



**HIGH COURT OF SIKKIM, GANGTOK**  
(Criminal Appellate Jurisdiction)

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**D.B.: HON'BLE SHRI SUNIL KUMAR SINHA, C.J. &  
HON'BLE MRS. MEENAKSHI MADAN RAI, J.**  
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**Crl. A. No. 15 of 2015**

Shri Gandip Prasad,  
Son of late Lalan Prasad,  
Resident of : Rangpo Bazar,  
East Sikkim.

At Present : Rongyek Jail

... **Appellant.**

**Versus**

State of Sikkim.

... **Respondent**

**Appeal u/ S. 374 of the Code of Criminal Procedure, 1973.**

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**Appearance :**

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chettri,  
(Legal Aid Counsel) and Ms. Malati Sharma, Advocate for  
the Appellant.

Ms. Pollin Rai, Assistant Public Prosecutor for the State.  
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**J U D G M E N T**

(05.04.2016)

Following Judgment of the Court was delivered by  
**SUNIL KUMAR SINHA, CJ.**

1. This Appeal is directed against the Judgment dated  
31.03.2015 passed in Sessions Trial Case No. 02 of 2014 by the



Sessions Judge, South Sikkim at Namchi. By the impugned Judgment, the Appellant has been convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.50,000/- with default sentence of SI for one year.

2. In all, two accused persons were prosecuted. The Appellant herein (A-1) was prosecuted u/ Ss. 302/498-A IPC whereas, his mother, Girja Devi (A-2) was prosecuted u/ Ss. 302/109 & 498-A/109 IPC.

3. Deceased, Kalawati Devi, was wife of the Appellant (A-1). The case of the prosecution is that both the accused persons (A-1 and A-2) used to treat her with cruelty and Kalawati was not happy in her matrimonial house. On 28.10.2013 at about 0930 Hrs. the Appellant and the deceased both were seen together on the Jholungay bridge over Teesta river. All of sudden the Appellant forcefully took deceased into his lap and threw her into river Teesta, in which the water level was very high and the height between water level and bridge was about 50 – 60 feet.

4. The incident was witnessed by five eye witnesses, namely, Renu Chettri (PW-6), Bhim Bdr. Subba (PW-7), Sancha Raj Subba (PW-8), Prem Kumar Rai (PW-9) and Suraj Gurung (PW-11). Renu Chettri (PW-6) immediately gave telephonic information to ASI D.N. Rai (PW-10), who was In-charge of



Mamring Police Outpost of Namchi Police Station. Mr. D.N. Rai (PW-10) reduced it in writing (Exhibit-5) and forwarded the same to Namchi Police Station and a formal First Information Report (FIR Exhibit-6) was registered u/ S. 307 IPC.

5. Later on, at about 1300 Hrs. Munna Lal Prasad (PW-14), uncle of the Appellant, received information that dead body of one female was seen at 12<sup>th</sup> mile near village Mangchu. He immediately rushed there and identified that it was the dead body of the deceased, Kalawati Devi. He gave a written report (Exhibit-14) to the Officer-in-charge, Rangpo Check-post (under Kalimpong Police Station). Thereafter, inquest (Exhibit-10) was drawn at about 1405 Hrs. The dead body was then sent for post mortem examination, which was conducted by Dr. Prasenjit Biswas (PW-13), who submitted his report (Exhibit 15) and opined that the cause of death was drowning in fresh water, which was ante-mortem in nature.

6. The case of the prosecution was based on the eye witnesses' account of PW-6, PW-7, PW-8, PW-9 and PW-11. Learned Sessions Judge relied on the testimonies of these eye witnesses and held that it was proved beyond all reasonable doubts that the Appellant had forcefully thrown his wife into river Teesta, with the intention of causing her death, therefore, he was liable for punishment u/ S. 302 IPC. The Appellant, thus, was



convicted and sentenced as above. However, he was acquitted of the charges framed u/ S. 498-A. The second accused (A-2) was also acquitted of all the charges framed against her. The Appellant has challenged his conviction by filing this Appeal.

