



**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Criminal Appellate Jurisdiction)

DIVISION BENCH: **THE HON’BLE MRS JUSTICE MEENAKSHI MADAN RAI, JUDGE**  
**THE HON’BLE MR JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

**Crl. A. No. 06 of 2022**

Sanjit Rai,  
Aged about 19 years,  
Son of Shri Man Bir Rai,  
Resident of Langang,  
Gyalshing,  
West Sikkim. .... Appellant

**versus**

State of Sikkim ..... Respondent

**Appeal under section 374(2) of the Code of Criminal Procedure, 1973**

[Against the judgment dated 24.02.2022 in the matter of State of Sikkim vs.  
Sanjit Rai – Sessions Trial Case No. 03 of 2020 passed by the learned Sessions  
Judge, West Sikkim at Gyalshing]

**Appearance:**

Ms. Puja Lamichaney, Advocate (Legal Aid Counsel) for the  
appellant.

Mr. Yadev Sharma, Additional Public Prosecutor with Mr. Sujan  
Sunwar, Ms Pema Bhutia and Mr. Shakil Raj Karki, Assistant  
Public Prosecutors, for the State-respondent.

Date of hearing : 26<sup>th</sup> June, 2023  
Date of judgment : 7<sup>th</sup> August, 2023

**J U D G M E N T**

**1.** The murder of a young school going girl, ironically  
wearing a T-shirt which said “*Good Things are Going to Happen*”  
on that fateful 10<sup>th</sup> day of August, 2020 by the appellant, who



was known to her, by inflicting multiple stab wounds on her body, perforating the lungs and liver by a 10 inch 7 centimetres 'Rambo Knife' with sharp edges on one side, resulting in severe haemorrhage shock and death before she could reach the hospital, led to the appellant's conviction.

2. The impugned judgment dated 24.02.2022 and the order on sentence dated 25.2.2022 sought to be assailed by the appellant found him guilty under sections 302 and 201 of the Indian Penal Code, 1860 (IPC) and sentenced him to imprisonment for life and to pay a fine of Rs.10,000/- for the offence under section 302 IPC. In default, the appellant was to undergo further imprisonment for one year. The appellant was also sentenced to 7 years and to pay a fine of Rs.5000/- for the offence under section 201 IPC. In default, he was to undergo further imprisonment for a term of 6 months. The sentences were directed to run concurrently. An amount of Rs.6,00,000/- was also awarded to the parents of the deceased victim under section 2(e) of *the Sikkim Compensation to the Victims (or their Dependents) Scheme, 2021* for the loss of the life of their child.

**Circumstances held against the appellant.**

3. According to the learned Sessions Judge, the present case was based on circumstantial evidence as there were no eyewitnesses. The following circumstances were considered by



the learned Sessions Judge to conclude that the chain of circumstances was complete, cogent and coherent and it was the appellant who was guilty of the offences charged and no other.

**“70. ....**

- PW-2 sees a boy wearing a red jacket at the PO dragging a girl and proceeding to throw the girl over the edge.
- When PW-2 runs towards the boy, the boy flees from the spot.
- The said boy according to PW-2 was wearing a black cap, a red jacket and was carrying a black back-pack.
- PW-2 finds the deceased bleeding at the spot.
- PW-3 arrives at the spot and helps PW-2 evacuate the deceased to the hospital where she is declared dead.
- PW-19 I.O confirms that the Medical Officer Dr. Bandana Thapa (PW-1) had handed over the articles which were brought along with the victim to him which consists of a green ladies hand bag containing the victim's mobile phone, tempered glass, a purse, cash Rs.160/-, two photographs and two ear tops.
- The deceased is identified as Kooshma Hangma Subba by PW-5 sister of the deceased who calls the sister's cellphone and is informed by a person on the sister's phone that her sister is injured and PW-5 is to come to the hospital.
- PW-5 goes to the hospital to find her sister has succumbed to her injuries.
- PW-5 informs PW-19 that Sanjit Rai (accused) is the boyfriend of the deceased, but in March, 2020 during the lockdown her victim sister had confided in her that she had broken up with her boyfriend Sanjit Rai (accused).
- Accused in his 313 admits to having been the boyfriend of the victim and to their breakup.
- I.O. then apprehends the accused as a suspect and during investigation records the disclosure statement (Exhibit-15) of the accused in presence of PW-16 and 17.
- PWs-16 and 17 both prove Exhibit-15 was made by the accused in their presence at the police station and recorded by PW-19.
- The apparel worn by the accused at the time and the black backpack are recovered on the basis of Exhibit-15 from the room of the accused. The apparel consists of a red jacket [M.O-X] and a blue jeans pant [M.O-XII].
- Both articles of clothing are found to contain blood stains which matches the blood of the victim on examination by PW-18, the forensic examiner, RFSL.
- Accused also points out the spot below the PO is from where the search team recovered a knife [M.O-VI] on the basis of Exhibit-15.
- M.O-VI also has blood stains which matches the blood group of the deceased as per finding of PW-18.
- PW-15 proves he drew the blood sample of the deceased [M.O-VII].



