

IN THE HIGH COURT OF SIKKIM

Criminal Appeal No. 12 of 2000

Dilip Darjee,
Rengyek,
P.O. & P.S. Gangtok,
East Sikkim.

..... Appellant.

Versus

State of Sikkim.

..... Respondent.

Coram:

The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.

The Hon'ble Mr. Justice Anup Deb, Judge.

Present : Mr. A. K. Upadhyaya with Ms. Pema C. Wangdi, Advocates for the appellant.

Mr. N. B. Khatiwada, Additional Public Prosecutor with Mr. J. B. Pradhan, Govt. Advocate for the State.

Date of Decision : March 26, 2001.

J U D G M E N T

Dayal, C.J.

This appeal is directed against the Judgment and Order passed by the learned Sessions Judge (East & North), Gangtok in Criminal Case No. 17 of 1998 convicting the appellant under section 302 IPC for causing the death of Jaggi Maya Darjee and under section 382 IPC for committing theft of her personal belongings after having made preparation for causing her death. The appellant was sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs.5,000/- and in default to undergo further rigorous imprisonment for six months for the offence under section 302 IPC and for rigorous

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imprisonment for a period of three years with fine of Rs. 2,000/- and in default of payment of fine to undergo further rigorous imprisonment for four months for the offence under section 382 IPC. Both the substantive sentences were directed to run concurrently.

2. The deceased, Jaggi Maya Darjee, was the resident of Sama Sivik, Lingdum Busty under the Sadar Police Station, East Sikkim. Prosecution case is that her neighbour, Bir Bahadur Subba PW-5, living at a distance of 200 ft. from her house, noticed foul smell coming from her house, whereof he informed Tulshi Ram Chapagai PW-3. On the advice of Tulshi Ram Chapagai, Bir Bahadur Subba informed the Panchayat. The Panchayat asked him to find out the relatives of the deceased. Then Bir Bahadur Subba located Jit Bahadur Darjee PW-4, who is the uncle of the appellant. The appellant is the brother of the deceased. Then, all went to the house of the deceased, but the house was found locked from inside. Then they decided to report the matter to the Police. Thereafter, the door of the house was broken open and dead body of the deceased was found in highly decomposed condition. Thereupon, U. D. Case No. 34(7)98 was registered by the Sadar Police Station, Gangtok under section 174 of the Code of Criminal Procedure, and was endorsed to S. I. J. N. Sharma PW-10, for investigation on 28th July, 1998. S. I. J. N. Sharma proceeded to the place of the occurrence at Sama Sivik, Lingdum Busty. He found the deceased lying on a bed. He conducted inquest on the body of the deceased. As the body was highly decomposed, no external injury could be detected. The inquest report is Exhibit P-3. About a month thereafter, the appellant came to Chandra Ram Sharma PW-12 to ask him to sell on his behalf one nose ring (bulaki). The witness, Chandra Ram Sharma, recognised the same as belonging to the deceased, Jaggi Maya Darjee and enquired as to where from he had obtained the same. The appellant replied that he had got it from one Ghuirey and Ghuirey

