

Sikkim High Court Sonam Zangpo Bhutia vs State Of Sikkim on 21 March, 2005 Equivalent citations: 2005 CriLJ 1937 Author: A Subba Bench: N Singh, A Subba JUDGMENT A.P. Subba, J. 1. This appeal is directed against the judgment dated 31-5-2002 passed by Shri S. W. Lepcha, learned Sessions Judge (East & North) at Gangtok in Criminal Case No. 21 of 2002 convicting the appellant under Sections 302 and 201, IPC and sentencing him to life imprisonment and to pay a fine of Rs. 5,000/- in default to undergo further imprisonment for six months under Section 302 and to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- in default to undergo further rigorous imprisonment for three months under Section 201. Both the sentences were made to run concurrently. 2. Briefly stated the prosecution case is as follows :— On 11-4-2000, Shri Gigma Bhutia, the complainant and his wife left for jungle to collect fire wood and fodder leaving behind his aged mother Somti Bhutia, the deceased and his infant baby aged about 6-7 months at home. The other daughter who was aged about 7 years had also left home to attend the village school in Sang. The complainant and his wife returned home from the jungle at around 2 p.m. On returning they found the house locked and his mother the deceased absent from home. For some time, the complainant thought that the deceased might have gone to the village to fetch his daughter but when she failed to return for a long time he along with the neighbours started search for the deceased. On extensive search being made by them, they came upon a blood stained trousers of the accused in the nearby cowshed. Thereafter, on breaking open the door of the bed room of the deceased, they found all gold ornaments, precious stones (zee mala) and cash amounts missing. On further search in and around the house, the complainant found that the bundle of the broom stems staked by him had been shifted to the corner. On removing the heap of broom stems they found, the dead body of the deceased with blood stains lying concealed underneath the broom stems. 3. A verbal information regarding the incident was received at Singtam Police Station from I.C. Sang Out Post around 015 hours on 12-4-2000. On receipt of such information the I.O. along with his staff reached the spot where the I.C. Sang Out Post and his staff were found present and guarding the place of occurrence. Later on, a formal FIR regarding the incident was lodged by the complainant. On receipt of the FIR Singtam case No. 9(4) 00 was registered under Sections 302/380/201 IPC and investigation was taken up. 4. The investigation carried out by the I.C. revealed prima facie case under Sections 302, 380 and 201, IPC against the accused and accordingly a charge-sheet was filed and the appellant was placed on trial. Having found sufficient material the learned trial Court framed charges against the accused under Sections 302/201/382, IPC. 5. The plea of the appellant at the trial was one of denial. 6. In order to prove their case, the prosecution examined as many as 23 witnesses. After considering the material on record and on hearing the prosecution and the defence, the learned Sessions Judge came to the conclusion that the prosecution had proved the guilt of the accused/appellant under Sections 302 and 201, IPC beyond reasonable doubt and convicted him under the said sections of law and passed sentences as already stated above. Being aggrieved by the aforesaid order of conviction and

sentence passed by the learned Sessions Judge the accused appellant has come up in the present appeal. 7. Shri B. K. Gupta, learned legal aid counsel appearing for the appellant in this appeal and Shri J. B. Pradhan, the learned Public Prosecutor appearing for the State were heard. The contention of Shri B. K. Gupta is that the entire prosecution case was based on circumstantial evidence but the chain of circumstances was not complete in the prosecution case. It is his main contention that the learned trial Court had framed charges under Section 382, IPC also but there was no whisper of the same in the main judgment and as there was no finding on this charge it had the effect of snapping the chain of circumstantial evidence in the case. In the facts and circumstances, it was his contention that the appellant was entitled to be given the benefit of doubt. The contention of the learned public prosecutor on the other hand is that even though the prosecution case was based on circumstantial evidence each and every of the relevant circumstances was proved by the prosecution by cogent evidence and there was no break in the chain of circumstantial evidence. As such, the question of the appellant being entitled to benefit of doubt does not arise. 8. To substantiate his contention Shri B. K. Gupta, learned counsel for the appellant, pointed out that there are contradictions in the statements of the P.Ws. 2, 9, 11 and 22. It is his further contention that the evidence of P.W. 2 was not properly scrutinised by the learned trial Court, We may, therefore, notice the relevant evidence given by these witnesses. Shri Jigme Bhutia (P.W. 2) is the complainant. In his deposition he has stated that on 11-4-2000 he and his wife Doma Bhutia had left for jungle to collect fodder at around 8.30 a.m. leaving behind the deceased and his infant son aged about 6-7 months in the house. When they returned home at about 2 p.m. they found their baby son crying in the cradle outside the house. As the house was locked they waited for their mother to return till evening and when she failed to return home they conducted a search for her in the neighbourhood. When they failed to find her anywhere they returned home and broke open the lock and entered the house. On entering the house, they saw the lock of the almirah broken open and found that the gold, silver ornaments and zee stones were missing. Thereafter on further search they found a pair of light colour zeans trousers with blood stains which, belonged to the accused Sonam Zangpo Bhutia in the nearby cowshed. On seeing the blood stains trousers they grew suspicious and on further search they found the dead body of the deceased at the back side of the house next to the wall covered with dried stems of broom plants. Shri Inchung Lepcha (P.W. 9) is a resident of the same village and neighbour of the complainant who knew the accused as well as the deceased. According to him, on 11-4-2000, i.e. the day of the incident he had gone to the house of the accused to drink water. On reaching the house of the accused he saw the accused washing his hands and feet outside the house. As he was proceeding to leave, after drinking water, from the front side thoroughfare of the house the accused stopped him from taking that route saying that the ducks will bite him if he goes that way. He asked him to leave from the back side of the house. He accordingly left taking the route at the back side of the house. Chup Tshering Bhutia (P.W. 11) is also a resident of the same village and related to the deceased. The deceased