- *The injuries on the deceased are confirmed to be stab wounds as seen by PWs-1,2,3,8,9 and 15.*
- *PW-15 confirms the ante mortem injuries were 17 stab injuries with perforation of the lungs and liver caused by a sharp edged weapon, homicidal in nature.*
- *Accused admits in his statement recorded under Section 313, Cr.PC to making his statement Exhibit-15 and to the recovery of M.O-X, XI thereafter from his room and M.O-VI from the PO.*
- *He also admits in his statement recorded under Section 313, Cr.PC to going to the spot and pointing out the spot from where the knife [M.O-VI] is recovered by the police.*
- *Accused in his examination under Section 313 Cr.PC. admits to having gone to the PO and having met the deceased.*
- *He admits to his clothes being stained by the blood of the victim in his examination under Section 313, Cr.PC.”*

### **Submissions of the counsel**

4. Heard Ms Puja Lamichaney, learned Counsel for the appellant and Mr. Yadev Sharma, learned Additional Public Prosecutor for the State. Ms Puja Lamichaney submitted that the prosecution has failed to establish the case beyond reasonable doubt and that the chain of circumstances to prove the guilt of the appellant is not complete. The evidence led by the prosecution is replete with material discrepancies which has the propensity to doubt the case put forward by them. Mr. Yadev Sharma on the other hand argues that the prosecution has been able to cogently prove that it was the appellant and the appellant alone who was guilty of the murder of the deceased. The disclosure statement (exhibit-15) led to the recovery of the wearing apparels of the appellant from his room including the red jacket (M.O-X) and blue jeans pant (M.O-XII) which had blood of the deceased in it. The recovery of the weapon of offence, i.e., the knife (M.O-VI), at the instance of the appellant also



connects the appellant to the act of murder as the forensic examination concluded that there was blood of the deceased in the knife (M.O-VI) as well. The learned Additional Public Prosecutor submitted that the nature of injuries clearly establishes the appellant's intention and therefore, the judgement of conviction and order on sentence need not be interfered with.

**5.** We shall now examine each of the submissions made on behalf of the appellant.

***Disclosure Statement***

**5(i)** In the disclosure statement (exhibit-15), the appellant disclosed that he had thrown the knife in the jungle and kept the clothes he had worn, i.e, red jumper and jeans pant, in his room and that he would be able to show the knife as well as the clothes he had worn in the presence of witnesses.

**5(ii)** The disclosure statement (exhibit-15) is vital to the prosecution case and therefore, seriously attacked by the learned counsel for the appellant. It is contested that the disclosure statement (exhibit-15) which is said to have been made in the presence of Labden Bhutia (PW-16) and Mahesh Subedi (PW-17) suffers from material discrepancies. The learned counsel submits that both Labden Bhutia (PW-16) and Mahesh Subedi (PW-17) deposed about going to the Police Station with Mingma Tshering Bhutia (PW-2) and not with each other. A closer look at the



depositions reflects that Labden Bhutia (PW-16) did mention that Mahesh Subedi (PW-17) was present at the Police Station along with him. The disclosure statement (exhibit-15) also records the presence of both Labden Bhutia (PW-16) and Mahesh Subedi (PW-17) and bears their signatures on it. Thus, failure of Mahesh Subedi (PW-17) to mention the presence of Labden Bhutia (PW-16) in his deposition would not make the discrepancy material.

***Deposition of Mingma Tshering Bhutia (PW-2)***

**5(iii)** The learned counsel for the appellant submitted that the failure of Mingma Tshering Bhutia (PW-2) to mention about the disclosure statement and the subsequent seizures would vitally affect the prosecution case. Mingma Tshering Bhutia (PW-2) was examined by the prosecution as he was the first witness who saw the victim and an unidentified person at the place of occurrence immediately after the incident. He was not a witness to the disclosure statement (exhibit-15) or the seizure of the wearing apparels of the appellant, the victim and the weapon of offence, i.e., the knife (M.O-VI). Therefore, there was no need for Mingma Tshering Bhutia (PW-2) to provide details of the weapon of offence, depose about the wearing apparels of the appellant seized pursuant to the disclosure statement (exhibit-15) and sign on it. These are not discrepancies or inconsistencies in the prosecution case. Minor inconsistencies in the individual statement of these witnesses may have occurred as they were recollecting what the appellant stated to the Police on 10.08.2020



after almost four months. However, that does not affect the prosecution version.

***The time of recording the disclosure statement (exhibit-15)***

**5(iv)** The learned counsel for the appellant argued that there is a vital flaw in the time of recording the disclosure statement (exhibit-15). According to her, the prosecution maintains that the disclosure statement (exhibit-15) was recorded at 2200 hours on 10.08.2020. However, Mahesh Subedi (PW-17) during cross-examination admitted that it was recorded in the evening. The fact that Mahesh Subedi (PW-17) qualified his statement by saying that he does not remember the exact time of recording the disclosure statement nullifies the argument made by the learned counsel about the discrepancy in the time of recording the same.

***Discrepancy in the deposition of seizure witnesses***

**5(v)** The learned counsel for the appellant laid stress on the discrepancy in the depositions of Labden Bhutia (PW-16), Mahesh Subedi (PW-17) and the Investigating Officer (PW-19) regarding the recovery of clothes of the appellant. The fact that all the three witnesses deposed that the wearing apparels were recovered at the instance of the appellant from his room upstairs reassures us that the recoveries were made pursuant to the disclosure statement (exhibit-15) from the appellant's room. While Labden Bhutia (PW-16) and Mahesh Subedi (PW-17) deposed that the appellant took out the wearing apparels and the



black bag from his room upstairs, the Investigating Officer deposed that the appellant showed them a bag which he had hidden under his bed from where he pulled out a grey black back-pack and from inside it the wearing apparels, are also merely minor discrepancies. These minor inconsistencies may be the result of multiple factors like the time gap between the incident and the recording of the deposition, memory lapses, lack of focus, etc. However, for inconsistencies to dent a criminal prosecution it must be such that it affects the core of the prosecution case and shakes its very foundation.

