

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 16th April, 2021

DIVISION BENCH: THE HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CHIEF JUSTICE
THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.A. No.05 of 2020

Appellant : Lalit Rai

versus

Respondent : State of Sikkim

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

Appearance

Mr. Jorgay Namka, Legal Aid Counsel for the Appellant.

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

J U D G M E N T

Meenakshi Madan Rai, J.

1. This Appeal questions the Judgment and Order on Sentence, both dated 26.12.2019, of the Learned Sessions Judge, West Sikkim at Gyalshing, in Sessions Trial Case No.03 of 2017 (*State of Sikkim vs. Lalit Rai*), by which the Appellant was convicted for the charge under Section 302 of the Indian Penal Code, 1860 (for short, "IPC") and sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs.10,000/- (Rupees ten thousand) with a default clause of imprisonment.

2. Before dealing with the merits of the Appeal, we may briefly advert to the Prosecution case for clarity. Exhibit 1, the First Information Report (for short, "FIR") dated 23.01.2017,

was lodged by P.W.1, Panchayat of Megyong, West Sikkim, informing that at around 4 p.m., he received telephonic information from P.W.5 stating that one Lalit Rai (Appellant) had murdered his wife. That, P.W.1, accompanied by his friends, visited the Place of Occurrence (for short, "P.O.") at Gaucharan, Amaley, Saagbari, Megyong, West Sikkim and found the body of the Appellant's wife with multiple cut injuries on her person, caused by a sharp edged weapon. The Appellant had absconded from the P.O. On the basis of Exhibit 1, FIR bearing No.04/2017, dated 23.01.2017, was registered against the Appellant under Section 302 IPC by Kaluk Police Station. The investigation revealed that the deceased was earlier married to one Krishna Bahadur Gurung and had three children from the said wedlock. She later developed relations with the Appellant who was also from the same neighbourhood and living with his aged parents. In the month of June, 2016, Krishna Bahadur Gurung caught the Appellant and the deceased in a compromising position upon which he asked his wife to leave his home. The Appellant took the deceased as his wife and constructed a separate house where he lived with her but the deceased often used to taunt the Appellant due to their financial problems and wished to return to her former husband. The Appellant thus became insecure and suspected her of having an extra marital affair. On the relevant day, both the Appellant and the victim had gone to the "*dhara*" (water source) to fetch water. The Appellant had carried a backpack with documents and a torch light as well as a "*khukuri*" (sharp edged weapon) in its scabbard. On reaching the P.O.,

they met P.Ws.2, 3 and 4. The Appellant spoke to P.W.3 who, upon questioning, remarked that she liked the deceased who often gave her sweets. An altercation broke out between the Appellant and the deceased as to how the deceased had obtained the sweets to give P.W.3 as the Appellant had not given such articles to the deceased. In a fit of rage, the Appellant assaulted the deceased with the "khukuri" he was carrying, which proved to be fatal. On completion of investigation, Charge-Sheet came to be filed against the Appellant under Section 302 of the IPC before the Court of the Learned Chief Judicial Magistrate, West Sikkim at Gyalshing which was committed to the Court of Sessions. The Learned Sessions Court framed Charge against the Appellant under Section 302 of the IPC. On his plea of "not guilty," twenty Prosecution Witnesses were examined, on closure thereof, the Statement of the Appellant under Section 313 of the Code of Criminal Procedure, 1973, was recorded in which he denied any involvement in the offence. On due consideration of the evidence and materials furnished, the Learned Trial Court convicted and sentenced the Appellant as aforestated.

3. Before this Court, the arguments advanced by Learned Counsel for the Appellant was that the case was one of circumstantial evidence as P.Ws.2, 3 and 4, who were alleged to be eye witnesses by the Prosecution had, in fact, not witnessed the alleged incident. P.W.2, as per her evidence, only heard the sound of the Appellant assaulting his wife but did not witness it. P.W.3 was a six year old minor whose evidence merits no

consideration apart from which, she failed to support the Prosecution case. P.W.4 had hearing and speech impediment making her evidence suspicious and unreliable. P.Ws.13 and 14 both failed to fortify the Prosecution case regarding the disclosure made by the Appellant. The Report of the Central Forensic Science Laboratory (for short, "CFSL"), Kolkata, Exhibit 17, is of no assistance to the Prosecution case as the weapon of offence did not contain the blood stains of the deceased. There were only four injuries on the body of the deceased which were insufficient in the ordinary course of nature, to cause her death. The Prosecution also failed to establish any motive for the offence or to prove its case beyond a reasonable doubt. Hence, the impugned Judgment and Order on Sentence be set aside and the Appellant be acquitted of the Charge. To buttress his submissions, Learned Counsel placed reliance on the decisions of the Hon'ble Supreme Court in ***Shivaji Chintappa Patil vs. State of Maharashtra***¹ and ***Stalin vs. State, Represented by the Inspector of Police***².

