

GAHC010097422020



**IN THE GAUHATI HIGH COURT
(The High Court of Assam: Nagaland: Mizoram &
Arunachal Pradesh)**

Crl. A(J) 57/2020

Mridul Gogoi
Lakhimpur, Assam.

..... Appellant

Versus

The State Of Assam

..... Respondent

**BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

For appellant(s) : Mr. R. Sarma, Amicus Curiae.

For respondent(s) : Ms. S. Jahan, learned Addl. P.P.
Assam,
Ms. K. Phukan, Legal Aid Counsel,
(respondent No. 2)

Date of hearing : **09.08.2023**

Date of Judgment & Order : **22.08.2023**

JUDGMENT & ORDER (CAV)

(S.P. Khaund, J)

1. Heard Mr. R. Sarma, learned Amicus Curiae for the appellant as well as Ms. S. Jahan, learned Additional Public Prosecutor for the State of Assam. Also heard Ms. K. Phukan, learned Legal Aid Counsel for the respondent no. 2.
2. This appeal under Section 374(2) Cr.P.C is preferred by the accused appellant Sri Mridul Gogoi (herein referred to as the accused) challenging the judgment and order dated 23.09.2019 passed by the learned Additional Sessions Judge (F.T.C), Lakhimpur, North Lakhimpur, in connection with Sessions Case No. 25(NL)/2015, convicting him for the offence punishable under Section 302 of the Indian Penal Code (IPC for short) and sentencing him to imprisonment for life and a fine of Rs. 5,000/- with default stipulation. He was however exonerated of the charge punishable under Section 341 IPC.
3. The FIR (Exhibit-1) unfolds that on 20.07.2013, at about 12:00 noon, Sri Bipul Baruah (hereinafter referred to as the deceased) went to the nearby shop to fetch some goods, when the accused restrained him in front of his house and assaulted him with an iron rod, causing grievous injuries on his abdomen and private parts. The neighbouring people assembled and immediately forwarded the injured to the Dhalpur hospital in an ambulance. The FIR was lodged by the mother of Bipul Baruah, Smt Binu Baruah
4. The FIR was registered as Bihupuria P.S. Case No. 167/2013, under Sections 341/326 IPC and investigation commenced. Sri Bipul Baruah expired while undergoing treatment upon which charge for the offence punishable under Section 302 IPC was added to the case. On conclusion of investigation, charge-sheet was laid against the accused under Sections

341/302 IPC. This case was then committed for trial. At the commencement of trial, a formal charge under Sections 341/302 IPC was framed and read over and explained to the accused to which he pleaded not guilty.

5. Two substantiate its stance, the prosecution adduced the evidence of 6(six) witnesses and the defence cross-examined the witnesses to refute the charges. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C for short) and the accused stated that he had been falsely implicated. However, he admitted to have stabbed the deceased.

6. The trial Court formulated the following points for determination:-

“(i) Whether the accused person on 20.07.2023 at about 12.00 a.m. at village No. 2 Era Pather, Panigaon under Bihpuria P.S. wrongfully restrained Bipul Baruah on his way to fetch goods from shop situated nearby the house of accused person, and thereby committed offence punishable under Section 341 of IPC, as alleged?”

“(ii) Whether the accused person on the same date, time and place committed murder intentionally (or knowingly) causing the death of Bipul Baruah by inflicting blows with pointed iron rod on his abdomen and private parts, and thereby committed offence punishable under Section 302 IPC, as alleged?”

7. The learned Amicus Curiae for the appellant Mr. R. Sarma laid stress in his argument that this case will come under the exception to Section 300 IPC. He relied on the decision of the Hon'ble Supreme Court in ***Dilip Kumar Mondal and Another Vs. State of West Bengal*** reported in ***(2015) 3 SCC 433***.

8. The learned Addl. P.P. emphasised through her argument that the trial Court has

correctly decided this case. The evidence of the eye witnesses establishes the guilt of the accused.