***Contradictions in recovery of knife (M.O-VI) and other material objects***

**5(vi)** The learned counsel for the appellant submitted that there are contradictions in the evidence led by the prosecution regarding recovery of the knife (M.O-VI). It is the prosecution's case that certain other recoveries including some items of the victim and the knife (M.O-VI) were recovered on 11.8.2020 at the instance of the appellant after he made the disclosure statement (exhibit-15). The disclosure statement (exhibit-15) was recorded on 10.8.2020. The seizure of the wearing apparels of the appellant from his room was made at 2310 hours on 10.8.2020. According to the Investigating Officer (PW-19), after the recovery of the wearing apparels they proceeded to the place of occurrence where the appellant pointed out the spot where he had thrown the weapon of offence, i.e., the knife (M.O-VI). They went down to



the spot to search for the knife (M.O-VI) but as it was past midnight, dark and raining, they decided to resume the search the next day. The next morning on 11.8.2020 around 0700 hours, the Investigating Officer, his team along with the witnesses and the appellant went to the place of occurrence and inspected the spot shown by the appellant from where he recovered and seized an umbrella with blood stains (M.O-XV), surgical mask with blood stains (M.O-XVII), two dry leaves with blood stains (M.O- XVI), one red black pink coloured shoe of the left foot (M.O-XVIII). They then went down to the spot pointed out by the appellant the night before where he had thrown the knife (M.O-VI). The knife (M.O-VI) was recovered from near a tree situated about 70 feet below the place of occurrence. These facts deposed to by the Investigating Officer have been cogently corroborated by the two witnesses, i.e., Labden Bhutia (PW-16) and Mahesh Subedi (PW-17) who were witnesses to the disclosure statement (exhibit-15) and the seizure memos (exhibits-19, 20, 21 & 22). The contradictions pointed out by the learned counsel in the testimony of the Investigating Officer, Labden Bhutia (PW-16) and Mahesh Subedi (PW-17) are minor contradictions which does not shake the foundation of the prosecution case.

***Material objects not kept in proper custody and may have been tampered with.***

**5(vii)** It is argued by the learned counsel for the appellant that when the knife (M.O-VI) was seized, it did not have



blood stains but when it was forensically examined it is said that it had blood stains and thus there is likelihood that the knife (M.O-VI) had been tampered with. The seizure memos, i.e., exhibits 19 and 20, records that the umbrella (M.O-XV), surgical mask (M.O-XVII) and dry leaves (M.O-XVI) had blood stains. The seizure memo (exhibit-22) by which the knife (M.O-VI) was seized does not record that it had blood stains. The description of exhibits received in the forensic examination report dated 12.4.2021 (exhibit-23) also does not record that the knife (M.O-VI) had blood stains. However, on forensic examination, human blood was detected in it which gave positive test for blood group 'AB' matching the blood group of the deceased. This has been proved by the Forensic Expert - Prem Kumar Sharma (PW-18) through his deposition and forensic examination report dated 12.4.2021 (exhibit-23). Obviously, what was not visible to the naked eye was detected during forensic examination.

**5(viii)** It was argued that Sonam Zangmu Shenga (PW-11) – Incharge of the Malkhana, stated that the case was registered on 10.08.2020 and the Station House Officer (SHO) had brought the case exhibits including the knife to the Police Station although the prosecution case is that the knife (M.O-VI) was recovered on 11.08.2020. A closer look at the deposition reflects that Sonam Zangmu Shenga (PW-11) had mentioned that the case was registered on 10.08.2020 but had not stated when the SHO had brought the exhibits to the Police Station. The



evidence of the Investigating Officer, Labden Bhutia (PW-16) and Mahesh Subedi (PW-17) however makes it absolutely certain that the knife was recovered on 11.08.2020 and not on 10.08.2020 as suggested. There is no evidence on record to take serious note of the suggestion made by the learned counsel for the appellant that the material objects were not kept in safe custody and therefore may have been tampered with. Allegation of tampering is a serious charge. In the cross-examination of the Investigation Officer, no charge of tampering has been suggested by the defence. The seizure memo (exhibit-16) through which the Investigating Officer seized the red jacket (M.O-X), T-shirt (M.O-XI), blue jeans pant (M.O-XII), black coloured shoe (M.O-XIII) with white stripes and one back-pack (M.O-XIV) was prepared on 10.08.2020 at 2310 hours. It does not mention that any of these items had blood stains on them. Neither does the forensic examination report (exhibit-23) in the description of the exhibits received. However, the Investigating Officer deposed that these material objects were seized in the presence of Labden Bhutia (PW-16) and Mahesh Subedi (PW-17). The seizure memo (exhibit-16) reflects that the seizure was affected by the Investigating Officer in their presence and bears their signature. They also confirmed the seizure. According to the Investigating Officer, the seized articles were handed over to Sonam Zangmu Bhutia (PW-11) – the Malkhana Incharge, who confirmed the same and also gave evidence of its safe custody. Thereafter, the seized articles