4. Learned Additional Public Prosecutor, repudiating the contentions of Learned Counsel for the Appellant, submitted that the Prosecution has indeed proved its case beyond a reasonable doubt, as established by the evidence of P.Ws.2, 3 and 4 who witnessed the incident. P.W.2 clearly stated she saw the Appellant had suddenly assaulted his wife with an object that he was carrying. The evidence of P.W.3 also reveals that she had gone to the "dhara" and saw the Appellant killing his wife. That,

¹ 2021 SCC OnLine SC 158

² (2020) 9 SCC 524

P.W.4 despite her physical challenges, was able to state that the Appellant was carrying a bag and was with his wife in the field where he killed her with a "*khukuri*" MO VIII. That, the evidence of all three witnesses have not been decimated in cross-examination. P.W.5 also deposed that on the same day, the Appellant arrived at his courtyard and shouted that he had killed his wife and threatened to kill the wife of P.W.5 as well. That, the Appellant in his Statement under Section 27 of the Indian Evidence Act, 1872 (for short, "Evidence Act") revealed that he could disclose the location where he had thrown the "*khukuri*." That, the Statement was recorded by the Investigating Officer (for short, "I.O.") in the presence of two witnesses viz. P.Ws.13 and 14, who have testified as much. MO VIII was recovered from the place as disclosed by the Appellant. That, the CFSL Report, Exhibit 17, indicates that human blood was detected on MO VIII which was of female human origin, duly buttressed by the evidence of P.W.17 who examined the articles thus establishing that MO VIII was the weapon of offence which fatally injured the victim. That, MO X the black Jacket and MO XI the black Track Pants, the wearing apparels of the Appellant were seized from his possession in the presence of P.Ws.15 and 16 as substantiated by Exhibit 16, the Seizure Memo. That, as per P.W.17, blood found on MO VIII was of female human origin. Although the Appellant claims that he had no motive to kill the deceased and that there were no eye witnesses to the incident, he has failed to explain the circumstance as to how the blood of the deceased, as supported by Exhibit 17, was found on MO VIII,

MO X and MO XI. That, the Post Mortem Report of the deceased, Exhibit 5, which was prepared by P.W.8, the Medico Legal Consultant of STNM Hospital, Gangtok on 25.01.2017, reveals that there were multiple injuries on the person of the deceased which was the cause of her death, having been inflicted by a sharp heavy weapon. To fortify his submissions, reliance was placed on ***Thaman Kumar vs. State of Union Territory of Chandigarh***³, ***Virsa Singh vs. State of Punjab***⁴, ***Polamuri Chandra Sekhararao alias Chinna alias Babji vs. State of Andhra Pradesh***⁵, ***V.D. Chavan vs. Sambaji and Chandrabai (Smt.) and Others***⁶, ***Gurdip Singh vs. The State of Punjab***⁷, ***Paramjit and Another vs. State of Haryana***⁸ and ***Raja alias Rajinder vs. State of Haryana***⁹. That, the Prosecution has proved its case beyond a reasonable doubt and the impugned Judgment and Order on Sentence requires no interference. Hence the Appeal be dismissed.

5. Learned Counsel for the parties were heard *in extenso* and due consideration accorded to their submissions. The evidence and documents on record have been meticulously examined and the impugned Judgment and citations made at the Bar perused. It is thus appropriate to assess whether the Judgment of conviction and Order on Sentence of the Learned Trial Court were justified.

