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THE HIGH COURT OF SIKKIM : GANGTOK

CRIMINAL APPEAL NO. 9 OF 2003

In the matter of an appeal under section 382
read with section 374(2) of the Cr.P.C.

Chandra Shekar Subedi,
S/o Dhan Bahadur Subedi,
R/o Kemkoongsha,
Geyalshing,
West Sikkim
(At present in State Jail,
Rongyek, East Sikkim) **Appellant**

VERSUS

State of Sikkim **Respondent**

For the appellant : Shri S. Sarkar, Senior Advocate
assisted with Shri S. S. Hamal,
Advocate.

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.

The appellant has been convicted under section
302 IPC by the learned Sessions Judge (E & N) Sikkim at
Gangtok in Criminal Case no. 21 of 2001 for having
committed murder by intentionally causing the death of his
wife Manju Subedi and sentenced to undergo imprisonment

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for life and to pay a fine of Rs.5,000/- with a default clause of sentence.

2. The prosecution case is as follows:-

The appellant, a constable in the Sikkim Armed Police was posted in the office of A.D., S.I.B., Balwakhani during March, 2001. Manju Subedi (hereinafter referred to as the deceased) was his second wife. She was getting a sum of Rs.1,500/- as her monthly maintenance which was being deducted from the salary of the appellant. On 11.3.2001 at about 3.30 p.m. the deceased went to the office of the appellant along with Amrita (PW7) and met the appellant in the guard room. At that time, the appellant was on his bed and his colleagues were playing cards in the adjoining room. The appellant and the deceased were heard having serious discussion over the amount of maintenance. After sometime, hearing some 'hulla' (commotion) constable PW5 on being instructed by constable PW3 entered into the other room and found the deceased lying dead on the bed of the appellant with injury on her throat caused by a knife which was still embedded and the appellant was found sitting near the deceased.

The prosecution examined 16 witnesses in order to bring home the charge against the appellant.

3. The plea of the appellant was one of denial.

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4. Shri Sarkar, learned counsel appearing for the appellant submitted that prosecution has not been able to establish its case beyond reasonable doubt. Alternatively, his submission was that the offence committed by the appellant would be one under section 304 part II IPC. In support of this submission he relied on the judgments of the Supreme Court in Shankar vs. State of Madhya Pradesh AIR 1979 SC 1532 and Surinder Kumar vs. Union Territory, Chandigarh AIR 1989 SC 1094.

5. In view of the submissions made on behalf of the appellant, let us examine the evidence on record. PW1 was a constable and at the time of the occurrence he was posted in the office of A.D., S.I.B., Balwakhani. He stated that he and the appellant were in the upper room of the office when the deceased came and asked the appellant for money. The appellant replied that he had no money. Thereafter he (PW1) went to the lower room where his colleagues constables PWs 3 and 5 were playing cards. At that moment, they heard some commotion in the upper room. PW3 asked PW5 to go up and verify as to what had happened? PW5 went up and returned saying that "the appellant has killed". In the cross-examination, PW1 stated that he cannot say as to who killed the deceased. PW2 is another constable who was on sentry duty in the S.I.B. office at Balwakhani. He stated at about 2.45 p.m. one lady accompanied by her friend came and

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wanted to meet the appellant saying she was his wife. He refused to allow her entry. Thereafter he contacted the senior guard commander and after obtaining permission from him he allow her to enter the office. PW3 was another constable. He deposed that at about 2.45 p.m. when they were playing cards the deceased accompanied by her friend came and inquired about the appellant. He pointed out to her to the section of the room where the appellant was sleeping. After sometimes, he heard the appellant and the deceased talking about some monetary matters. Around 4.30 p.m. he heard a female voice crying in pain saying "aaya aaya". Then he requested PW5 to find out as to what had happened? PW5 returned and informed him that he saw the deceased lying dead on the bed of the appellant. PW4 was the guard commander in the A.D., S.I.B. office. His evidence is that on the date of occurrence around 4.30 p.m. he was informed by PWs 3 and 5 that the appellant killed his wife. He immediately rushed to the guard room and found the dead body of the deceased lying on the bed of the appellant and the appellant was present at the spot. PW5 was another constable who was on guard duty. He stated on the date of occurrence he was on duty from 6 a.m. to 9 a.m. and was given additional duty from 12 noon to 3 p.m. After performing the additional duty he handed over charge to PW2 and came back to the guard room. The

