

GAHC010139712010



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

Case No. : CrI.A./97/2010

SANKAR DEBNATH,
S/O SRI ROHINI DEBNATH A R/O VILL- CHECAPANI, P.S. KOKRAJHAR,
DIST. KOKRAJHAR, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR,

2:SRI SWAPAN DEBNATH
S/O LT. SUDHIR DEBNATH R/O VILL- CHECAPANI
KAMALA JORA
P.S. and DIST. KOKRAJHAR
ASSAM

Advocate for the Petitioner : MR.A KHALEQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. AHMR Choudhury, Advocate

For the Respondents : Additional PP, Assam

Date of Hearing : 01.09.2023

Date of Judgement : 01.09.2023

JUDGEMENT & ORDER (ORAL)

1. Heard Mr. AHMR Choudhury, learned counsel for the appellants. Also heard learned Additional Public Prosecutor, Assam.
2. The present appeal is directed against the judgment and sentence dated 15.06.2010 passed by the learned Additional Sessions Judge (FTC), Kokrajhar in Sessions Case No. 17/2008 corresponding to GR case No. 550/2007 whereby the appellant was convicted under Sections 447/324/307 IPC and sentenced him to suffer one month SI under Section 447 IPC and to suffer RI for one year under Section 324 IPC and also sentenced him to suffer RI for five years and to pay a fine of Rs. 1,000/- only in default RI for one month under Section 307 IPC.
3. The prosecution was launched on the basis of an FIR alleging, inter-alia, that on 30.06.2007 at about 9-30 p.m. the accused Sankar Debnath being armed with a khukri entered into the house of his brother Dilip Debnath and dealt khukri blow on the head of his brother with the intention to kill him. The accused attempted to dealt khukri blow on the neck of his brother, but as his brother moved suddenly the khukri hit on his shoulder. As a result, he became unconscious. Seeing the above incident the family member of his house raised hue and cry. Hearing hue and cry, the nearby people gathered for which the accused fled away from the place of occurrence. Thereafter, his brother was shifted to police station by him, one Aboni Debnath and Kamala Debnath, wife of Aboni Debnath. From police station his brother was shifted to RNB Civil Hospital, Kokrajhar in an injured condition. After receiving the ejahar, the Officer-in-Charge, Kokrajhar PS registered a case bearing Kokrajhar PS case No.

172/2007 under Section 458/326/307/34 IPC.

4. The Investigating Authority investigated the matter and subsequently, after completion of the investigation, filed charge-sheet being Charge-sheet No. 66/2007 against the appellant under Section 448/324/307/109/34 IPC. The learned court below framed formal charges under Section 448/324/307 IPC and when the appellant claimed to be not guilty and trial commenced.

5. To bring home the charges against the appellant, the prosecution examined as many as 8 witnesses including the I/O and the Doctor. The accused was examined under the provision of Section 313 Cr.P.C. The accused did not adduce any defence evidence. Thereafter, the learned trial court below convicted the appellant and sentenced him as discussed above.

6. Before having the determination, let this court first examine the depositions of the PWs.

7. PW-1, Swapan Debnath deposed that the PW-2 (victim) is his younger brother and the accused Sankar Debnath is his neighbour and they reside at the same vicinity. On the date of the incident at about 9.30 PM the accused Sankar Debnath came to the residence of PW-1 searching his father holding a khukuri in his hand. PW-1 informed that the accused's father is not in their home. Seeing the Khukuri PW-1 went to the Verandah of his residence out of fear as the accused attempted to stab him. Hearing commotion, PW-2 came out of his house to enquire into the matter and the accused stabbed him at the neck and at the left side of his shoulder. Then the PW-1 reached to the place of occurrence and saw his brother (PW-2) lying on the ground unconsciously. The accused immediately ran away after committing the crime. One Dilip Das and Parimal Das also came to take stock of the situation followed by Abani Debnath

and Kamala Debnath. PW-1 then informed the matter to the Gaonburah and VDP Secretary Sunil Mitra. The FIR was lodged on the next date at the Kokrajhar PS. The I/O visited the place of occurrence and seized cloths having blood stain and the recorded the statement of the victim.

The PW-1 in his cross examination deposed that the police had recorded his statement and denied the suggestion that he did not state before the police that the father of the accused Sankar Debnath was not available at his residence. PW-1 denied the suggestion that the accused did not tried to assault him and that the accused did not go to his house searching for his father near his residence on the date of the occurrence. PW-1 further deposed in his cross-examination that there was no enmity between Dilip Debnath and Sankar Debnath and they had no quarrel also. PW-1 stated that it is not a fact that his younger brother Dilip Debnath was not injured at his working place and also that the accused did not stab Dilip Debnath (PW-2) in his presence. He further denied the suggestion that they implicated the accused Sankar Debnath in commission of the offence only to harass him. PW-1 deposed in his cross examination that the O/C, Kokrajhar PS recorded his statement on the date of the incident and sent his brother for treatment and medical examination after due interrogation. He denied the suggestion that he did not see Sankar Debnath along with a Khukuri at his hand on the date of the incident and that he did not see Sajal Debnath standing near the road at the time of the incident. He also denied the suggestion that out of anger he filed this case.

