



THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 25th OCTOBER, 2016

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.A. No.09 of 2016

Appellant : Mingur Dorjee Tamang,
Aged about 29 years,
S/o Shri Pratap Singh Tamang,
R/o 6th Mile,
Below Entel Motors,
P.O. & P.S. Ranipool,
East Sikkim.

versus

Respondent : State of Sikkim

Appearance

Mr. Ajay Rathi, Legal Aid Counsel for the Appellant.

Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with
Mrs. Pollin Rai, Assistant Public Prosecutor for the State.

J U D G M E N T

Meenakshi Madan Rai, J.

1. This Appeal has been filed assailing the Judgment and Order on Sentence of the Court of the Learned Sessions Judge, Special Division – II, East Sikkim, at Gangtok, both dated 19-12-2015, in Sessions Trial Case No.14 of 2013, convicting the Appellant under Section 326 of

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the Indian Penal Code, 1860 (for short the "IPC") and sentencing him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.25,000/- (Rupees twenty five thousand) only, with a default stipulation.

2. Although the appeal assailed the above, however, when the verbal arguments were advanced by Learned Counsel for the Appellant, he urged that he only sought to assail the sentence imposed by the Learned Trial Court and had no quarrel with the decision on merits. According to him, the convict is a young unmarried man about 29 years and has no criminal antecedents. That, the offence committed by the Appellant was his first and done on the spur of the moment in a fit of rage. That, if he is incarcerated in jail, his future would be completely ruined, as he would be languishing therein with hardened criminals, making it difficult for him to rehabilitate in society due to the stigma attached to such persons and also ruining his prospects for marriage. It was also prayed that this Court may extend a reformatory approach towards the convict instead of incarcerating him. It is thus prayed that the sentence of three years rigorous imprisonment imposed on the Appellant be set off against the period of imprisonment already undergone by him.

3. On the other hand, the arguments of Learned Additional Public Prosecutor were that, the conviction handed out by the Learned Trial Court, warrants no interference inasmuch as the Charge was

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initially framed under Section 307 of the IPC and thereafter, the Learned Trial Court on analysing the evidence on record, came to a finding that the offence committed instead amounted to one under Section 326 of the IPC. Thus, the imprisonment is commensurate with the offence and the sentence imposed ought not to be disturbed.

4. I have heard Learned Counsel for the parties and given due consideration to their submissions. Consideration has also been taken of the entire records of the case including the evidence of the witnesses. I have also perused the impugned Judgment and Order on Sentence.

5. What arises for consideration before this Court is, whether the prayer of the Appellant seeking setting off of the sentence by the period already undergone by him as an under-trial prisoner against the period of imprisonment imposed on him, i.e., three years rigorous imprisonment, can be considered and allowed.

6. In order to gauge this, we may briefly walk through the facts of the case. On 22-04-2013, at about 15.20 hours, at Namnang View Point, locally known as "Hurhuray Dara", near Assembly House, Gangtok, the Appellant assaulted the victim with a sharp cutting weapon over her body and face. An FIR was lodged by P.W.4 Dr. Maya Shilal, the Medical Officer on duty in the Emergency Ward of the STNM Hospital, where the victim was first evacuated following the assault. Based on the FIR, Sadar Police Station Case No.77 of 2013 dated 22-04-



2013, under Section 326 of the IPC was registered against the Appellant and the matter taken up for investigation.

7. During investigation, it transpired that the victim and the Appellant were childhood friends and their families were known to each other. From the year 2011, the victim and the Appellant were in a relationship, she was a Librarian in the Army Public School, Libing, Gangtok, while the Appellant was unemployed and often used to visit the victim's school and bother her. In March, 2013, due to his harassing behaviour, the victim ended their relationship. In the month of April, however, the Appellant again went to the work place of the victim and created nuisance, on which the victim fled from the school. The Appellant again went there on 22-04-2013, on which, the victim decided to complain about the matter to the Appellant's parents both of whom worked in the Sikkim Legislative Assembly and were aware of their relations. The victim and the Appellant boarded a taxi together and the victim met the Appellant's mother in her Office who suggested that they all go to "Hurhuray Dara" for a talk. There the victim requested her to counsel the Appellant to leave her alone. She also told the Appellant that she did not want to continue the relationship on which the Appellant in a fit of rage assaulted the victim repeatedly over her body with a sharp surgical blade which he was carrying with him.

