
(2001) 03 SIK CK 0003

Sikkim High Court

Case No: Criminal Appeal No. 7 of 2000

Udai Man Gurung

APPELLANT

Vs

State of Sikkim

RESPONDENT

Date of Decision: March 7, 2001

Citation: (2002) CriLJ 691

Hon'ble Judges: Ripusudan Dayal, C.J; Anub Dev, J

Bench: Division Bench

Advocate: N.B. Kharga and N. Rai, for the Appellant; S.P. Wangdi, Public Prosecutor and Karma Gyatso, for the Respondent

Final Decision: Allowed

Judgement

Ripusudan Dayal, C.J.

The appellant has been convicted by the Sessions Judge, South and West Sikkim at Namchi u/s 302, I.P.C. for causing the murder of his wife, Romala Gurung and sentenced to undergo imprisonment for life and also to pay a fine of Rs. 2000/- and in default of payment of fine to undergo further imprisonment for two months.

2. Prosecution case, in brief, is that during the night between 6th June, 1997 and 7th June, 1997, the appellant had a quarrel with his wife Romala Gurung, the deceased, and beat her up with bamboo stick and belt. His father, Man Bahadur Gurung, P.W. 1, his mother Ran Maya Gurung, P.W. 2 and his sister Hem Kumari Gurung, P.W. 4 tried to stop the appellant from beating his wife but they failed to do so and, therefore, the father of the accused went to the village and brought Harka Bir Gurung, P.W. 3, Purna Bdr. Gurung, P.W. 5, and Amar Gurung, P.W. 6 to stop the appellant from beating his wife but when they came back home at about 1.30 hrs on 7-6-1997, the father found his wife and daughter crying since his daughter-in-law, Romala Gurung had already died. A written complaint, Exhibit P-1 to that effect was made by Man Bahadur Gurung, P.W. 1 to the in-charge, Namthang out post on 7-6-1997 on the basis of which a formal FIR, Exhibit P-20 was registered. The investigation was conducted by S.I., Bijoy Subba, P.W. 22 who

investigated into the case and filed charge-sheet. During the trial twenty-two witnesses were examined in all. Three of them who were eyewitnesses are Man Bahadur Gurung, P.W. 1, Ran Maya Gurung, P.W. 2 and Hem Kumari Gurung, P.W. 4. All of them turned hostile. However, P.W. 1 has admitted his signature on the complaint, Exhibit P-1. He deposed that on the date of the occurrence, he had gone to the maize field of Ganga Prasad to sort out the maize crops as khetala and when he returned home after the said field work at about 7 p.m., all his family members including the appellant and his wife were present. Thereafter, he went to bed. At about 12.30 p.m., in the night, he was awakened by his daughter Hem Kumari saying that something had happened to Romala and that she was not speaking. Then, he went to Romala and found that she was dead. During the cross-examination by the Public Prosecutor, he was asked as to whether he had made a statement to the police that he had seen his son mercilessly beating Romala with a bamboo stick and belt. The witness replied that he did not remember as to what statement he had made before the police in connection with the case, as he was nervous at that time. He was also asked whether he had made a statement before the police that when he saw the appellant mercelessly beating Romala, he tried to intervene but the appellant reprimanded him and asked him to keep out of his personal affairs. He replied that he did not remember as to whether he had made such a statement as he was nervous at that time. Then, he was asked by the Public Prosecutor as to whether he had stated before the police that when he was unable to intervene in the matter he went to seek the help of his neighbours to intervene. To this question also, he replied that he did not remember as to what he had stated before the police as he was nervous. Then he was asked who were the neighbours whose help he had sought for. He replied that one of them was Harka Bir Gurung P.W. 3, and the other was one Gurung who is known in the village as Madesey Kancha. He was also asked as to whether all the persons had seen the dead body of the victim. He replied in the affirmative and said that they had advised him to report the matter to the police. Ran Maya Gurung P.W. 2, has stated that Romala died on account of illness. Her statement is contrary to the medical evidence on record which we will refer to later on. The evidence of Hem Kumari Gurung P.W. 4, is not material, as according to her evidence she did not see anything. Her statement is to the effect that she slept with the deceased and when in the night she wanted to attend to nature"s call she found that Romala was dead. Her statement is inherently improbable. The evidence of Harka Bir Gurung, P.W. 3 is material. He is the neighbour of the appellant, his house being situated at a distance of half a kilometer from the house of the appellant. This witness has deposed that in the night of the occurrence at about 12.30 Man Bahadur Gurung P.W. 1, came to his house carrying a torch and informed him that his son the appellant was about to kill his wife by beating her with belt and requested him to help him intervene in the matter. The witness replied that he would not go alone out of fear and told him that if he called Purna Bahadur Gurung also to accompany, he would go along with him. After sometime, Man Bahadur Gurung came with Purna Bahadur Gurung and all of them went to the house of the appellant. On reaching the house of the appellant they saw Ran Maya Gurung and Hem Kumari Gurung crying in the verandha, as the wife of the appellant was dead. They then went inside the house and found the wife of the

