

# THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

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**SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**  
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## **Crl. A. No. 01 of 2020**

Sudeep Rai,  
Aged about 23 years,  
Son of Kalu Singh Rai,  
Resident of Segeng Busty,  
Mangalbaria,  
West Sikkim.

*Presently at Central Prisons, Rongyek.* ..... Appellant

### **Versus**

State of Sikkim ..... Respondent

### **Appeal under section 374(2) of the Code of Criminal Procedure, 1973.**

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**Appearance:**

Ms Tshering Palmoo Bhutia, Advocate (Legal Aid Counsel) for the Appellant.

Mr. S.K. Chettri, Additional Public Prosecutor for the State Respondent.

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**Date of hearing : 08.03.2021 and 11.03.2021**  
**Date of judgment: 05.04.2021**

## **J U D G M E N T**

### **Bhaskar Raj Pradhan, J.**

**1.** The appellant convicted by the learned Sessions Judge, West Sikkim at Gyalshing (the learned Sessions Judge) under section 304-II of the Indian Penal Code, 1860 (the IPC) seeks to challenge both the judgment of conviction and order on

sentence, dated 23.09.2019, in Sessions Trial Case No. 07 of 2018 (*State of Sikkim vs. Sudeep Rai*). The learned Sessions Judge has sentenced the appellant to undergo simple imprisonment for a term of seven years and to pay a fine of Rs.10,000/-.

**2.** Heard Ms Tshering Palmoo Bhutia, learned counsel for the appellant and Mr. S.K. Chettri, learned Additional Public Prosecutor for the respondent.

**3.** The learned counsel for the appellant submits that there are no eye witnesses in the present case and therefore, it is a case based on circumstantial evidence. She submits that the circumstantial evidence has not been proved in the manner required and there are broken links in the chain of circumstances. It is submitted that the learned Sessions Judge while appreciating the evidence of the prosecution witnesses have taken note of the examination-in-chief but ignored the cross-examination. It is further submitted that even the learned Sessions Judge has discarded the purported disclosure statement (Exhibit-3). The learned counsel took this Court through the various depositions of the prosecution witnesses pointing out various discrepancies which would, according to her, seriously dent the prosecution case. The judgment of the Supreme Court in *Vithal Tukaram More and Others vs. State of*

*Maharashtra*<sup>1</sup> and *Umakant and Another vs. State of Chhattisgarh*<sup>2</sup> were relied upon. The judgment of this Court in *Binod Pradhan and Another vs. State of Sikkim*<sup>3</sup> was also referred to.

4. In *Vithal Tukaram More* (supra), the Supreme Court noted its earlier judgment in *State of U.P. vs. Dr. Ravindra Prakash Mittal*<sup>4</sup>, in which it was held, “11. .... that the essential ingredients to prove guilt of an accused by circumstantial evidence are: (a) the circumstances from which the conclusion is drawn should be fully proved; (b) the circumstances should be conclusive in nature; (c) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence; (d) the circumstances should to a moral certainty, exclude the possibility of guilt of any person other than the accused.”

5. In *Umakant* (supra), the Supreme Court held, *interalia*, that the burden of proof in criminal law is beyond all reasonable doubt and if the views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other towards his innocence, the view which is favourable to the accused should be adopted. The judgment of this Court in *Binod Pradhan* (supra) which dealt with an allegation of rape is not found relevant.

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<sup>1</sup> (2002) 7 SCC 20

<sup>2</sup> (2014) 7 SCC 405

<sup>3</sup> (2019) SCC online Sik 227

<sup>4</sup> (1992) 3 SCC 300

**6.** The learned Additional Public Prosecutor on the other hand submits that the learned Sessions Judge had rightly convicted the appellant. He pointed out the various circumstances taken note of by the learned sessions Judge in paragraph 36 of the impugned judgment and submitted that each of these circumstances were proved beyond reasonable doubt and they form an unbroken chain of circumstances leading to the only hypothesis that it is the appellant and the appellant alone who is guilty for the offence.

