



THE HIGH COURT OF SIKKIM : GANGTOK

CRIMINAL APPEAL NO. 1 OF 2004

(Arising out of the judgment dated 2.3.2002 and order dated 26.3.2002 passed by Shri S.W. Lepcha, Sessions Judge (E&N), Gangtok in Criminal Case no. 1 of 2001).

Passang Tamang,
S/o Late Dalman Tamang,
R/o Rongong,
North Sikkim.
(at present in Rongyek Jail,
Gangtok)

.... **Appellant**

VERSUS

State of Sikkim

.... **Respondent**

For the appellant : S. S. Hamal, Advocate.

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

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

Last date of hearing : 22.07.2004


Date of judgment: 10th August, 2004.

J U D G M E N T

R. K. PATRA, C.J.

Being felt aggrieved by the judgment dated 2.3.2002 and order dated 26.3.2002 passed by Shri S.W. Lepcha, Sessions Judge (East & North), Gangtok in criminal case no. 1 of 2001 convicting the appellant under section 302 IPC and sentencing him to undergo imprisonment for

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life and to pay a fine of Rs.5,000/- (with a defaulting clause of sentence) and under section 201 IPC sentencing him to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- (with a defaulting clause of sentence) he has filed this appeal.

2. The prosecution case briefly stated is as follows:

The appellant is a resident of Phodong busty in North district of Sikkim. He has a house in the said busty. He has been staying there with his wife Pashi Doma (PW3). He had rented out one room of his house to Tenzing Sherpa alias Mingma Appa (hereinafter referred to as the deceased). On 18.8.2000 evening the appellant and his brother-in-law Balu Sherpa (PW1) took some drinks in a local restaurant and both of them returned to the house of the appellant around 9.15 p.m. They found the door of the room of the deceased open and the lights and the radio were on. The deceased was found sleeping with his face turned towards the wall. After taking dinner, the appellant offered drinks to PW1 to which the latter declined. The appellant told PW1 that the deceased might require some drinks and accordingly he went to his room to offer drinks. To his surprise the deceased was not in the room. He noticed the room and the bed of the deceased were splattered with blood. The appellant accordingly came back and informed PW1 that the deceased was not in his room. He suggested that they

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should look for him. Both the appellant and PW1 went to the house of their neighbour Gurung Saila and enquired if the deceased had come to him. When the neighbour answered in the negative they went to the hospital but did not find the deceased there too. Thereafter, they went to the other villagers and enquired if they had seen the deceased. They even went to the maize field but did not get trace of the deceased. The appellant however continued his search and ultimately on 20.8.2000 found the dead body of the deceased near the river Phodong Khola. By that time the police had arrived at the spot. After holding inquest, the police sent the dead body to the hospital for autopsy. After completing investigation, the appellant was placed on trial leading to his conviction and sentence as mentioned above.

3. In order to bring home the charges against the appellant, the prosecution examined fifteen witnesses.

4. The plea of the appellant was one of denial.

5. There is no eye-witness to the occurrence. The learned Sessions Judge has found the appellant guilty of the offences punishable under sections 302 and 201 IPC on the following circumstantial evidence:

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- (i) The deceased was a tenant under the appellant who was living in the room adjoining the room of the latter.
 - (ii) The appellant was last seen with the deceased on 18.8.2000.


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- (iii) The appellant's statement that the fingerprints and the weapon of offence would put him in trouble and therefore it should be either concealed or thrown away.
 - (iv) Bloodstains were found in the room of the deceased.
 - (v) The appellant absconded from the village.
 - (vi) Recovery of the weapon of offence from the cardamom field at the instance of the appellant.

6. The learned counsel for the appellant contended that the prosecution has not been able to prove each link in the so-called chain of circumstances and therefore the conviction of the appellant is vulnerable. Shri J.B. Pradhan, learned counsel for the prosecution submitted that the conviction is well founded.

7. There is no dispute that the deceased had homicidal death. PW14, the doctor who conducted the post-mortem examination of the dead body of the deceased found the following ante-mortem injuries.

