

THE HIGH COURT OF SIKKIM : GANGTOK

CRIMINAL APPEAL NO. 16 OF 2003

In the matter of an appeal against conviction.

Indra Prasad Sharma,
S/o Devi Prasad Ghimirey,
R/o Toribary Busty, Jaigaon,
Dist. Jalpaiguri.
(At present in State Jail,
Rongyek, East Sikkim) **Appellant**

VERSUS

State of Sikkim **Respondent**

For the appellant : Shri N. Rai assisted by Jyoti
Kharga, Advocates.

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

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

Date of judgment: 1st April, 2004.

J U D G M E N T

R. K. PATRA, C.J.

This appeal is directed against the judgment dated 10.6.2003 and order dated 13.6.2003 passed by the learned Sessions Judge (Special Division-II) Sikkim at Gangtok in Criminal Case No. 1/2002 by which the appellant has been convicted under section 302 IPC for having committed murder by intentionally causing the death of Balaram Adhikari and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5000/- with a default clause of sentence.

2. The prosecution story is as follows :

The appellant who hails from Toribari Busty, Jaigaun P.S. in the district of Jalpaiguri, (W.B.) came to Tareythang under Pakyong P.S. in the East District of Sikkim and stayed for some days in the house of Balaram Adhikari, (hereinafter referred to as the deceased). During this period he developed intimacy with Geeta (PW 18), the daughter of the deceased. This was resented by the deceased. In one of the letters the appellant wrote to PW-18, that if any one would come in their way he would not hesitate to do away with his life by hook or by crook. On 22.6.2001 at about 4.30 p.m. the appellant came to the house of the deceased and took a sharp-edged cutting weapon, locally known as 'bamphok' from the kitchen of the deceased. When the deceased's son (PW-1) asked him as to why he had done it, the appellant replied that he wanted to cut a monkey with it. Within a few minutes he was seen to have assaulted the deceased with the said 'bamphok' on the head and body resulting in his instantaneous death. On being reported about the incident, PW2, the Panchayat Secretary, Linkey Tareythang, G.P., lodged FIR (Exhibit P-1) at Pakyong Police Station. In the FIR, the appellant was named as the assailant of the deceased. As he fled away from the village a massive manhunt was made. On the following day (23.6.2001) at about 0950 hrs, information was received from Rongli Police Station to the effect that a suspect resembling the appellant

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had been detained during the previous night. On receipt of this information the Investigating Officer proceeded to Rongli Police Station and found the description of the appellant as narrated by the witnesses tallied with him. On interrogation the appellant broke down and confessed to have killed the deceased. The appellant was thereafter arrested. In course of investigation he made statement on 27.6.2001 that he threw the weapon of offence underneath two big mango trees at Tilaypati and on the basis of the disclosure statement the 'bamphok' was recovered from the place pointed out by the appellant. After completion of investigation charge-sheet was filed leading to the appellant's trial which ended in his conviction and sentence as mentioned above.

3. In order to bring home the charge against the appellant, although the prosecution examined 20 witnesses, the main witnesses are PWs 1, 3 & 12. Dipak (PW3), the son of the deceased is the sole eye witness to the occurrence. PW1, Madan is another son of the deceased who is a pre-occurrence witness. PW12 is the doctor who conducted post-mortem examination of the dead body of the deceased.

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

5. We have perused the entire evidence on record. It is not disputed at the bar that the deceased had homicidal death. The doctor (PW-12) noticed the following ante-mortem injuries on the body of the deceased:

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A - GENERAL

No.1. Lacerated Injury 10 x 3 cm over left side of the face extending on left ear to left upper lip.

No. 2 Lacerated Injury of left temporal region 6 x 3 cms in sizes.

No. 3 left eye ball damaged.

B - HEAD AND NECK

No. 1. Laceration of the scalp left side.

No. 2 fracture of the left temporal bone.

No. 3 brain matters were coming out from the skull.

C - CHEST

No. 1 Ribs and chest wall lacerated injury and fractured of the six to 10th ribs left side.

No. 2 lungs rupture injury of lower lobe of left rib.

D - ADBOMEN

Stabbed wound 4x3 cms. in the left side of the abdomen rupture in Peritoneal Cavity.

According to him, the cause of death was shock as a result of haemorrhage due to ante-mortem multiple injuries caused by a sharp cutting weapon.

6. Let us now proceed to consider the evidence of PW-3 who is the lone eye witness to the occurrence. He being the son of the deceased would not let out the real assailant. His evidence however needs close and thorough scrutiny. He deposed that the appellant was previously residing in their house but at the time of occurrence he was staying in the house of one Pekurel Kaila. He stated that on the day of the occurrence at about 5 p.m. he was listening to the radio in his house and his younger brother Madan (PW-1) and his father (deceased) were there in the house. At that time the appellant came and took away one 'bamphok' from their kitchen saying that he needed it to cut a monkey and went

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downwards. Later he (PW3) saw the appellant assaulting on the head and body of his father with the 'bamphok'. After being assaulted, the deceased fell down crying "Marayo....Papilay...Marayo..". PW3 thereafter threw a stone at the appellant who threatened to kill him with the 'bamphok'. Immediately thereafter he fled from the place of occurrence. This witness was cross-examined but nothing was brought out to discredit his testimony. The evidence of PW3 is corroborated by the evidence of his younger brother PW1 who was aged about 11 years. He deposed that around 4.30 pm of the day of occurrence the appellant came to their house when he was preparing rice in the kitchen and took away the 'bamphok' saying that he wanted to cut a monkey with it. After sometime he heard his elder brother PW3 shouting in a frightened voice and he (PW1) saw the appellant running away downwards from their house with the 'bamphok' in his hand. He immediately came out of the kitchen and found his father lying on the ground and was bleeding profusely. His evidence shows that although he had not seen the appellant assaulting the deceased, he saw him coming to their house and taking the 'bamphok' and running away from the place of occurrence. On close scrutiny of the evidence of PW3 and PW1, we are satisfied that both of them are reliable witnesses. Nothing has been brought out in their cross-examination as to why they would

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falsely implicate the appellant in the crime. Their evidence is cogent, convincing and consistent and does not suffer from any infirmity. For the reasons aforesaid, we have no hesitation to hold that it was the appellant who assaulted the deceased with the 'bamphok' resulting in his death.

7. Although the prosecution sought to press into service the so-called recovery of the 'bamphok' we are not inclined to attach any importance to it inasmuch as PW3, the eye witness himself did not identify any 'bamphok' as the weapon of offence used to inflict his father.

8. The learned counsel for the appellant submitted that the offence committed by the appellant would be one under section 304 Part I IPC. There is nothing on record to suggest that the act committed by the appellant would come within any of the exceptions to section 300 IPC. We therefore do not find any substance in the above submission of the learned counsel for the appellant.

9. In the result, there is no merit in this appeal which is accordingly dismissed.


(**R.K. Patra**)
Chief Justice
01.04.2004


(**N. Surjamani Singh**)
Judge
01.04.2004

Dictation taken
&
typed by me
Tshering Dolkar