**7.** The FIR dated 11.09.2018 was lodged by Sandeep Rai (PW-4) alleging that his brother Randip Rai was hit on the head by the youngest brother, the appellant, using a hammer and that he had been admitted to the Mangalbaria hospital. It was also asserted that his brother Randip Rai was hit on the varandah of his house at around 7:00 p.m. As per the prosecution, Randip Rai succumbed to his injuries on 12.09.2018. The investigation was conducted by Police Inspector Bimal Gurung (PW-16) (Investigating Officer), who, on the closure of the investigation filed the charge-sheet dated 14.11.2018 alleging that an offence under section 302 IPC had been made out. On 28.12.2018, the learned Sessions Judge framed a charge against the appellant under section 302 IPC. The appellant pleaded not guilty and claimed trial. During the trial, the prosecution examined 16 witnesses. The appellant was examined under section 313 of the

Code of Criminal Procedure, 1973 (Cr.P.C.) on 12.08.2019. He denied the allegations. In his defence, he stated that it is true that he and his deceased brother had an argument that night. However, as the deceased came to assault him he had run away from home. He asserted that he had not assaulted the deceased.

**8.** Sandeep Rai (PW-4) identified the appellant as his younger brother. He deposed that on 11.09.2018, both the appellant and the deceased had gone to Mangalbaria bazaar and consumed alcohol. At around 5:00 p.m., the appellant returned home while the deceased, at around 7:00 p.m. According to Sandeep Rai (PW-4), the appellant and the deceased had quarrelled with each other at around 7:30 to 8:00 p.m. When he went to the courtyard of their house, he saw the deceased lying on the ground with cut injuries on his head. He also noticed blood on the head of the deceased. He deposed that the appellant was not at the place of occurrence when he saw the deceased lying on the courtyard. He along with the villagers evacuated the deceased to the Mangalbaria PHC. On the following day, the deceased succumbed to his injuries. During cross-examination, Sandeep Rai (PW-4) admitted that the deceased and the appellant shared cordial relationship with each other. He also admitted that on the relevant day, the deceased and the appellant had gone to Mangalbaria bazaar and when they returned, they were intoxicated. He further admitted that he had

heard discussions between the appellant and the deceased when he was inside his room and that he had not seen the appellant assaulting the deceased.

**9.** Chandrakala Chettri (PW-3) also identified the appellant as her brother-in-law and deposed that even the deceased was her brother-in-law. According to her, on 11.09.2018 at around 7:30 p.m., when they were watching television she heard a discussion between the appellant and the deceased. After some time, she heard some noises and saw the deceased lying on the ground in a pool of blood. She noticed that there was some wound on his head. According to her, the appellant was not there. The same evening, the deceased succumbed to his injuries. During cross-examination, she admitted that the deceased and the appellant shared a cordial relation prior to the incident. At the relevant time, there was no electricity and as such it was very dark and that she had not witnessed the incident.

**10.** Lalita Manger (PW-5) identified the appellant as her co-villager. According to her, on 11.09.2018 at around 7:00 p.m., the appellant came to her house and told her that he had hit someone six times with his fist and thereafter, left. During cross-examination, she admitted that she did not know anything about the case.

**11.** Ramesh Rai (PW-2) identified the appellant as his cousin. He deposed that on 11.09.2018, at around 7:30 to 8:00 p.m., the appellant came to their house and told them that he had assaulted the deceased with his fist on his head. According to Ramesh Rai, he took the appellant to Mangalbaria Outpost and handed him over to L/Nk Jas Man Subba (PW-1). Thereafter, the appellant was taken to Nayabazaar Police Station. During his cross-examination, Ramesh Rai (PW-2) admitted that he was not an eyewitness to that incident.

