

IN THE HIGH COURT OF SIKKIM

Criminal Appeal No. 6 of 2000

Gompu Lepcha
Resident of Arithang
Gangtok. ... **Appellant.**

-Versus-

State of Sikkim. ... **Respondent.**

Coram:

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

Present: Mr. A. K. Upadhyaya with Mr. S.L. Pradhan,
Advocates for the appellant.

Mr. N.B. Khatiwada, Additional Public Prosecutor
with Mr. Karma Thinlay, Assistant Government
Advocate for the State.

Date of Decision: 10th June, 2002.

J U D G M E N T

Dayal, C.J.

This appeal arises from the judgment and order of the learned Sessions Judge, East and North Sikkim at Gangtok, convicting the appellant under section 304 Part II of the Indian Penal Code and sentencing him to rigorous imprisonment for a period of six years and also to pay a fine of Rs. 10,000 and in default of payment of fine to undergo further rigorous imprisonment for six months.

ms. 2002

2. The appellant Gompu Lepcha and his wife Smt. Lata Chettri were charged by the learned Sessions Judge under Section 302 read with Section 34 of the Indian Penal Code for causing the death of Gurmit Bhutia in furtherance of their common intention. The learned Sessions Judge acquitted Lata Chettri and no appeal has been filed by the State against her acquittal.

3. Prosecution case, in brief, is that on 7.4.1993 Ugen Norden Lepcha PW-4 and his wife Mrs. Norkit Lepcha PW-1 had hosted a birthday party of their son at their residence at Arithang, Gangtok. The birthday party started at 7 p.m., and continued upto 10 p.m approximately. After the dinner, there was no water for washing the utensils, because the accused persons had disconnected the water line in front of their house. Consequently, Ugen Norden Lepcha PW-4, his wife Norkit Lepcha PW-1, the deceased Gurmit Bhutia, his wife Chimi Ongmu PW-2 and Doma Wangyal PW-3 went in front of the house of the accused persons to reconnect the water pipe. As the deceased was reconnecting the water pipe, the wife of the appellant started using abusive language. A serious quarrel broke out. The wife of the accused started throwing flower pots at the persons who had gone for restoration of the water connection. The wife of the appellant said that all the people who had come should be finished. The deceased tried to pacify the wife of the appellant. In the meanwhile, there was a knock on the door from inside the room of the appellant and the appellant shouted that these people should be finished. In the meantime, Ugen Norden Lepcha PW-4 left with his son for their house. Thereafter, the appellant rushed out with a knife charging the deceased and stabbed him in the stomach. Soon thereafter, the light was put off by some one. Many people got collected at the place of the occurrence. In the meanwhile Phurba Tshering Bhutia PW-7, a neighbour, reached his home and heard some commotion coming from outside. So, he went to the scene of the occurrence. On the request made by the wife of the victim, he helped the victim reach his house.

Handwritten signature

At about 11.15 p.m., Arun Thatal PW-15 who was attached to the Sadar Police Station as a probationary Sub-Inspector received a telephone call from S.I. Surendra Pradhan PW-14 to the effect that some fight was taking place at Arithang and that he should go there. Consequently, Arun Thatal proceeded to the spot. The appellant was not available. However the appellant's wife told him that a fight had taken place on water dispute. He also noticed the evidence of fight on the spot. Thereafter, he proceeded to the house of the deceased. Chimi Ongmu PW-2, wife of the deceased, told him that fight had taken place on water pipe and that her husband had been stabbed by the appellant, Gompu Lepcha. He found the victim to be in an unconscious state lying on the floor of his house. Seeing the serious condition of the victim, he took him to S.T.N.M. Hospital, Gangtok for treatment, in the police vehicle. The victim died at the hospital. A written complaint Exhibit P-1 was lodged by Chimi Ongmu PW-2, wife of the victim, with the Officer-in-Charge, Sadar Police Station on 8.4.1993 stating that on 7.4.1993 at about 10.30 p.m., she, her husband, the house owner Ugen Lepcha and two neighbours went to the house of the appellant to request them to reconnect the water pipe which they had disconnected, since water was required because of the birthday party of the child of the house owner and when the pipe was being reconnected, the wife of the appellant and three others misbehaved with them and when the deceased was trying to cool them, the appellant came from his room, stabbed the deceased with a knife and pushed him on the ground. On the basis of this complaint, formal FIR was drawn on 8.4.1993 at 0200 hours. Inquest was conducted by T. N. Sharma PW-18 O/C Sadar P.S. Post-mortem on the body of the deceased was conducted by Dr. S.D. Sharma, PW-8 who is the Medico Legal Consultant at the STNM Hospital. He found the following injuries on the body of the deceased:-

1. Incised wound 4x.5x.5cms. over the left frontal region with a tailing of 5 cms. over the left forehead,

m. sangma

2. Contused abrasion .5x.5cms over the left cheek adjacent to the hairline,
3. Superficial laceration 1x.5. cms over the left upper eyelid in the medial aspect,
4. Incised penetrating wound 2.5x1cm. over the left side of the abdomen 3cm above the iliaccrest. The injury going into the peritoneal cavity.