were sent for forensic examination to RFSL Ranipool on 25.8.2020. The forensic expert Prem Kumar Sharma (PW-18) - the Junior Scientific Officer, examined the articles forwarded to him seized during investigation and concluded that the Blood Group of the deceased was 'AB' and that human blood was detected in the surgical mask (M.O-XVII), the knife (M.O-VI), red jacket (M.O-X), blue jeans pant (M.O-XII), ladies hand bag (M.O-XXII), maroon T-shirt (M.O-III), black jeans pant (M.O-IV), bra (M.O-V) and underwear (M.O-XXIV) were also of Blood Group 'AB'. The surgical mask (M.O-XVII) was seized from the place of occurrence on 11.8.2020 by the Investigating Officer in the presence of Labden Bhutia (PW-16) and Mahesh Subedi (PW-17). The knife (M.O-VI) was recovered by the Police on 11.8.2020 approximately 70 feet below the place of occurrence at the instance of the appellant. The red jacket (M.O-X) and the blue jeans pant (M.O-XII) of the appellant were seized by the Investigating Officer on 10.8.2020 from the room of the appellant in the presence of Labden Bhutia (PW-16) and Mahesh Subedi (PW-17). The bra (M.O-V), black jeans pant (M.O-IV) and underwear (M.O-XXIV) were handed over to the Investigating Officer by Dr. O.T. Lepcha (PW-15) after conducting the autopsy and preparing the medical report (exhibit-14). The failure of the Investigating Officer to mention blood stains on the material objects seized from the house of the appellant at his instance is easily explainable as they were seized in the middle of the night



and may not have been visible. It could very well be that the Investigating Officer ignored to mention it. It is equally possible that the blood stains may not have been clearly visible. However, it is quite evident that this failure to mention the blood stains is not a result of tampering as suggested. The seized articles were kept in the Malkhana for safe custody and thereafter sent for forensic examination which yielded the forensic examination report (exhibit-23). The period of interval between the criminal act, the arrest of the appellant, the making of the disclosure statement and the recovery of the material objects are so close and interconnected that there would be no room to doubt the recovery. The evidence led by the prosecution inspires confidence inspite of the little anomalies pointed out by the learned counsel for the appellant.

***Prem Kumar Sharma (PW-18) is not an expert***

**5(ix)** It has also been suggested that the prosecution had failed to prove that Prem Kumar Sharma (PW-18) was an expert. A perusal of his deposition, however, reflects that he had stated on oath that he was the Junior Scientific Officer posted at RFSL Saramsa and had examined the material objects by biological/serological techniques. The forensic examination report (exhibit-23) also records the same fact. The cross-examination by the defence neither alleges that as a Junior Scientific Officer he was incompetent to examine the material objects nor does it suggest that there was anything wrong with



the biological/serological techniques used by him for examination of the material objects. Detection of human blood and its evaluation is by biological/serological techniques. Thus, it can be safely concluded that Prem Kumar Sharma (PW-18) was an expert and that forensic examination report (exhibit-23) clearly reports what was examined and concluded by the expert.

***Failure of the prosecution to examine the appellant's blood***

**5(x)** The learned counsel for the appellant submitted that Prem Kumar Sharma (PW-18) had admitted during cross-examination that the blood sample of the appellant was not sent to their office for forensic examination and therefore the prosecution has not been able to prove that the blood found in the wearing apparels of the appellant was that of the deceased alone.

**5(xi)** The seizure of the red jacket (M.O-X) was on the very same day when the crime was committed and the appellant apprehended. The seizure was at the instance of the appellant after he made the disclosure statement. The recovery of the red jacket (M.O-X) was from the appellant's room late in the night of the same day. The red jacket (M.O-X) had blood stains which have been clearly established by the prosecution. On forensic examination, the blood stain on the red jacket (M.O-X) gave positive test for blood group 'AB' which was the same blood group of the deceased. The argument of the learned counsel for



the appellant that since the appellant's blood had not been tested it cannot be conclusively held that the blood stains found on the red jacket (M.O-X) was that of the victim, does not impress us. The medical examination of the appellant conducted on 10.8.2020 by Dr. Jigme Wangchuk Bhutia (PW-12) reflects that the appellant had no local injuries over any part of his body. Thus, it can be safely held that the blood on the red jacket (M.O-X) of the appellant was that of the deceased and deceased alone.

***Failure of the Prosecution to prove the red jacket (M.O-X)***

**5(xii)** The learned counsel for the appellant also vehemently argued that Mingma Tshering Bhutia (PW-2) had without hesitation deposed that the unidentified man he saw at the place of occurrence with the victim was wearing a red jacket (M.O-X) with a white stripe over the arms. The evidence of Mingma Tshering Bhutia (PW-2) regarding the white stripe on the red jacket (M.O-X) was recorded on 10.12.2020 after four months of the incident. Mingma Tshering Bhutia (PW-2) had witnessed the unidentified person kneeling by the side of the road holding a girl on his lap with his back turned to the road. His deposition reflects that he saw the appellant mostly from the back and in the evening. The blood of the deceased on the red jacket (M.O-X) of the appellant convinces us that the mention of a white stripe over the arms by Mingma Tshering Bhutia (PW-2) in such circumstances is not significant enough to throw out the prosecution case.



***Mingma Tshering Bhutia (PW-2) did not identify appellant in Court as the assailant.***

**5(xiii)** It was argued that Mingma Tshering Bhutia (PW-2) had failed to identify the appellant in Court as the assailant. Mingma Tshering Bhutia (PW-2) identified the appellant as the same person he saw at the Police Station on the night of the incident where he confessed his crime. His evidence reflects that he was at a distance from the unidentified person and the deceased. It also reflects that he did not clearly see the unidentified person's face as it was in the evening and his back was turned towards him. Thus, in such circumstances, failure of Mingma Tshering Bhutia (PW-2) to identify the appellant in Court as the unidentified person he saw in the evening of 10.8.2020 is natural, truthful and understandable. It does not affect the prosecution case as other circumstances cogently proved by the prosecution unerringly proves that the unidentified person who Mingma Tshering Bhutia (PW-2) saw that evening holding the deceased was the appellant and appellant alone. The argument of the learned counsel for the appellant that the prosecution had failed to connect the appellant to the crime is without any merit. The prosecution has been able to prove the chain of circumstances leading to the guilt of the appellant with great certainty.

