

GAHC010123632015



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

Case No. : CRL.A(J)/102/2015

PRABHAT CH. SEAL

VERSUS

THE STATE OF ASSAM

2:SRI SUDHANYA ROY
S/O-LT. SURECH CH. ROY
VILL-UJAN PETLA PT.-I GAON
P.S.-TAMARHAT
DIST.-DHUBRI
ASSAM

Advocate for the Petitioner : MR.Z HUSSAIN

Advocate for the Respondent :

- B E F O R E -

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Date of Hearing : 01.02.2019

Date of Judgment : 28.06.2023

JUDGMENT & ORDER (CAV)

(M. R. Pathak, J)

This appeal from jail is preferred by the accused appellant Prabhat Chandra Seal against the Judgment of conviction and sentence dated 19.10.2015 passed by the learned Sessions Judge, Dhubri in Sessions Case No. 222/2014, arising out of Tamarhat Police Station Case No. 09/2011 (corresponding to G.R. Case No. 397/2011), whereby the accused has been convicted under Sections 302 of the Indian Penal Code for committing murder of his wife Maya Rani and sentenced him to undergo Rigorous Imprisonment for Life and to pay a fine of Rs. 1,000/- (Rupees one thousand), in default, to undergo further Simple Imprisonment for 6 (six) months, setting off the period of detention already undergone against the term of imprisonment imposed, directing the authorities to destroy the seized article in due course.

2. Heard Mr. Zahangir Hussain, learned *Amicus Curie* for the appellant and Ms. Shamima Jahan, learned Additional Public Prosecutor, Assam for the respondent No.1. As per the office note and the report of the Officer-in-Charge of Tamarhat Police Station dated 23.03.2016, notice of this appeal was served upon the respondent No. 2, informant of the case, but he did not appear in the matter.

3. The prosecution's case as narrated in the *ejahar* (Exhibit-1) is that one Sudhayanna Roy (PW.1), Secretary of the Village Defence Party of Village Ujan Petla Part-I on 18.01.2011 submitted a written *ejahar* before the Officer-in-Charge of Tamarhat Police Station stating that during the pre-dawn of 18.01.2011 around 03:00 am one Prabhat Chandra Seal resident of Ujan Petla Part-I Village hacked his wife Smti. Maya Rani Seal with an axe and killed her. On coming to know about the said incident around 09:00 in the morning, he visited the site, apprehended the accused and handed him over to the police. By the said *ejahar* the informant requested the

police authority to investigate the matter and to do the needful.

4. Said *ejahar* (Exhibit-1) was accordingly registered as Tamarhat Police Station Case No. 09/2011 under Section 302 IPC corresponding to G R Case No. 397/2011 and the Officer-in-Charge of Tamarhat Police Station as the Investigating Officer investigated the case.

5. Prior to that on 18.01.2011 around 03:00 pm over telephone the Officer-in-Charge of Tamarhat Police Station received an information that the accused Prabhat Chandra Seal killed his wife Maya Rani Seal at his own residence at Ujan Petla Village under Tamarhat Police Station hacking her with an axe. On receipt of the said information it was recorded and entered as G D Entry No. 380 dated 18.01.2011 of Tamarhat Police Station and thereafter the the Officer-in-Charge of said Police Station along with his staff went to the place of occurrence and seized an iron axe measuring about 7" length, 3½" width with 2½ feet length handle made of betel nut tree (Material Exhibit-1) that was found lying at the place occurrence in the dwelling house of the deceased Maya Rani Seal, wife of Prabhat Chandra Seal at Village Ujan Petla Part-I under Tamarhat Police Station in presence of witnesses and the accused person preparing a Seizure List (Exhibit-2). Thereafter, the said Officer-in-Charge of Tamarhat Police Station prepared the sketch map, made inquest on the dead body of the person deceased Maya Rani in her said dwelling house in presence of witnesses preparing an Inquest Report (Exhibit-4) and forwarded the dead body of the said deceased to Dhubri Civil Hospital for its Post Mortem Examination.

