

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl. A(J) No. 02 of 2022

1. Sri Kanulal Debnath, son of late Paresh Chandra Debnath, resident of village Ghilatali, Deb Para, P.O. Kalyanpur, P.S. Khowai, District: Khowai Tripura, at present in Khowai Sub-Jail, Khowai Tripura.

.....Appellant

-VERSUS-

1. The State of Tripura.

..... Respondent.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH

For Appellant(s)	:	Mr. B. Banerjee, Advocate.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of hearing and delivery of judgment and order	:	17.05.2023
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER [ORAL]

[T. Amarnath Goud, J]

Heard Mr. B. Banerjee, learned counsel appearing for the appellant and Mr. S. Debnath, learned Addl. Public Prosecutor, appearing for the respondent-State.

[2] The instant appeal is directed against the judgment and order of conviction and sentence dated 30.08.2019 passed by the learned Sessions Judge, Khowai Tripura, in connection with case No. S.T. (T-1) 31 of 2018, whereby and whereunder, the appellant has been convicted under Section-304 (Part-I) of IPC and thereby, sentenced to suffer Rigorous

Imprisonment for 10 years and to pay a fine of Rs. 5000/- with default stipulations.

[3] The factual background of the prosecution case is that on the basis of a written complaint lodged by the complainant namely, Sri Gopal Debnath (brother of the deceased) stating inter-alia that on 26.06.2018 at about 0700 hours the accused Kanulal Debnath assaulted his wife namely, Dipali Debnath at Ghilatali, in his kitchen room with an iron rod (sabol), as a result, Dipali Debnath sustained grievous injuries on her person and, thereafter, immediately shifted to GBP Hospital by her son and brother and during treatment at GBP Hospital, Agartala said Depali Debnath succumbed to her injuries.

[4] On the basis of the said complaint, Kalyanpur P.S. Case No.2018/KLN/036, dated 26.06.2018 under Sections-326/302 of IPC was registered and S.I. Sri Lalzuithara Darlong took up the investigation of this case and after completion of investigation he laid charge-sheet vide No.39 of 2018, dated 30.10.2018 under Sections-326/302 of IPC against the accused, the appellant herein.

[5] The learned Sub-Divisional Judicial Magistrate, khowai after taking cognizance of offence under Sections-326/302 of IPC complied the provision of Section-209 of Cr. P.C. committed the case to the Court of Sessions as the case is exclusively triable by the Court of Sessions, Khowai, Tripura after furnishing copies to the accused as required under Section-207 of Cr. P.C.

[6] On receipt of the case record by this Court on 21.12.2018, this Court framed charge under Section-302 read with section-34 of IPC against the accused appellant explaining the contents of charge to him translating the same in Bengali to which he pleaded not guilty and claimed to be tried.

[7] To substantiate the charge, prosecution has adduced as many as 17 witnesses including the complainant of this case mentioned in the appendix attached herewith. The prosecution also relied upon some documentary evidence as well as material object which were also marked as exhibits in connection with the present case as reflected in the attached appendix. The defence case was that of total denial of the allegation of the prosecution and as such the convict-appellant during his examination under Section-313 of Cr. P.C, pleaded his innocence and denied to adduce any witness in support of his defence.

[8] After hearing both the parties, the learned Court below found that the appellant is guilty for committing offence punishable under Sections-304 (Part-I) of IPC and thereby sentenced him as stated supra. For the purpose of reference, the observation of the Court below may be reproduced hereinbelow:

“In discussing the evidence of prosecution witnesses I already stated it that PW-2 who is the star witness of this case specifically deposed in his evidence that in the early morning there was a quarrel in between the deceased and the accused who are his parents. He did not explain any specific reason of that quarrel. It is not the case of prosecution that earlier to the said incident the conduct of the accused towards the deceased was not good. Not a single witness deposed about the motive of the crime. Since the intention to kill the deceased is not proved by prosecution but infliction of fatal injury on the head of deceased which caused her death has been proved, I am of the view that accused deserve some consideration in the matter of conviction. On having my due consideration of all these facts and circumstances, I find and hold that this is a fit case where for the commission of offence by the accused he can be convicted under Section-304 (Part-I) of IPC.