9. On the basis of corroborative and uncontroverted evidence of PW-1, 2, 3 and 4 and on the basis of uncontroverted evidence of PW-3 and PW-4, the trial Court held the accused guilty of offence under Section 302 IPC. The trial Court also took note of the statement of the accused under Section 313 Cr.P.C. Although, the accused replied that the witnesses have adduced false evidence against him, he has admitted that he stabbed the deceased. This admission of the accused under Section 313 Cr.P.C was heavily relied upon by the trial Court to saddle him with the offence of murder.

10. The question that falls for consideration is that whether the trial Court has erroneously convicted the accused u/s 302 IPC.

11. In this case at hand, the informant Smti. Binu Baruah deposed as PW-1 that she has lodged the FIR marked as Exhibit-1, wherein, Exhibit-1(1) is her signature. About two years ago, one Saturday at about 1.00 P.M. her son went to a shop and at that time, she also went to fetch water from a nearby well. At that time, she saw the accused stabbing her son with an iron rod. A 108 Ambulance was called and her son Bipul Baruah was taken to the Dholpur Civil Hospital but he was referred to North Lakhimpur Civil Hospital. However, treatment could not be provided at North Lakhimpur hospital and her son was sent to Tezpur Mission Hospital. On Tuesday her son succumbed to his injuries.

In her cross-examination, she has affirmed that she has mentioned before the police in her initial statement that the accused had brought the iron rod from his house and stabbed her son on his abdomen.

12. This evidence of PW-1 is corroborated by the evidence of Mihi Kanta Baruah, who has testified as PW-2 that Bipul died about two years ago. The alleged incident occurred around 1.00 P.M. He was searching for a tractor, when he noticed the ongoing quarrel between Bipul and the accused. He tried to dissuade them from quarrelling. The accused then tried to attack Bipul with an iron rod, but failed. Thereafter, the accused thrust the iron rod into Bipul's abdomen and fled from the place of occurrence (P.O. in short). As Bipul was in a critical condition, he called an Ambulance and took him to Dholpur Civil Hospital. Later, Bipul died at Tezpur Mission Hospital. During investigation, the police seized the iron rod. He, (PW-2) proved his signature on the seizure list as Exhibit-2(1). He has however admitted in his cross-examination that he did not mention before the police in his initial statement that he witnessed the ongoing quarrel between Bipul and the accused and he tried to intervene and then, the accused thrust the iron rod into Bipul's abdomen. He has also admitted that the iron rod was not produced before him to be identified by him in the Court. He firmly refuted the defence suggestion that he did not witness the incident. The evidence of PW-1 and PW-2 is corroborated by the evidence of PW-3.

13. Smt Marami Baruah has testified as PW-3 that the deceased was her elder brother. He died about two years ago. On the fateful day, at about 1.00 P.M. her elder brother and the accused had an altercation on the road. Thereafter the accused went inside his house and brought out an iron rod and hit her elder brother on his hand. Her elder brother uprooted a fence post and attacked the accused. Then the accused thrust the iron rod into her brother's abdomen. Her brother immediately slumped to the ground and the accused fled from the scene. She screamed and raised an alarm upon which the neighbouring people arrived. A 108 ambulance was called and the neighbours took her brother to the Dholpur Civil Hospital.

From Dholpur Civil Hospital her brother was taken to the North Lakhimpur Mission Hospital and thereafter her brother was referred to Guwahati but he had to be taken to Tezpur Mission Hospital due to his critical condition. Her brother succumbed to his injuries. She proved her signature on the seizure list as Exhibit-2(2).

14. This witness was cross-examined in extenso. No contradiction could be elicited through the cross-examination of this witness as per Section 145 of the Indian Evidence Act, 1872 (Evidence Act for short) qua Section 162 Cr.P.C. The cross-examination of this witness vis-a-vis the cross-examination of PW-6 (I/O) brings forth no contradiction to disbelieve the testimony of this witness. Her evidence is uncontradicted and uncontroverted. The evidence of PW-1, 2 and 3 is a firsthand account of the incident.

