

(2012) 07 SIK CK 0001
In the Sikkim High Court
Case No : Criminal Appeal No. 16 of 2011

Shri Rakesh Rai @ Spiderman

APPELLANT

Vs

The State of Sikkim

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Citation : (2012) CriLJ 4033

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

Bench : Division Bench

Advocate : N. Rai, with, Ms. Jyoti Kharka, for the Appellant; J.B. Pradhan, Public Prosecutor with Mr. Karma Thinlay Namgyal, Assistant Public Prosecutor and Mr. S.K. Chettri, Asstt Public Prosecutor for the State, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice Permod Kohli, CJ

1. This appeal is directed against the Judgment Special Division-I, Sikkim at Gangtok in S.T. Case No.8 of 2010; State of Sikkim -versus- Rakesh Rai alias Spiderman, whereby the appellant/accused has been convicted for offences under Sections 332/333/224 of the I.P.C. and vide a separate Order of even date, the appellant has been awarded the following sentences: -

- a) Convict shall undergo imprisonment for a term of two years under Sec. 224 IPC,
- b) Convict shall undergo imprisonment for a term of three years under Sec. 332 IPC.
- c) Convict shall undergo imprisonment for the maximum period of 10 years and shall also pay a fine of Rs.1000/- under Sec.333 IPC. In default of payment of fine, convict shall undergo further imprisonment of one year.

The period of detention undergone further ordered to be set off. The sentences ordered to be run concurrently. When this matter was taken up for consideration

on 27.06.2012, Mr. N. Rai, learned Senior Counsel appearing for the appellant, fairly submitted that he does not want to challenge conviction and prayed for reduction of sentences awarded to the appellant. Arguments have been accordingly heard only on the question of reduction of sentence.

2. In view of the short question argued before us, the facts relevant for the purpose are being briefly noticed hereunder.

2.1 The appellant was an under-trial prisoner at State Jail, Rongyek, East Sikkim. On 21.07.2005 at 0230 hrs., a written complaint was received from one Shri Parasmani Pradhan, NDO at State Jail, Rongyek, East Sikkim alleging that on the intervening night of 20.07.2005 and 21.07.2005 at about 0140 hrs., while he was on duty and patrolling around the prison, he heard a whistle being blown from the ward no. 4 section. He rushed towards the said area and broke open the lock on the perimeter gate of ward no. 4. It was further stated that on reaching the front gate along with some other guards, he saw the accused Rakesh Rai @ Spiderman beating the warder Suraj Kumar Chettri (P.W. 9) in the passage with a wooden plank. He along with guards managed to overpower the accused and locked him in cell no. 7. It was further stated that after a little while the accused UTP was lying on his bed. He slit his own throat and had to be rushed to STNM Hospital for treatment.

2.2 On the basis of the written report, an FIR vide Police Station against the appellant u/s 307/333 of the IPC. After registration of the FIR, the investigation was taken in hand. On completion of investigation a charge-sheet u/s 173 of the Cr.P.C. came to be filed in the Court. The investigation revealed that warder Suraj Kumar Chettri (P.W. 9) was on night reserve duty at Sikkim State Jail, Rongyek from 1700 hrs. on 20.07.2005 to 0800 hrs. on 21.07.2005 having been deployed by the night duty officer ASJ Parasmani Pradhan (P.W.3) that evening for night duty at the Maximum Security Ward No. 4. It was further found that ASJ Parasmani Pradhan re-deployed HG Ram Lall Gurung (P.W.12) who was also on night reserve duty at Sikkim State Jail from 1700 hrs. on 20.07.2005 to 0800 hrs. on 21.07.2005 for night duty at the same place together with warder Suraj Kumar Chettri. At about 2230 hrs. on 20.07.2005, HG Ram Lall Gurung joined warder Suraj Kumar Chettri for night duty. After checking all the cells, warder Suraj Kumar Chettri brought and spread his bedroll out of the passage between the cell no.2 and 3. He, being unwell due to boil on his abdomen, laid down on his bed at about 0030 hrs. after informing his counterpart HG Ram Lall Gurung (P.W.12) to remain to duty and wake him up at 0200 hrs. on 21.07.2005.

2.3 Warder Suraj Kumar Chettri after lying down in his bed began listening to his radio on his ear phones, when UTP Rakesh Rai lodged in cell no. 7 spoke out from the surveillance hole to warder Suraj Kumar Chettri that he too wants to listen to the radio. Warder Suraj Kumar Chettri switched off his radio and conversed with the accused Rakesh Rai regarding his other criminal cases. He again began listening to his radio. HG Ram Lall Gurung, in the meantime, went to attend the call of nature in cell no. 5 of Maximum Security Ward no. 4. The

accused unscrewed the knots on the bolt on the door through the surveillance hole and allegedly flung open the door of the cell no.7 and came out to the passage where warder Suraj Kumar Chettri was lying down in his bed.