Finally I hereby convict Sri Kanulal Debnath under Section-304 (Part-I) of IPC for his commission of murder of the deceased namely, Dipali Debnath.

Considering the submission of both sides I hereby convict Sri Kanulal Debnath under Section-304(Part-I) of IPC and sentence him to suffer RI for 10 (ten) years and to pay a fine of Rs.5,000/- (rupees five thousand) i.e. to suffer SI for 2(two) months.”

[9] The appellant herein, being aggrieved by and dissatisfied with the impugned judgment and order of conviction dated 30.08.2019, has preferred this present appeal for ends of justice.

[10] Mr. Banerjee, learned counsel appearing for the appellant has submitted that PW-1 stated that on 26.06.2018 I.O. seized one Shaval (crowbar), one gamcha and some blood sample collected from the kitchen of the deceased in his presence under a seizer list and he put his signature in it. PW-1 also identifies the seized shaval and gamcha before the Court. It has been further stated that he heard that the accused assaulted his wife with a shabal and thereby wife of the accused succumbed to her injuries in GBP Hospital Agartala. But, the cross examination he stated that he did not put signature on the seized shaval and gamcha but the learned Court below most whimsically believed that statement and convicted the appellant herein.

[11] PW-2, Sri Surajit Debnath deposed that on 26.06.2018 at about 06.00 am he was in his house and at that time his mother Dipali Debnath was making roti in their kitchen and accused was engaged in quarrel with his mother on some domestic affairs. He further deposed that at that material time he just came out of the wash room and saw that the accused and the deceased quarrelling each other.

[12] It has been further submitted that while PW-2 was on the main road he heard sounds from their kitchen immediately he noticed his father was going out of the house. He deposed that at the material time of their quarrel, except his father and the deceased none were in their kitchen. He rushed back to his house and say his mother was lying there on the ground in the kitchen with some bleeding injuries over her forehead and on her fact. Subsequently, she was shifted to GBP hospital and during the treatment his mother was succumbed to her injuries. After death of his

mother, police prepared a report over the dead body of his mother and on 26.06.2018 police seized some blood stain gauze cloth wherein the blood sample of his deceased mother was collected by the medical officer at the time of her post-mortem and those were kept in a sealed envelope.

[13] But, in his cross examination he has stated that there are few house besides their house and main road is in the West of their house. He voluntarily stated that his elder brother was in the house of his maternal aunt on that day but, he has not disclosed the name of his elder brother and the name of his material aunt.

[14] Learned counsel appearing for the appellant has drawn our attention to the deposition of PW-5 wherein, it has been stated that on 26.06.2018 her brother reported her over telephone that her mother was severely assaulted by her father with a crowbar in her parent's kitchen. She further stated that her mother was shifted to GBP hospital by her brother and maternal uncle and on the way of GBP hospital. But, in her cross examination she has uttered name of another brother and she never made any statement regarding the role of her another brother.

[15] PW-6 Sri Dulal Debnath in his examination-in-chief has stated that on 26.06.2018 he was in the house and taking some food in the morning and at that relevant time suddenly he heard shouting of his sister i.e. the deceased herein and her son Surajit Debnath from their house immediately he rushed to their house and while he was entering into their house, he found his brother in law Kanulal Debnath, the accused-appellant running out of his house and went towards the West. Thereafter, while he entered into their dwelling hut, he found his sister lying on the ground in the kitchen with severe injury over her face and head and a crowbar was found beside her with some blood stain.

[16] Mr. Banerjee, learned counsel has contended that the learned Court below believed the testimony of PW-2 and 6 and considered them most important witnesses of his case but, the learned Court below utterly failed in appreciating the facts and circumstances of the case as there exists serious discrepancies and contradiction between the statement of the PWs. The learned Court below without considering the fact that the prosecution has totally failed to prove the case against the convict-appellant beyond reasonable doubt, convicted the appellant without any legal evidence and was swayed by whim.

[17] Per-contra, Mr. S. Debnath, learned P.P. has opposed the submission of the learned counsel appearing for the appellant and submitted that the prosecution case is well proved by the evidence of PWs.2, 3, 6, 9, 11, 12 and 15. The death is well proved, weapon used in the death also proved by prosecution beyond all reasonable doubt.

