



THE HIGH COURT OF SIKKIM : GANGTOK

Criminal Appeal No. 01 of 2006

1. Rupnarayan Pradhan
Son of late Dirga Narayan Pradhan,
Resident of Sudunglakha Busty,
P. S. Rhenock,
Presently residing at Tadong,
Dara Gaon, East Sikkim.

2. Smt. Dhan Maya Pradhan
Wife of Shri Rupnarayan Pradhan,
Resident of Sudunglakha Busty,
P. S. Rhenock,
Presently residing at Tadong,
Dara Gaon, East Sikkim.

... Convicts/Appellants.

-Versus -

State of Sikkim ... Respondent.

For the Petitioners : Mr. B.K. Rai and Mr. A.J. Sharma, Advocates for the appellants.

For the Respondents : Mr. Karma Thinlay, Addl. Public Prosecutor for the State-respondent.

PRESENT: HON'BLE MR. JUSTICE AJOY NATH RAY, CHIEF JUSTICE

AND

HON'BLE MR. JUSTICE N. SURJAMANI SINGH, JUDGE

DATE OF JUDGMENT : 23rd MARCH, 2007.



JUDGMENT

The Court :

1. The prosecution is not called upon and only the appellants i.e., the convicted-accused are heard.
2. It needs the patience of a tree on the part of a Judge hearing a criminal appeal in an Indian Court.
3. We have read the well reasoned judgment of Mrs. Meenakshi M. Rai, Sessions Judge In-charge, Special Division-I, Sikkim at Gangtok (who is our Registrar General now) which was pronounced in open Court and also the sentence imposed by her after hearing the accused.
4. We are in wholehearted agreement with the judgment and the sentence imposed and there can be no two opinions about this matter.
5. The two accused are the husband of the victim and the second wife of the husband who are respectively accused Nos.1 and 2.
6. Before 1989, more than one marriage were permitted in Sikkim as the Hindu Marriage Act had not been extended, but the victim-accused admitted that hers was not an arranged marriage. However, the accused No.1 has children by both his marriages and they are all about 20/25 years of age. The victim was separated from the accused No.1 and was living separately for a long time past, about 13 years, before the incident occurred on the 27th of November, 2002.
7. The incident was simply this, that the two accused and one of their children, a son, tied up the victim and beat her up with a wooden roll and



a bamboo stick. The three material objects exhibited are the rope, the roll and the bamboo stick.

8. As many as 15 witnesses were examined on the part of the prosecution. The defence examined no witnesses at all; arguments were sought to be made on the part of the appellant that they were not given any opportunity to call any witness but this submission has absolutely no foundation at all. No attempt was made on the part of defence to call any witness. After the incident, the accused spent time in various hospitals and ultimately spent one night in a hospital at Gangtok. There were no eye witnesses of the incident excepting the accused herself. There is evidence only after the beating was over, in the sense of the accused being dragged and also the very important evidence of the accused's sister that she saw her with open hair, only in a petticoat and a blouse and with dried blood clotted on her swollen mouth. The victim was carried to the Police Station.


9. The victim has given evidence herself also and she is PW-10. In a matter of this nature, the victim's evidence is to be read first and thereafter all circumstances are to be examined, and all arguments on the part of the accused are to be heard to see whether any part of the material and necessary evidence of the victim on facts can be cast a reasonable doubt upon, by a free, fair and objective judicial mind or examiner.


10. We have examined all the material matters on record. The trial Judge has exonerated the two accused from the charge of attempt to murder on the perfectly valid ground that the accused did not intend to kill the first wife of accused No.1, but only beat her up.



11. However, she has held them guilty both under Sections 324, 342 and 34 of the Indian Penal Code i.e. in regard to voluntarily causing hurt by dangerous weapons, wrongful confinement and acts done by several persons in furtherance of common intention.

12. Sentence has been imposed to the extent of six months for voluntarily causing hurt by dangerous weapons. It goes without saying that both a wooden roll and a bamboo stick are sufficient weapons for killing a human being and as such application of Section 324 is perfectly justified. One month's sentence has also been imposed for wrongful confinement of the victim with rope to the pole. The sentence of five hundred rupees fine is also wholly justified as well as the alternative sentence of one month in lieu thereof. The accused are out on bail. The first accused has been about 27 days in custody and the second accused i.e. the second wife about 2 days. The only clarification which we make in the judgment under appeal is that in regard to voluntarily causing hurt and wrongful confinement, the two sentences of six months and one month will run concurrently and not successively, as has to be the case in every matter. Save for this the appeal of the two accused are dismissed. It is pertinent to mention that the son of the second wife who was involved in the incident was not a major at the material time and, therefore, has not figured in this judgment and trial. The two accused will surrender themselves forthwith. A prayer for stay of this judgment and order is made but the prayer is unhesitatingly turned down.


(Ajoy Nath Ray, CJ)


(N.S. Singh, J.)