**12.** L/Nk Jas Man Subba (PW-1) identified the appellant in court. He received information from the Mangalbaria Primary Health Centre (PHC) stating that one assaulted patient was admitted there. He along with another officer went there and saw Randip Rai and noticed that he had three-four wounds on his head. According to L/Nk Jas Man Subba (PW-1), he asked Randip Rai as to who had assaulted him, to which he had replied that it was the appellant who had done so with the weapon. He also inquired and found out that the appellant was hiding in the house of Ramesh Rai (PW-2). He requested Ramesh Rai (PW-2) to bring the appellant to Mangalbaria Outpost. Thereafter, the appellant was taken to Nayabazaar Police Station. In cross-examination, he admitted that when he met Randip Rai at the PHC, he was fine and could converse properly. He also admitted

that when he inquired from Randip Rai that if any weapon was used he did not say anything to him.

**13.** Sub Inspector Pranay Chettri (PW-11) deposed that on 13.09.2018, he had seized the clothes of the deceased as well as the blood sample at the STNM Hospital vide seizure memo (Exhibit-6). He identified the material objects, i.e, the white vest (M.O.II) and black pant (M.O.III).

**14.** Diwash Rai (PW-12) was the seizure witness to seizure memo (Exhibit-6) who identified his signature thereon. According to him, the police had seized the white vest (M.O.II) and black pant (M.O.III) at STNM Hospital, Gangtok. During cross-examination, he admitted that the seizure memo (Exhibit-6) had not been read over to him.

**15.** Dr. Uma Adhikari (PW-13) had examined the deceased on 11.09.2018, when he was brought to the emergency department at around 8:00 p.m. with a history of fall. She had noticed cut injuries on the forehead. The deceased had a history of alcohol intake. Dr Uma Adhikari (PW-13) also volunteered to state that when the deceased was brought to the PHC she was given the history that he had fallen and accordingly attended to him. Thereafter, around 11:30 p.m., she was telephonically informed by the sister on duty that the condition of the deceased had deteriorated. When she went to see the deceased, she found



that he was quite serious and therefore she made arrangements for a referral to a higher centre at Gangtok. As there were no escort available for the deceased at that time, he was to be taken the next morning. However, at 4:00 a.m., the Doctor in-charge was informed that the deceased had succumbed to his injuries. During her cross-examination, she admitted that the deceased was brought to the PHC by the parties and was not forwarded by the police. She also admitted that no Medical Legal Case (MLC) was forwarded when the deceased was brought to the hospital. She admitted that the patient was walking by himself and that he did not tell her that he was hit by a hammer.

**16.** Dhan Kumar Tamang (PW-6) and Bishnu Manger (PW-7) are witnesses to the recording of the statement of the appellant under Section 27 of the Indian Evidence Act, 1872 (Exhibit-3). Both of them identified Exhibit-3 and their signatures thereon. They deposed that after the recording of the statement, they accompanied the police team and the appellant to the place of occurrence where the appellant took out one hammer (M.O.I) from the bushes which was concealed by him. According to them, the hammer (M.O.I) was seized vide seizure memo (Exhibit-4). During cross-examination, Dhan Kumar Tamang (PW-6) admitted that the police had already recorded Exhibit-3 when he reached the Nayabazar Police Station. Bishnu Manger (PW-7) admitted that the police had already recorded

Exhibit-3 when he reached the Mangalbaria Police Outpost. Dhan Kumar Tamang (PW-6) admitted that after he had affixed his signature in the seizure memo (Exhibit-4), they went to the place of occurrence and recovered the hammer (M.O.I) from the place of occurrence. Exhibit-3 is undated. The learned Sessions Judge noted these glaring inconsistencies caused by the depositions of Dhan Kumar Tamang (PW-6) and Bishnu Mangar (PW-7) and concluded that it would not be safe to rely upon the purported disclosure statement (Exhibit-3) or the seizure memo (Exhibit-4).