***Black cap worn by the unidentified person not seized***

**5(xiv)** Similarly, the failure of the Investigating Officer to seize the cap worn by the unidentified person at the time of the



incident from the appellant does not dilute the prosecution case further as the red jacket (M.O-X) and blue jeans pant (M.O-XII) worn by the appellant at the time of the commission of the crime was recovered pursuant to his disclosure statement (exhibit-15) which had blood stains of the deceased. However, the deposition of Mingma Tshering Bhutia (PW-2) that when he ran towards the unidentified person he let go of the body and fled down the hill is relevant to infer the appellant's guilt.

***Discrepancy regarding the colour of the T-shirt (M.O-III)***

**5(xv)** It is true that Dr. O.T. Lepcha (PW-15) noted "blood stained blue round coloured T-shirt with '*Good Things are Going to Happen*' printed in the front. ...." in his autopsy report. He said so in his deposition as well. Dr. O.T. Lepcha (PW-15) however identified the round collared T-shirt as M.O-III. M.O-III is a maroon coloured T-shirt with '*Good Things are Going to Happen*' printed in the front. The inquest report (exhibit-5) records that the deceased was wearing maroon coloured T-shirt at the time of the inquest. The chalan (exhibit-13) sending the dead body of the deceased for post mortem examination also records that she was wearing a maroon T-shirt. The forensic examination report (exhibit-23) also records the receipt of maroon coloured T-shirt. The autopsy was conducted on 11.08.2020. According to Dr. O.T. Lepcha (PW-15), after the autopsy was conducted, the wearing apparels of the deceased were packed and sealed and handed over to the Police. The



Investigating Officer confirmed the receipt of the body of the deceased and deposed that it was sent for forensic examination on 25.08.2020. The defence did not even suggest that the Police had tampered with the evidence during the cross-examination of the Investigating Officer. Therefore, the mention of a blue coloured T-shirt in the autopsy report (exhibit-14) seems only a typographical error.

**5(xvi)** In *Bijender alias Mandar vs State of Haryana*<sup>1</sup> cited by the learned counsel for the appellant, the Supreme Court held that it may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. On examination of the evidence led by the prosecution and considering all the submissions made by the learned counsel for the appellant, we are of the considered view that the disclosure statement and the recovery made thereafter is unimpeachable and not shrouded with elements of doubt.

***Motive not proved***

**5(xvii)** The learned Sessions Judge has held that the prosecution has not been able to prove the call data records (exhibit-32) as there is no certificate under section 65B(4) of the

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<sup>1</sup> (2022) 1 SCC 92



Indian Evidence Act, 1872. The learned counsel for the appellant contends that the prosecution has failed to prove motive of the appellant to murder the deceased. It is correct that in cases which is sought to be proved by way of circumstantial evidence motive is of great relevance. However, it would not be correct to suggest that the absence of motive would completely destroy the prosecution story. Motive is always in the mind of the accused and it may not be possible for the prosecution to spell it out with accuracy in every case. To argue that in every given case motive needs necessarily to be proved would be giving far too much importance to it than is required. PW-5 clearly deposed that the appellant was her sister's boyfriend and that she had disclosed to her that she had broken up with him. What transpired between the appellant and the deceased was known only to them. The deceased is no more but the appellant had her blood in his wearing apparels. The prosecution has been able to establish beyond reasonable doubt that the unidentified person who was seen by Mingma Tshering Bhutia (PW-2) with the deceased at the time of the incident holding her was the appellant. The chain of circumstances as enumerated by the learned Sessions Judge establishes beyond reasonable doubt that it is the appellant and the appellant alone who had committed the offence and merely because the prosecution failed to establish motive in great detail it cannot be held that the appellant is not guilty.



### ***The facts***

**6.** In the evening of 10.08.2020, Mingma Tshering Bhutia (PW-2) while taking a walk saw a person kneeling by the side of the road at Maneydara holding a girl on his lap. His back was turned to the road but he saw the long hair of the girl he was holding. He did not pay much attention as he thought they were a couple. While climbing up the slope he turned back to notice that the boy was dragging the girl towards the edge of the hill. The boy thereafter carried the girl and it looked as if he was about to throw her over. Mingma Tshering Bhutia (PW-2) ran towards him. The boy let go of the body and fled down the hill. He ran after the boy but could not catch up. Mingma Tshering Bhutia (PW-2) noticed that the boy was wearing a black cap, a red jacket with a white stripe over the arms and carrying a black back-pack. He returned to the spot where the girl was lying and found her bleeding from the neck. She was still breathing and blinking slowly. Just then, an Alto vehicle belonging to one Prabin dai from Langang and known to him arrived at the spot. Mingma Tshering Bhutia (PW-2) stopped the vehicle, carried the girl into it and rushed to the hospital.

**7.** Prabin Subba (PW-3) confirmed that while returning from Byadung in his Alto vehicle on the date of the incident, he was stopped by a person known to him from Naya Busty at Maneydara. The person told him that a boy had thrown a girl at



the spot and fled. He saw the body of the girl lying on the ground with cut injuries on her clothes and body and an open wound near the kidney area. He was informed by the person that the girl still had pulse and suggested that they rush her to the hospital. Prabin Subba (PW-3) and the person then took the girl to the hospital where she was declared dead. It is evident that Mingma Tshering Bhutia (PW-2) and Prabin Subba (PW-3) had rushed the deceased to the Hospital.