2.4 On hearing the sound of the door being flung open, Suraj Kumar Chettri woke up and found accused standing over him armed with a wooden plank. On seeing this, warder Suraj Kumar Chettri cried out to the other guards and, in the meantime, accused hit him on the head with the wooden plank. As a result, warder Suraj Kumar Chettri fell unconscious on his bed with blood oozing out from his head. It is further alleged that P.W.12, HG Ram Lall Gurung, who went to attend the call of nature, heard the sound of the wooden plank being struck in the passage. The accused, in the meantime, reached over to the cell no. 5 and also struck HG Ram Lall Gurung with the same wooden plank. HG Ram Lall Gurung tried to protect himself by shielding himself with his hands. During the scuffle, the accused struck HG Ram Lall Gurung on the head with the same wooden plank. The inmates of the Maximum Security Ward no. 4 also cried out seeing this happening. Rakesh Rai returned to the passage of Maximum Security Ward no. 4 and started hitting the doors of cell nos. 6, 4, 3, 8 & 9 from where the inmates were crying and opened the doors of the cell nos. 4 & 3 and asked the inmates to come out. The inmates remained inside their cells.

2.5 In the meantime, ASJ Parasmani Pradhan accompanied by warder Nochi Bhutia (P.W.10) and Thendup Bhutia (P.W.8) arrived at the perimeter gate of the maximum Security Ward no. 4 where warder Sukhbir Sunar (P.W.4) and warder Tseten Bhutia (P.W.5) had already arrived. ASJ Parasmani Pradhan had brought a hammer from the administrative office and broke open the lock on the perimeter gate with the hammer and entered the premises of the Maximum Security Ward no. 4, where he found HG Ram Lall Gurung running out and bleeding from his head. He also found the accused hitting warder Suraj Kumar Chettri with the wooden plank. He called out to the accused to throw the wooden plank and get into his cell but was threatened by the accused. ASJ Parasmani Pradhan, thereafter, picked up steel plates and mugs kept outside the doors of cell nos. 9 and 10 and hurled them at Rakesh Rai. He took cover behind the door of his cell no. 7. ASJ Parasmani Pradhan managed to snatch the wooden plank, which had stuck in the door of cell no. 7. He then placed some of the warders in the passage to guard the accused and other inmates. Warder Suraj Kumar Chettri and HG Ram Lall Gurung were taken down to the administrative office and later sent to STNM Hospital for medical examination.

2.6 In the meantime, it was found that the accused slit his throat with a blade while lying on his bed in cell no. 7 and he was also taken to the STNM Hospital. The investigating agency prima facie found offences under Sections 307/333/332/224 of the IPC established against the accused/appellant and filed the charge-sheet. The trial Court on consideration of the material on record framed charge against the accused under Sections 307/333/332/224 IPC. The accused having pleaded not guilty was put to trial.

2.7 Prosecution examined witnesses including the I.O. and after recording the statement u/s 313 Cr.P.C. and hearing the parties, the learned Sessions Judge, Special Division-I, Sikkim at Gangtok passed the impugned Judgment of conviction and awarded the sentences noticed above, while acquitting the accused for offence u/s 307 IPC.

3. Since the submission on behalf of the appellant is related only to the reduction of the sentences, the findings of the trial Court on the question of conviction need no reference.

4. Mr. N. Rai, learned Senior Counsel submits that there is contradiction between the statements of P.W.9 and P.W.-12. He also submitted that at the time of the commission of offence, the accused was 20 years of age and deserves leniency. His further submission is that the trial Court awarded a maximum sentence provided under law to the accused which needs to be reduced as there is no valid reason to award the maximum sentence prescribed under law.

5. In support of his contention, he has referred and relied upon judgments in (i) Manumiya Vs. State of Gujarat, (ii) State of Karnataka Vs. Mohammed Sadiq, and (iii) State of Karnataka Vs. Richard @ Aruldas and Chakravarthi @ G. Gopal, . In Manumiya (supra), the Hon"ble Supreme Court while upholding the conviction of the appellant u/s 333 reduced the sentence from 1 (one) year to 6 (six) months and remitted the fine.

6. In State of Karnataka v. Mohammed Sadiq (supra), the accused was charged with the allegation that he jumped the traffic signal and later on being apprehended, hit the on duty police constable, who suffered fracture of his ribs. The trial Court acquitted the accused for offence u/s 333 IPC. However, the Hon"ble High Court of Karnataka on appeal finding the offence u/s 333 IPC also established, conviction the accused to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.25,000/- and in default to undergo further simple imprisonment for a period of three months. This judgment has no application so far the controversy before us is concerned.

