

(2012) 07 SIK CK 0003
In the Sikkim High Court
Case No : Criminal A. No.15 of 2011

Ner Tshering Lepcha and Nimzang Lepcha

APPELLANT

Vs

State of Sikkim

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Citation : (2012) CriLJ 3982

Hon'ble Judges : Permod Kohli, C.J; Sonam Phintso Wangdi, J

Bench : Division Bench

Advocate : A.K. Upadhyaya, with Ms. Binita Chhetri and Ms. Dawa Jangmu Sherpa, for the Appellant; J.B. Pradhan, Public Prosecutor with Mr. Karma Thinlay Namgyal, Additional Public Prosecutor and Mr. S.K. Chettri, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice S. P. Wangdi, Judge

1. In this Appeal the Appellants seek to assail the and West Sikkim at Namchi dated 28-02-2005 in Sessions Trial Case No.4 of 2004 by which they stand convicted for the offence under Sections 302/34 and 380/34 of the Indian Penal Code (in short "IPC"). The case of the prosecution so much that is relevant for the purpose of this Appeal is that on 26-11- 2002 at about 0815 hours the Gyalshing Police Station received a complaint from one Sonam Wangda Bhutia, P.W.4, of Chojo Busty, Khecheperi, West Sikkim, stating that at about 0530 hours of the same day P.W.5, Ms. Nikhit Lepcha alias Kali, aged about 9 years and P.W.20, Master Sam Tshering Lepcha alias Aching Lepcha, aged about 7 years, informed him that in the night of 25-11- 2002 the Appellants had stabbed to death the deceased, Chokee Bhutia, aged about 65 years in the store room of her house where millet was stocked and had fled after committing the theft of huge amount of her money and varying kinds of gold and silver ornaments. The Gyalshing P.S. Case No.30(11)02 dated 26-11-2002 under Sections 457/302/392/34 IPC was registered against the Appellants and the case taken

up for investigation.

2. Investigation of the case revealed that the Appellants were familiar with the deceased Chokee Bhutia and her family and used to visit her house frequently. On 25-11-2002, the Appellants having decided to kill her and rob her of her wealth, borrowed a knife from one Sam Tshering Lepcha, P.W.20, from the house of P.W.15, Godup Lepcha where a puja was being performed. They then went to the house of the deceased and found her threshing millet along with her two minor foster children, Nikhit Lepcha, P.W.5 and P.W.20, Sam Tshering Lepcha, in her store room near the kitchen. Being familiar to the family they pretended to join them and help in threshing the millet. After consuming the drink offered by the deceased, the Appellants who were on their feet all the time, then got into action. When the deceased rose and turned to collect more unthreshed millet the Appellant No.2, Nimzang Lepcha caught hold of the deceased by her arms from behind restraining her from moving and the Appellant No.1, Ner Tshering Lepcha pulled out the knife from its sheath tied in the waist of Appellant No.2 and stabbed her on the neck of the deceased. The deceased struggled to set herself free but, was unable to do so and ultimately fell dead on the pile of millet. They then assaulted the minor children and entered the room of the deceased, stole her money and gold ornaments and fled.

3. The consequential charge-sheet filed against the Appellants culminated in the Learned Trial Court framing charge under Sections 457/302/392/34 IPC against the Appellants and at the conclusion of the trial they were convicted under Sections 302/34 IPC for committing the offence of the deceased Chukee Bhutia and under Sections 380/34 IPC for theft of the cash and ornaments of gold and silver from her house and sentenced accordingly.

4. It is relevant to note that at the time of hearing Mr. A. K. Upadhayaya, Learned Senior Advocate, appearing as Legal Aid Counsel on behalf of the Appellants, at the outset submitted that he would prefer not to press the Appeal on the merit of the findings contained in the impugned judgment but would confine himself to an alternative plea for reduction of the sentence. Under such circumstances, we proceeded to hear the matter to the limited question preferred to be pressed on behalf of the Appellants.

5. A perusal of the brief synopsis of submissions filed by the Learned Counsel for the Appellants, however, revealed that the relief being sought for was not for reduction of the sentence but for alteration of the offence from Section 302 IPC to Section 304 Part II IPC. Therefore, the submissions conflicting as they were, in the larger interest of the justice we have proceeded in the premises that the prayer is for alteration of the offence from Section 302 to Section 304 Part II IPC.