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appellant was in the guard room along with the deceased. After changing clothes he went to the adjoining room and played cards with his colleagues. He prepared tea and gave the same to his colleagues as well as to the deceased. While playing cards PW3 asked him to find out as to what had happened as he heard some sound there. He went inside the room and found the deceased lying dead on the bed with a knife fixed to her throat and the appellant was sitting on the bed. PW6 was a resident of Housing Colony, Tadong in whose house the deceased was working as maid-servant. He stated that on the date of the occurrence the deceased left his house saying that she would go to her husband to receive maintenance amount. PW7 who had accompanied the deceased turned hostile to the prosecution. PWs 8 and 9 are witnesses to seizure of certain articles. PW10 is the brother of the appellant whose evidence is of no use to the prosecution. PW 11 was the ASI attached to the office of S.A.P., Pangthang. His evidence is to the effect that one of his duties in the office was to make payment of salaries to the jawans. He stated that the appellant had two wives and a sum of Rs.1,500/- was being deducted every month from his pay and was being handed over to the second wife (deceased). For the month of February, 2001 a sum of Rs.760/- was only deducted as there were many other deductions from his salary and the said amount of Rs.760/-

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was handed over to the deceased and she was advised to collect the balance amount from the appellant. PW12 was a police photographer. He was merely tendered by the prosecution. PW13 was the doctor who conducted the post-mortem examination of the dead body of the deceased. He found the following ante-mortem injuries:-

Stab wound 2 x 3 cms. on the middle of neck in between collar bones. The inner end of the wound sharp and clean cut while utter end splitting type.

According to him the cause of death was shock as a result of ante-mortem haemorrhage due to ante-mortem injuries produced by sharp cutting weapon like a dagger. He also stated a dagger was found embedded in the stab wound at the middle of the neck. PW14 was the officer-in-charge in the Sadar police station, Gangtok. PW15 was a Judicial Magistrate who recorded the statement of Amrita PW7 under section 164 Cr.P.C. PW16 was the investigating officer.

6. Considering the evidence of constables PWs 1, 2, 3, 5 and the guard commander PW4 coupled with the medical evidence of the doctor PW13 there is no iota of doubt that the deceased had homicidal death.

7. None of the above police personnel had seen the appellant committing the murder of the deceased. But they are consistent in their evidence that while they were all engaged in playing cards the appellant and deceased were in

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another room and were talking about monetary affairs. After sometime, they heard some sort of sound and PW5 on being asked went to the other room and found the deceased was lying dead and the appellant was found sitting near her. There is absolutely no reason as to why the colleagues of the appellant would speak against him. Although none of them stated as to who stabbed the deceased, we have no doubt in our mind that it was the appellant who did it.

8. From the analysis of evidence made above, we have seen that it was the deceased who went to the appellant to ask her monthly allowance. The evidence of PW1 shows that when she asked for money, the appellant replied that he had no money with him. The deceased and the appellant were in the room for sometime and had discussion over payment of monthly maintenance. The demand for higher amount of maintenance made by the deceased and the blunt denial by the appellant must have turned to a heated argument and the appellant must have lost his self-control and in a fit of anger stabbed at her neck. There could be no pre-meditation on the part of the appellant because it was the deceased who went to the appellant and broached the topic of payment of allowance. In the circumstances, we are inclined to hold that the appellant is entitled to benefit of exception 4 to section 300

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IPC and is thus guilty of an offence punishable under section 304 part I IPC.

9. In the result, the order of conviction and sentence passed under section 302 IPC is hereby set aside. The appellant is convicted under section 304 part I IPC and he is directed to suffer rigorous imprisonment for seven years.

10. The appeal is partly allowed.


(R. K. Patra)
Chief Justice
01.04.2004

I agree.


(N. Surjamani Singh)
Judge
01.04.2004

Dictation taken
&
typed by me
Dipak Saha