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and one other person had killed Jaggi Maya Darjee. Suspicion arose in the mind of Chandra Ram Sharma. Thereafter, he along with other co-villagers produced the appellant before the Sadar Thana along with the said nose ring and also one wrist watch which were seized by the Police under the seizure memo Exhibit P-6. Thereupon, a written complaint was lodged by S. I. J. N. Sharma PW-10 to the O/C, Sadar Police Station which is Exhibit P-4. A case under section 302 IPC was thereupon registered against the appellant, Ram Bahadur Darji, Ghuirey and one unknown person and was endorsed to S. I. D.T. Simick PW-15 for interrogation. During the course of investigation, the appellant made a statement before the I.O. in the presence of witnesses. That statement except for the part which is inadmissible in evidence under section 25 of the Evidence Act, is to the effect that he had removed the deceased's gold ear-rings from her ears, Rs. 800/- from her waist band and also nose ring and wrapped the two ear-rings in a paper and hid the same in a cliff, near river Dhaingray, and the said gold ear-rings were in the same place and the same could be found on going there. That statement was signed by the I. O. D. T. Simick in the presence of Chandra Ram Sharma PW-12, Mrs. Lalita Rai PW-6 and Hari Prasad Sharma PW-1. The statement was also signed by the appellant on 28th August, 1998. The accused took out the pair of marwaries (ear-rings) from the stoney area of Dhaingray Khola (jhora)'s cliff by the side of Sama Sivik Road leading to Rankey, in the presence of the witnesses Chandra Ram Sharma PW-12 and Mrs. Lalita Rai PW- 6. After the completion of the investigation, S. I. D. T. Simick filed chargesheet against the appellant under sections 302 and 382 IPC for committing murder of Jaggi Maya Darjee and committing theft of her personal belongings after making preparation for causing her death. The learned Sessions Judge charged the appellant under section 302 for having caused the murder of Jaggi Maya Darjee between 20th and 23rd July, 1998 and under section 382 for

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having committed the theft of one Bulaki (nose ring), one pair of Marwaries (ear-rings) and one wrist watch from the possession of Jaggi Maya Darjee, after having made preparation for causing her death by strangulation. During the trial, 15 witnesses including the I.O. were examined. One of the witnesses, Dr. K. B. Gurung (PW-13) is the Medico Legal Specialist at the S.T.N.M. Hospital, Gangtok. He conducted the medico legal autopsy on the body of the deceased on 28th July, 1998. The body was in advanced stage of putrefication. The witness deposed that the body was highly decomposed. He gave the approximate time of death as three or four days prior to his examination. At the same time, he admitted that it was possible that the death had occurred one month earlier. He stated that even if the death had occurred one month earlier, the time of death is mentioned in such reports as only three or four days. He could not give the cause of the death. He could also not say whether the death might have occurred on account of suicide or strangulation.

3. The case rests entirely on circumstantial evidence. The only circumstance on which the prosecution relies upon is that the accused was found in possession of the belongings of the deceased, Jaggi Maya Darjee. Chandra Ram Sharma PW-12, is a former Panchayat member of Lingdum Gram Panchayat. He has deposed that the appellant brought one nose ring belonging to the deceased to him to sell the same. The witness recognised the same as belonging to the deceased, as the deceased had purchased the same at the time of her marriage and as he had helped her in making the purchase. According to his evidence, the deceased and also her family members used to seek his assistance in making purchases of the gold ornaments. The witness has further deposed that on his enquiry as to wherefrom he had obtained the bulaki Exhibit (vi), the appellant replied that he had got the same from one Ghuirey and Ghuirey had also given him (the appellant) one wrist watch. Thereupon, the witness told the

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appellant that the nose ring belonged to Jaggi Maya Darjee. Then the appellant replied that Jaggi Maya Darjee had been killed by Ghuirey and one other person. Thereupon, he took the appellant to the Police Station where the nose ring and wrist watch were seized by the Police under seizure memo P-6. He also stated that the appellant made a disclosure statement marked Exhibit P-1 to the effect that the two ear-rings could be found on going to the place of hiding and thereafter the ear-rings Exhibits 1 and 2 were seized in his presence vide seizure memo Exhibit P-7. The other seizure memo witness Mrs. Lalita Rai (PW-6) has admitted her signature on Exhibit P1. At the same time, she stated that she did not notice the Police reducing the statement of appellant to writing, though the appellant had stated before the Police that he had hidden the ear-rings in a cave. She stated that the place where the accused took out the ear-rings is on the road side. She has also proved her signature on Exhibit P-1. One other witness regarding the disclosure statement and the recovery of marwaries made by the appellant is Hari Prasad Sharma PW-1. He deposed that the marwaries were recovered by the Police in his presence from one green plastic from a cliff but the disclosure statement Exhibit P-1 was signed by him on the next day of the recovery. Reference may also be made to the evidence of Samsher Lepcha PW-7, who has deposed that about six to seven days prior to the discovery of the dead body of the deceased, who was the sister of the appellant, he saw the appellant going towards the deceased's house and the appellant told him that he was going to his sister's house.