**8.** Dr. Bandana Thapa (PW-1) - the Medical Officer, was on duty on 10.08.2020 when a body of an unknown female with multiple stab wounds on the body, face and neck was brought to the District Hospital, Gyalshing by Mingma Tshering Bhutia (PW-2). Thereafter, she lodged the First Information Report (FIR)(exhibit-1).

**9.** PW-4 – mother of the deceased, learnt about the deceased being in the Hospital from PW-5 (sister of the deceased) who went to the Hospital along with her siblings and was informed by the Investigating Officer that her sister was no more. She noticed the injury on her neck. PW-5 deposed that the appellant was the boyfriend of the deceased and that her sister used to stay in the hostel of Tashi Namgyal Academy at Gangtok. She identified the appellant in Court. According to her, when the



deceased had returned to Gyalshing around March 2020 she had confided in her that she had broken up with the appellant.

**10.** The criminal investigation was taken up by Narayan Kumar Rai (PW-19) as the Investigating Officer. He was also the Station House Officer of the Gyalshing Police Station. Gyalshing P.S. Case FIR No. 21/2020 dated 10.08.2020 under section 302 IPC was registered against unknown persons.

**11.** During the course of investigation, the Investigating Officer learnt that the appellant was the victim's boyfriend. The appellant was thereafter apprehended and brought to the Police Station. At the Police Station on 10.8.2020 at 2200 hours, the appellant made his confession which was recorded in the disclosure statement (exhibit-15) in the presence of Labden Bhutia (PW-16) and Mahesh Subedi (PW-17). Mingma Tshering Bhutia (PW-2) was also at the Police Station during this time.

**12.** The disclosure statement (exhibit-15), the prosecution asserts, led to the recovery of the wearing apparels of the appellant worn during the incident from his room in the second floor of his house at his instance. The seizure was made at 2310 hours on 10.8.2020 vide seizure memo (exhibit-16) by the Investigating Officer (PW-19) in the presence of Labden Bhutia (PW-16) and Mahesh Subedi (PW-17).



**13.** Thereafter, they proceeded to the place of occurrence where the appellant pointed out to the spot where he had thrown the knife (M.O-VI). They went down to the spot but as it was past midnight, dark and raining, they decided to resume the search the next day.

**14.** On 11.8.2020 around 0700 hours at the instance of the appellant, the Investigating Officer recovered an umbrella with blood stains (M.O-XV), surgical mask with blood stains (M.O-XVII), two dry leaves with blood stains (M.O-XVI), one red black pink coloured ladies shoe of the left foot (M.O-XVIII). The seizure was effected through seizure memos (exhibit-19 and exhibit-20) in the presence of Labden Bhutia (PW-16) and Mahesh Subedi (PW-17) between 0740 and 0800 hours.

**15.** Thereafter they went down to the spot pointed out by the appellant the night before and recovered the knife (M.O-VI) from near a tree situated about 70 feet below the place of occurrence. The knife (M.O-VI) was seized through seizure memo (exhibit-22) at 0900 hours.

**16.** On the same day, the Investigating Officer conducted the inquest on the body of the deceased and found 16-17 injuries which appeared to be stab wounds inflicted on the head, neck, abdomen and back. He thereafter prepared the inquest report



(exhibit-5). Kharka Bahadur Subba (PW-8) was present at the Gyalshing Hospital where the inquest was conducted on the body of the deceased along with Santa Man Limboo (PW-9). They were the witnesses to the preparation of the inquest report and noticed the injuries on the body and a deep cut on the nape of the neck. Santa Man Limboo (PW-9) also saw several injuries including stab wounds in the abdomen, back, head and neck of the deceased.

**17.** At around 3:42 p.m. on 11.8.2020, Dr. O.T. Lepcha (PW-15) – the Chief Medico Legal Consultant, conducted the autopsy on the body of the deceased and noted 17 ante mortem injuries, 4 internal injuries and opined that the cause of death was the result of severe haemorrhage and shock as a result of multiple stab injuries with perforation of the lungs and liver caused by cutting edged weapon homicidal in nature.

**18.** On completion of the investigation and recording statement of witnesses, the Investigating Officer filed the charge-sheet.

**19.** The learned Sessions Judge framed two charges against the appellant under section 302 IPC for the murder of the deceased and under section 201 IPC for causing disappearance of the evidence and screening himself.



**20.** During the trial, the prosecution examined 19 witnesses including the Investigating Officer. The facts as stated above have been proved by the prosecution through the prosecution witnesses. After recording the prosecution evidence, the appellant's statement under section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was recorded on 31.12.2021. The appellant stated that he was innocent of the charges but admitted to have gone to the place of occurrence and that the deceased was known to him. The appellant stated that he did not desire to produce any witnesses in his defence.

**21.** The Investigating Officer (PW-19) has proved the inquest report (exhibit-5) and deposed that when he conducted the inquest on the body of the deceased at the hospital he found 16-17 injuries which appeared to be stab wounds inflicted on the head, neck, abdomen and back.