6. Section 300 of the IPC deals with the offence of murder which carves out five Exceptions to the offence and

³ (2003) 6 SCC 380

⁴ AIR 1958 SC 465

⁵ (2012) SCC 706

⁶ (2006) 9 SCC 210

⁷ (1971) 3 SCC 425

⁸ (1996) 11 SCC 143

⁹ (2015) 11 SCC 43

explains when culpable homicide is not murder. Learned Counsel for the Appellant has placed reliance on **Stalin vs. State** (*supra*). The Accused/Appellant therein was accused of the death of the victim on account of a single knife blow inflicted by him. It was contended that Section 302 of the IPC would not be attracted and the case would fall under Section 304 Part II of the IPC. The Hon'ble Supreme Court, after hearing the matter, dealt with Exception 4 to Section 300 of the IPC, which provides that culpable homicide is not murder if it is committed without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel and without the offender having taken undue advantage and not having acted in a cruel or unusual manner. It was concluded that the case would fall under Section 304 Part I of the IPC and not Section 304 Part II of the IPC. It is not the argument of the Appellant herein that his case falls within the parameters of Exception 4 to Section 300 of the IPC, hence this ratio is of no assistance to him. Learned Counsel had also garnered strength from the ratiocination in **Shivaji Chintappa Patil** (*supra*). In the said case, the Hon'ble Supreme Court was dealing with a matter in which the High Court of Judicature at Bombay had dismissed the Appeal of the Appellant and maintained the conviction of sentence passed by the Learned Additional Sessions Judge for the offence under Section 302 of the IPC. The matter therein pertained to circumstantial evidence. The Hon'ble Supreme Court, after examining the evidence on record, was of the considered opinion that the chain of events which were to be so interwoven to each other leading to no other conclusion than

the guilt of the accused, as required in cases of circumstantial evidence, was missing and the Prosecution even failed even to prove a single incriminating circumstance beyond a reasonable doubt. This ratio also lends no succour to the Appellant's case for the reason that the instant matter does not pertain to circumstantial evidence. P.W.2, in her testimony, has categorically stated that at the relevant time, she was collecting water at the village "dhara" when she saw the accused and his wife nearby. As she was walking, she heard a sound "chaak" and when she looked, she "saw" the accused had suddenly assaulted his wife with an object he was carrying. This evidence withstood cross-examination. P.W.3, although six years old, was found to be a competent witness, the Learned Trial Court having questioned her prior to recording her evidence and concluded that she gave rational answers to the questions put to her. She also deposed that she had witnessed the Appellant killing his wife. Her cross-examination did not decimate her evidence-in-chief. P.W.4 was the third eye witness to the incident and although speech and hearing impaired, she deposed that she had seen the Appellant with his wife on the field and that the Appellant killed his wife with a "khukuri."

7. The evidence of P.Ws.13 and 14 discloses their presence at the time when the Statement of the Appellant under Section 27 of the Evidence Act, Exhibit 14, was recorded by the I.O. P.W.18. They identified their signatures as Exhibit 14 (a) and Exhibit 14 (b) respectively, on Exhibit 14. On the disclosure made by the Appellant, recovery and seizure of the weapon of

offence MO VIII, was made by the I.O. in the presence of the two witnesses vide Exhibit 15, the Seizure Memo. P.W.13 also identified his signature on the scabbard of MO VIII. Consequently, no error emanates in Exhibit 14 as recorded by the I.O. and recovery of MO VIII.

8. P.W.17 was the Examiner-cum-Reporting Officer of CFSL, MHA, Government of India. She examined MO VIII, MO X, MO XI, MO XII, MO XIII T-shirt, MO XIV Pyjama, MO XV Brassiere, MO XVI Slacks, MO XVII, MO XVIII blood sample and Soil samples MO XXI and MO XXII. According to this witness, human blood could be detected on the Material Objects enumerated hereinabove. She also found that the blood on MO VIII, MO X, MO XII and MO XXI were of female human origin due to the presence of 'XX' peaks in amelogenin (sex determination marker). The blood sample of the deceased MO XVIII matched with the genetic profile recovered from the human blood stains present on MO X and MO XI. Thus, it is evident from Exhibit 17 and the evidence of P.W.17 that the blood of the deceased not only matched the blood stains on MO X and MO XI, articles of clothing of the Appellant but also on MO VIII the weapon of offence. No explanation was forthcoming from the Appellant as to how the blood of the deceased was found on his wearing apparels and MO VIII, neither did the Appellant take recourse to the provisions of Section 106 of the Evidence Act.