was his sister-in-law and the accused was his nephew. According to him he was present at his sister's house when a dead body was recovered from underneath the heap of broom plant stems behind her house. He saw the dead body with many injuries. Dr. K. B. Gurung (P.W. 22) is the Medico Legal Consultant, STNM Hospital who had conducted the post-mortem on the dead body of the deceased. During the medico legal autopsy he observed the following injuries on the dead body :- "A. General: Rigor mortis fully developed all over the body. Post-mortem lividity fixed on the back. No putrefaction. Ante-mortem injuries 1. Incised wound 2 x 1 cms. near left ear. 2. Incised wound 4 x 3 cms on the parietal (left) region of head. 3. Incised wound 2 X 1 cms. on the right arm. B. Head and Neck ; 1. Fracture of the left parietal bone of skull. 2. Extradural and sub-dural haemorrhages present. C. Chest: Intact D. Abdomen : Healthy and intact." The cause of death according to him was head injury produced by sharp cutting heavy weapon. 9. As may be seen from the above, the evidence given by the 4 witnesses are distinct and separate from each other and deal with different sequence of events. Except the minor contradictions as noted by the learned trial Court in the impugned judgment, we find no contradiction on any of the material points. Thus, we find it difficult to agree with the learned counsel for the appellant that there is contradiction in the evidence of P.Ws. 2, 9, 11 and 22 and that such contradiction leads to a break in the circumstantial chain. 10. Admittedly, there is no eye-witness to the occurrence. The prosecution case is based on circumstantial evidence only. Therefore, the question is whether the proved circumstances provide a complete chain and point to the guilt of the accused and exclude any hypothesis consistent with his innocence. The learned trial Court while arriving at the conclusion that the accused and nobody else was responsible for the death of the deceased Somti Bhutia mainly referred to and relied on the evidence of P.Ws. 1, 2, 4, 5, 7, 8, 9, 12, 13, 18 and 22. So far as the evidence of Shri Jigme Bhutia (PW 2), the complainant, Shri Inchung Lepcha (P.W. 9) and Dr. K. B. Gurung (P.W. 22) are concerned, their evidence have already been discussed in the foregoing paragraph 8. We may now deal with the evidence of other relevant P.Ws. Out of the above PWs. PWs, 1, 4 and 5 are the witnesses who have only deposed about the arrest of the accused person at Namchi. The arrest of the accused person at Namchi is not at all in question. Therefore, a detailed discussion of the evidence of these three witnesses is not called for. The evidence of the other witnesses is as follows :- Mrs. Chung Bhutia (P.W. 7) is a witness belonging to the locality and her statement is relevant. She has stated that on 9-4-2000 the deceased visited her house and complained to her that the accused was creating problems for her and expressed the apprehension that the accused might commit theft of her belongings or do something to her. Shri Tashi Pintso Bhutia (P.W. 8) is the Writer Constable of Sang Out Post. He was present in the place of occurrence when search for the deceased was conducted on the relevant day. He stated "we found one pair of white trousers said to be belonging to the accused. The said pair of trousers contained blood stains. The dead body of Somti Bhutiani was found near her house. It was covered by 'amliso' sticks." Shri Sonam Senga (P.W. 12) is one of the sons of the deceased. According to this witness, he is related to the accused