6. The said Officer-in-Charge on 18.01.2011 itself recorded the statements of the witnesses acquainted with the facts of the case present in the place of occurrence under Section 161 CrPC, arrested the accused person on 19.01.2011, collected the Post Mortem Examination Report of the deceased dated 19.01.2011 (Exhibit-3) and on completion of the investigation of the case, the Investigating Officer of the case Fozlur Rahman Khan, Sub-Inspector of Police, finding prima facie materials submitted the Charge Sheet in said Tamarhat P.S. Case No. 09/2011 under Sections 302 IPC vide No. 06/2001 dated 31.01.2011 against the accused person Prabhat Chandra Seal, (Exhibit-5).

7. From the case record we have seen that the learned Additional Chief Judicial Magistrate, Dhubri vide order dated 19.04.2011 granted bail to the accused person Prabhat Chandra Seal in the G.R. Case No. 397/2011 arising out of said Tamarhat P.S. Case No. 09/2011.

8. Finding that the charge sheet in said Tamarhat P.S. Case No. 09/2011 contains charge under Section 302 IPC that is exclusively triable by the Court of Sessions only, the learned Additional Chief Judicial Magistrate, Dhubri by order dated 28.07.2014 committed the said G.R. Case No. 397/2011 to the Court of learned Sessions Judge, Dhubri fixing 16.08.2014 for appearance of the accused person before learned Sessions Judge, Dhubri.

9. On receipt of the record of said G.R. Case No. 397/2011 after its commitment, on 16.08.2014 it was registered as Sessions Case No. 222/2014 in the Court of learned Sessions Judge, Dhubri and as the accused person did not appear in the said Session Case on 16.08.2014 and on its subsequent dates, on the basis of order of Non Bailable Warrant of Arrest, the accused person was arrested and was produced before the Trial Court on 02.01.2015 and since then he is in jail custody.

10. The learned Sessions Judge, Dhubri by its order dated 19.01.2015 passed in said Sessions Case No. 222/2014 framed charge under Section 302 IPC against the accused person Prabhat Chandra Seal that was read over and explained to him, to which the said accused pleaded not guilty and claimed to be tried and accordingly, the trial of the case began. As the accused was unable to engage his advocate to defend him, the Trial Court directed the District Legal Services Authority, Dhubri to engage an Advocate as the State Defence Counsel to defend the accused person from the panel of the Advocates and accordingly, DLSA, Dhubri engaged Defence Counsel in the case for the said accused person.

11. To bring home the charge against the accused person of the case, i.e., the appellant herein, the prosecution examined eight witnesses before the Trial Court, including the Investigating Officer of the case and the concerned Autopsy Doctor and placed above noted Exhibits. The defence for the accused/appellant Prabhat Chandra Seal did not adduce any evidence on its behalf but cross examined the prosecution witnesses. After closure of the evidence for the prosecution in the case, the Trial Court on 17.10.2015 recorded the statements of the accused Prabhat Chandra Seal under Section 313 CrPC and on being asked, he claimed to be innocent, denied the accusations made against him by the prosecution, refused to say anything on his defence and also denied to lead evidence from his side. Learned Sessions Judge, Dhubri after hearing the parties passed the impugned Judgment and conviction dated 19.10.2015 in said Sessions Case No. 222/2014 convicting the appellant under Section 302 IPC for committing

murder of his wife Maya Rani Seal and sentenced him to undergo Rigorous Imprisonment for Life and to pay fine.

12. Mr. Zahangir Hussain, learned *Amicus Curie* for the appellant submitted that there are inconsistencies in the case of the prosecution, contradictions amongst the prosecution witnesses and that the prosecution has failed to establish the charge under Section 302 IPC against the appellant/accused accused Prabhat Chandra Seal beyond all reasonable doubt. Therefore, Mr. Hussain, learned *Amicus Curie*, submitted before the Court that the learned Trial Court committed illegality in convicting the accused appellant and as such, the impugned judgment of conviction and sentence dated 19.10.2015 passed against the appellant Prabhat Chandra Seal in Sessions Case No. 222/2014 should be set aside and quashed, acquitting him from the said case.

