



THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 3rd JUNE, 2016

D.B. : HON'BLE MR. JUSTICE SATISH KUMAR AGNIHOTRI, JUDGE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.A. No.25 of 2015

Appellant : Chuden Tamang,
Aged about 29 years,
S/o Bhim Bahadur Tamang,
R/O Pakshep Mangan,
North Sikkim.
[Presently in Central Prison,
Rongyek, East Sikkim]

versus

Respondent : State of Sikkim

Appeal under Section 374(2) of the
Code of Criminal Procedure, 1973

Appearance

Mr. B. K. Gupta, Advocate (Legal Aid Counsel) for the Appellant.
Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with
Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Public Prosecutors
for the State-Respondent.

J U D G M E N T

The following Judgment of the Court was delivered by

Meenakshi Madan Rai, J.

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1. Aggrieved by the Judgment and Order on Sentence of the Learned Sessions Judge, North Sikkim, at Mangan, dated 28-08-2014, in S.T. Case No.01 of 2013, convicting the Appellant under Section 302 of the Indian Penal Code, 1860 (for short "IPC"), and sentencing him to undergo rigorous imprisonment and to pay a fine of Rs.2,000/- (Rupees two thousand) only, the instant Appeal has been preferred.

2. While assailing the impugned Judgment and Order on Sentence, it was contended by Learned Counsel for the Appellant that, the Learned Trial Court failed to appreciate that as per the evidence of P.W.2, the Appellant had slit the throat of the deceased, to the contrary in the Autopsy Report, Exhibit 8, does not reveal this aspect. The FIR, Exhibit 2, does not disclose the name of the Appellant and that evidence of P.Ws 2, 3 and 4 allegedly eye-witnesses, do not corroborate. It was urged that no finger prints were lifted from M.O.IV, the alleged weapon of offence, to substantiate that it was the Appellant who had used it for committing the offence. That, for want of sufficiency of evidence, the benefit of doubt ought to be extended to the Appellant hence the impugned Judgment and Order on Sentence be set aside.

3. Repudiating the stance of the Appellant, it was submitted by Learned Additional Public Prosecutor that P.Ws 2, 3 and 4, the ocular witnesses to the offence have corroborated each

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other's evidence. Laying stress on the evidence of P.W.19, the CFSL Expert, he contends that on examination of the blood sample of the deceased, M.O.II, for blood grouping the sample was found to be of the Blood Group 'A' thereby establishing the Blood Group of the deceased. Blood Group 'A' was detected in Exhibit 'C' (M.O.IV) the weapon of offence used by the Appellant to murder the victim. The clothes of the victim M.O. VIII, M.O.IX and M.O.X also contained blood of the Group 'A' confirming the fact that her Blood Group was 'A'. The same blood was found not only on the weapon of offence M.O.IV but also on the wearing apparels of the Appellant, being M.O.V and M.O.VI, the Jeans and T-shirt worn by him at the time of the incident, leading to the inevitable conclusion that the Appellant had committed the offence. Hence, the impugned Judgment and Order on Sentence brooks no interference.

4. We have carefully considered the rival contentions raised by Learned Counsel before this Court and have also carefully perused the entire evidence and documents on record, including the impugned Judgment and Order on Sentence. What falls for determination by this Court is whether the Appellant committed the offence under Section 300 of the IPC, punishable under Section 302 of the IPC.

5. In order to reach a finding on this aspect, it is necessary to briefly state the Prosecution case, which is that P.W.1 Gazam

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Lepcha, Panchayat Member of Kazor Ward, Mangan GPU, received telephonic information from Yankee Lepcha, wife of P.W.10, on 17-11-2002 at around 4.30 p.m., instructing her to verify as to whether some person was being killed in her house. P.W.1 lived about 5/6 steps away from the house of Yankee Lepcha and accordingly went to the place of occurrence (for short "P.O."). Once at the P.O, she found a familiar lady lying in a pool of blood, in the kitchen of Yankee Lepcha's house. While coming out from the P.O. she saw the Appellant sitting near the shop of P.W.2, with his hand wrapped in a piece of blood soaked cloth. Accordingly, at 5.10 p.m., she lodged a written FIR, Exhibit 2, which was registered and taken up for investigation.

6. Investigation revealed that the Appellant on the same afternoon, at around 1530 hours, saw the victim his wife, near Pakshep View Point, coming with an unidentified person, who on seeing the Appellant reportedly retracted his steps. This aspect, however, could not be established by investigation. The Appellant tried to persuade his wife to return to him, which she evidently refused. The Appellant in a fit of rage picked M.O. IV from the Butcher's Shop belonging to P.W.4 and attacked his wife on her neck in front of the "Pan Shop" of P.W.2. To protect herself the victim ran into the kitchen of P.W.10 where the Appellant followed and assaulted her, several times with M.O.IV, inflicting multiple incised

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injuries on her head and upper limbs as a result of which she died in a pool of blood at the P.O. The incident was witnessed by P.W.3 and P.W.4 who by then had reached the P.O. on hearing the commotion. P.W.3 pulled the Appellant out of the kitchen and dragged him to the road side. On completion of investigation, Charge-sheet was accordingly filed under Section 302 of the IPC against the Appellant. The Material Objects (MO's) were forwarded to CFSL, Kolkata, for examination and opinion and supplementary Charge-sheet submitted on its receipt.