15. The learned counsel for the accused emphasised through his argument that the witnesses are related and partisan witnesses. They have not witnessed the incident, but they have falsely claimed to have witnessed the incident. This argument of the learned counsel can be safely brushed aside. On this aspect, it would be germane to reiterate that the evidence of PW-1 and PW-3 has remained uncontradicted and uncontroverted.

16. PW-4 is also a related witness. Sri Pranab Baruah has testified as PW-4 that he was in Bipul's house at the time of the incident, when Bipul went out to a shop. He heard a commotion and he went out and saw the accused running towards his house and an iron rod had penetrated into the abdomen of Bipul. Many people had already assembled and one 108 Ambulance was called and Bipul was taken to the hospital. After three days, Bipul succumbed to his injuries while undergoing treatment at Tezpur Mission Hospital.

17. This witness has described the latter part of the incident. He reached the P.O. after the

assault.

18. The learned counsel for the accused laid stress in his argument that the Medical Officer, has opined that death of the person was probably due to pulmonary oedema. By projecting this opinion, the learned defence counsel has submitted that the injury did not result in the death of the deceased, but the deceased died as a result pulmonary oedema.

19. Dr. Arup Rajbanshi was the Medical Officer, who conducted the autopsy on 24.07.2023 at Kanaklata Civil Hospital, Tezpur. He has opined that death of the deceased was probably due to pulmonary oedema. He has proved the autopsy report as Exhibit-3. His findings are as follows:-

“A male dead body. Rigor mortis present.

Mid line surgical incision repaired and suture material and B/C flanks wound seen. Surgical Anastomosis is seen and suture material and multiple injury in mesentery. No any bleeding seen.”

20. It is evident that the deceased sustained fatal injuries on his stomach. His intestine was pierced and surgical anastomosis was seen. Multiple injuries were detected in mesenteric colon. All the witnesses ranging from PW- 1 to PW-4 have clearly and categorically deposed that the accused thrust the iron rod into the stomach of the deceased. The evidence of PW-1, PW-2, PW-3 and PW-4 is corroborated by the evidence of the Medical Officer, PW-5. Moreover, the accused has also admitted under Section 313 Cr.P.C that he had stabbed the deceased.

21. It could be culled out from the evidence that there was a quarrel between the accused and the deceased. Both the accused and the deceased worked themselves to a fit of fury and

then the accused thrust an iron rod into the stomach of the deceased. The pulmonary oedema is the result of the injuries sustained by the deceased. The evidence of the witnesses ranging from PW-1 to PW-4 depicts the transactions which finally led to the death. The altercation between the deceased and the accused perpetrated into the accused hitting the deceased with the iron rod which forms a part of the transactions as per Section 6 of the Evidence Act. The witnesses PW-1 to PW-4 are *res-gestae* witnesses, leaving little room for misunderstanding/misinterpretation. The cause of death due to pulmonary oedema, secondary to the stomach injury within 24 hours corroborates the time of the occurrence and the weapon of offence used by the accused and the assault on the stomach of the deceased. Thus, it is established beyond reasonable doubt that the accused dealt one blow, but the blow no doubt was quite serious, as a result of which intestines of the deceased were pierced.

22. On a closer look at the evidence of PW-6, I/O, it could be culled out that no contradiction could be elicited through his cross-examination vis-a-vis the cross-examination of PW-1. A cross case was lodged by the accused against the deceased and final report was submitted by the I/O. On receipt of the FIR, on 20.07.2023, he registered GDE No. 306 dated 20.07.2013 and forwarded the same from the Simoluguri O.P. to Bihpuria P.S. for registration of the FIR. During investigation, he (PW-6) also prepared the sketch map and he proved the sketch map as Exhibit-4(1). Initially, the case was registered under Section 341/326 IPC but when he received the information that the patient died in the B.K. Mission Hospital, he prayed before the Magistrate, for incorporation Section 302 of the IPC.

