



Serial No.01
Supple List 1

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. A. No. 24 of 2023

Date of Decision: 14.06.2024

Shri. Differson Makdoh @Makhon Vs. State of Meghalaya Son of Lucymon Makdoh, Through the Commissioner Aged about 30 years, & Secretary to the Government Resident of : Iewmawlong, Ri-Bhoi of Meghalaya, Department of District, Nongpoh. Home (Police), Civil Secretariat, Presently serving sentence in <u>Ri-Bhoi</u> Shillong. District Jail, Nongpoh.	
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::::Applicant/Appellant.

::::Respondent.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Dr. P. Agarwal, Legal Aid Counsel.

For the Respondent(s) : Mr. R. Gurung, GA.
 Mr. A. H. Kharwanlang, GA

i)	Whether approved for reporting in Law journals etc:	Yes/No
ii)	Whether approved for publication in press:	Yes/No



JUDGMENT AND ORDER

This criminal appeal is preferred against the Judgment and order of conviction dated 03-01-2020 passed by the Court of the Sessions Judge/Additional DC, Ri-Bhoi District, Nongpoh in Sessions Case No. 19 of 2018 whereby the appellant was convicted under Section 326 IPC and Part II of Section 308 IPC and awarded sentence of 7 (seven) years rigorous imprisonment and a fine of Rs 10,000/- (ten thousand) and in default of payment to undergo further simple imprisonment of one month.

1. The fact of the case is that on 22-11-2017, a written FIR was lodged by Smt. Rimisha R. Marak (PW-1) (sister of the victim) to the effect that Shri. Banshemphang R. Marak (victim) was stabbed with a knife by Shri. Makhon Makdoh (accused-appellant) on 21-11-2017 at around 10.30 PM at Iewmawlong junction while the victim was coming from the house of his employer Shri. Comingson Kharchandi. The injured victim was taken to the Civil Hospital, Nongpoh from where he was referred to NEIGRIHMS hospital, Shillong and kept in ICU. On the basis of the FIR, Nongpoh PS Case No.265 (11) 2017 u/S 326/307 IPC was registered and the matter was investigated into. On the completion of the investigation, a charge-sheet bearing No.45/2018 dated 05-06-2018 u/S 326/307 IPC was submitted and the appellant was put to trial. On 24-09-2018, charge under Section



326/307 IPC was framed against the appellant where he pleaded not guilty and claimed trial. At the trial, the prosecution examined as many as 12 (twelve) witnesses, exhibited 11 documents and 4 (four) material exhibits in support of its case. After the conclusion of the evidence of the prosecution witnesses, the appellant was examined under Section 313 Cr.PC. The appellant declined to adduce any defence witness. Thereafter, the matter was finally heard and the learned Trial Court by impugned Judgment and Order dated 03-01-2020 convicted the appellant under Section 326 and Part II of Section 308 IPC and sentenced the appellant to undergo seven years rigorous imprisonment and imposed a fine of Rs. 10,000/- and in default of payment, to undergo further one month's simple imprisonment.

2. Dr. P. Agarwal, learned Legal Aid Counsel appearing for the appellant in her argument does not dispute the occurrence of the incident and involvement of the appellant in the incident. However, the learned Counsel submits that the appellant has not committed any crime intentionally and the act committed by him was under extreme provocation. The learned Counsel further submits that it was the victim who by his action provoked the appellant and the appellant has committed the alleged act in his self-defense. There was no presence of "*mens rea*" in the act of the appellant and it was a case of "*actus reus*". The learned Counsel



submits that even the Trial Court in its impugned Judgment and Order has specifically recorded that the accused was provoked by the victim. The learned Counsel submits that the sentence awarded is not proportionate to the nature of the crime and prays that the sentence may be reduced to the period of detention undergone by the appellant and he may be released.

3. Countering the submission advanced on behalf of the appellant, Mr. R. Gurung, learned GA appearing for the State-respondent submits that the contention raised on behalf of the appellant is not backed by any sound proposition of law and is based on the premises of sympathy and mercy which has no place in criminal law. He supports the conviction and the sentence awarded by the Trial Court and submits that the injury inflicted on the victim speaks of the mindset of the appellant while he committed the crime. The learned GA further submits that during the course of trial, the appellant did not put any effort to establish a case of extreme provocation while cross-examining the prosecution witnesses. He submits that the appellant does not deserve any leniency from this Court and the appeal be dismissed being devoid of merit.

4. Heard the learned Counsels appearing for the rival parties and also perused the materials available on record.

5. The PW-1, the sister of the victim who lodged the FIR, in her deposition before the Trial Court stated that two friends of the victim took



the injured victim to the Civil Hospital, Nongpoh and after that she was informed that the victim was assaulted by the appellant. She also stated that she went to the house of the appellant on the next day of the incident to ask for medical expenses which was refused by the mother of the appellant. On the same day she went to the police station and lodged the FIR (Exhibit P1). She stated that the victim told her after his discharge from hospital that the appellant stabbed him.

6. The PW-2 and the PW-3, both of whom are friends of the victim and were present with the victim at the time of the incident, deposed more or less in the same line. From the deposition of the said witnesses, it can be gathered that on the day of incident, i.e. on 21-11-2017 at around 9.30 PM or 10.00 PM, while coming back together in an auto rickshaw driven by the victim from the house of the employer of the victim, upon reaching Iewmawlong junction, they noticed a truck had dashed one grocery shop. On seeing this, the victim stopped the auto rickshaw and all of them headed towards the truck. While the PW-2 and PW-3 were inspecting the damaged truck and the said shop, the victim went to the driver side of the truck. Suddenly, they heard victim's call for help and rushed to the driver side of the truck and saw the appellant was standing next to the victim who was bleeding from stomach. They asked for help from the appellant for taking the victim to the hospital, but the appellant refused and fled away.