On the internal examination the injuries detected were as follows :

1. Partial incised resection of the abdominal aorta at the level of 3rd lumbar vertebra,
2. There was haemoperitonium with faecal matter around 1000 ml. in the peritonea cavity,
3. Complete incised resection of the descending colon.

Cause of death was reported to be internal haemorrhage following resection of the abdominal aorta. The injuries 1 and 4 were produced by a sharp edged cutting weapon and injuries 2 and 3 were produced by blunt force. Injury 4 was reported to be sufficient to cause death in the ordinary course of nature. Subsequently, the case was entrusted by T.N. Sharma, PW-18 who was the Officer-in-Charge of Sadar Police Station to Ongmu Bhutia, PW-16 for investigation. Afterwards, the investigation was handed over by her to P.I. Hissey Zangpo Bhutia PW-17 who was the Police Inspector in the Crime Branch. On taking up the investigation he found that almost investigation had been completed by SI Ongmu Bhutia PW-16. She searched for weapon of offence but could not recover the same. She re-examined all the witnesses and interrogated the accused persons. After completing the investigation she submitted charge sheet against the accused persons. In his statement recorded under section 342 of the Code of Criminal Procedure, 1898, the appellant took the stand of simple denial of all the questions put to him. However, on being asked as to why the witnesses had deposed against him, he stated that the witnesses had been tutored by S.I. Ongmu Bhutia who was

M. Ongmu

inimical to him as he had purchased the land where she had raised construction. Relying upon the evidence of the eye witnesses, PW-1, PW-2 and PW-3 which was corroborated by the medical evidence of Dr. S.D. Sharma PW-8, the learned Sessions Judge held the appellant guilty of the offence under section 304 Part II of the Indian Penal Code. He was also of the opinion that Exception 4 of Section 300 of the Indian Penal Code was attracted to the present case in as much as there was no premeditation for the assault and hot and harsh words had been exchanged between the parties. He further observed that the appellant had assaulted the deceased in a sudden heat of passion and that he had not acted in any cruel manner.

4. The appeal came up for hearing initially on 28.3.2001 when the court expressed the doubt as to whether the case which was covered under Exception 4 to Section 300, Indian Penal Code could be covered under Section 304 Part II. Furthermore, a doubt was expressed whether the circumstances exist where the case could be covered even under Exception 4 to Section 300. So, notice was issued to the appellant to show cause why the conviction from Section 304 Part II, I.P.C. should not be converted to Section 302 IPC and sentence be enhanced accordingly. I have heard Shri A.K. Upadhyaya for the appellant and Shri N.B. Khatiwada, Additional Public Prosecutor for the State on the appeal and also on the notice as to enhancement of sentence.

5. Learned counsel for the appellant has submitted that though a large number of the people had collected on the spot, no independent witness was examined and PW-1, PW-2 and PW-3 are partisan witnesses. He has further submitted that the light was not sufficient to enable the witnesses to see as to how and by whom the victim was assaulted. Furthermore, he has submitted that it is doubtful whether the FIR was registered on the basis of the complaint Exhibit P-1

v. original

lodged by the wife of the deceased. His further submission is that the eye witnesses did not disclose to the people who had gathered there that they had seen the appellant assaulting the deceased. After perusing the record and hearing the learned counsel for the parties, I am satisfied that witnesses PW-1, PW-2 and PW-3 were the most natural witnesses. PW-1 had hosted the birthday party. PW-2 and her husband, the deceased, and PW-3 were the neighbours of PW-1 and had attended the party on invitation. Admittedly, the appellant was not inimical to the family of the deceased or to PW-1 or PW-3. A quarrel ensued since water supply had been disconnected as a result of which the witnesses alongwith others went in front of the house of the appellant in order to get the water supply restored. The appellant and his wife felt unhappy with the victim and others who had accompanied him, as a result of which verbal altercation took place. Though there is nothing in the evidence of PW-1, PW-2 and PW-3 to show that physical fight took place from the side of the victim also, PW-4 Ugen Norden Lepcha has stated that his wife PW-11 told him that some fight had taken place. This means that physical fight took place from the side of the victim also. Furthermore, Dr. S.D. Sharma PW-8 has stated that Dr. Tshering Doma had examined the appellant who had received simple injury produced by blunt force. There is absolutely no reason for disbelieving the statements of PW-1, PW-2 and PW-3 that it was the appellant who rushed from inside his room and stabbed the deceased on his stomach. There is also no doubt that the appellant had, before stabbing the deceased, charged the deceased. The case of the appellant is that the witnesses have deposed against him at the instance of S.I., Ongmu Bhutia PW-16 who was inimical to him. In this connection, reference has been made to the statement of Anguir Bhutia PW-11, who, in his cross-examination, has stated that he had sold the land where the house of S.I. Ongmu Bhutia was situated to the appellant and on that land Ongmu Bhutia and her family members used to reside in a temporary

