

CrI. Rev. P. No. 03 OF 2016

----- Petitioner.

-VERSUS-

----- Respondent.

ADVOCATE (S)

FOR ----- Mr. Ajay Rath, Mr. Rahul Rath, Mr. Aditya
Makhim, Ms. Phurba Diki Sherpa and Ms. Pramit
Chettri.

ADVOCATE (S)

FOR ----- J. B. Pradhan, Public Prosecutor, Mr. Karma
Thinlay, Addl. Public Prosecutor, Mr. S. K. Chettri,
Asstt. Public Prosecutor and Ms. Pollin Rai, Asstt.
Public Prosecutor.

Case No.....

Serial No.	Date	Order (s) with Signature (s)
1	2	3
01.	31.03.16	Crl. Rev. P. No. 03/2016 BEFORE MR. JUSTICE S. K. SINHA, CJ. Present: Mr. Ajay Rathi and Ms. Phurba Diki Sherpa, Advocates for the Petitioner. ... Heard on admission. Order dictated in open Court. Typed separately, signed and dated. Chief Justice 31.03.2016

pm/jk

Index : Yes / No
Internet : Yes / No

HIGH COURT OF SIKKIM, GANGTOK
(Criminal Revisional Jurisdiction)

HON'BLE SHRI SUNIL KUMAR SINHA, CHIEF JUSTICE

Crl. Rev. P. No. 03 of 2016

Mr. Devraj Upreti @ Praveen,
S/o Shri Chura Mani Upreti,
Aged about : 27 years,
Resident of : Rawtey Rumtek,
Near Durga Mandir, Rumtek,
Post Office : Rumtek,
Police Station : Ranipool,
East Sikkim.

... **PETITIONER**

Versus

State of Sikkim

... **RESPONDENT**

**Criminal Revision under Sections 397 and 401 read with
Section 482 of the Code of Criminal Procedure, 1973.**

Appearance :

Mr. Ajay Rathi and Ms. Phurba Diki Sherpa, Advocates
for the Petitioner.

ORDER
(31.03.2016)

SUNIL KUMAR SINHA, CJ.

1. Heard on admission.
2. The Petitioner is aggrieved by the order dated 24.02.2016 passed in Sessions Trial Case No. 27/2015, whereby charges u/S. 302 IPC have been framed against him.

3. The case of the prosecution is that on 02.08.2015, at around 10.00 AM, the accused assaulted the deceased with a kitchen-knife on the left side of the chest, which caused following injuries: -

- (i) Cut wound measuring 2 cm on the left side of the chest;
- (ii) Cut wound measuring 1.5 cm on the left side of the chest.

Corresponding to one of the injuries, there was an injury on the left lung, which was punctured on the posterior lobe and about one litre blood had accumulated in the thoracic cavity. The diaphragm was also punctured on the left posterior aspect. The left lung had completely collapsed. It was opined that the external injuries with corresponding internal injuries were ante mortem and could be caused due to forcible thrusting of a sharp edged weapon like knife. The external injury No. 1 corresponding to internal injury was fatal to life and sufficient to cause death in ordinary course of nature. The deceased had died as a result of hemorrhage and shock due to above injuries.

4. Mr. Rathi, learned counsel appearing on behalf of the Petitioner, argues that there was a sudden fight between the Petitioner and the deceased and after the fight the above injuries were caused. His submission is that in the above facts and circumstances an offence u/S. 302 IPC would not be made out

and the case of the Petitioner would fall within the exception of Sec. 300 IPC.

5. I have gone through the contents of the charge-sheet as also the postmortem report collected during the course of investigation. Whether an offence will fall under exception to Sec. 300 IPC is a question of fact which could not be decided at the stage of framing of charges. The evidence with relation to intention or knowledge would be looked into when they are available on record with a view to appreciate them, which exercise cannot be undertaken at this stage. At this stage, the Court, on perusal of evidence, has only to find out whether there exists sufficient ground to take the view that a *prima facie* case is made out to proceed against the accused. If the Court is satisfied about the existence of *prima facie* evidence, the charges would be framed accordingly, but when even accepting as it is the evidence, which the prosecution proposes to adduce, no case is made out against the accused, the Court shall be right in procedure to discharge him.

6. I am of the view that there is sufficient material against the Petitioner to frame a charge u/S. 302 IPC. The petition, therefore, is liable to be dismissed and is dismissed summarily.

Chief Justice
31.03.2016

Approved for Reporting
Internet

: Yes/No.
: Yes/No.

pm/jk