7. The Learned Trial Court after hearing the submissions advanced by Learned Counsel for the opposing parties found *prima facie* material to frame charge under Section 302 of the IPC to which the Appellant pleaded "not guilty" and claimed trial. The Prosecution thereafter furnished nineteen witnesses. After considering and analysing the evidence, the Learned Trial Court convicted the Appellant as detailed hereinabove.

8. While carefully considering the evidence on record, it is clear that P.W.1 on receiving information of the incident from the wife of P.W.10 immediately went to the P.O. and thereafter lodged the FIR. The lodging of the FIR is duly supported by the evidence of P.W.18, the I.O. of the case, who submitted that P.W.1 lodged the FIR around 5.10. p.m. P.W.2, is the first witness to the offence and according to her, when the victim had come to her shop at around 4

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p.m. on the same day and was enquiring from her about the price of socks, the Appellant came and slit the throat of the victim. It is the case of Learned Counsel for the Appellant that this witness had admitted that she did not see any knife with the Appellant but still she witnessed the Appellant slitting the throat of the deceased which appears to be improbable. While giving this argument due consideration and even if one is inclined to disregard the evidence of P.W.2, in view of Exhibit 8 which does not list any cut injury on the throat of the victim, there is no doubt that P.W.3 and P.W.4 witnessed the incident in the kitchen of the house of P.W.10. P.W.3 has testified that at the relevant time he saw some people running towards the road and shouting, he followed them to verify the reason. When he reached the Pan Shop of P.W.2, he was informed by her that the Appellant had murdered his wife in the kitchen of the house of P.W.10. On looking downwards, he saw that the door of the said kitchen was open and the Appellant with blood stained hands was emerging from the kitchen and again trying to re-enter the same place. P.W.3 went towards the kitchen where he saw the dead body of the victim lying on the floor. He rebuked the Appellant telling him he ought not to have committed the offence to which the Appellant responded by saying that he would not allow the deceased to belong to anyone else as she could not belong to him either. Saying so, he lifted the knife and in the presence of P.W.3 once again assaulted the deceased with the knife, on her head. The knife, i.e.,

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the weapon of offence was identified by P.W.3 as "M.O.IV", which fell off the hand of the Appellant when P.W.3 was dragging him out of the P.O.

9. The evidence of P.W.4 substantiates and supports the evidence of P.W.3 since he too arrived at the P.O. where he saw the Appellant chopping the deceased, using M.O.IV. According to him, although he tried to intervene and pull the Appellant from the scene, he was unsuccessful. Despite incisive cross-examination of P.W.3 and P.W.4 by Learned Counsel for the Appellant before the Learned Trial Court with regard to the identity of M.O.IV, both the witnesses stood unwaveringly by their statements. The seizure of M.O.IV by the Police was witnessed by P.W.4 in the presence of P.W.6, who also identified M.O.IV as the same dagger seized by the Police on the relevant day from the P.O. Apart from seizure of M.O.IV, P.W.6 and P.W.1 also witnessed the seizure of M.O.I, the hair strands of the deceased; M.O.II, the blood sample of the deceased lifted by the Police from the kitchen of the house of P.W.10; M.O.III, broken pieces of blood stained glass bangles of the deceased and M.O.VII the amputated middle finger of the left hand of the deceased. The fact of seizure of M.O.V, blue jeans pant and M.O.VI, red coloured T-shirt, worn by the Appellant is vouched by the evidence of P.Ws 5 and 8 and P.W.15 in whose presence the seizures were made by the Police. Although P.Ws 6, 7, 8, 9 and 10, the

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villagers of the area did not witness the incident, nevertheless they reached the P.O. after the incident had occurred. With the exception of P.W.7, the others had seen the body of the deceased at the P.O. and had also seen the Appellant at the P.O., thereby lending credence to the Prosecution case.

10. Having said that, it is not necessary to delve in detail into the evidence of P.W.13, Dr. O.T. Lepcha who conducted the Autopsy of the deceased and prepared Exhibit 8, the Autopsy Report. Suffice it to say that he has opined that *"the cause of death to the best of his knowledge and belief was due to multiple homicidal chopped wounds of severe nature"*. The evidence of this Doctor also supports the Prosecution case. P.W.14 was the Consultant Psychiatrist who examined the Appellant but found him to be of sound mind. In consideration of this evidence, the Appellant cannot claim the benefit of Section 84 of the IPC, which argument to be fair, was not even put forth by Learned Counsel for the Appellant. It may be recorded here that the offence committed by the Appellant does not fall within the ambit of the Exceptions to Section 300 of the IPC. The evidence of P.W.19 on pain of repetition, points to the fact that the wearing apparels of the Appellant, being M.O.V and M.O.VI, contained blood of the Blood Group 'A', which has been established to be the Blood Group of the deceased, thereby clinching the Prosecution case.



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11. In the end result, we are of the considered opinion that the Prosecution evidence put forth is clear, cogent, trustworthy and inspires the confidence of this Court proving beyond a reasonable doubt that the Appellant had committed the murder of his wife.

12. Consequently, the impugned Judgment and Order on Sentence passed by the Learned Sessions Judge calls for no interference by this Court.

13. The Appeal stands dismissed.

14. No order as to costs.

15. Copy of this Judgment be sent to the Learned Trial Court.

16. Records of the Court below be remitted forthwith.

(Meenakshi Madan Rai)
Judge
03-06-2016

(Satish Kumar Agnihotri)
Judge
03-06-2016

Approved for reporting : **Yes**

Internet : **Yes**