Thereafter, they took the victim inside the auto rickshaw and rushed to the hospital. Later, the relatives of the victims were informed. Both the witnesses asserted that the appellant was present at the place of occurrence and committed the crime.

7. The victim, who was examined as PW-4 in his deposition before the Court stated that on the day of the occurrence, at around 9. 00 PM, while returning from the house of his employer along with PW-2 and PW-3 by the auto rickshaw driven by him, on reaching Iewmawlong junction saw one truck dashed against one tea stall. On seeing the truck, they stopped and got down. The two of his friends (PW-2 and PW-3) went towards the left side of the truck and he climbed to the driver's door of the truck and saw the appellant sitting on the driver's sit raising the accelerator of the said truck to remove the said truck. He asked the appellant why did he act smart by driving the said truck when he did not know how to drive, the appellant remained silent with his hand at his back and when the victim turned towards the truck, the appellant from behind stabbed him from his left side of his chest. The appellant pulled him and at the same time stabbed him four times. He could feel blood coming out and shouted for help. Thereafter, the victim's friends heard his cry for help and came towards him and lifted him inside the auto rickshaw and took him to the Civil Hospital Nongpoh.



8. The PW-5 is the seizure witness and proved the seizure list Exhibit P 2 by which the grey T-Shirt (Material Exhibit 1) was seized. He also identified the said material exhibit.
9. The PW-6 is also another seizure witness who proved Exhibit P 5, the seizure list, by which Material Exhibit 2 (Knife) was seized by the police on being led by the appellant.
10. The PW-7 is the doctor who attended the victim at Civil Hospital, Nongpoh, when the victim was taken to the hospital. He stated that he examined the victim with the assistance of his staffs and found two stab wounds on the left side of the abdomen and two on the left upper back. The injuries suffered by the victim was grievous in nature and sufficient enough to cause his death.
11. The PW-8 is also another medical expert who attended victim on 22-11-2017 when the victim was referred to NEIGHRIMS hospital. He deposed that victim had multiple stab injuries on the left side of the chest and upper abdomen and the final diagnosis was homicidal injury with left diaphragmatic injury with fracture left 8 ribs with splenic injury.
12. The PW-9 is a forensic expert who was holding the post of In-charge Director, FSL, deposed before the Trial Court that he examined the victim's T-Shirt marked as Exhibit – A and two numbers of blood samples marked as Exhibit – C and also the knife marked as Exhibit – B and



prepared the examination report which was intimated to the Superintendent of Police. He exhibited the FSL report as Exhibit P 8.

13. The PW-10 is another FSL expert who was holding the post of Scientific Officer, Physical Division. He deposed that he examined the T-Shirt of the victim marked as Exhibit – A and the knife marked as Exhibit – B and observed that the cut marks on Exhibit – A were found to be similar with the tested cut marks by Exhibit – B. He stated that after he completed the examination, the exhibits were sent to Biology Division along with the report. He exhibited the report before the Court as Exhibit P 9.

14. The PW-11, who is the Investigating Officer of the case, in his deposition before the Court narrated in details of the steps taken during investigation of the crime right from the visit of place of occurrence, recording of statement of the witnesses and collection of material exhibit in the matter. He also deposed that the appellant was arrested and during interrogation he voluntarily admitted that he had stabbed the appellant. He further stated that the knife by which the victim was stabbed was also recovered on the leading of the appellant. He also stated that the appellant has admitted to have committed the crime in his statement recorded under Section 164 Cr.PC. and the evidence collected through forensic test also are positive.



15. The PW-12 is the Judicial Magistrate who recorded the confessional statement of the appellant. The said witness deposed before the Court that the appellant had confessed to the commission of crime without any intention to hurt anybody. She further deposed that the confessional statement of the accused was recorded after following the due process of law and after ascertaining that it is voluntary. The confessional statement was exhibited as Exhibit P 11 before the Trial Court.

16. A careful scrutiny of the entire evidence on record, as summarized above, establishes beyond reasonable doubt that the appellant was responsible for inflicting stab injuries by a knife on the victim. The statement of the appellant made under Sections 164 Cr.PC. and 313 Cr.PC. lend further support to the above fact. However, the reason behind such commission of crime by the appellant is not crystalized by the evidence on record. In his statement under Sections 164 Cr.PC. and 313 Cr.PC. the appellant asserted that he has committed the crime in self-defense. The learned Trial Court seems to have accepted the assertion made by the appellant and proceeded to convict the appellant under Section 326 and Part II of Section 308 IPC by holding that charge under Section 307 IPC has not been proved against the appellant. Nothing has been placed before this Court to disturb the findings and the conclusion arrived by the Trial Court. Hence, the impugned Judgment and order of conviction dated 03-



01-2020 passed by the Court of the Sessions Judge/Additional DC, Ri-Bhoi District, Nongpoh in Sessions Case No. 19 of 2018 needs no interference by this Court.

17. Coming to the prayer made by the learned Counsel for the appellant for reduction of sentence, it is seen that the victim had received 4 (four) stab injuries caused by the appellant which, according to the medical witness, were sufficient enough to cause death. That apart, perusal of the charge-sheet filed in the case reveals that the appellant was involved in another criminal case registered as Nongpoh PS Case No. 51(03) 2015 under Section 307/506 IPC. Hence, in the facts and circumstances, this Court is not inclined to accede to the prayer made on behalf of the appellant.

18. In the light of the discussions made above, there is no merit in the present Criminal Appeal and the same stands dismissed.

19. Let an authenticated copy of this Judgment and Order be supplied immediately to the appellant free of cost.

JUDGE

Meghalaya
14.06.2024
"Biswarup-PS"

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BHATTACHARJEE

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