

GAHC010065502018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/31/2018

Md. Abdul Matleb,
Morigaon

.....Appellant

-Versus-

The State of Assam,
Represented by PP, Assam

.....Respondent

— B E F O R E —

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MITALI THAKURIA

For the Appellant	: Mr. K Goswami, Senior Advocate.
For the Respondent	: Ms. S. Jahan, Additional Public Prosecutor, Assam
Date of Hearing	: 10.10.2023
Date of Judgment	: 13.10.2023

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

Heard Mr. K Goswami, learned Senior Counsel and Amicus Curiae appearing for the appellant. Also heard Ms. S Jahan, learned Additional Public Prosecutor appearing for the State respondent.

2. This appeal has been filed against the impugned judgment dated 30.04.2013 passed by the learned Sessions Judge, Morigaon in Sessions Case No. 59/2008, by which the appellant has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life with a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a further period of 1 (one) year. The appellant was also acquitted of the charge under Section 324 IPC.

3. The prosecution case in brief is that an FIR dated 26.07.1988 was submitted by the Informant/Prosecution Witnesses-1 (PW-1), who is the son of the deceased. In his FIR, the informant states that on 26.07.1988, when his mother went to a bamboo grove in order to cut bamboo at around 1:30 p.m., the appellant saw her and taking a spear in his hand severely injured her with the spear, which led to her death. The FIR also states that there were eye-witnesses to the crime and that the appellant thereafter fled from the place of occurrence. In pursuance to the FIR, Laharighat P.S. Case No. 135/1988 under Sections 302/326 IPC was registered. Thereafter, the Investigating Officer investigated the case and on finding a *prima facie* case under Sections 302/324 IPC against the appellant, the Investigating Officer submitted his charge-sheet

on 28.09.1988. However, as the appellant had absconded and could not be traced, the case remained pending before the learned Trial Court. The appellant was arrested by the Police 10 (ten) years later, i.e., on 08.09.2008. Thereafter, the learned Trial Court framed charges under Sections 302/324 IPC against the appellant on 16.10.2008. In the trial proceedings, the learned Trial Court examined 6 (six) Prosecution Witnesses. Examination of the appellant was thereafter undertaken under Section 313 Cr.PC. The learned Trial Court came to a finding that the appellant was guilty of having committed the murder of the deceased and he was accordingly convicted under Section 302 IPC. However, the learned Trial Court acquitted the appellant from the charge under Section 324 IPC. Subsequent thereto, the learned Trial Court sentenced the appellant, as indicated in the earlier paragraphs.

4. The learned Amicus Curiae submits that a perusal of the evidence adduced by the learned Trial Court shows that there were eye-witnesses to the crime and that the incident had occurred due to a dispute involving ownership of a bamboo, which was claimed by the family of the deceased and the appellant as their property. He submits that one of the bamboos amongst the bamboo clump was touching an electric wire, which required an electrician of the Assam State Electricity Board to cut the said bamboo. On the said bamboo being cut, the appellant was in the process of taking the said bamboo home, which was however objected to by the deceased and her husband. Thereafter, due to a provocation that followed, involving ownership of the bamboo which had been cut, the appellant pierced the neck of the deceased with a spear, which led to the death of the deceased. He submits that Section 302 IPC is not attracted to the facts of the case, as there was no premeditation or intention to kill the deceased and the entire action had arisen out of a sudden provocation,

with regard to the ownership of the cut bamboo. He submits that Exception 1 of Section 300 IPC would be attracted to the case in hand and not Section 302 IPC. He accordingly prays that the impugned judgment may be set aside and the charge under Section 302 IPC may be altered to Section 304 Part-II as Exception 1 of Section 300 IPC was applicable to the facts of the case.

5. Ms. S Jahan, learned Additional Public Prosecutor submits that it appears from the evidence on record that the appellant had acted due to provocation, as there was a dispute with regard to the ownership of the bamboo which was growing between the land of the appellant and the deceased. She accordingly submits that the present case may attract Part-I of Section 304 IPC, in view of the case coming with Exception-I of Section 300 IPC and would not attract Section 302 IPC.