7. Mr. N. Rai, learned Senior Advocate appearing on behalf of the Appellant, has argued that the eye witnesses were not reliable as they had seen the incident from a distance of about 30 feet and some of them had admitted that they could not identify the Appellant at the time of commission of offence. The said argument cannot be accepted after going through the entire evidence of the eye witnesses. Renu Chettri (PW-6) has deposed that he had clearly seen the Appellant lifting the deceased and throwing her into the water. At that time, the water level of the river was very high. Though, two of his friends, namely, Sancha Raj Subba (PW-8) and Prem Kumar Rai (PW-9) tried to save the deceased by throwing a bamboo towards her, she could not catch the bamboo and ultimately had swept away in river current. Thereafter, they caught the Appellant on the spot itself and brought him to Mamring Police Outpost. Renu Chettri (PW-6) has been duly corroborated by the remaining eye witnesses, i.e. PW-7, PW-8, PW-9 and PW-11, who all were present at the time of the incident and had seen the incident from a distance of about 30 feet. As noted above, it was a day time incident of about 0930 Hrs, so it cannot be held that in normal circumstances the



witnesses sitting at a distance of 30 feet would not be able to see it. So far as the argument of identification of the Appellant as a person who threw the deceased in the river is concerned, the same is meaningless because the eye witnesses have deposed that they immediately rushed to the place of occurrence i.e. on the bridge and caught that person who threw the lady (deceased) into the water, who was none else than the Appellant. Thus, this is a case in which the Appellant was caught red-handed at the place of occurrence itself by as many as five eye witnesses, who handed over him to the concerned Police Outpost. We find that the versions of the eye witnesses are duly corroborated by the FIR (Exhibit-5) which was recorded by Mr. D.N. Rai, In-charge, Mamring Police Outpost. It was a prompt FIR lodged telephonically, which contains the name of the Appellant as the sole culprit of the crime.

**8.** Mr. Rai then contended that the dead body which was recovered by the police was not identified to be that of the deceased. The argument appears to be fishy. The Appellant (A-1) is the nephew of Munna Lal Prasad (PW-14), who deposed that on coming to know about the deceased having been swept away by river Teesta and her dead body was found near Mangchu village, he had lodged a report (Exhibit-14) before the Officer-in-charge of Rangpo Check-post (under Kalimpong Police Station). He had proved the report (Exhibit-14) and had also proved his signature



(Exhibit-14[a]). If we look into the contents of Exhibit-14, it would be clear that on 28.10.2013 at about 1300 Hrs. Munna Lal (PW-14) heard about discovery of the dead body of one female on the bank of river Teesta, near village Mangchu. He went there immediately and after seeing the dead body he identified that it was the dead body of the deceased Kalawati Devi and then only he lodged the report Exhibit-14. Not only this, he was also a witness to inquest, which was conducted on the dead body of the deceased at about 1405 Hrs on the same day. It contains that he lodged the report in the said Police Check-post in which he had identified the deceased. Thus, there is no material to show that the dead body of the deceased was not identified.

9. Mr. Rai has also contended that the Doctor mentioned in the post mortem report that no product of conception was detected, whereas, the deceased was carrying pregnancy of three months, therefore, the entire post mortem report as well as identity of the deceased becomes doubtful. Dr. Prasenjit Biswas (PW-13) in his cross-examination has admitted that there was nothing to suggest that the deceased was pregnant at the time of death. But he added that he had collected viscera along with complete uterus for its examination, which report was not before him while preparing the post mortem report, therefore, the post mortem report was not complete, meaning thereby that if the viscera report would have been brought on record then the report



of the contents of uterus would have shown the pregnancy and then it could have been opined that the deceased was carrying pregnancy. Moreover, merely on this account the evidence relating to physical identity of the deceased by the uncle of the Appellant, Munna Lal Prasad (PW-14) cannot be ignored. He has clearly stated that he had identified the dead body to that of the deceased and then had lodged a report (Exhibit-14) in Rangpo Check-post under the Kalimpong Police Station. We have no reason to disbelieve the testimony of Munna Lal Prasad, who is a close relation of the Appellant. We find from the records that not a single question was asked from Munna Lal Prasad and his entire evidence which he deposed in examination-in-chief in the above manner remains fully intact.

**10.** Mr. Rai has lastly contended that it was a case of suicide as the deceased jumped into the river on her own. The said argument of Mr. Rai cannot be accepted in light of the evidence of the above eye-witnesses, who clearly deposed that the deceased was caught by the Appellant and then was forcibly thrown by him, over the railing of the bridge which was of 3 feet height, into the deep water of the river. The versions of the eye-witnesses from whom nothing adverse could be elicited in their cross-examinations, clearly nullify the element of suicide as argued by Mr. Rai.



11. For the forgoing reasons we do not find any substance in the Appeal. It is, accordingly, dismissed.

Sd/ -  
**Judge**  
05.04.2016

Sd/ -  
**Chief Justice**  
05.04.2016

Approved for Reporting : Yes/ ~~No~~.  
Internet : Yes/ ~~No~~.

jk