**22.** Dr. O.T. Lepcha (PW-15) – the Chief Medico Legal Consultant, who conducted the autopsy of the body of the deceased on 11.8.2020 at around 3:42 p.m. noted the following ante mortem injuries over the body:-

- “1. Wedge shaped stab injury measuring 3 x 1.2 x cavity placed over the Right Mid Axillary line, placed 112.5 cm above heel.
2. Wedge shaped stab injury with clean margin measuring 3 x 1.2 x cavity placed over the right chest along the Right Mid Axillary line and placed 112.5 cms above heel.



3. Wedge shaped stab injury with clean cut margins measuring 3.5 x 1 x cavity placed at the right anterior axillary line 112 cms above heel.
4. Horizontally placed wedge shaped stab injury with clean margin measuring 3.5 x 2 x bone placed over the right mid axillary line, placed 103 cms above the heel.
5. Horizontally placed wedge shaped stab injury with clean margin measuring 3.5 x 1.7 x cavity placed over the lower right chest 99 cms above the heel.
6. Horizontally placed wedge shaped stab injury with clean margin measuring 3 x 2 x cavity over the right chest 95 cms above the heel.
7. Vertically placed wedge shaped stab injury with clean margin measuring 3 x 2 x cavity over the right chest placed 88.5 cms above heel.
8. Horizontally placed wedge shaped stab injury with clean margin measuring 4.7 x 1.5 x cavity in the mid line (just below the Xiphisternum) placed 96 cms above heel. [the said injury has perforated the stomach].
9. Perforating injury with clean margin placed over the left upper arm with the entry wound measuring 3x1.5 cms placed over the lateral aspect. The Exit wound measures 2.5 x 0.8 cms and placed over the lower medial aspect of the left upper arm.
10. Puncture wound 2 x 0.5 x fracture of the underlying left zygomatic bone, placed just in front of the tragus of the left ear.
11. Puncture wound 3 x 1cm over the left zygoma, with underlying fracture of the zygomatic bone and placed 3 cms in front of injury no.10.
12. Incised injury 6 x 1cms with underlying fracture of the occipital bone, with avulsion of the lower scalp downward (force directed downwards).
13. Horizontally placed chop wound 3 x 1.3 x vertebrae — the injury is directed and is placed at the nuchal bone and is situated 134 cms above the heel.
14. Puncture wound 3.5 x 1cms x vertebrae placed 4.7 cm right to midline and situated 141 cms above heel.
15. Puncture wound 1.3 x 0.8 x bone placed 145 above heel.
16. Incised injury 3 x 0.7cms placed 3cms left to midline and 130 cms above the heel.
17. Incised injury 5 x 1cm placed 128 cms above heel.”

**23.** Dr. O.T. Lepcha (PW-15) also noted the following internal injuries over the body:-

- “1. Perforation of the right lung with around 1800ml of blood with clots present in cavity.
2. Perforation of the diaphragm (right dome) present.
3. Perforation of the Right Lobe of liver present.



4. Around 1000-1500 ml of blood is present in the abdominal cavity.”

**24.** While handing over the wearing apparels of the deceased, Dr. O.T. Lepcha noted the blood stains on them. He also noted that the round collared T-shirt (M.O-III) had multiple holes and tears corresponding to the underlying injuries over the body.

**25.** Dr. O.T. Lepcha (PW-15) was not shown the weapon of offence and the prosecution is devoid of his specific expert opinion on whether the knife (M.O-VI) could have caused the injuries. Dr. O.T. Lepcha (PW-15) however has given a detailed report on the ante mortem injuries and his opinion that the injuries were caused by cutting edged weapon. His cross-examination by the defence clarifies the nature of injuries further. Dr. O.T. Lepcha (PW-15) opined that the injuries were caused by cutting edged weapon and not by ‘bamphok’ or ‘khukri’. The length of the knife (M.O-VI) was 10 inches 7 centimetres. It had sharp edges on one side. These facts have been sufficiently proved. The detection of the blood of the deceased on the knife (M.O-VI) by the forensic expert with the evidence of Dr. O.T. Lepcha (PW-15) clearly establishes that it was the weapon of offence by which the deceased was murdered.



**26.** The nature of the injuries both ante mortem and internal proves beyond reasonable doubt the intention of the assailant. The blood of the deceased found on the red jacket (M.O-X) and the blue jeans pant (M.O-VII) of the appellant, recovered at his instance pursuant to the disclosure statement (exhibit-15) from his room on the very same day of the incident, and the arrest convincingly proves beyond reasonable doubt that it was the appellant and the appellant alone who was guilty of the crime.

**27.** Thus, the prosecution has been able to convincingly establish that on 10.08.2020 Mingma Tshering Bhutia (PW-2) saw a boy holding the deceased who had multiple stab wounds at the place of occurrence. The boy ran away on seeing Mingma Tshering Bhutia (PW-2). Prabin Subba (PW-3) who arrived at the place of occurrence helped Mingma Tshering Bhutia (PW-2) evacuate the deceased to the hospital as they could still feel her pulse. At the hospital, Dr. Bandana Thapa (PW-1) received the body of the deceased with multiple stab wounds on the body, face and neck and thereafter lodged the FIR. PW-5 - sister of the deceased, identified her at the hospital. She also informed that the appellant was the boyfriend of the deceased and that she had recently broken up with him. On being informed about the relationship between the appellant and the deceased, the Investigating Officer arrested the appellant who confessed to his



crime at the Police Station and made a disclosure statement (exhibit-15). The disclosure statement (exhibit-15) led to the recovery of the wearing apparels of the appellant from his room on the same day of the incident and his arrest. The next day, at the instance of the appellant, certain material objects belonging to the deceased was recovered from the place of occurrence. Thereafter, the weapon of offence which was thrown by the appellant after committing the crime was also recovered from below the place of occurrence. On forensic examination, blood of the deceased was traced in the red jacket (M.O-X) and the blue jeans pant (M.O-XII) worn by the appellant at the time of commission of the crime. The blood of the deceased was also traced in the knife (M.O-VI) which clearly established that this was the weapon of offence. The inquest as well as the autopsy clearly established that it was a case of homicide. The nature of injuries established the intention of the appellant of causing death of the deceased. The chain of circumstances as enumerated by the learned Sessions Judge establishes beyond reasonable doubt that it is the appellant and the appellant alone who had committed the offence and merely because the prosecution failed to establish motive in great detail it cannot be held that the appellant is not guilty.