8. The Charge-Sheet was submitted under Section 307 of the IPC against the Appellant. Subsequently, a re-investigation was

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ordered based on a representation made by the victim to the Director General of Police in August, 2013. The representation included a Discharge Certificate issued to her by the Medical Officer of the STNM Hospital and Orthopaedic and Physiotherapy Centre, Pradhan Nagar, Siliguri. The Discharge Certificate mentioned that multiple injuries have been sustained by the victim which were not reflected in the Medico Legal Examination Report submitted by P.W.4 Dr. Maya Shilal. After re-investigation, the Charge-Sheet remained as one under Section 307 of the IPC.

9. The Learned Trial Court after hearing the parties, framed Charge against the Appellant under Section 307 of the IPC and the Prosecution duly furnished twenty-five witnesses to establish its case beyond a reasonable doubt.

10. Of prime importance is the evidence of P.Ws 4, 5, 6, 7, 17 (also examined as P.W.22) and 20, the Doctors who examined the victim, besides the evidence of the victim, P.W.2 herself. The victim testified that, she and the Appellant came to know each other through their respective fathers, thereafter, they met on several occasions as they attended the same functions. In the year 2012, she joined the Army School as a Librarian where the Appellant started frequently stalking her. His visits to her school grew more frequent as did his obsession with her and she had to ask the employees of the school to remove him from her classroom. On 22-04-2013 also, the Appellant came to her

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school and she tried to reason with him, but he became enraged and tried to push her to a cliff near the Libing Helipad. Consequently, she decided to inform the Appellant's mother on which, she and the Appellant boarded the same taxi and reached the Sikkim Legislative Assembly where she met the Appellant's mother who invited her to go outside where they could discuss the matter freely and both of them walked towards "Hurhurey Dara" near the Sikkim Legislative Assembly. All of a sudden, the Appellant held her face from behind and started assaulting her by cutting her face. He then pushed her to the ground and started assaulting her on her face, the nape of her neck, left forearm and legs (around the shin and ankles) with a sharp cutting weapon on which she became unconscious. His mother did not assist the victim. The Police personnel during investigation recorded her Dying Declaration and she remained in hospital for 16-17 days, after which she was discharged. Due to the continuous swelling in her legs for about two weeks while she remained at home, she was taken to Siliguri to an Orthopaedic Clinic by her parents, where she was admitted and remained there for about twenty-four days. None of the above facts could be demolished in her cross-examination.

11. P.W.4 as already stated, was the Doctor in the Emergency Ward at the STNM Hospital, where the victim was brought at 3.50 p.m. on 22-04-2013, with a history of assault with a sharp weapon over her body. The witness admitted that although in her Medical Report she



had stated that there were multiple lacerated wounds, however, in actuality, the wounds were multiple incised wounds, which were found on the victim's face, left forearm, both legs and right ankle. After examination of the victim, she referred her to the General Surgeon as she was of the opinion that the wounds had to be sutured. She also referred her to the Orthopaedic Surgeon as she suspected that there was a tendon tear in her ankle. Besides the above, P.W.4 referred her to the Dental Surgeon since there were several oral injuries and bleeding in the mouth. On examining the Appellant, she found bruises over left thumb and middle finger. Her evidence remained untouched by the cross-examination.

12. P.W.5 was the Consultant Orthodontist who examined the victim. According to him, *"On my examination I found the following injuries: 1. A clean cut injury over left cheek. 2. Cut injury over lower border of mandible. The injuries were grievous because it was in the facial region which included disfigurement of the face. I along with the Maxillo Facial Surgeon, Dr. Norden Lepcha sutured the said cut injuries."*

13. Dr. Tashi Hoesar Bhutia, the Junior Orthopaedic Surgeon, at STNM Hospital was examined as P.W.6. As per this witness, the victim was forwarded to him for the repair of her ankle tendons. He accordingly examined her on 23-04-2013 when she was transferred to his Department and on that day, he prescribed antibiotics and painkillers.



He further stated that on 25-04-2013 the patient was taken to O.T. under spinal anaesthesia to repair the injured tendons which was found completely severed, namely, "*extensor hallicious longus*", "*tibialis anterior*", "*extensor digitorum longus*". All these tendons were repaired using 2-0 Prolene (a kind of suture material). He conducted thorough wound toileting (washing of wounds). The wound was closed using 2-0 silk for skin suturing. The leg was then immobilised under plaster of paris slab and the patient was transferred to the Ward.