6. Briefly set out, the grounds that the Learned Senior Counsel seeks to press in support of his plea are as under:-

(i) From the record of the case, it is clear that the accused persons had no motive to kill the deceased. From the prosecution case, it appears that the

accused persons wanted to steal/rob the valuables from the possession of the deceased. It appears that the accused persons struck the deceased not with an intention to kill her, but with the intention of preventing her from obstructing them from stealing valuables.

(ii) The weapon used is not a firearm.

(iii) The weapon of offence is a small knife, the length of the blade of which is 7.1 cm only as per the CFSL report.

(iv) The deceased was not hit on her vital organs.

(v) The accused persons were very young at the time of the commission of the offence i.e. 19 & 20 years respectively.

(vi) The accused were arrested on 28th of November, 2002 and since then they are in custody. They have almost completed ten years in custody.

7(a). The first point raised on behalf of the Appellants, in our view, is most untenable on the face of the glaring evidence to the contrary. There is no manner of doubt that the Appellants had committed the offence in a premeditated manner. We find from the evidence of P.W.20, Sam Tshering Lepcha that the Appellant No.2 had borrowed his knife and disappeared with it which is a circumstance indicating preparation of the Appellants to kill the deceased. The evidence of the two minor prosecution witnesses, namely, Nikhit Lepcha, P.W.5 and Sam Tshering Lepcha, P.W.20, who are eye-witnesses to the commission of the offence, reveals that the Appellants had come to their house in the evening of the same day in the pretext of looking for the village "witch doctor" which is the next circumstance. Next, their evidence further reveal that the Appellant No.2 later caught hold of her and the Appellant No.1 pulled out a knife from its sheath tied on the waist of the Appellant No.2 and stabbed her on the neck so severely that resulted in her death on the spot. After killing her they entered her room and committed the theft of the money and valuables of the deceased and fled. The sequence of events well-established by the evidence of the minor eye-witnesses completely belies the plea urged on behalf of the Appellants that they did not have the intention to kill her but, to only prevent her from obstructing them from stealing the valuables. Then, of course, is the disclosure statements rendered by the Appellants, recovery of the ornaments at their behest from the place of its concealment, recovery of blood smeared weapon, blood soaked clothes and the C.F.S.L. report confirming the blood as human blood.

(b) The points no.(ii), (iii) and (iv), raised on behalf of the Appellants, in our view, also do not appear to have any substance. It is not necessary that for an offence to fall u/s 300 IPC the weapon necessarily is required to be a firearm. The weapon in the present case may be a small knife but, it does not detract from the fact that it was used with such force aimed at the neck that the deceased was killed almost instantaneously on the spot. The severity of the assault can be gathered from the autopsy report, Exhibit 29, and the evidence of

Medico-Legal Specialist, P.W.17 from which we find the following:-

1. Incised wound 10 cms x 3 cms x 1 cm situated obliquely on the hyoid bone.
2. Left carotid artery was cut.
3. Incised wound 3 cms x 2 cms x 1 cm situated horizontally above the hyoid bone.
4. Incised wound on the lateral part of neck below the angle of mandible measuring 3 x 1 cm.

The nature of the injuries indicate the force with which the victim was stabbed at least three times. From this the intention of the Appellants can indubitably be inferred. We can also reasonably presume that it was because of the size of the knife that the Appellants aimed it at the neck of the victim in order to make her death certain. If they did not have such intention but only wanted to prevent the deceased from obstructing them from committing the theft as urged on their behalf, there was nothing that prevented them from injuring her elsewhere instead of stabbing her on the vital part of her body with such force.

(c) The youthfulness of the Appellants, in our view, would not be of any assistance to the Appellants considering the pre-medicated and the brutal manner in which the offence was committed against an old lady of 65 years of age taking advantage of her trust and faith in them.

(d) So far as the ground mentioned in point no.(vi) is concerned, it is irrelevant as to the number of years a prisoner has undergone detention for the purpose of considering alteration of sentence from Section 300 IPC to Section 304 Part II IPC or any other part thereof and is accordingly, rejected.

8. For the reasons aforesaid, the offence, in our view, squarely falls u/s 300 IPC shorn of the Exceptions thereto and, therefore, we do not find any reason to differ with the views of the Learned Trial Court as contained in the impugned judgment which we find it to be a well considered one.

9. In the result, the Appeal stands dismissed.

10. No order as to costs. Let a copy of this judgment along with the original records of the case be transmitted to the Learned Trial Court forthwith for compliance.