13. However, Ms. Shamima Jahan, learned Additional Public Prosecutor, Assam on the other hand submitted that the learned Sessions Judge, Dhubri in Sessions Case No. 222/2014 arising out of Tamarhat Police Station Case No. 09/2011 (corresponding to G.R. Case No. 397/2011) had rightly passed the impugned judgment on proper scrutiny of the evidence as well as the exhibits adduced by the prosecution. Therefore, Ms. Jahan submitted that since the accused/appellant had been rightfully convicted, the impugned Judgment and Order of conviction and sentence dated 19.10.2015 need not be interfered with.

14. To appreciate the contentions made on behalf of both the parties, i.e. the appellant/accused as well as the State, let us examine the evidence on record of the witnesses in the case.

15. PW.1, Sudhayanna Roy, informant of the case, a hearsay witness, deposed before the Trial Court that he and the accused hailed from same village and that he knew the accused. PW.1 also deposed that wife of the accused expired and her name was Mayarani Seal and that about 4/5 years back the incident had occurred for which he lodged the FIR before the Tamarhat Police Station. PW.1 identified the said FIR Exhibit.1 and his signature on it. He deposed that on the date of occurrence, hearing commotion in the house of Prabhat Ch. Seal, he went there and from the women folk of the said house he came to know that Prabhat Ch. Seal killed his wife. PW.1 deposed that he did not see the occurrence.

During his Cross-examination PW.1 stated that he did not see the alleged occurrence and

that the house of the accused was located a bit away from his house. PW.1 stated that he had heard about the alleged occurrence, but did not go to the house of the accused.

16. PW.2, Biplab Ch Seal, son of the deceased as well as the accused of the case deposed before the Trial Court that deceased Maya Rani Seal was his mother and that the accused was his father and that he did not know the circumstances under which his mother had died. PW.2 deposed that on the date of the alleged occurrence, he along with his mother and father were sleeping in the same room and during the night his father had asked him to go to sleep and in the morning he found his mother lying dead on the bed. PW.2 deposed that he had noticed injury on the scalp and mouth of his mother with bleeding and seeing the condition of his mother's, he had fainted and that he did not notice any injury on the person of his father.

During his Cross-examination by the defence, PW.2 stated that on the night of the incident he had slept after taking meals and on the following morning he woke up by 07:00 am and that he did not know the circumstances under which his mother had died.

17. PW.3, Anil Ch Seal a school teacher by profession, also a reported witness, deposed before the Trial Court that both the deceased and the accused were known to him and that the accused lived near his house. He deposed that after hearing about the death of Maya Rani Seal, wife of Prabhat Ch. Seal, the accused, he had been to the house of Prabhat Seal and heard that Prabhat Seal had killed his wife and that he did not witness the alleged occurrence. PW.3 deposed that he saw bleeding from the injuries on the person of the deceased Maya Rani, but could not specify the parts her body from where blood was oozing out.

During his cross-examination by the defence PW.3 stated that he did not know the circumstances under which Maya Rani Seal had died.

18. PW.4, Sushil Seal, seizure witness deposed before the Trial Court that he knew Prabhat Seal, the accused and the deceased Maya Rani Seal, wife of the accused and that said Maya Rani was killed. PW.4 deposed that the "axe" by which said Maya Rani was killed was seized and that he had put his signature on the. PW.4 proved the said Seizure List, Exhibit-2 and also identified his signature on it and deposed that he had not seen the alleged occurrence.

During his cross-examination by the defence said PW.4 stated that he did not know the circumstances under which Maya Rani died and he could not recollect whether at the time of his

signature the document was blank or not and he did not know what was mentioned in the seizure list.

19. PW.5, Sushil Seal, father of the deceased Maya Rani and a reported witness, deposed before the Trial Court that Maya Rani was his daughter and that Prabhat was his son-in-law. PW.5 deposed that on the day of the alleged occurrence, he received information that his daughter was in serious condition and he immediately rushed to the house of his daughter and on reaching the house of Prabhat, he saw his daughter lying dead in his house.