14. Dr. Pemba T. Bhutia, P.W.7 the Chief Consultant and Head of Department of Orthopaedics, STNM Hospital in his evidence deposed that, the victim aged 27 years was brought to the Emergency Ward of the STNM Hospital on 22-04-2013 and kept in the Emergency Ward for one day. On 23-04-2013, she was shifted to the Orthopaedic Ward where he examined her and found that she had multiple cut wounds over her face and cut injury over her right ankle where she had extensor tendon injuries. Thereafter, on 25-04-2013, he along with his Junior Doctor repaired the injured tendons.

15. P.W.17, the Medico Legal Specialist who was later again examined as P.W.22 also vouched for the evidence of the other Doctors stated hereinabove. That, on 22-04-2013, he was present at the Emergency Ward at STNM Hospital at 3.45 p.m. to 3.50 p.m., when the victim was brought there with the history of assault. She was immediately taken to the Trauma O.T. for further management. Since



there was many other patients at that time, he went over to the Trauma O.T. and found that the victim was conscious and was responding and had multiple injuries on her face, hand and lower trunk which were all bleeding profusely. The Surgeon had arrived there and had started working on her vitals and her wounds which were in plenty and mostly on the left side of her face, hand and lower limbs. The margins of wounds were clean cut with no sign of any contusions and abrasions, neither did the wounds have signs of any bridging and were all bleeding. On his examination, he formed an opinion to the extent that the injuries caused by light sharp edged weapon and all the injuries were grievous in nature. In cross-examination, the witness has opined that the injury would have caused death had there not been timely medical intervention. That, on 22-04-2013, Dr. Kinchok Bhutia examined the victim and found severe ENT bleeding with multiple incised injury over different parts of her body and the patient was in a state of shock. He started his treatment and also sent urgent calls to the Orthopaedic and Oral Maxillo Facial Surgeon to attend to the patient. To a suggestion, under cross-examination that, the injuries could be self-inflicted, the Doctor opined that all the injuries on the body of the victim could not be self-inflicted as the injuries were deep and multiple.

16. The evidence of P.W.20, Dr. Norden Lepcha, also assumes importance as he was the Maxillo Facial Surgeon to whom Dr. Sandeep Pradhan P.W.5 had referred the victim for medical examination. On

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examining the patient, he found multiple sutured laceration over *pan facial region* and *upper and lower extremities* (legs and hands). The patient was responding, but in hypovolemic shock due to injuries. No bony facial injuries were detected. He then shifted the patient to the Orthopaedic Section and repaired the wounds by step sutures by giving layer wise closure followed by subcutaneous sutures with 5.0 prolene.

17. None of the evidence of the witnesses given in chief were demolished despite the gruelling cross-examination each of them were subjected to. All of the above evidence would indicate the culpability of the Appellant. The evidence of each witness has supported the evidence of the other with regard to the injuries on the victim which without a shred of doubt were grievous. The evidence of P.W.2 is duly corroborated by the evidence of all the Doctors as discussed hereinabove.

18. Since the challenge is only to the sentence, I do not deem it essential to embark on a protracted discussion on the merits of the case. The penalty imposed is a consequence of the horrific act of an adult male on a hapless female merely because she sought to end her relationship with him. It is indeed outrageous that a man can physically attack a female with a weapon merely because she has a mind of her own and decided to exert it. The attack commenced as an act of cowardice when the Appellant attacked her from behind rendering her

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completely defenceless. He has disfigured her, scarring her not only physically, but mentally as well. Contrary to his apprehension that his marriage prospects could be ruined by incarceration, I find that his entire intention when he inflicted the injuries pivoted around ruining her marriage prospects. From a consideration of the totality of the circumstances and evidence, I find that the sentence handed out by the Learned Trial Court is indeed commensurate to the offence and, therefore, brooks no disturbance.

19. Consequently, the Appeal fails and is accordingly dismissed.

20. The Appellant shall surrender forthwith before the Court of the Learned Sessions Judge, Special Division – II, East Sikkim, at Gangtok, to undergo the sentence imposed on him by the impugned Order on Sentence, duly setting off the period of imprisonment already undergone by him during investigation and as an under-trial prisoner.

21. In terms of The Sikkim Compensation to Victims or his Dependents Schemes, 2011, as amended in 2013, a sum of Rs.3,00,000/- (Rupees three lakhs) only, be made over to the victim by the Sikkim State Legal Services Authority (for short "SSLSA").

22. No order as to costs.



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23. Copy of this Judgment be sent to the Learned Trial Court along with Records of the Court, and to the Member Secretary, SSLSA, forthwith for information and compliance.

Sd/-
(**Meenakshi Madan Rai**)
Judge
25-10-2016

Approved for reporting : **Yes**

Internet : **Yes**