

(2015) 11 SIK CK 0002
In the Sikkim High Court
Case No : Criminal Appeal No. 06 of 2015

The State of Sikkim

APPELLANT

Vs

Pem Dorjee Sherpa and Others

RESPONDENT

Date of Decision : 10-11-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 324, 34, 452

Citation : (2015) 11 SIK CK 0002

Hon'ble Judges : Sunil Kumar Sinha, C.J. and Meenakshi Madan Rai, J.

Bench : Division Bench

Advocate : S.K. Chettri and Pollin Rai, Assistant Public Prosecutors, for the Appellant; Gita Bista, Legal Aid Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Meenakshi Madan Rai, J.—The only question that arises for consideration in this Appeal is whether the Learned Trial Court erred in acquitting the Respondents/ Accused Persons, Pem Dorjee Sherpa (A1) and Da-Norbu Sherpa (A2) (hereinafter referred to as A1 and A2) of the offences under Sections 302, 452, 324 read with Section 34 of the Indian Penal Code, 1860.

2. For this purpose, it is essential to briefly delve into the facts of the case. As per the Prosecution on 5.9.2013 at 17:30 hours, a First Information Report was received from one Phur Temba Sherpa (PW-1), Panchayat Secretary of 55- Ribdi Bharang GPU, West Sikkim, to the effect that he had been informed that A1 and A2, both residents of Upper Ribdi had assaulted and killed one Sangay Sherpa (Lama). On reaching the spot to verify the same, he found the Victim Sangay Sherpa (Lama) lying dead, while Victim Dilip Rai (PW-7) also having been assaulted by A1 and A2 was in a serious condition. A case against A1 and A2 was duly registered, investigation taken up and on completion of investigation, Charge Sheet was filed against both A1 and A2 under Sections 452/302/324/34 of the IPC. The Learned Trial Court framed Charges against A1 and A2 under the above Sections of the IPC, to which they pled "not guilty" and claimed trial. In an

effort to prove its case beyond a reasonable doubt, the Prosecution examined 11 (eleven) witnesses. The Learned Trial Court, after duly considering and analyzing the evidence on record and finding no materials against A1 and A2 acquitted them of the offences under which they were charged, hence this Appeal.

3. While reiterating the facts of the case, it was inter alia argued by Mr. S.K. Chettri, Learned Assistant Public Prosecutor for the State-Appellant, that the Learned Trial Court failed to appreciate the evidence of the Prosecution witnesses more particularly PW-1, PW-4, PW-7 and PW-11 which was clinching against A1 and A2, leading to the irresistible conclusion that they had assaulted and killed Sangay Sherpa. That apart, it was also argued that the Learned Trial Court failed to consider the Disclosure Statements of A1 and A2 and in view of the materials on record they ought to have been convicted of the offences under which they were booked.

4. Per contra, it was argued by Ms. Gita Bista, Learned Legal Aid Counsel for A1 and A2, that there was no scope for any interference in the decision of the Learned Trial Court, which had carefully considered the evidence and finding nothing incriminating against A1 and A2, consequently acquitted them. Pointing out to the contradictions in the evidence of PW-7 (Dilip Rai), allegedly a victim of assault by A1 and A2, she submitted that on the one hand he stated that after A1 and A2 assaulted him, he fell unconscious but that A1 and A2 continued to assault Sangay Lama, who then succumbed to his injuries, thereby pondering as to how an unconscious person could probably be aware of continuing assault. She further draws the attention of this Court to the cross-examination of PW-7, wherein he promptly admitted that his statement supra is a wrong statement thereby making his evidence unreliable.

5. It was further contended that although, MO-I and MO-II are said to be the weapons of offence but PW-7 has admitted that he was unaware as to from where the articles were brought by the police. Infact, on the medical examination of PW-7 by PW-5 (Dr. Nagendra Gurung), it has clearly emerged that the Doctor found no injury on PW-7 but found him to be totally intoxicated and under the influence of alcohol, rendering the evidence of PW-7 to be doubtful. The other witnesses have led no evidence against A1 and A2, thus in sum total, the Judgment of the Learned Trial Court, therefore requires no interference and the Appeal be dismissed.

6. The arguments advanced by the Learned opposing Counsel, were heard at length and carefully considered. The documents and the evidence furnished before the Learned Trial Court were also carefully considered.

7. While first reverting to Exhibit-8, the Medical Report of PW-7, allegedly the surviving Victim of the incident, the examining Doctor PW-5, besides recording that the person had consumed alcohol and was under its influence has not found any injuries on the person of PW-7. PW-5 stood by his findings in Exhibit-8, during his deposition.