[18] In view of the submissions canvassed by the learned counsel appearing for the parties as reflected above, let us make a short survey of the evidence and material placed on records to justify the conviction and sentence declared against the accused-appellant under Section -304 (Part-I) of IPC. After perusal of the material evidence on record and the circumstances as sketched herein, the main object which needs to be discussed is that whether there was any predetermined intention of the accused to kill his wife. There is presumption that a man knows the natural and likely consequence of his acts.

[19] In the present case, there is no evidence to show that the appellant has intention to kill the deceased. In fact, it was a family dispute i.e. fighting between the husband and wife which is very much common in nature. Culpable homicide by causing death of person other than person whose death was intended...*if a person, by doing anything which he intends*

or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

[20] The expression intention and knowledge postulate the existence of positive mental attitude. It was further held that when and if there is intent and knowledge, then the same would be a case under first part of section 304 and if it is only case of knowledge and not intention to cause death by bodily injury, then the same would be a case of second part of section 304. In the present case the accused suddenly blow his wife without any intention or knowledge that it could be the case of her death. As such, according to us, the learned Court below could have been decide the matter under Section 304(Part-II) of IPC instead of part-I.

[21] If the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term which may be extend to 10 years, or with fine, or with both under the second part of section 304. Knowledge is a strong word and imports a certainty and not merely a probability. The element of knowledge is mandatory in the case for applicability of the second part of section 304.

[22] The nature and the number of injuries as well as their location and the weapon used lead to conclude that to a reasonable person, an attack of the nature launched by the appellant on victim could cause his death. While it may be difficult to delve into the mind of attacker to decode his intention knowledge for the consequences of his actions can certainly be attributed to him. The appellant had knowledge that his actions are likely to cause the death. In this case, he was held guilty of culpable homicide not

amounting to murder and held liable to be sentenced under the first part of the section 304.

[23] In the case there was a quarrel between the accused and the deceased. Suddenly the accused hit the deceased with a crowbar on the head when they were quarreling each other. Only a single blow on the head may not be sufficient to cause death. It could not be said that the accused inflicted the blow intending to cause death. It was not discernible that the injury was inflicted with an intention to cause death of victim or to cause such bodily injury that it was likely to cause the death of the victim. However, it is not clear that the act has been done by the accused with knowledge that it would cause death.

[24] There was free fight between the husband and the wife which had caused death to a person. The reason of quarrel was not known to anyone the family member of the deceased. Circumstances disclosed that the object was to fight only and not to cause death or grievous injury to the person. The accused assaulted and caused the death of the victim with crowbar and relying on the prosecution witness the learned Court below convicted him under section 304 Part-I.

[25] Before awarding conviction against accused, the Courts should be mindful of fact that there should be no room to suspect evidence of key prosecution witnesses based on whose evidence conviction is being awarded. As a general rule, while appreciating evidence in a criminal case, Court should bear in mind, that it is not quantity, but quality of evidence that is material. It is the duty of Court to consider the trustworthiness of witness and evidence adduced on record and to assess the same in a prudent manner, whether the same inspires confidence, so as to accept and act upon, before convicting accused.

[26] In our considered opinion, the prosecution has miserably failed to prove that the cause of death of the wife of the appellant was the outcome of any pre-mediation, which has led this Court to come to the conclusion that the way the murder is caused, does not come within the purview of the definition of Section-304 (Part-I) of IPC rather it comes within the ambit of the definition of Section-304 Part-II of IPC.

[27] Accordingly, we are inclined to reduce the conviction and sentence to suffer RI for 10 years as returned by the Sessions Judge, Khowai Tripura, and consequently, we hold that substantial justice would be rendered if the appellant is sentenced to suffer RI for 7 years instead of RI for 10 years. In the result, the instant appeal is partly allowed. The appellant shall suffer RI for (seven) years which shall include the period he already has undergone.

[28] With the modification in the above term in regard to the sentence of the appellant, the instant appeal stands partly allowed and thus, disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

JUDGE



JUDGE

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