During his cross-examination by the defence PW.5 stated that he did not see as to how Maya Rani had died.

20. PW.6, Madhabi Seal, mother of the deceased, another reported witness deposed before the Trial Court that she knew Prabhat and that Mayarani was her daughter and that over phone she received information that Mayarani was serious. She deposed that Police did not examine her. At that stage said PW.6 witness declared hostile.

During her cross-examination by the prosecution, PW.6 stated that in the morning after hearing about her daughter being subjected to assault, she, her husband and son had immediately rushed to the house of the accused and saw the accused killing her daughter by means of an axe and that the neck of her daughter was forced against a chair and that by means of his knees neck of her daughter was pinned to the chair. She denied that knowing the truth of the fact and she had suppressed the truth.

During her cross-examination by the defence PW.6 stated that she did not know as to how her daughter died and that her house was about 2 to 3 hours journey from the house of the accused. She also stated that she fainted seeing her daughter.

21. PW.7, Dr. Sumitra Paul, was the concerned the Autopsy Doctor who conducted the Post Mortem Examination of the person of the deceased Maya Rani Seal at Dhubri Civil Hospital on 19.01.2011. Said PW.7 deposed before the learned Trial Court that on 19.01.2011 she was serving as Sub-Divisional Medical Officer at Dhubri Civil Hospital and that on requisition of police vide Tamarhat P.S. G.D. Entry No. 380 dated 18.01.2011 she received the dead body and examined Mayarani Seal on 19.01.2011 and had recorded following observations :—

(i) A female dead body aged about 38 years was subjected to post-mortem

examination.

- (ii) Rigor mortis was present. Mouth was partially opened; eyes were closed and it was blackish around the right eye.
- (iii) Lacerated injury over the bridge over the nose that was transverse in nature and was of size 1" x 1/2" x 1/2".
- (iv) Two numbers of lacerated injuries in the right temporal area that were longitudinal in direction, where the size of injury No.1 was 2 1/2" x 1/2" x 1/2" and that of injury No.2 was 3" x 3/4" x 3/4".
- (v) One lacerated injury over occipital area on its right side that was longitudinal in direction of size 3 1/2" x 3/4" x 3/4" with clotted blood all over the injured areas.
- (vi) Fracture of nose bone and occipital bone.
- (vii) Membrane was found ruptured at the site of fracture.

PW.7, the Autopsy Doctor opined that death of the deceased was due to shock and haemorrhage as a result of injuries sustained by her that were anti-mortem in nature. Said PW.7 proved the Post Mortem Examination Report of the deceased Mayarani dated 19.01.2011 Exhibit-3, her signature as well as the signature of the then Joint Director of Health Services, Dhubri in it.

The defence declined to cross examine the said Autopsy Doctor PW.7.

22. PW.8, Inspector Fozlur Rahman Khan, Investigating Officer of the case deposed before the Trial Court that on 18.01.2011 he was serving as the Officer-in-Charge of Tamarhat Police Station and on that day around 03:00 pm over telephone he received an information that the accused Prabhat Ch. Seal murdered his wife Mayarani seal at his own residence at Ujan Petla Village under Tamarhat Police Station by striking his wife by means of an axe. On receipt of said information he along with his staff at 03:00 pm entered the same as G D Entry No. 380 dated 18.01.2011 and left for the place of occurrence, prepared the sketch map, made inquest on the dead body of the person deceased Mayarani preparing Inquest Report Exhibit-4 and identified his signature on it. PW.8 also deposed that he seized the axe vide Exhibit-2 and identified his signature on it. PW.8 deposed that he had recorded the statements of the witnesses, arrested the accused person and forwarded him, that he had filed the charge sheet in the case Exhibit-5 and identified his signature on it. PW.8 deposed that Material Exhibit-1 was the axe produced before him that was seized by him from the custody of the accused.

