

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A. (J) 12/2021

Sri Biswaranjan Debbarma

son of late Sachindra Debbarma, resident of Panbari,
P.S. Mongiakami-799205, District- Khowai, Tripura

----Appellant

Versus

The State of Tripura

----Respondent

For Appellant(s)	:	Mr. S. Kar Bhowmik, Sr. Advocate Mr. A. Darlong, Advocate
For Respondent(s)	:	Mr. Ratan Datta, PP
Date of hearing & delivery of	:	20.09.2023
Judgment & Order		
Whether fit for reporting	:	Yes / No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

(Amarnath Goud, J)

Heard Mr. S. Kar Bhowmik, learned senior counsel assisted by Mr. A. Darlong, learned counsel appearing for the appellant. Also heard Mr. Ratan Datta, learned PP appearing on behalf of the respondent-State.

2. This present appeal is filed against the judgment of conviction and order of sentence dated 16.07.2019 passed in connection with case No. S.T. (T-1) 20 of 2018 by the learned Sessions Judge, Khowai, Tripura, whereby the learned Sessions Judge convicted the appellant for commission of offence punishable under Section 325 of the IPC, and sentenced him to suffer R.I. for 7 (seven) years and to pay a fine of Rs. 2,000/- with default stipulation, and further convicted him under Section 302 IPC and sentenced him to suffer R.I. for life and to pay a fine of Rs.5,000/- with default stipulation.

3. In short, the fact leading to institution of this appeal is that, on 24.02.2018 at about 0630 hours the accused, the appellant herein, had a quarrel and exchange of words with the parents of the complainant under influence of liquor on some family issues and when the father of the

complainant tried to stop the accused, the accused assaulted the father of the complainant with a branch of a tree on his head and chest and also assaulted his mother, Smt. Dukhini Debbarma. The injured persons were immediately shifted to GBP hospital, but the father of the complainant succumbed to his injuries on 24.02.2018 in the evening at GBP hospital.

4. The said complaint was registered as Mongiakami PS case no. 05 of 2018. The matter was investigated by the investigating officer, and after completion of investigation submitted charge-sheet against the appellant under Sections 326/302 of the IPC. At the commencement of trial, the learned Sessions Judge had framed charge against the appellant to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution to establish the charge had adduced as many as 16 witnesses. After closure of recording evidences, the appellant was examined under Section 313 Cr.P.C. wherein he denied all the allegations leveled against him by the prosecution witnesses. After hearing arguments and on examining the evidences and materials on record, the learned Sessions Judge had convicted and sentenced the appellant for committing offence, as aforestated. Hence, this appeal before this court.

6. Mr. Kar Bhowmik, learned senior counsel appearing for the appellant has submitted that due to certain provocation from the father of the complainant the appellant lost control over himself and started to assault the victims by branch of a tree. Learned senior counsel has also submitted that the death of the deceased was in fact a result of the assault caused by the accused still the offence would not amount to murder and at the most it could be said that this is a case of culpable homicide not amounting to murder, and that too, punishable under the second part of Section 304 IPC. Learned senior counsel

also prayed on behalf of the accused that if the conviction of the accused for the death of the deceased is altered to Section 304(II) IPC the sentence of imprisonment for that offence may be reduced. In fine, learned senior counsel has argued that without properly appreciating the evidences on record, the learned trial court had convicted the appellant.

7. On the other hand, learned PP appearing for the respondent-State has urged to maintain the findings of the learned trial court since there is no infirmity or illegality in the findings of the learned trial court.

8. We have considered the submissions for learned counsel appearing for the parties. We have perused the evidences and materials on record and the judgment passed by the learned Sessions Judge.

9. To substantiate the findings of the learned trial court, this court has perused the deposition of the prosecution witnesses as well as the defence witnesses wherefrom it is revealed that PW-1 is the eye witness to the alleged incident. As per deposition of PW-1, on the alleged date, there was a quarrel between the accused-appellant and his father-in-law, Deb Charan Debbarma and during quarrel, the appellant used filthy languages to his father-in-law and while his father-in-law protested, the appellant became more furious and suddenly lifted a dry branch of tree and attacked his father-in-law but his father-in-law took shelter behind their dwelling hut and suddenly the appellant strike out a blow with the said branch over the head of his father-in-law from his back due to which the victim suffered severe injuries over his head and became senseless and thereafter the accused leaving the dry branch of the tree left the place of occurrence. PW-1 further deposed that during interrogation by police, the accused admitted his guilt.

PW-2, deposed that the accused is her son-in-law and oneday about 10 months back in the morning the accused had a quarrel with her husband in their courtyard and when she went to save her husband, suddenly the accused gave a blow to her husband with a branch of a tree and also blow on her right arm resulting which they sustained injuries and became senseless. She further deposed that her husband died in the hospital.