appellant dead. Purna Bahadur Gurung P.W. 5 and two more witnesses, Amber Gurung P.W. 6 and Ram Bahadur Tamang P.W. 18 were tendered in evidence and they were neither examined-in-chief nor cross-examined. Medical examination was conducted by P.W. 14 Dr. S.D. Sharma, medico-legal consultant attached to STNM Hospital, Gangtok. He conducted the post-mortem examination on 9-6-1997 and found the following five injuries on the body of the deceased :--

1. Multiple irregular contusions over the forehead and face.
2. Multiple rail-road line contusions spaced 1 cm. apart over the arms and forearms on both sides, back of chest, trunk and both thighs and legs, inter-spaced with irregular contusions coalescing together.
3. Multiple abrasions over the contusions on both thighs.
4. Hematoma scalp 8x6 cms. over the occipito parietal region.
5. Abrasion 3x2 cms. over the left side of the abdomen below the costal margin.

Internally there was subarachnoid hematoma over the right pre frontal lobe and a film of subarachnoid haemorrhage over both hemispheres posteriorly and extra vasation of blood in the chest wall.

According to his evidence death was caused by shock as a result of internal and intracranial haemorrhage caused by injuries from blunt force and injuries were collectively sufficient to cause death in ordinary course of nature.

3. Learned trial Court found that the charge of murder u/s 302, I.P.C. is proved beyond reasonable doubt against the appellant and convicted the appellant and sentenced him as stated before. We also find that evidence is sufficient to show that death was caused in the house of the appellant and if death had been caused by any one other than the appellant it was for the appellant to explain the circumstances under which death had occurred. However, in his statement u/s 313, Cr. P.C., the appellant has adopted the posture of ignorance or bare denial. He also did not produce any evidence in support of his innocence. Evidence of P.W. 3 read with the complaint P-1 made by Man Bahadur Gurung proves beyond reasonable doubt that it was the appellant who had caused the death of his wife, Romala Gurung. The learned counsel for the . appellant has also conceded this position. However, he has submitted that the case is covered u/s 304, Part II, I.P.C. and not u/s 302 because there is nothing on the record to show that the appellant had the intention of causing death or causing such bodily injuries as were sufficient in the ordinary course of nature to cause death. We find merit in this submission. The injuries were, caused by rubber belt and also by bamboo stick. None of the injuries except injury No. 4 were sufficient in the ordinary course of nature to cause death. There is nothing on record to show how injury No. 4 was caused except the statement of S.I. Bijoy Subba, P.W. 22, the Investigating Officer who has stated that

during investigation the appellant disclosed to him that in the process of assault the head of the victim happened to hit the cot as a result of which she died. The Investigating Officer seized the said cot. In the circumstances we are of the view that the appellant did not have the intention to cause death or to cause such bodily injuries as were sufficient in the ordinary course of nature to cause her death. However, he caused such bodily injuries as he knew were likely to cause death. As such, the case is covered u/s 304, Part II, I.P.C. The appellant has been in custody since 24-6-1997 i.e. for more than three and a half years. In our view, the imprisonment already suffered by him together with fine of Rs. 2,000/- would be sufficient to meet the ends of justice. In the approach we have adopted we find support from the authority in [Chuttan and others Vs. State of Madhya Pradesh](#), .

4. In the result, we allow the appeal in part, set aside the judgment of conviction and order of sentence by the learned trial Court and in place thereof convict the appellant-Udaiman Gurung u/s 304, Part II, I.P.C. and sentenced him to imprisonment already undergone by him and also to a fine of Rs. 2000/- and in default thereof to undergo, simple imprisonment for one month.