v. Ongmu

shed constructed thereon and since the appellant wanted to construct a building on that land the said Ongmu Bhutia and her family members had to vacate the said land. The fact that Ongmu Bhutia had to vacate the land which had been purchased by the appellant does not appear to be any reason for the alleged enmity so as to impel Ongmu Bhutia PW-16 ask the witnesses to give false evidence against the appellant. Even if Ongmu Bhutia was inimical to the appellant, there could be no reason for the witnesses to exculpate the real culprit and implicate an innocent person. Evidence of PW-1, PW-2 and PW-3 is clear, cogent and trustworthy and is supported by medical evidence. There is no merit in the submission made on behalf of the appellant that the prosecution did not produce independent witnesses. It was not necessary for the prosecution to produce all the persons who were present on the spot. The witnesses who have been examined were most natural witnesses and have fully established the case of the prosecution.

6. I do not see any merit also in the submission of the learned counsel for the appellant that the light was insufficient to enable the witnesses to see the stabbing by the appellant. It is in the evidence of the witnesses that the light was switched off by some one after the appellant had stabbed the victim. PW-1 Mrs. Norkit Lepcha has also stated that even after the light had been put off, there was dim light coming indirectly from inside the house. Furthermore, the witnesses and the victim belonged to the same locality and were known to each other. There is also no merit in the submission made on behalf of the appellant that the evidence of PW-1, PW-2 and PW-3 is not reliable, since they did not disclose about the stabbing by the appellant to the other persons gathered on the spot. The people on the spot must have themselves seen the occurrence or must have come to know about the stabbing by the appellant from one or the other. It was not necessary for

v. ongmu

everyone of PW-1, PW-2 and PW-3 to tell every person who was present on the spot that the appellant had stabbed the victim.

7. Chimi Ongmu PW-2, the wife of the deceased, has stated that that on 8.4.1993 she submitted the written complaint Exhibit P-1 to S.I. Ongmu Bhutia who had come to her house. On the basis of this statement, learned counsel for the appellant has submitted that false complaint was prepared at the instance of S.I. Ongmu Bhutia. But there is no basis for this submission. Chimi Ongmu PW-2 has denied in her cross-examination the suggestion that S.I. Ongmu Bhutia PW-16 had helped her or had given her any guidance as to how to write the FIR. There is no reason for disbelieving her statement. In this connection note may be taken of the fact that S.I. Ongmu Bhutia was also residing in the same locality and was known to the family of the victim. She might have visited the house of the victim even before the investigation had started. Simply because the complaint was given by the wife of the deceased to S.I. Ongmu Bhutia at her own house case of the prosecution does not become doubtful, particularly when it has been found that the evidence of the eye witnesses is truthful.

8. In the inquest report, Exhibit P-2, T.N. Sharma, PW-18, Officer-in-Charge, Sadar Police Station has stated that a "formal complaint was also received from the brother of the deceased". Such complaint is not on record. The learned counsel of the appellant has submitted that perhaps the complaint made by the brother of the deceased was the first FIR. It is difficult to draw such an inference. The use of the word 'also' goes to show that the complaint which might have been received from the brother might be a later one. However, the appellant also did not try to bring such an FIR on the record. It is difficult to believe that if there was any complaint made by the brother of the appellant it

v. sanyal

would be contrary in substance to what is stated in the complaint, P-1 made by PW-2.

9. T. N. Sharma, PW-18 has also stated in his cross-examination that it is true that the case was registered on the formal report made by the brother of the deceased. This statement has been made the basis for the argument by the learned counsel for the appellant that the formal FIR was recorded on the report made by the brother of the deceased and not the wife of the deceased. However, a perusal of the formal FIR Exhibit P-12 shows that the FIR is based on the complaint made by PW-2, the wife of the deceased, and not any complaint made by the brother of the deceased. It is apparent that the statement made by PW-18, T.N. Sharma is incorrect to this extent. It appears to have been made because of failure of memory.