During his cross-examination, said PW.8 stated that the seized axe was not produced before him on that day and that he did not ascertain the finger prints on the handle of the axe by

sending the same to the FSL, Guwahati. PW.8 denied the suggestion that the seized axe was not recovered from the accused.

23. From the evidence of PW.7, the Autopsy Doctor concerned we have seen that the deceased Maya Rani Seal had sustained injuries and that were – (i) Lacerated injury of transverse nature over the bridge over the nose of size 1" x ½" x ½"; (ii) Lacerated injuries of two numbers that were longitudinal in direction on the right temporal area, where size of the 1st injury was 2½" x ½" x ½" and size of the 2nd injury was 3" x ¾" x ¾"; (iii) Lacerated injury of longitudinal direction on the right side over occipital area with the size of 3½" x ¾" x ¾" and clotted blood all over the injured areas; (iv) Fracture of nose bone and occipital bone and (v) Membrane was found ruptured at the site of fracture. Said Autopsy Doctor PW.7 opined before the Trial Court that the death of the deceased Maya Rani Seal was due to shock and haemorrhage resulting from the injuries sustained by her, which were anti-mortem in nature. We have also seen that the defence declined to cross-examine said PW.7 and as such the evidence of the concerned Autopsy Doctor, PW.7 remained intact.

24. From the evidence of Biplab Ch. Seal, PW.2, son of the deceased Maya Rani Seal and the accused Prabhat Ch. Seal we have seen that he had shown ignorance regarding the circumstances under which his mother had died. But the said PW.2 in his evidence-in-chief deposed before the Trial Court that on the date of the occurrence (i.e. on 18.01.2011) he, his mother (deceased Maya Rani Seal) and father (accused Prabhat Chandra Seal), all of them were sleeping in the same room and that during the night his father had asked him to go to sleep. When said PW.2 woke up in the morning he found his mother lying dead on the bed and said PW.2 noticed injuries on the scalp and mouth of his mother that were bleeding and that he did not notice any injury on the person of his father. These evidence of PW.2 could not be demolished by the defence and it remained in one piece.

25. PW.3, Anil Ch Seal, a school teacher by profession, acquainted with the deceased Maya Rani Seal as well as the accused Prabhat Ch. Seal, who lived near the house of the accused, was an independent witness. Though said PW.3 was a reported witness regarding the incident but from his evidence we found that on hearing the incident that Prabhat Ch. Seal had killed his wife Maya Rani Seal, said witness went to the house of Prabhat Ch. Seal and there he saw bleeding from the injuries on the person of the deceased Maya Rani, but he could not specify the parts of

her body from where blood was oozing out. This evidence of said PW.3 also could not be unturned by the defence.

26. From the records of the case we have perused that the Trial Court on 17.10.2015 while recording of his Section 313 CrPC statements in Question No.4, specifically pointed out that *on the day of the alleged occurrence PW.2 Biplab Ch. Seal slept with his mother (Maya Rani Seal) and father (Prabhat Ch. Seal) in the same room and in the night his father (Prabhat Ch. Seal) had asked him to go to sleep and in the morning he found his mother lying dead on the bed and that he noticed injuries on the scalp and mouth of his mother that were bleeding* and asked the accused Prabhat Ch. Seal what he had to say about it and without explaining or answering the queries, the accused Prabhat Ch. Seal simply replied that he was innocent.

27. Similarly, the Trial Court on 17.10.2015 during recording of Section 313 CrPC statements, when pointed out in Question No.5 that after hearing the incident when PW. 3 Anil Ch. Seal visited the house of Prabhat Ch. Seal, PW.3 saw bleeding from the injuries on the person of the deceased Maya Rani and asked his answer, the accused Prabhat Ch. Seal replied that he was innocent.

28. From those answers it is clear that the accused Prabhat Ch. Seal did not reply and clarify about the injuries and bleeding from the injuries on the deceased Maya Rani though on the night of the incident the accused Prabhat Ch. Seal slept with his son PW.2 Biplab Ch. Seal and the deceased Maya Rani in the same room.