6. We have heard the learned counsels for the parties.

7. The deposition of PW-1, who is the cousin of the appellant and the son of the deceased, is to the effect that there was a dispute regarding a cluster of bamboo in between the family of the appellant and his family. As one of the bamboo was touching the electric line, the electrician from the Electricity Department had cut the bamboo. When his mother (deceased) went to carry the bamboo to her house, the appellant arrived there and begun quarrelling with his mother. Thereafter, the appellant went into his house and brought out a spear, with which he pierced the neck of his mother. The appellant then took out the spear from his mother's neck and took it with him. When he approached the place of occurrence, the appellant reached towards him and the people gathered there thereafter took him inside. PW-1 stated that his mother died

instantaneously and he submitted an FIR thereafter.

In his cross-examination, PW-1 stated that at the time of the incident, the accused was not mad but he used to talk a lot. However, it appeared that he suffered from some kind of instability. Further, on arriving immediately after the incident, PW-1 saw the appellant pulling out the spear from the neck of his mother.

8. PW-2, who is the sister-in-law of the appellant stated that electrical linesman had cut some bamboo belonging to the appellant to clear the electric line. The appellant wanted to take the bamboo but the husband of the deceased prevented him. When the deceased arrived at the scene, the appellant pierced the neck of the deceased with a spear. Thereafter, the appellant fled away. PW-2 also stated that the appellant had dealt a blow on Safia and Miraj with the spear. Safia sustained cut injuries on her back and forearm, while Miraj sustained injuries on his face.

9. The evidence of PW-3 is to the effect that the deceased was the aunt of his father and the appellant was his father. He stated that he did not see the incident.

10. PW-4, who is the daughter of the deceased stated that the linesman from the Electricity Department cut some bamboo belonging to them. The appellant went to take the bamboo cut by the linesman, but her father claimed the bamboo to be his. When her mother arrived at the scene, the appellant pierced the neck of her mother with a spear, due to which her mother died instantaneously. Thereafter, the appellant also injured her father. She also sustained injuries while attempting to protect her parents from further assault

by the appellant.

In the cross-examination of PW-4, PW-4 stated that the bamboo fell in the share of her father's land, but the appellant disputed the same. PW-4 also denied the suggestion that the appellant was suffering from insanity at that time.

11. The evidence of PW-5, who was the Doctor working in Nagaon Civil Hospital is to the effect that he performed the post-mortem examination on the deceased and he found the following injuries on the body of the deceased:-

“External Appearance: One female human cadaver of average built, rigor mortis present with eyes and mouth half opened. Stains of blood over the face and neck with the following injuries:

- (1) One penetrating injury on the left side of the cheek 1/2" above the upper border of the left mandible measuring 2"x12"x1/2"xdeep to the oral cavity. The wound is eleptical sharp margin.*
- (2) One penetrating injury over the left lower temporal region 1/2" above the left zygoma bone measuring 2"x1/2"x2 1/2", eleptical in sharp with sharp margin.*

On further dissection of the wound, there is fracture of the left temporal bone with corresponding injury of the lower temporal lobe of the brain and covering meninges.

- (3) One eleptical obliquely placed penetrating injury at the left lower border of the left mandible 2"x2"x3". The long muscles of the left neck are bisected with severing of the great vessels to and from the brain with opening into the pharynx.*

All the injuries are caused by sharp weapon. Injuries are caused within 48 hours from the time of post mortem.

Thorax : Walls, ribs and cartilates, pleurae, larynx and Brachere: healthy.

Right Lung, left lung: pale.

Pericardium: Healthy.

Heart empty.

Abdomen: Walls, Peritoneum, : Healthy.

*Mouth, pharynx, oesophagus: discussed
already.*

Stomach and its contents: empty.

Small intestine and its contents: Healthy.

*Large intestine and its contents: healthy
and
faecal
matters present.*

Liver, spleen: pale.

Kidneys: healthy.

Bladder : empty.

Organs of generation healthy.

Muscles, Bones and Joints : Described already.

More detailed description of injury or disease: Ante-mortem blood clots are found firmly adherent in and around the side of injury and to the fracture end of the bones. The injuries are ante-mortem.

Opinion: In my opinion, the cause of death is due to haemorrhage and shock as a result of the injuries sustained."