**17.** Milan Rai (PW-9) and Binod Rai (PW-10) are witnesses to the seizure of one stone with blood stains weighing 2 kgs (M.O. IV), black plastic with blood stains (M.O.V) and one piece of cloth with blood stains (M.O.VI) on 13.09.2018 from Sandeep Rai (PW-4). Both the witnesses identified their signatures on the seizure memo (Exhibit-8) as well as the material objects. During cross-examination, Milan Rai (PW-9) admitted that the contents of the seizure memo (Exhibit-8) was not read over to him. Binod Rai (PW-10) admitted during cross-examination that the material objects were common objects and easily available and that he had not affixed his signature on the material objects.

**18.** The inquest was conducted by the Investigating Officer (PW-16) on 12.09.2018 in the presence of Man Bdr. Rai (PW-8). The Investigating Officer (PW-16) deposed that he had

conducted the inquest and prepared the inquest report (Exhibit-5), in which he had mentioned the details of the injuries seen on the dead body of the deceased. Man Bdr. Rai (PW-8) deposed that the police had taken the body of the deceased to Gangtok Hospital for post-mortem. According to him, the police had prepared the inquest report in which he had affixed his signature. He also deposed that at the Gangtok Hospital, police had seized one blood stained white vest and black pants with blood stains of the deceased vide seizure memo (Exhibit-6). During cross-examination, he admitted that the contents of the inquest report (Exhibit-5) was not read over to him.

**19.** Dr. O.T. Lepcha (PW-15), the Chief Medico Legal Consultant at the STNM Hospital, Gangtok, conducted the post-mortem examination of the deceased on 13.09.2018 along with one Dr. Karma Mingur (Assistant Professor, Manipal College of Medical Sciences) and prepared the autopsy report (Exhibit-13) and noted the following:

“On examination I found the following:-

1. Rigor mortis was present, post mortem staining was present faintly over the back and was fixed. There was presence of cyanosis with pallor.

Ante mortem injuries:

1. There was multiple abraded laceration (surgically repaired) over the different areas of the scalp.
2. – lacerated injury (with two nos. of stitches) 2.8x1.5 cm over the vertex.
3. --- Grazed lacerated wound (surgically repaired with two stiches).
4. Abraded lacerated wound 1.8x0.8 over the midline at the occipital bone.
5. Lacerated injury 2.3x2 placed over the occipital bone with underline fracture of occipital bone.

6. Depressed (patterned) fracture 2.5cm diameter over the occipital bone.
7. Fissure fracture extending from the left parietal eminence to the left temporal bone measuring 10 cm.
8. Fissure fracture extending from the parietal eminence upto the external protuberance over the back of skull measuring 16 cms.

Head and neck:

1. The scalp showed widespread scalp haematoma with bilateral temporal haematoma. There was presence of subdural haematoma 4x3x2 cms placed over the occipital lobe. There was diffuse subarchnoid haemorrhage with features of intracerebral haemorrhage.

Chest:

1. Both the lungs were congested and oedematous.
2. The stomach contained around 800 ml of digested food with fluid (alcohol smell present).”

**20.** Dr. O.T. Lepcha (PW-15) opined that the approximate time since death was more than 24 hours and the cause of death to the best of his knowledge and belief was due to intra-cranial haemorrhage as a result of fractured skull due to multiple blunt force injury, homicidal in nature.

**21.** Prem Kumar Sharma (PW-14), a Junior Scientific Officer, Biology Department, posted at RFSL Saramsa, deposed that on 03.10.2018, their Department received one sealed cloth containing blood sample of the deceased (M.O.VII), one black plastic pouch with reddish stains (M.O.V), one big stone weighing 2 kgs (approx.) with reddish stain (M.O.IV), one hammer (M.O.I), one small green and white coloured piece of cloth with reddish stain (M.O.VI). The said material objects were examined by him by serological/biological techniques. The sample blood of the

deceased gave positive tests for Blood Group 'AB'. Human blood was also detected in the small black pouch (M.O.V), small green and white piece of cloth (M.O.VI) and the big stone weighing 2 kgs (M.O.IV), which tested positive for blood group 'AB', which was the blood group of the deceased. However, no blood could be detected on the hammer (M.O.I).