as cousin and the accused slept with him on the previous night, i.e. 10-4-2000. He stated "on the previous night i.e. on 10-4-2000 the accused who is my cousin slept in the same room as my". In his cross-examination, he stated that he did not find the accused when he woke up in the morning of 11-4-2000 around 7 a.m. He also identified the pair of trousers (Exhibit P1) as belonging to the accused appellant. Smt. Tshering Doma (P.W. 13) is the wife of the complainant. Her evidence shows that she had accompanied her husband to the forest to collect fodder on the date of the incident. She has corroborated the statement of complainant P.W. 2 in material particulars. She has also identified the two trousers recovered from the place of occurrence as belonging to the accused. She has stated "finally, they found one pair of trousers belonging to the accused near the cowshed. The pair of trousers contained blood stains. These are the said pair of trousers already marked Exhibit 1. Two days prior to the incident, the accused was wearing the said pair of trousers." The only question put to her about the identification of the said trousers was that the similar type of trousers are available in the market and many people wear the said trousers to which she answered by saying yes. She however categorically denied the suggestion that the trousers Exhibit 1 was not belonging to the accused person. Shri Akhey Bhutia (P.W. 18) is the seizure witness in respect of seizure of one pair of white trousers (Exhibit 1), one axe (exhibit II) and one G.I. Pipe (Exhibit III). In his evidence, he has duly identified the seized articles. He stated "I was present at the spot when the police seized one G.I. Pipe and one pair of white trousers. This is the said G.I. Pipe seized by the police already Ext. III and this is the pair of trousers already marked Ext. 1 The police also recovered one axe from the kitchen garden. At that time the axe was stained with blood and also had some strands of hair." In addition to the above, the evidence of Shri Shougey Bhutia (P.W. 3) is also relevant. Shri Bhutia was the former husband of the deceased. He has stated that the deceased Somti Bhutia was his first wife with whom he had separated since the year 1985 after he married the second time. The deceased was living in the main house along with his children. According to him, the accused Sonam Zangpo Bhutia is the son of his own late sister. After the death of his parents the accused appellant was living with his first wife, the deceased. 11. The question is whether the evidence of the above witnesses is sufficient to establish the basic facts and if so whether inference of the guilt of the accused can be drawn on the basis of the established facts. To find an answer to these questions the well-established principles governing the appreciation of evidence in cases depending on circumstantial evidence have to be borne in mind. For this purpose, it would be advantageous to notice the guiding principle laid down by the Hon'ble Supreme Court in various cases in the matter of assessing circumstantial evidence and also for applying the doctrine of benefit of doubt. In *Pohalya Motya Valvi v. State of Maharashtra*, AIR 1979 SC 1949 : (1979 Cri LJ 1310) the Supreme Court observed as follows ;— "Briefly, the principles are that each circumstance relied upon by the prosecution must be established by cogent, succinct and reliable evidence: that the circumstance relied upon must be such as cannot be explained on any hypothesis except the guilt of the accused. In other words, the circumstances must be of an incrimi-

nating character. All the proved circumstances must provide a complete chain no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence.” In *Gambhir v. State of Maharashtra*, AIR 1982 SC 1157 : (1982 Cri LJ 1243) the Supreme Court observed as follows :— “..... The law regarding circumstantial evidence is well settled. When a case rests upon the circumstantial evidence such evidence must satisfy three tests : (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused: (3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.” In the case of *Kishore Chand v. State of Himachal Pradesh*, AIR 1990 SC 2140 : (1990 Cri LJ 2289), it has been observed as follows :— “.....It is necessary to distinguish between facts which may be called. primary or basic facts on one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Courts has to judge the evidence in the ordinary way and in appreciation of the evidence in proof of those basic facts or primary facts, there is no scope for the application of the doctrine of benefit of doubt. The Court has to consider the evidence and decide whether the evidence proves a particular fact or not. Whether that facts leads to the inference of the guilt of the accused or not is another aspect and in dealing with this aspect of the problem, the doctrine of benefit would apply and an inference of guilt can be drawn only if the proved facts are inconsistent with the innocence of the accused and are consistent only with his guilt.” In *Inderjit Singh v. State of Punjab*, AIR 1991 SC 1674 : (1991 Cri LJ 2191), the Supreme Court has laid down the law in para 2 of the judgment as follows :— “It is well settled that in a case pending on circumstantial evidence, the prosecution must establish all the circumstances by independent evidence and the circumstances so established must form a complete chain in proof of guilt of the accused beyond all reasonable doubts. The circumstances so proved must also be consistent only with the guilt of the accused.” 12. In the present case, the evidence of the witnesses discussed above are sufficient to prove the following circumstances :— (i) That the appellant was living along with the deceased in the same house. He was present in the house at the relevant time. (ii) That on the day of the incident, the deceased and the infant baby of the complainant were left alone in the house. The accused was seen washing his hands and feet in the courtyard at the relevant time. (iii) That the accused had the opportunity to commit the crime. (iv) That the deceased was found lying dead with injuries on her body and all the valuables were stolen from the almirah. (v) That two blood stained trousers which the accused was seen wearing two days ago were recovered from the place of occurrence. (vi) That the deceased had apprehended danger to her