10. The learned counsel for the appellant initially submitted that the FIR should have been forwarded to the Magistrate immediately after it had been lodged under the provision of Section 157 of the Code of Criminal Procedure, 1898 but S.I. Ongmu Bhutia, PW-16 has expressed her ignorance as to whether the complaint, Exhibit P-1 was forwarded to the Magistrate. However, subsequently when it came to the notice of the learned counsel after reading Section 157 that the FIR has to be sent by the Officer-in-Charge of the Police Station and not by the Sub-Inspector this point was given up by the learned counsel.

11. It is fully established beyond reasonable doubt that the appellant intentionally caused body injuries to the victim, Gurmit Bhutia. One of the injuries was sufficient in the ordinary course of nature to cause death. As such, the case is covered under clause 3 of Section 300 IPC. At the same time, I affirm

M. Singh

the finding of the learned Sessions Judge that the case is covered under Exception 4 of Section 300. But that does not bring the case under Section 304 Part II. A case would be covered under Section 304 Part II only if the act is done with the knowledge that it is likely to cause death but without an intention to cause death or to cause such bodily injury as is likely to cause death. When it is found that the act by which the death was caused was done with the intention of causing such bodily injury as was sufficient in the ordinary course of nature to cause death, the case would be covered under Section 304 IPC Part I. However, learned counsel for the appellant has submitted that the case may be held to be falling under Section 304 Part II and in support of his submission has relied upon Mahesh -v- State of Madhya Pradesh, 1996 CrL. L.J., 4142 (SC) and Mavila Thamban Nambiar-v-State of Kerala 1997 CrL.L.J., 831 (SC). In both the cases only one blow had been inflicted upon the deceased and on the facts found it was held in the latter case that it would be reasonable to infer that the accused had the knowledge that the injury caused would cause death though he might not have intended to cause the death. Even when the appellant was convicted under Section 304 Part II, he was sentenced by the Supreme Court to rigorous imprisonment for seven years. In the other case of Mahesh the accused was convicted under Section 304 Part I IPC and sentenced to rigorous imprisonment for six years besides payment of fine of Rs. 1000 and in default of payment of fine to undergo further imprisonment for four months. However, in the instant case the evidence is to the effect that the appellant intended to cause the death of the victim. Norkit Lepcha PW-1 has deposed that the appellant had shouted from inside his room "open the door, who are they, they should be finished". Chimi Ongmu, PW-2, the wife of the deceased has deposed that there was knocking on the door from inside the room with a voice like that of the appellant saying "these people should not be spared". Doma Wangyal, PW-3 stated that a voice was

Handwritten signature

heard of somebody saying "open the door I will see them", whereupon the wife of the appellant opened the door and then the appellant rushed from inside the room and stabbed the deceased on his stomach. Ugen Norden Lepcha, PW-4, though was not present at the time of the stabbing, has stated that on the day of the incident itself, earlier also, the appellant had stopped water supply. He has deposed that as he was preparing for the party he found that there was no flow of water from alkathene pipe and so he and the victim Sonam Gurmik went to check the pipe line and when they went near the house of the appellant they found that the pipe had been disconnected in front of the building of the appellant. Then the witness requested the appellant to reconnect the pipe as he was having a party. The appellant replied that he would reconnect it and then he along with the deceased came back to his house and saw water flowing from the pipe. Thereafter, the party continued but when the party was over and water was needed for cleaning up utensils, there was again no water in the pipe and it is thereafter that he along with others went to the scene of occurrence where the quarrel ensued resulting in the death of deceased. On these facts, reasonable inference would be that that injury caused by the appellant which was according to medical evidence sufficient in the ordinary course of nature to cause death was intentional. As was held in Mahesh Balmiki-v- State of M.P. 2000(1) SCC 319 "there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the

महेश बालमिकी

offender and the offence committed by him." However, I find, in the circumstances, the punishment awarded by the learned Sessions Judge to be sufficient for the altered conviction.

12. In the result, the conviction of the appellant under Section 304 Part II IPC is altered to one under Section 304 Part I IPC. He shall suffer for the altered conviction rigorous imprisonment for six years and shall also pay fine of Rs.10,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for four months. The period of detention undergone by him during the investigation, enquiry or trial shall be set off against the term of imprisonment imposed on him.

The appeal thus stands disposed of.

n. g. dayal
10.6.2002
(Ripusudan Dayal)
Chief Justice
10.06.2002