**22.** The learned Sessions Judge has enumerated the following circumstances proved against the appellant on the basis of which he was convicted.

**“36.** In the case at hand, based on the evidence adduced by prosecution, I find the following circumstances have been established:-

- a) On 11.09.2018 the deceased and the accused go to the market and return home in the evening in a state of intoxication;
- b) both the brothers are under the influence of alcohol and they begin quarrelling soon after;
- c) the elder brother PW-4 and his wife PW-3 are in their room in the same house at the time and hear the two younger brothers quarrelling. PW-4 even advises them to stop quarrelling;
- d) following the quarrel PW-4 and his wife PW-3 go out to look only to find the deceased brother lying in a pool of blood with head injuries in the courtyard of the house;
- e) the accused is nowhere to be seen;
- f) the injured deceased is taken to Mangalbaria PHC by PW4 and others;
- g) the same night immediately thereafter (between 07:00 to 8:00 pm) accused flees to the house of PW-5 Lalita Mangar and tells her he “*hit six times to somebody with his fist*” after which the accused leaves;
- h) the accused then goes to the house of PW-2 Ramesh Rai and informs PW-2 that he has hit the deceased on his head;
- i) around 08:30pm PW-1 receives information about the patient being admitted at the PHC. PW-1 goes to the PHC and finds deceased Randip Rai admitted with “3-4 wounds on his head”;

- j) PW-1 asks Randip Rai who inflicted the injury on him. PW-1 says Randip Rai (deceased) replied "*his own youngest brother Sudeep Rai, the accused assaulted him with a weapon*";
- k) PW-1 comes to know accused is in the house of PW2 and instructs him to bring accused to the police out-post;
- l) PW-2 then takes the accused to the Mangalbaria Out Post and hands him over to PW-1;
- m) accused is taken to Nayabazar Police station where PW-2 says the accused "*stated to the Police that he assaulted the deceased with a hammer (martol)*";
- n) The deceased succumbs to his injuries in the early hours of 12.09.2018 at the Mangalbaria P.H.C.;
- o) Accused is unable to explain how the deceased brother came to sustain the injuries when they were quarrelling; or why he failed to come to the assistance of his injured brother; or even why he was missing from the house at the time soon after the quarrel;
- p) On 13.09.2018 a hammer (MO-I) is recovered by the police from the bushes near the PO at Segeng, West Sikkim in the presence of PW-6 and 7;
- q) The autopsy by PW-15 reveals the death was caused due to intra-cranial hemorrhage as a result of fractured skull due to multiple blunt force injury."

**23.** The identity of the appellant and the deceased are proved. They were brothers. Their brother - Sandeep Rai (PW-4), and sister-in law - Chandrakala Chettri (PW-3), identified the appellant in court. Even Ramesh Rai (PW-2) identified the appellant.

**24.** Sandeep Rai (PW-4) established that on 11.09.2018, the deceased and the appellant had gone to the Mangalbaria bazaar and returned home in the evening in a state of intoxication. Sandeep Rai (PW-4) and Chandrakala Chettri (PW-3) deposed that they were in the house at the relevant time when they heard the deceased and the appellant quarrel with each