PW-3 is a hearsay witness who deposed that he came to know from other persons that the accused assaulted Deb Charan Debbarma with a branch a tree. PW-4, is a woman constable of Mungiakami PS who registered the case against the accused-appellant. PW-5, is the medical officer who treated the injured Dukhini Debbarma. PW-6, is the scribe and he deposed that he came to learn from his mother that his brother-in-law had killed his father by a lathi. PW-7, PW-8, PW-10 and PW-11 are seizure witnesses. PW-9 deposed nothing material related to the instant case. PW-12 prepared the written ejahar. PW-13, deposed that on the alleged date hearing some shouting she went to the house of Deb Charan Debbarma where she found Deb Charan Debbarma lying in his house with bleeding injury on his head. This witness further deposed that she heard that the accused assaulted Deb Charan Debbarma with a branch of tree relating to some quarrel with his father-in-law on some family issues. PW-14, is the medical officer who conducted post mortem examination over the dead body of deceased Deb Charan Debbarma. PW-15, is the investigating officer. PW-16 is the Sr. Scientific Officer cum ACE of SFSL.

Nothing material could have been elucidated from cross-examination of these prosecution witnesses.

10. On appreciation of the evidences of prosecution witnesses, there is ample evidence and material implicating and establishing the appellant's involvement in crime beyond doubt. There is no doubt that the parties were closely related, being the father-in-law and the son-in-law.

12. We have also perused the disclosure statement made by the appellant wherein he stated that an altercation took place with his father-in-law centering family matters and at that time his father-in-law suddenly rebuked him in filthy language and came before him and he became much angry hearing his filthy words and he took one branch of tree that was lying on the ground and hit severely on the head, chest and other parts of the body of his father-in-law by that branch of tree due to which his father-in-law sustained bleeding injuries. The appellant had further disclosed that when his mother-in-law started to rebuke him and came before him at that time being angry and had hit her by the branch of the said tree for which she also sustained bleeding injury. At the same-time, the prosecution witnesses (PW, 1, 2, 3, 6, 13) have not deposed about the presence of any intruder or third person at the relevant time. Further, PW-13 deposed that the accused-appellant used to reside as 'gharjamai' in the house of the victim. No such suggestion was given to them in the cross-examination as well. Thus, the fact that the appellant and the deceased were together during the time of occurrence when the deceased suffered the fatal injuries is established and proven. From the entirety, it can safely be presumed that the incident took place in a spur of anger and from the disclosure statement of the appellant it is well established that there was certain provocation from the father-in-law due to which the appellant had assaulted him and that too by a dry branch of a tree, which has been seized and marked as Exhibit 1/2.

13. In such peculiar situation, there seems to have no intention of accused of causing such brutal crime, for which could not be held guilty either of murder or of culpable homicide amounting to murder, but only of causing simple injuries. Culpable homicide is of two kinds, culpable homicide amounting to murder and culpable homicide not amounting to murder. It is, therefore, necessary first to examine the relevant sections themselves.

Section 299 of the IPC, reads as follows:

"Section 299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

Section 300 of the IPC, reads as follows:

**"300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—
2ndly-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—
3rdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—
4thly-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.**

Exception 1- When culpable homicide is not murder- Culpable homicide is not murder if the offender, whilst deprived of the power of self control by grave and sudden provocation, causes the death of the person who gave the provocation nor causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First —That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly —That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly —That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2: Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3: Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting or the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4: Culpable homicide is not murder if it is committed without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5: Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent."

Further, Section 304 of the IPC, reads as under:

"304. Punishment for culpable homicide not amounting to murder. Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

Exception 1 differs from Exception 4 of Section 300 of the IPC. Exception 1 applies when due to grave and sudden provocation, the offender, deprived of the power of self-control, causes the death of the person who gave the provocation. Exception 1 also applies when the offender, on account of loss of self-control due to grave and sudden provocation, causes the death of any other person by mistake or accident. Exception 4 applies when an offence is committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel and the offender commits culpable homicide without having taken undue advantage of acting in a cruel and unusual manner. The Explanation to Exception 4 states that in such cases it is immaterial which party gives the provocation or commits the first assault.

14. It is in this context we would refer to the disclosure statement of the accused, which is that the deceased had abused the appellant and the appellant out of anger had assaulted the deceased by a branch of tree. There was sudden loss of self-control on account of a slow burn reaction followed by the immediate provocation. There was temporary loss of self-control as the appellant had started to assault his father-in-law (victim-deceased) and also his mother-in-law with a dry branch of tree. Therefore, we hold that the act of provocation on the basis of which the appellant caused the death of his father-in-law was both sudden and grave and that there was loss of self-control.

Applying the provocation exception, we would convert the conviction of the appellant from Section 302 to Part II of Section 304 of the IPC.

15. From the entirety, this court is of the opinion that the act of the accused in the alleged crime is proved beyond reasonable doubt, but the said act was due to temporary loss of self-control as the appellant might have lost his control over his anger at that relevant point of time. Part II of Section 304 IPC stipulates that *if act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.* Applying this exception, we would convert the conviction of the appellant from Section 302 to Section 304 Part II of the IPC.

16. From the above discussion, we are of the view that the present case falls under the exception contained in Section 300 IPC and is a case of culpable homicide not amounting to murder, for which, maximum punishment prescribed in Section 304 Part-II IPC is ten years.

Hence, this appeal is allowed in part. The conviction awarded to the appellant under Section 302 IPC is converted into the conviction under Section 304 Part II IPC, consequent to which the sentence is also reduced to 7 (seven) years. However, the appellant shall pay the fine of Rs.5,000/- imposed by the trial court, else, he shall have to suffer six months rigorous imprisonment.

Send down the LCRs.

JUDGE

JUDGE