4. It is a case of circumstantial evidence and as observed in Babuda v. State of Rajasthan AIR 1992 SC 2091, it is well-established that the prosecution has to establish each circumstance by independent evidence and the circumstances so established should form a complete chain without giving room to any other hypothesis and should be consistent with his guilt and inconsistent

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with his innocence. The learned Sessions Judge found the appellant guilty of both the charges by holding that the appellant had been found in possession of some articles belonging to the deceased and also because he was seen going towards the house of the deceased. In our view, no reliance can be placed on the statement of Samsher Lepcha PW-7 to the effect that he had seen the appellant going towards the house of the deceased about six or seven days prior to the discovery of the dead body of the deceased. According to the evidence of Dr. K. B. Gurung PW-13, death could occur three or four days or even one month prior to the recovery of the body. Neither the time of the death could be ascertained nor the cause of the death. Medical evidence does not shed any light as to whether the death had occurred on account of an homicidal act or suicide or for the deceased having taken excessive liquor. Bir Bahadur Subba admitted in his cross-examination that the deceased used to consume alcohol everyday. The fact that she used to consume alcohol was admitted by Jit Bahadur Darjee PW-4 also.

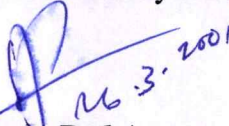
5. This main circumstance on which reliance has been placed by the prosecution is the recovery of the ear-rings by the appellant pursuant to the disclosure statement made by the appellant. However, it is doubtful whether the recovery was made pursuant to the disclosure statement Exhibit P-1 in view of the statement of Hari Prasad Sharma PW-1, that he was asked to sign Exhibit P-1, one day after the recovery had been made and also the statement of PW-6 Mrs. Lalita Rai that she did not notice the Police reducing the disclosure statement to writing. Furthermore, there is absolutely no evidence on record to prove that the ear-rings alleged to have been so recovered belonged to the deceased, Jaggi Maya Darjee. Even if it be held that the recovery was made of the ear-rings belonging to the deceased pursuant to a disclosure statement made by the appellant, for that fact alone the appellant cannot be held guilty of the

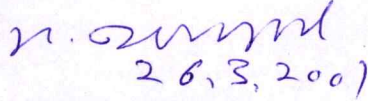
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charge of murder. In this view, we find support from Nagappa Dondiba Kalal v. State of Karnataka AIR 1980 SC 1753 and Sanwat Khan v. State of Rajasthan AIR 1956 SC 54. Furthermore, the fact that the house of the deceased at the time of the discovery of her dead body was locked from inside, goes a long way to suggest that the death was not homicidal. So, the appellant is entitled to acquittal of the charge under section 302 IPC.

6. Mr. Khatiwada submits that evidence on record proves at least that the appellant was found in possession of stolen property. It is true that Chandra Ram Sharma PW-12 has deposed that the appellant had brought one nose ring (Bulaki), Exhibit-6 belonging to the deceased, to seek his assistance for its sale, and on enquiry, the appellant told him that he had got it from Ghuirey who along with one another person had killed the deceased, but Ghuirey has not been prosecuted. Reason given for this by the prosecution is that there is no evidence against him. Ghuirey has also not been produced as a witness. If the appellant had stated before Chandra Ram Sharma and also before the Police that Ghuirey had committed the murder and if Ghuirey had not given the Bulaki to the appellant, then we see no reason why Ghuirey should not have been produced in evidence to show the falsity of the statement made by the appellant. We find no credible evidence to hold that the appellant was found in possession of any stolen property. As such, the appellant cannot be convicted under section 411 IPC also.

7. In the result, we allow the appeal, set aside the impugned judgment and order, acquit the appellant of the charges under sections 302 and 382 IPC and direct that he be set at liberty forthwith, if not required in any other case.


(Anup Deb)
Judge
26.03.2001


(Ripusudan Dayal)
Chief Justice
26.03.2001