

HIGH COURT OF TRIPURA
AGARTALA
Crl. A. (J) 31/2022

Sri Ajoy Urang

son of Sri Badal Urang, resident of Chantail, P.O. + P.S. Kailasahar,
District- Unakoti Tripura (at present detained in Kailasahar District Jail,
Kailasahar, Unakoti, Tripura)

----Appellants

Versus

The State of Tripura

----Respondent

For Appellant(s)	:	Mr. B. Banerjee, Advocate
For Respondent(s)	:	Mr. S. Ghosh, Addl. PP
Date of hearing & delivery of	:	30.08.2023
Judgment & Order		
Whether fit for reporting	:	Yes / No

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

JUDGMENT & ORDER

(Amarnath Goud, J)

Heard Mr. B. Banerjee, learned counsel appearing for the appellant. Also heard Mr. S. Ghosh, learned Additional PP appearing on behalf of the respondent-State.

2. This present appeal is filed against the judgment of conviction and order of sentence dated 20.09.2021 passed in connection with case No. S.T./11 (UK) of 2020 by the learned Sessions Judge, Unakoti Tripura, Kailasahar, whereby the learned Sessions Judge convicted the appellant for commission of offence punishable under Section 302 of the IPC, and sentenced him to suffer R.I. for life and also directed him to pay a fine of Rs. 10,000/- with default stipulation.

3. In short, the fact leading to institution of this appeal is that, on 20.06.2019 the appellant and his family members alongwith the family members of the informant were invited in the house of Nadi Urang and after taking dinner, they all went to sleep. In the intervening night of 20.06.2019

and 21.06.2019 at about 02:00 hours, the informant heard screaming of Fulmani Urang and someone had put on the lights and at that time he saw the appellant giving dao blow indiscriminately to everyone who were in the house, resulting which 6 persons sustained injuries out of whom Jhalo Urang had succumbed to her injuries. Thereafter, the informant caught hold of the appellant and tied him with rope in the verandah of his house and arranged for shifting the injured to the hospital.

4. The said complaint was registered as Irani PS case no. 45 of 2019. The matter was investigated by the investigating officer, and after completion of investigation submitted charge-sheet against the appellant under Sections 302/307/326 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 18 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, but adduced 3 witnesses in his defence. 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 aforesated. Hence, this appeal before this court.

6. Mr. Banerjee, learned counsel appearing for the appellant has submitted that the appellant is a patient of Epilepsy and when the appellant receives the attack of Epilepsy, he fails to remember or recognize everything, and also he loses control over himself. Learned counsel has also submitted that there is no eye witness to the alleged incident. Learned counsel has

further argued that none of the prosecution witnesses are trustworthy and there evidence has no evidentiary value, hence, learned counsel has urged this court to set the appellant at liberty. In fine, learned 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 Additional 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, the appellant and his family including the family of the informant were the invitees in the house of PW-8 wherein after celebrating the occasion, they all went to sleep, but in the night at about 2:00 PW-1 woke up from sleep after hearing hue and cry of Fulmani Urang and later on someone had put on the light and thereafter he saw the appellant was striking dao blow upon every persons in the house resulting which Ajoy Urang, Fulmani Urang, Jhalo Urang, his wife Merry Urang, daughter of Fulmani Urang, his son Elion Urang and another woman sustained cut injuries on their person. He further deposed that thereafter, he caught hold of the appellant and tied him with rope and kept aside in the verandah of the house and arranged for shifting the injured to the hospital. He further deposed that after two days Jhalo Urang had died in the hospital.

PW-7 and PW-13 are the eye witnesses to the alleged incident. They also stated to the same tune to that of PW-1.

The deposition of PW-1, PW-7 and PW-13 was corroborated by the depositions of PW-2, PW-3, PW-4, PW-5, PW-6, PW-8. Though, these witnesses were not the eye witnesses, but they conjointly deposed that the appellant had caused dao blows upon the injured persons and they also could name the injured persons. They also unequivocally stated that when they went to the house of Nadi Urang, they saw the appellant was tied with rope in the verandah of the house of Nadi Urang.