12. The evidence of PW-6, who is the In-Charge of the Moirabari Police Outpost under the Laharighat Police Station, is to the effect that on receiving information regarding the assault made by the appellant on the deceased, he made a GD Entry No. 365 dated 26.07.1988 at Moirabari Police Outpost and proceeded to the place of occurrence. He immediately sent the dead body of

the deceased to Civil Hospital, Nagaon for post-mortem. He also sent the injured Safia Khatun and Marij Ali to Moirabari Hospital for examination. He also recorded the statement of witnesses and as PW-1 had filed an FIR, the Officer-In-Charge of the Laharighat Police Station registered Laharighat Police Station Case No. 135/1988 under Sections 302/326 IPC, against the appellant. Further, the Officer-In-Charge of the Laharighat Police Station investigated the case

In his cross-examination, PW-6 states that PW-2 did not state before him that the appellant had pierced the neck of the deceased with a spear.

13. In the examination of the appellant under Section 313 Cr.PC, he has denied having pierced the neck of the deceased with a spear.

14. Though the evidence of PW-2 that the appellant had pierced the neck of the deceased with a spear is contradicted by the evidence of PW-6, the evidence given by PW-1 and PW-4 clearly prove that the appellant had pierced the neck of the deceased with a spear, due to a dispute with regard to ownership of a bamboo, grooving in the bamboo cluster on the land between the appellant and his brother's family. As such, it implied that there was a land dispute between the parties. Further, the act of the appellant in running away/absconding from the scene of the crime and being arrested 10 (ten) years after the incident had occurred, implies that the appellant was aware of the crime he committed and had run away to avoid getting caught.

15. In view of the reasons stated above, we do not have any doubt with regard to the guilt of the appellant in causing the death of the deceased. Further, on perusing the order of the learned Trial Court passed in the order sheet on 11.11.2008, we find that a report was called for from the

Superintendent, District Jail, Maorigaon in respect of the health status of the appellant. The report of the Health Officer showed that the appellant was examined and his behavior was found to be normal. The order dated 11.11.2008 also states that the appellant had been taking some medicines prescribed by the Tezpur Mental Hospital. The report further states that there was no sign of mental illness of the appellant.

16. As can be seen from the evidence of the eye-witnesses and the conduct of the appellant in absconding for more than 10 (ten) years, the prosecution has been able to prove beyond any reasonable doubt that the appellant action was the cause of death of the deceased. However, the Prosecution, in our view, has not been able to prove beyond all reasonable doubt that the case is one of murder. The act of piercing of the neck of the deceased by a spear seems to have been made suddenly due to provocation, while being deprived of the power of self control. The evidence recorded shows that dispute between the parties arose after the bamboo had been cut by the electrical linesman and as there was a dispute with regard to who was the owner of the cut bamboo. There was no pre-meditation or intention on the part of the appellant to be involved in any fight or to cause any injury to each other prior to the bamboo being cut. It appears that the provocation was not sought or voluntarily provoked by the appellant, prior to the bamboo being cut. At the cost of repetition, it may be again stated that the dispute/provocation suddenly arose between the parties, when confronted with the delinquent as to who was the owner of the cut bamboo and who would take it home.

17. On considering the above facts, we are of the considered view that the facts of this case do not attract Section 300 IPC and instead comes within the

First Exception to Section 300 IPC. As the act of the appellant was homicidal in nature and keeping in view the fact that the appellant had pierced the neck of the deceased, i.e., a vital part of the body, we are of the view that the case comes within Section 304 Part-1 IPC, as the homicidal act was done with the intention of causing death.

18. Thus, we are of the view that the charge under Section 302 IPC should be altered to Section 304 IPC Part-I and we accordingly do the same. The appellant is accordingly convicted under Section 304 IPC Part-I and sentenced to undergo rigorous imprisonment for 10 (ten) years with a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a further period of 1 (one) year. The period already undergone in prison as an Under Trial Prisoner (UTP) and as a convict shall be set off from the above sentence. Consequently, the impugned judgment dated 30.04.2013 passed by the learned Sessions Judge, Morigaon in Sessions Case No. 59/2008 is hereby modified to the extent, indicated above.

19. Send back the LCR.

20. In appreciation of the assistance provided by the learned Amicus Curiae, the appropriate fee payable to him should be paid by the State Legal Services Authority.

JUDGE

JUDGE

Comparing Assistant