29. Section 300 of the Indian Penal Code relates to 'Murder' and it stipulates 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

Secondly.— 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

Thirdly.— 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-

Fourthly.— 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.

30. The ingredients of Section 300 IPC are – (i) Presence of a bodily injury, (ii) Intention to inflict the bodily injury that it is not accidental and (iii) The injury in the ordinary course of nature is sufficient to cause death. From the evidence of the PW.2 Biplab Ch. Seal, son of the deceased Maya Rani Seal and the accused Prabhat Ch. Seal, corroborated by the medical evidence of PW.7, the autopsy doctor, we found that ingredients of Section 300 IPC are present with regard to the death of the deceased Maya Rani Seal.

31. Section 101 of the Indian Evidence Act, 1872 relates to 'Burden of Proof' and it reads as follows:

101. Burden of proof.— Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) *A* desires a court to give judgment that *B* shall be punished for a crime which *A* says *B* has committed.

A must prove that *B* has committed the crime.

(b) *A* desires a court to give judgment that he is entitled to certain land in the possession of *B*, by reason of facts which he asserts, and which *B* denies, to be true.

A must prove the existence of those facts.

32. Section 106 of the Indian Evidence Act, 1872 provides for 'Burden of proving fact especially within knowledge' and reads as follows -

106. Burden of proving fact especial within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) *A* is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him.

33. The Hon'ble Supreme Court in the case of *Shambu Nath Mehra -Vs- The State of Ajmer*, reported in AIR 1956 SC 404 have laid down the general Rule that – *the in a criminal case the burden of proof is on the prosecution and Section 106 of Evidence Act is certainly not intended to relive it on that duty and Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act.*

34. In the case in hand we have seen that from the evidence of the Autopsy Doctor PW.7, son of the deceased and the accused PW.2 and the neighbour PW.3, the prosecution could place sufficient prima facie material in pointing towards the accused for the guilt except the evidence regarding the commission of crime by him. But reasonable and credible explanation was not forthcoming from the accused regarding the special knowledge he had pertaining to the injuries on the scalp and mouth of his wife Maya Rani Seal that were bleeding and that she was lying dead on her bed in the room in which he along with his wife Maya Rani Seal (the deceased) and his son Biplab Ch. Seal (PW.2) were sleeping together on the night of the incident.

35. It is the accused who had the special knowledge regarding the said incident and the prosecution inspite of its best efforts could not have the said knowledge. As such, in terms of Section 106 of the Evidence Act, the burden was on the accused of proving the fact about the injuries sustained by his wife while she was with him in the same room on the night of the incident and to explain/clarify about the said special knowledge he had as to how his wife Maya Rani Seal had sustained those injuries while she was with him. We have seen that the defence failed to refute the said presumption against the accused, more particularly in the absence of any explanation from him in that regard.

36. As such we upheld the impugned Judgment of conviction and sentence dated 19.10.2015 passed by learned Sessions Judge, Dhubri in Sessions Case No. 222/2014, arising out of Tamarhat Police Station Case No. 09/2011, whereby the accused appellant has been convicted under Sections 302 IPC for committing murder of his wife and sentenced to undergo Rigorous Imprisonment for Life with fine.

37. Accordingly the appeal is dismissed.

38. We appreciate the service rendered by Mr. Zahangir Hussain, learned *Amicus Curie* for the appellant and Ms. Shamima Jahan, learned Additional Public Prosecutor, Assam in adjudicating

the matter. We direct the Gauhati High Court Legal Services Committee to pay remuneration of Rs. 7,500/- to Mr. Zahangir Hussain, learned *Amicus Curiae* on raising a bill by him towards his assistance rendered to the Court.

39. Registry shall return the relevant records of Sessions Case No. 222/2014 to the Court of learned Sessions Judge, Dhubri along with a copy of this order.

40. A copy of this order be also furnished to the accused appellant Sri Prabhat Chandra Seal, son of Late Jatindra Seal, through the Superintendent and Jailor of District Jail, Dhubri.

JUDGE

JUDGE

Comparing Assistant