The deposition of PW-14, who conducted the post-mortem over the dead body of the deceased Jhalo Urang also proves that the cause of death of Jhalo Urang was due to impact of heavy sharp edged weapon.

PW-15, the Medical Officer, treated the injured persons in the hospital and from his report it is well established that the injured persons received the injuries due to assault with sharp cutting weapon.

10. On the other hand, nothing material could have been elucidated from the depositions of the defence witnesses, as produced by the appellant, but the defence witnesses have unanimously stated that the appellant suffers from Epilepsy and when the appellant receives the attack of Epilepsy, he loses sense.

11. 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. However, from the deposition of the defence witnesses, it is seen that the appellant had been suffering from a disease called 'Epilepsy' which means that the appellant has brain disorder that causes recurring seizures. The episode of Epilepsy is totally absent in the

trial and the same cannot be taken into consideration at this stage. However, learned counsel for the appellant has placed some prescriptions and documents before this court relating to the treatment of Epilepsy provided to the appellant in jail since long. We have seen the said documents and prescriptions, as produced by learned counsel for the appellant, which according to us reveals that the appellant is being treated by the jail authority for suffering from Epilepsy.

12. Obviously the certificates produced from the jail authority as regards the disease of the appellant, was an expert evidence about the nature and consequence of the disease which would determine to the mental condition of the accused at the time of the act. The defence witnesses also spoke about the mental condition of the accused. Thus, it could be presumed that the accused was in a disturbed state of mind on the alleged date of the incident. From the examination of the accused under Section 313 Cr.P.C., it is seen that while answering to question no. (3), the accused has replied *“I donot know. I cannot remember the matter of night. I gained my consciousness in the hospital. There was injury on my face. Stitching was done.* Again to answer question no. (5), the accused has replied *“I have forgotten. Fulmani is my wife. Why I would kill her.* To answer question no. (6), the accused has replied *“My wife Fulani her daughter Rubina is my daughter. Why I would kill them”.* From the answer to question no. (9), it is seen that, the accused has replied *“I cannot remember the matter of night of 15.01.2021. I have visited a house at day time. I do not know whose house was than.”* Again to question no. (64), the accused has replied *“I cannot remember what I do. When I go through the disorder, I cannot remember what had happened on that night. I cannot remember what had happened.”.* From the entire examination of the accused

under Section 313 CrPC, it is revealed that the accused was not at all aware of the incident that took place due to his act and continuously he replied that he is not responsible and he does not know anything since he cannot remember anything. The medical certificates, as produced by learned counsel for the appellant from the jail authority at least confirms that the accused suffers from epilepsy. Epilepsy is a kind of disease which may cause insanity. In this insanity, the patient may commit crime without knowing what he was doing. Here also the accused, who suffered from epilepsy, has committed a brutal murder. There is thus ground to believe that he may have committed this murder in a fit of epileptic insanity. These things give rise to the inference that the accused may have committed the crime in a fit of insanity and without knowing that what he was doing either wrong or contrary to law. In the instant case, there is no other involvement in the alleged crime except the present appellant who has inflicted injuries to the victims by dao blow.

13. It is contended by learned counsel for the appellant that the appellant cannot not be held guilty of murder under Section 302 IPC, but must be held guilty of culpable homicide not amounting to murder under Section 304 IPC. From the medical documents, as placed by the learned counsel for the appellant and also going through the examination of the accused under Section 313 CrPC, it can be presumed that the accused is a patient of Epilepsy, who lost awareness during a seizure and also lost control upon himself. Thus, 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 not 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 sections themselves.

“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.

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- 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 or 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.”

14. 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 suffered seizure at that relevant point of time. There is, however, evidence of a medical character before this court, and there are statements made by the defence

witnesses, that the accused suffered from epileptic. The Court has had further evidence especially in the prison records, of his having attacks of epilepsy. Applying this exception, we would convert the conviction of the appellant from Section 302 to Section 304 of the IPC.

"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."

15. 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, and sentence of life imprisonment awarded to the appellant is reduced to 10 (ten) years, however, the appellant shall pay the fine of Rs.10,000/- imposed by the trial court, in default of payment of fine, he shall further undergo one year rigorous imprisonment

Send down the LCRs.

JUDGE

JUDGE

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