1. Incised wound 3 x 3 cms. on the upper part of abdomen and lower part of the chest wall as a result intestine were out.
2. Bruises 2 x 2 cms. on both knees.
3. Lacerated injuries 3 x 2cms. on the top portion of the head.


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The cause of death, according to the doctor, was shock resulting from the ante-mortem haemorrhage due to



multiple ante-mortem injuries inflicted by a light sharp-cutting weapon.


8. Let us now examine other evidence available on record. PW1 is the brother-in-law of the appellant, the latter having married his cousin sister. PW1 stated that in the evening of 18.8.2000 he and the appellant had a few drinks along with their friends in a local restaurant and returned to the house of the appellant at about 9.15 p.m. On arrival, they noticed that the door of the room of the deceased was open. The lights in the room were on and the radio was also playing. The deceased was found sleeping with his face turned towards the wall. PW1 and the appellant took dinner. The appellant offered drinks to PW1 to which the latter declined. The appellant told PW1 that the deceased might be in need of drinks and accordingly he went to his room. Within two to three minutes he returned saying that the deceased was not in the room and that the room and his bed were found splattered with blood. The appellant thereafter went out in search of the deceased along with PW1 but his whereabouts could not be located. In the cross-examination of PW1 it was brought out that he did not enter the room of the deceased and was not able to identify if the person who was found sleeping facing towards the wall was the deceased himself. He admitted that the person found lying on the bed was wearing a cap and he had covered his

PW1




face with a blanket. This being the evidence, it cannot be said that PW1 found the deceased sleeping in his room at the relevant time. PW2 is the sister-in-law of the appellant. She stated that in the previous year the appellant and PW1 came to her house and enquired if the deceased had come to her. She replied them in the negative. Thereafter, they went away. Later they informed her that despite their best efforts the deceased could not be traced. PW2 further deposed that when she went to the room of the deceased she found drops of blood on the floor of the room. She picked up a knife which was stained with blood. A small piece of flesh was also stuck on the tip of the knife. She identified exhibit I to be the said knife. In her cross-examination, she stated there were a few drops of blood in the room of the deceased and not a pool of blood. The deceased was, according to her, very much upset after the death of his wife and used to remain weeping throughout the night. PW3 is the wife of the appellant. She was declared hostile. Nothing substantial is brought out in her evidence to implicate the appellant with the commission of the offence. She deposed that the deceased was suffering from tuberculosis. PW4 is a co-villager of the appellant. He stated that PW1 informed him that the deceased who was the tenant of the appellant was missing. PW4 on being requested joined the search party but they could not find the deceased anywhere. He further

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stated that when he entered the room of the deceased he noticed drops of blood on the floor. The appellant and PW2 discovered one knife in the room. In his cross-examination he stated that the deceased was suffering from tuberculosis and he used to vomit blood. PW5 stated that on 20.8.2000 the appellant made a statement at the police station to the effect that he had hidden the weapon of offence in the ceiling of his house. In the evening when they searched they could not find it in the ceiling of the house. The appellant later took them to the cardamom field below his house where the knife was found. PW6 is a member of the local panchayat. She stated that the appellant came on 19.8.2000 and informed her that the deceased was found missing from his rented room. PW7 stated that on 20.8.2000 the appellant came to his shop and purchased one torchlight. PW8 stated that on 20.8.2000 the appellant came and asked for a loan of Rs.1,500/-. As he had no money with him, he could not advance any amount to the appellant. PW9 stated that on 19.8.2000 at about 7 a.m. when he had gone to the house of PW6, the appellant dropped in and informed him that his tenant, the deceased was missing and not found in his room. PW10 is one of the persons who joined the search party. He stated that on 20.8.2000 the dead body of the deceased was spotted by the side of the river Tarman Khola. PW11 is a villager of Chungthang. He stated that about four to five


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months prior to the incident the deceased had kept his daughter with him. His evidence does not throw any light on the prosecution case. PW12 is a resident of village Lingdom. There is nothing in his evidence to implicate the appellant in the commission of the offence. PW13 stated that the appellant who is his brother-in-law had spent one night in his house. As already noted, PW14 is the doctor who conducted autopsy on the dead body of the deceased. PW15 is the Investigating officer.