9. The evidence of P.W.8, Medico Legal Consultant, STNM Hospital is to the effect that the body of the deceased was

forwarded for autopsy on 24.01.2017 at 4.30 p.m. Autopsy was conducted by him on 25.01.2017 at 10 a.m. to 11.30 a.m. The body was found with multiple injuries near "pani dhara." The following findings were *inter alia* recorded by P.W.8 in his Report, Exhibit 5;

"Antemortem Injuries:

1. Amputation of left index finger of the hand.
2. Incised wound (red, bleeding) measuring 3.8 X 1.3 cm over lateral extensor aspect of left forearm.
3. Multiple linear abrasion over an area of 18X5 cm, at the lateral extensor surface of left forearm.
4. Incised chop wound (8X4X2.8 cm) over the front of face involving the bridge of nose, left and right cheek.
5. Linear incised wound (8X0.5 cm) situated just below the right angle of mandible extending from the midline to the right side of neck.
6. Incised injury (4X1.2X0.8 cm) situated 2 cm below injury 5 nos.
7. Incised chop injury with underlying fracture of frontal skull bone involving right-eyebrow. The injury measuring 7X2 cm with underlying comminuted fracture of parietotemporal bone (right)
8. Stellate shaped wound incised injury 5X1.6Xbone over the occiput
9. Chop wound 18 X 5.5 X bone placed over the back of the neck at the level of C-7. Spine with tailing of the would (sic) measuring 4 cm placed even the right side, just below the right ear. The injury involves the skin, cervical vertebrae, spinal cord, muscle and arteries (Vertebrae).
10. Chop injury (8X1.8 cm X 3 cm) extending from left side of mid mandible and extending posteriorly till the hairline posteriorly and involves the lower lobe of ear which has been cut off.

Head and neck :- Subdural haematoma 6X4X2 cm over the right parietotemporal region. Diffuse Sub-Arachnoid haemorrhage present.

.....

The Opinion as to the approximate time since death was 12 – 24 hrs and the cause of death, to the best of my knowledge and belief was due to multiple injuries associated with 85-90% transection of the spinal cord, as a result of sharp heavy weapon homicidal in nature. ...”

His evidence establishes that multiple injuries were inflicted on the deceased by a sharp heavy weapon which resulted in her death. In other words, it emanates that the injuries that were sustained by the deceased, were sufficient in the ordinary course of nature to cause her death. The ocular evidence of P.Ws.2, 3 and 4 are found trustworthy and credible and finds due corroboration in the medical evidence and Exhibit 17.

10. In *Virsa Singh supra*, the Hon’ble Supreme Court, speaking through Vivian Bose, J., held *inter alia* as follows;

“(12) To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300 “thirdly”;

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

(13) Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 “thirdly”. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will

be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.”

The observations of the Hon'ble Supreme Court *supra* squarely apply to the facts and circumstances in the instant matter.

11. The evidence of the eye witnesses are consistent and unwavering. They actually witnessed the Appellant assaulting the deceased. Their evidence categorically establishes that the Appellant was the perpetrator of the offence, being armed with MO VIII with which he assaulted the deceased. It cannot be said in these circumstances that he did not intend to inflict the injuries on the deceased which were sufficient in the ordinary course of nature to cause her death. The act complained of clearly does not fall within the ambit of the Exceptions carved out in Section 300 of the IPC.

12. It may relevantly be noted here that in a case of direct evidence, “motive” is irrelevant whereas in a case of circumstantial evidence, motive may indeed be an important link which completes the chain of circumstances. Besides, motive not being an explicit requirement as per the provisions of the Indian Penal Code, failure to attribute motive cannot be fatal to the Prosecution case where eye witness account exists. Resultant, the argument of Learned Counsel for the Appellant that no

motive was established by the Prosecution, cannot be countenanced as ocular testimony of witnesses have rightly been considered by the Trial Court to bring home the charge against the Appellant.

13. Hence, in light of the discussion made hereinabove, the findings of the Learned Trial Court proving the guilt of the Appellant is just and proper and thereby the impugned Judgment and Order on Sentence warrants no interference.

14. Consequently, we find no merit in the Appeal which fails and is accordingly dismissed.

15. No order as to costs.

16. Copy of this Judgment be transmitted to the Learned Trial Court, for information.

17. Records be remitted forthwith.

(**Meenakshi Madan Rai**)
Judge
16.04.2021

(**Jitendra Kumar Maheshwari**)
Chief Justice
16.04.2021

Approved for reporting : **Yes**

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