23. The evidence of the medical officer also reveals that the deceased sustained fatal injuries on his abdomen. There is indeed overwhelming evidence against the accused. The

argument of the learned counsel for the accused that the evidence of related witnesses cannot be relied upon is not accepted. It is a settled principle that related witnesses are reliable and their evidence cannot be discarded only because of the fact that they are related. In this case, the accused inflicted a bodily injury on the deceased, which finally resulted in his death. There can be no doubt that in a fit of rage, the accused intended to cause and indeed caused the injuries.

24. It has been observed by the Hon'ble Supreme Court in ***Dilip Kumar Mondal's*** case (supra) that:-

"22.This Court in Sridhar Bhuyan vs. State of Orissa (2004) 11 SCC 395, reaffirmed the same and held as under:-

"7.For bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

8. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which

notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that

the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

25. In the instant case, it has surfaced from the evidence that a sudden fight broke out between the accused and the deceased. There was no premeditation to start a fight. The evidence clearly reveals that the deceased went out and he had an altercation with the accused and then the accused went into his house and brought the iron rod. In this case too, it is difficult to apportion the share of blame attached to each fighter. This case falls squarely within the ambit of exception 4 to Section 300 IPC. In the heat of passion both the parties worked themselves into a fit of fury on account of a verbal spat.

26. It has been observed by the Hon'ble Supreme Court in ***Ajmal Vs. State of Kerala*** reported in **(2022) SCC 766** that:-

“12. The decision in State of Andhra Pradesh v Rayavarapu Punneyya & Anr⁵ notes the important distinction between the two provisions, and their differing, but subtle distinction. The court pertinently pointed out that: "12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of section 304. Then, there is "culpable homicide of the third

degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of section 304.. 13. The academic distinction between "murder" and "culpable homicide not amounting to murder" has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of sections 299 and 300."

27. Reverting back to this instant case, it is held, that the prosecution has failed to prove beyond reasonable doubt that the accused committed murder by intentionally causing the death of the deceased. There is no allegation by any of the prosecution witnesses that the accused had any motive or intention to cause death of the deceased. This incident occurred as a result of a sudden fight without any premeditation, in the heat of passion and upon a sudden quarrel. The offender had not taken undue advantage by acting in an unusual manner. The accused had inflicted bodily injuries on the deceased which were of such a nature that were likely to cause death. There can be no doubt that the accused intended to cause and did cause the injuries, and is therefore, liable to be punished under first part of Section 304 of IPC. The scenario in which the accused had been stated by the eye-witnesses to have given one blow on the deceased, it is difficult for us to hold that he gave the blow in question either with the intention of causing murder of the deceased or he could have had the requisite knowledge that death would otherwise be the inevitable result. In such a situation, even on accepting the prosecution case, we hold that the accused did not commit

the offence under Section 302 IPC but under Part-I of Section 304 IPC. We set aside the conviction of the accused under Section 302 IPC and instead convict him under Section 304 Part-I of the IPC.

28. The appeal is partly allowed. The conviction under Section 302 IPC is scaled down to section 304 Part-I IPC and we convict the accused under Section 304 Part-I to undergo 10 (ten) years rigorous imprisonment. The sentence of fine of Rs. 5,000/- along with default stipulation is confirmed. The order of set-off under Section 428 Cr.P.C is upheld.

29. Before parting with the record, this Court extends the appreciation to the services rendered by Mr. R. Sarma, learned Amicus Curiae and recommend that the Registry may make arrangements for payment of necessary remuneration to the learned Amicus Curiae as per the existing norms.

30. Send back the LCR.

JUDGE

CHIEF JUSTICE

Comparing Assistant