**28.** Dr. O.T. Lepcha (PW-15) opined that the cause of death was the result of severe haemorrhage shock as a result of



multiple stab injuries with perforation of the lungs and liver, caused by cutting edged weapon homicidal in nature. It was certain that the death was homicidal. The multiple injuries sustained by the deceased on vital parts of her body reflects that the deceased was inflicted multiple blows with an intention of causing death. This amounts to murder as defined by section 300 of the IPC. Consequently, the appellant's conviction under section 302 IPC by the learned Sessions Judge is upheld.

**29.** The appellant has also been convicted under section 201 of the IPC for causing disappearance of evidence of offence, or giving false information to screen offender. Section 201 IPC reads as under:-

***“201. Causing disappearance of evidence of offence, or giving false information to screen offender.—****Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;*

*if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*

*if punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;*

*if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to*



*one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.”*

**30.** The learned Sessions Judge has held that as it is proved that the knife (M.O-VI) was thrown in the jungle below the place of occurrence which is not an easily accessible spot it establishes the intention of the appellant to dispose the weapon of offence used by him in causing the murder. Further, the knife (M.O-VI) could not be recovered immediately and was found only on the second day after a thorough search, thereby sufficiently proving the charge against him under section 201 IPC.

**31.** The Supreme Court in ***Kodali Purnachandra Rao and Another vs. The Public Prosecutor, Andhra Pradesh***<sup>2</sup> held that:

“16. In order to bring home an offence under Section 201, Penal Code the prosecution has to prove:

- (1) that an offence has been committed;
- (2) that the accused knew or had reason to believe the commission of such offence;
- (3) that with such knowledge or belief he
  - (a) caused any evidence of the commission of that offence to disappear, or
  - (b) gave any information respecting that offence which he then knew or believed to be false;
- (4) that he did so as aforesaid, with the intention of screening the offender from legal punishment;
- (5) If the charge be of an aggravated form, as in the present case, it must be proved further that the offence in respect of which the accused did as in (3) and (4), was punishable with death, or with imprisonment for life or imprisonment extending to ten years.”

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<sup>2</sup> (1975) 2 SCC 570



**32.** The proved facts reflect that the appellant had thrown the knife (M.O-VI) below the place of occurrence after the commission of murder. It also reflects that the knife (M.O-VI) was recovered at the instance of the appellant after he made the disclosure statement (exhibit-15). It is not the case of the prosecution that the appellant gave any false information which he knew or believed to be false to screen the offender. Therefore, it was necessary for the learned Sessions Judge to examine whether in the facts of the case the act of the appellant would amount to causing the knife (M.O-VI) to disappear. The circumstance of the knife (M.O-VI) not being recovered immediately and found only the next day was more due to the fact that by the time the Investigating Officer had completed the search and seizure from the room of the appellant, it was very late in the night. By the time the Investigating Officer reached the place of occurrence it was past midnight and dark. It is established that the appellant had thrown the knife (M.O-VI) below the place of occurrence after the commission of murder and it was recovered the next day at his instance after he gave his disclosure statement (exhibit-15).

**33.** The Constitutional Bench of the Supreme Court in ***Kalawati vs. State of Himachal Pradesh***<sup>3</sup> held that section 201 is not restricted to the case of a person who screens the actual

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<sup>3</sup> (1953) 1 SCC 86



offender; it can be applied even to a person guilty of the main offence, though as a matter of practice a Court will not convict a person both of the main offence and under section 201.

**34.** Thus, in view of the judgment of the Supreme Court, we are of the view that it may not be prudent to convict the appellant who has been found guilty of the main offence of murder for the offence under section 201 IPC as well in the facts and circumstances stated above. We, therefore, set aside the conviction of the appellant under section 201 IPC.

**35.** Considering the manner in which the appellant committed the crime by inflicting multiple stab injuries by 10 inches 7 centimetres 'Rambo knife' with jagged edge on one side on vital parts of her body, we are of the view that the sentence imposed for the offence of murder by the learned Sessions Judge needs no interference. It is accordingly confirmed. The sentence imposed under section 201 IPC is, however, set aside. The amount of Rs.6,00,000/- awarded by the learned Sessions Judge to the parents of the deceased victim under *the Sikkim Compensation to the Victims (or their Dependants) Scheme, 2021*, is maintained.



**36.** The impugned judgment and the order on sentence stands modified to the above extent. The appeal is disposed accordingly.

**37.** The Registry shall furnish a certified copy of this judgement free of cost to the appellant. A copy thereof shall be transmitted to the Court of the learned Sessions Judge, West Sikkim at Gyalshing along with the Trial Court records.

**( Bhaskar Raj Pradhan )  
Judge**

**(Meenakshi Madan Rai)  
Judge**

Approved for reporting : **Yes/No**  
Internet : **Yes/No**

*bp*