other. Their depositions established the presence of the appellant in the house at the relevant time when the deceased was assaulted. When Chandrakala Chettri (PW-3) and Sandeep Rai (PW-4) went to the corridor/courtyard of their house they saw the deceased lying on the ground in a pool of blood. Both of them noticed that the appellant was not there. Sandeep Rai (PW-4) along with the villagers evacuated the deceased to the Mangalbaria PHC. The appellant thereafter, went to Lalita Mangar's (PW-5) house and told her that he had hit somebody on his head six times with his fist. Immediately thereafter, the appellant went to his cousin - Ramesh Rai's (PW-2) house, and told them that he had assaulted the deceased with his fist on his head. The Mangalbaria PHC gave information to L/Nk Jasman Subba (PW-1) from the Mangalbaria Police Outpost that one patient who had been assaulted was admitted to the Mangalbaria PHC. He visited the PHC and found the deceased had been admitted with three-four wounds on his head. He asked the deceased about the assault. The deceased told him that he had been assaulted by the appellant with a weapon. Ramesh Rai (PW-2), thereafter, took the appellant to Mangalbaria Police Outpost and handed him over to L/Nk Jasman Subba (PW-1) who took him to Nayabazaar Police Station where he was arrested.

**25.** The above facts stand proved. It has been held so by the learned Sessions Judge who had also correctly discarded the

evidence relating to the disclosure statement (Exhibit-3) purportedly recorded under section 27 of the Indian Evidence Act, 1872. The oral depositions have been made by natural witnesses who were present during the relevant time. Their evidence cannot be doubted except for the fact that the prosecution had not been able to prove that the hammer (M.O.I) was the weapon of offence. The chain of circumstances proved by the prosecution as enumerated above does lead to the inevitable conclusion that it was the appellant and the appellant alone who had committed the offence. There is no manner of doubt that it could have been done by anybody else.

**26.** The learned Sessions Judge has convicted and sentenced the appellant under section 304-II IPC, which reads as under:-

**“304. Punishment for culpable homicide not amounting to murder.** - Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

.....

Part II: Punishment – Imprisonment for 10 years, or fine, or both – Cognizable- Non-bailable – Triable by Court of Session – Non-compoundable.”

**27.** To make out an offence punishable under section 304-II IPC, the prosecution is required to prove the death of a



person and such death was caused by the act of the accused and further that he knew that such act of his was likely to cause death.

**28.** Sandeep Rai (PW-4) – the brother of the deceased and Chandrakala Chettri (PW-3) – his sister-in-law; Man Bahadur Rai (PW-8) - who took the body of the deceased to Gangtok Hospital for post mortem along with the police; Dr. Uma Adhikari (PW-13) – who attended to the deceased at the Mangalbaria PHC; Dr. O.T. Lepcha (PW-15) - who conducted the post mortem examination of the deceased on 13.09.2018 and the Investigating Officer (PW-16) – who conducted the autopsy of the deceased, all established his death. The prosecution evidence as discussed above, also establishes that such death was caused by the act of the appellant. The ante mortem injuries noted by Dr. O.T. Lepcha (PW-15) in his post mortem report (Exhibit-15), leads to the only hypothesis that the appellant knew that such act of his which caused multiple injuries on the head of the deceased was likely to cause his death. Dr. O.T. Lepcha’s (PW-15) opinion that the cause of death was due to intra-cranial haemorrhage as a result of fractured skull due to multiple blunt force injury and it was homicidal in nature, is convincing and backed by the post-mortem examination.

**29.** The punishment prescribed for the offence under section 304-II IPC is imprisonment for ten years, or fine or both.

The learned Sessions Judge has sentenced the appellant to undergo simple imprisonment for a term of seven years and pay a fine of Rs.10,000/-, which is found perfectly justifiable in the facts of the present case.

**30.** Resultantly, the appeal fails and is dismissed.

**31.** The judgment of conviction and order on sentence passed by the learned Sessions Judge in Sessions Trial Case No. 07 of 2018, both dated 23.09.2019, are upheld. The direction for simple imprisonment in default of payment of fine is also upheld.

**32.** The compensation awarded to the father of the deceased under section 357 Cr.P.C. is maintained.

**33.** The records of the learned Trial Court be sent back. Certified copy of this judgment be sent to the learned Trial Court and a copy also be furnished free of charge to the appellant.

**( Bhaskar Raj Pradhan )  
Judge**

Approved for reporting: Yes/~~No~~  
Internet : Yes/~~No~~

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