9. On a close and careful analysis of the evidence made above, it transpires that the deceased as a tenant was occupying one of the rooms in the house of the appellant. There is no evidence at all that the appellant was found in the company of the deceased on 18.8.2000 or any day prior or subsequent to that day. Along with the appellant his wife PW3 was also staying in the same house. Therefore the finding of the learned Sessions Judge that the deceased was "last seen" with the appellant is based on no evidence. The evidence on record on the other hand shows that the appellant and the deceased were not seen together at the relevant time. In his evidence PW1 stated that after he arrived along with the appellant, he found the deceased sleeping with his face turned towards the wall but in the cross-examination he frankly admitted that he was not able to identify if the person he found sleeping was the deceased


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because he was wearing a cap and got his body and face covered with blanket. PW1 further stated that after taking dinner the appellant went to the room of the deceased to offer drinks to him but within two to three minutes he returned and told him (PW1) that the deceased was not found in his room. In view of such evidence it cannot be held at all that the deceased was last seen alive in the company of the appellant.

10. Learned public prosecutor contended that the conduct of the appellant was suspicious and to mislead the people and the investigation agency he submitted a missing report exhibit P4 on 19.8.2000. The appellant also submitted another report on 20.8.2000 exhibit P5 stating that the dead body of the deceased was found at a cliff by the villagers. We have duly considered this aspect and are inclined to hold that in absence of any other incriminating evidence, no adverse inference can be drawn from the above conduct of the appellant. Learned public prosecutor submitted that unless the appellant had his hands in the murder of the deceased he would not have stated before others that the weapon of offence should be concealed or thrown away. From the above statement no inference of guilt can be drawn against him. Since the deceased was a tenant in one of the rooms of his house, he might have apprehended that the police would entangle him and with a


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view to avoid complication he might have told the witnesses that the weapon of offence should be concealed or thrown away. Had he used the knife as the weapon of offence to do away with the life of the deceased he could have easily without informing others concealed or thrown it away. In any event there is no evidence that the deceased was inflicted with the said weapon. There is no evidence to connect the knife exhibit I with the injuries found on the body of the deceased. It is surprising that the so-called weapon of offence was not sent for chemical examination. It is therefore not possible to say whether it contained any blood. Although there is evidence that the room and the bed of the deceased was splattered with blood, the Investigating officer did not take any steps to collect the said blood and sent it for chemical examination. These matters go against the prosecution.

11. No importance can also be attached to the so-called recovery of weapon of offence under section 27 of the Evidence Act. The Investigating Officer stated that he arrested the appellant on 23.8.2000 at 2245 hours at Phodong police station. If that be so, how could his disclosure statement (exhibit P1) be recorded on 20.8.2000 at 2130 hours. In the so-called disclosure statement the appellant was alleged to have stated that he concealed the weapon of offence in the ceiling of his house but the weapon

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of offence exhibit P1 was not found in the ceiling but was found in the cardamon field. There is no evidence to connect exhibit P1 with the assault on the deceased. Therefore the said evidence is of no help to the prosecution. It was also submitted that the appellant absconded. There is no evidence of his abscondence. On the contrary, he was seen in the search party along with other villagers. There is no other evidence worth noting to connect the appellant with the commission of the offence. Suspicion however grave cannot take the place of legal proof. In a case resting squarely on circumstantial evidence each incriminating circumstance must be clearly proved by reliable and clinching evidence. The circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn. When one link goes or is found missing, the chain of events gets snapped. In the case at hand, the prosecution has miserably failed to establish each of the so-called chain by adducing acceptable evidence.

For the reasons stated above, we have no hesitation to hold that the prosecution has not been able to prove its case beyond reasonable doubt. The appellant is therefore entitled to be acquitted.

12. In the result, the conviction and sentence imposed on the appellant are hereby set aside. He is acquitted of the

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charges. He may be set at liberty forthwith if his detention is not required in any other case.

13. The appeal is allowed.



(R. K. Patra)
Chief Justice
10.8.2004

I agree.



(N. Surjamani Singh)
Judge
10.8.2004

Dictation taken
&
typed by me
Tshering Dolkar