8. On analyzing the evidence of PW-7, it is difficult to consider it worthy of reliance being fraught as it is with contradictions. He stated that A1 and A2 had assaulted him and the deceased with wooden lathi, fists and blows. That, he fell unconscious but A1 and A2 continued to assault the deceased. Under cross-examination, he has admitted that he did not tell the police that A1 and A2 had assaulted him and the deceased. With regard to the continuing assault on the deceased after he, i.e., PW-7, was rendered unconscious, he conceded that it was a wrong statement.

9. The evidence of PW-5 substantiated by Exhibit-8, reveals that PW-7 was under the influence of alcohol and totally intoxicated. PW-7 himself admits "It is not a fact that on the relevant day, I was not under the influence of alcohol and fully intoxicated. " In the next breath, however, he proceeded to deny that he was intoxicated on the relevant day. Considering the anomalies in the evidence of PW-7 hereinabove, we are of the considered opinion that his evidence has to be taken with a pinch of salt, in other words it cannot be relied on.

10. With regard to the other lacunae in the Prosecution case, the I.O. stated that the incident took place at around 3:45 p.m., however, there is no reasoning advanced for this conclusion, since neither Exhibit-1, the original Complaint or Exhibit-2, the formal F.I.R., discloses the time of incident nor does the evidence of PW-7 reveal 3:45 p.m. to be the time of the offence. On the other hand, PW-7 has stated that he went to the house of A1, on the request of A2 at around 1000-1100 hours. The conclusion of the I.O. appears to be an unsubstantiated conjecture.

11. Added to the above anomalies is that PW-1, the Complainant has lodged the F.I.R. Exhibit-1, alleging therein that he was informed by PW-10 that the Victim Sangay Sherpa had been assaulted to death. That, when he reached the spot, he found that the victim had been killed by A1 and A2 and they had seriously injured PW-7. The mystery to be mulled over is as to how PW-1 reached the finding that the Victim had been killed by A1 and A2 and PW-7 had been assaulted and made unconscious by them, as PW-10 who allegedly informed PW-1 of the incident has not brought out this aspect in his evidence. PW-10 appears to have been informed by PW-9 of the incident whose evidence, however, throws no light on the circumstances of the death of Sangay Sherpa or the assault on PW-7. PW-9 was allegedly told of the sighting of Sangay Sherpa in the Victim's field by PW-8, who in turn had been informed of this fact by PW-2 and PW-3. Neither PW-2, PW-3, PW-8, PW-9 nor PW-10 have deposed that they had witnessed the incident or named A1 and A2 as the assailants. It is not the case of PW-1 that PW-7 narrated the incident to him. In view of the findings in Exhibit-8, PW-7 could well have been in a drunken stupor.

12. PW-4, the Doctor who conducted the Postmortem of the deceased after noting the injuries therein inter alia opined that the cause of death to the best of his knowledge and belief was due to multiple fracture of ribs with subdural haematoma, laceration of lungs and myocardial rupture.

13. Apparently, the injuries on the deceased caused his death, however in view of the vacillating evidence of PW-7, allegedly the only person present at the place of occurrence and the evidence of PW-2, PW-3, PW-8, PW-9 and PW-10, A1 and A2 cannot be foisted with the offences as charged, since the Prosecution is required to prove its case beyond a reasonable doubt. It is settled law that where even a slight doubt arises the benefit of it is to be extended to the accused.

14. The whole investigation of the I.O. admittedly is based on the statement of PW-7. The question that springs to mind is why the I.O. failed to carry out any investigation on the role of PW-7 in the incident.

15. The Disclosure Statement, allegedly of A1 and A2 lends no credence to the Prosecution case, as PW-1 and PW-6, allegedly the witnesses in whose presence the police recorded the statements being Exhibit-4 and Exhibit-5, have denied knowledge of the contents therein.

16. MO-I and MO-II allegedly the weapons of offence were seized in the presence of PW-1 and PW-6, but it has been admitted under cross-examination that no identification marks were affixed on the said objects by the police in their presence.

17. In view of the gamut of discussions hereinabove, this Court is of the considered opinion that the decision of the Learned Trial Court has been correctly arrived at based on the evidence furnished before it by the Prosecution and requires no interference.

18. Appeal fails and is dismissed.

19. No order as to costs.

20. All records of the Learned Trial Court pertaining to this matter be returned forthwith.