wife lying dead on the floor. The Investigating Officer (PW13) stated that on receipt of the complaint against the appellant he came to the place of occurrence. On arrival he found the door was bolted by the police personnel who were deployed by PW1. He (PW13) opened the door and went inside the house. He saw the appellant sleeping on the bed and the deceased lying on the floor near his bed.

7. From the narration of the evidence mentioned above, it may be seen that in the house there was none other than the appellant and the deceased. Presence of any third person in the house is fully excluded. When PW2 accompanied by PW3 and PW5 arrived at the spot within 15 to 20 minutes after reporting, they found there was none in the room except the appellant and the deceased who was lying dead on the floor having sustained multiple injuries on her body. The two children of the appellant, PW8 and PW9 were outside the house and were found crying. In the circumstances, the conclusion is irresistible that it was the appellant and appellant alone who assaulted the deceased inside the house leading to her death.

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- Counsel for the appellant contended that he had no intention to cause the death of the deceased nor was there any intention of causing such bodily injury to her as was likely to cause death. He submitted that the appellant was drunk and there ensued quarrel between him and the deceased and the appellant being infuriated assaulted her which ultimately caused her death. There appears to be force in his submission.
- 9. It is in the evidence of the doctor (PW11) that when the appellant was examined on 2.2.2002 by the Medical Officer Dr. T. Peggy, he noticed that he had consumed alcohol and was mildly under its effect. The evidence of PW4 is to the effect that she heard some noise like breaking of flower pots and banging of doors from the house of the appellant. Hearing the noise she came and found that the door of the house was bolted from inside. She knocked at the door but there was no response. The noise emerging from the house suggests that the appellant and deceased had some heated wordy duel between them and the appellant in a fit of anger following the sudden quarrel must have lost his self-control being intoxicated and assaulted the deceased leading to her death. There was no premeditation. The evidence on record does not suggest that he had any intention to cause her death nor did he intend to cause such bodily injury as was likely to cause death. But the knowledge of the appellant that by assaulting her in such a manner it was likely to cause death cannot but be inferred. For the reasons aforesaid we are inclined to commute the conviction under section 302 IPC to one under section 304 Part II I.P.C. The appellant is consequently convicted under section 304 Part II IPC.

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Considering the totality of circumstances, we are of the opinion that ends of justice would be met if he is sentenced to undergo rigorous imprisonment for four years. We order accordingly. The appellant is entitled to the benefit of set-off provided under section 428 Cr.P.C.

10. In the result the appeal is partly allowed.

(R. K. Patra) Chief Justice

I agree.

(N. Surjamani Singh)
Judge
23.8.2004

Dictation taken & typed by me Tshering Dolkar