life from the accused. (vii) That the accused absconded after committing the crime and was apprehended only after two months from Namchi. 13. Having thus found that the above circumstances, stand proved by the circumstantial evidence on record the next question is whether these circumstances taken cumulatively form a complete chain and whether they are of definite tendency unerringly pointing towards the guilt of the accused. 14. So far as the question of the established facts providing complete chain is concerned the submission of Shri Gupta is that there is a break in the chain in so far as the trial Court failed to discuss and give any finding on the charge framed against the accused under Section 382, IPC. A perusal of the records show that one head of charge framed against the accused was under Section 382. The impugned judgment nowhere shows any discussion or any finding on the charge. Hence the contention of the learned counsel for the appellant that no finding was given on the charge framed under Section 382 is borne out by record. It must however be made clear that the omission to give a finding on the issue which was framed has been taken as a ground of appeal to the limited extent that the absence of finding on such charge has broken the chain of circumstantial evidence. Therefore, the question at hand is whether such omission to consider and give any finding on the charge so framed under Section 382 has occasioned a break in the chain of the circumstances, To answer this question it must be noted that the charge under Section 382 relates to commission of theft after making preparation for causing death, hurt or restraint. In our considered view a finding on this charge even if given would hardly have the effect of snapping the chain of circumstances which have been found to have been established on the basis of the evidence available on record as already indicated hereinabove. 15. This brings us to the next question as to whether the proved circumstances bring home the offence to the accused appellant beyond reasonable doubt. It is clear from the guidelines laid down by the Hon'ble Supreme Court in the different cases cited above that the proved circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. In other words, it must be consistent only with the guilt of the accused and should be such as to exclude every hypothesis but the one proposed to be proved. Keeping such requirement in mind, we are of the considered view that the circumstances established by the evidence on record satisfy all the requisite conditions. The fact that the accused appellant was living with the deceased in the same family, the presence of the accused in the place of occurrence at the relevant time, availability of opportunity to commit the alleged crime finding the helpless old lady all alone in the house with small baby of 6-7 months left in her charge by the complainant and his wife, the presence of injuries on the dead body of the deceased, the recovery of the blood stained trousers (Exhibit I) belonging to the accused one axe (Exhibit II) and one G.I. Pipe (Exhibit III) from the place of occurrence and finally the absconson of the accused appellant after the commission of the crime all go to point towards the guilt of the accused appellant. To this we may add the apprehension expressed by the deceased that the accused appellant might inflict any harm to her. Further, the evidence oh record does not suggest the involvement of any other person in the crime. The evidence does not indicate

the possibility of any one else having intruded into the house of the deceased to commit the crime between the time when the deceased was left alone with the small baby in the house and the time when her dead body was found. The only person seen present in the house of the deceased at the relevant time was the accused appellant. No explanation has also been given by the accused as to why he absconded and remained away from the locality until he was arrested by the Police at Namchi, South Sikkim. For all these reasons, we have no hesitation to hold that the circumstance proved in the case at hand are inconsistent with the innocence of the accused and are consistent only with his guilt. Needless to say in a case where the proved circumstances provide a complete chain in proof of guilt of the accused the question of benefit of doubt does not arise. 16. Thus, in the facts and circumstances of the present case, we find no infirmity in the conclusion arrived at by the learned Sessions Court and as such we find no ground to interfere with the impugned judgment and order. 17. In the result, the appeal is rejected and the impugned judgment and the order of sentences are maintained. N.S. Singh, Ag. C.J. 18. I agree.