7. In State of Karnataka v. Riichard (supra), the accused was acquitted of the offence u/s 333 IPC by the trial Court. The Hon"ble High Court on appeal, however, found the charges under Sections 333 and 452 of the IPC against the accused and convicted him and sentenced him to undergo rigorous imprisonment for a period of one year, keeping view the fact that the offence was committed more than 16 years back. Even this judgment has no relevance in so far the present case is concerned.

8. Mr. J. B. Pradhan, learned Public Prosecutor appearing for the State-respondent, however, vehemently argued that the accused has a criminal background and was involved in other criminal cases. He was under trial when he committed the offence with premeditated mind to deter public servants from discharging their duties and thus, deserves no leniency in awarding of sentences. In support of his contention, he has relied upon the following observations made

by the Hon''ble Supreme Court in the case of *Sevaka Perumal, etc. Vs. State of Tamil Nadu*, : -

9. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate⁴ sentence. Therefore, law as a cornerstone of the edifice of order should meet the challenges confronting the society. Friedman in his *Law in Changing Society* stated that, "State of criminal law continues to be - as it should be - a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation of sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep seated personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In *Mahesh v. State of M.P.*: (1987) 3 SCC 80, this Court while refusing to reduce the death sentence observed thus: (SCC p. 82, para 6)

[I]t will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon.

10. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. If the courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

9. As regards the alleged contradictions between the statements of P.W.9 and P.W.12 are concerned, the statement of P.W.9 clearly and unequivocally established that it was the accused who hit him on his head with the wooden plank. This statement could not be demolished in cross-examination. Even though P.W.12 stated that he was hit from the back, however, the statement

does not in any manner contradict P.W.9. P.W.4, P.W.5, P.W.8 and P.W.10 also reached the spot immediately after the occurrence when the accused was holding the wooden plank in his hand. In any case, these minor contradictions are of no avail to the accused. Age of the accused could be a relevant factor if he would have been a first time offender. In the facts and circumstances of this case, both these contentions do not carry any weight.

10. Undoubtedly, the appellant/accused has been awarded the maximum sentence as prescribed u/s 333 of the IPC. The trial Court, while awarding the sentence to the appellant, gave due considerations to the nature of offence, the facts and circumstances of the case, specially the past criminal record of the accused, who is a habitual offender. The appellant was involved in other cases is not in dispute. It is the prerogative of the trial Court to award the sentence keeping in view all relative and relevant factors, which, inter alia, includes the manner of commission of offence, severity of the offence and the attending circumstances. Other factors like the age of the accused, his antecedents are also some of the considerations, which must weigh with the trial Court in awarding the sentence. From the statement of Dr. S. D. Sharma, who is a medico-legal consultant at STNM Hospital, has given his comment regarding the nature of injuries. It appears that the injuries caused to warder Suraj Kumar Chettri (P.W.9) are grievous in nature. Though the injuries on the body of other victim, namely, HG Ram Lall Gurung, are simple in nature. The Medical Officer, who examined Suraj Kumar Chettri, recorded as under: -

1. Haematoma over the right temporo-parital region;
2. Peri-orbital swelling of the right eye. The patient was unconscious and the pupils were normal in size and not reacting to light. The Medical Officer advised for the C.T. Scan of the brain and prepared the injury report. The C.T. Scan of the brain showed fracture of the right frontal-parietal bone and fracture of the right frontal bone and roof of the right orbit of the eye and contusions of the right temporal lobe.

11. It is established that the accused by managing to remove the bolt of the prison cell attacked the warder without any kind of provocation, while he was lying in the passage of the ward no. 4, with wooden plank on his head causing grievous injury. He also attacked the other warder with the sole object of fleeing from the prison. The offence u/s 333 of the IPC is in fact a combination of two offences, i.e. voluntary causing grievous injury and preventing a public servant from discharging his duty in a lawful manner. The offence of causing grievous injury as defined u/s 325 of the IPC itself carries punishment of 7 years and in combination with the offence deterring the public servant, the punishment prescribed u/s 333 of the IPC is 10 years. The trial Court exercised its judicial discretion to award the maximum punishment taking into consideration all the relevant factors including manner of commission of offence and past criminal record of the accused.

12. We are unable to persuade ourselves to accept the contention of Mr. N. Rai, learned Senior Counsel for reduction of the sentence in any manner. We are of the considered opinion that no interference is warranted in the matter of award of sentences. This appeal is, accordingly, dismissed.