8. PW-2, Dilip Debnath stated in his deposition that he knows the accused and the name of the accused is Sankar Debnath and also that he had filed the case against the accused Sankar Debnath. PW-2 deposed that the incident took place at around 9.30 PM about 1½ years ago and his wife Bhabani Debnath was

also present with him at that time. On the day of the incident the accused Sankar Debnath came to his house and hearing the accused calling his name he went out and then the accused Sankar Debnath stabbed him at the backside of his head and at the left side near his left ear. PW-2 then lost consciousness and regained his senses after two days at the hospital. The police seized his clothes and his brother PW-1 filed a case against the accused.

PW-2 in his cross examination stated that he had no enmity with the accused Sankar Debnath. PW-2 further deposed in his cross examination that when he opened the door of his residence the accused stabbed him at his head and he fell down on the ground and became unconscious as a result of the injury. He denied the suggestion that the accused did not stab him at his head. He further denied the suggestion that he is jealous of the accused for his good financial condition and that his brother filed this case for harass the accused. He further deposed in his cross examination that he got another injury at the shoulder joint of left side of his body and that there is no cut mark in his cloth.

9. PW3, Dilip Das in his deposition deposed that he knew the accused, who is his neighbor. He deposed that the alleged incident occurred 17/18 months ago at 9.30 pm. At that time, he retired to his bed and hearing hue and cry he reached the place of occurrence immediately. He saw the accused keeping a khukri at his hand and found victim lying near the door steps in an injured condition. He further deposed that the victim informed him that the accused Sankar Debnath caused him hurt by assaulting.

During his cross-examination, he deposed that he did not see that the accused had caused hurt to the victim.

10. PW4, Abani Debnath in his deposition deposed that he knew both

the victim and the accused. He found the victim in an injured condition. He further deposed that Parimal, Swapan, Aboni and himself shifted the injured victim to police station and the police referred the victim for treatment to hospital. He further deposed that Swapan informed him that the accused Sankar Debnath stabbed Dilip Debnath by khukri.

During his cross-examination, he deposed that police did not record his statement.

11. PW5, Pronoti Debnath in her deposition deposed that the informant is her husband. She further deposed that she knew the accused and the incident took place about one year back in the month of Ashar. She further deposed that the accused assaulted the victim by a khukri. The accused stabbed at the head of victim and also at the shoulder.

During her cross-examination, she deposed that there is a courtyard in between in their residence. She also deposed that police recorded her statement. She in her cross-examination deposed that father of accused did not come to their residence.

12. PW6, Smt. Kamala Debnath in her deposition stated that about two years back one night at about 8-00/9-00 pm when she was at her house one Bhabani Debnath called her by name and informed her that the accused assaulted the victim by khukri. She further deposed that she immediately came to the house of the victim and found that blood was oozing from the head of victim. She deposed that she put bandage on the head of the victim and took the victim to police station. Police sent the victim to Kokrajhar Civil Hospital. She further stated that she went alone to hospital with the injured and after getting him admitted she came back.

In her cross-examination, she deposed that she did not see how the victim sustained injury. She denied the suggestion that Bhabani Debnath did not call her by name and also informed that the accused assaulted the victim by khukri.

13. PW7, the doctor, in his evidence deposed that on 01.07.2007 he was working as S.D.M. & H.O. at R.N.B. Civil Hospital, Kokrajhar. He examined the victim in connection of Kokrajhar PS case No. 290/2007 on 30.06.2007 escorted by Home Guard Malik Uddin Sk. During examination, he found one incised wound about 8 cm. in length and ½ cm in depth over left shoulder joint and also found one incised wound about 5 cm in length and ½ cm in depth over the left Mastoid region. He opined the nature of injury was simple caused by sharp cutting weapon. He proved the Ext 1 as his report and Ext.1(1) is his signature.

During his cross-examination, he deposed that he has not mentioned in his report in respect of identification mark. In his cross-examination, he stated that he has also not mentioned the age of the injury. In his cross-examination, he deposed that he has not seen any injury in the ear. In his cross-examination, he also deposed that he has not mentioned about the history of injury.

14. PW8, Lalchand Sikdar in his deposition deposed that he was working as Sheristadar at Kokrajhar PS. On receiving an ejahar from one Sri Swapan Debnath by O/C, Kokrajhar Sri Uma Kanta Ramchiari registered a case as Kokrajhar PS case No. 170/2007 under Section 458/326/307/34 IPC and handed over the charge of investigation to him. He further deposed that he visited the place of occurrence recorded the statement of the witnesses including the complainant, drew the sketch map, seized one matia colour quarter size blood stained half pent, one orange colour blood stained sporting ganjee vide Ext. 3 and Ext. 3(1) is his signature. He also proved the ejahar as

Ext.2 and his signature as Ext. 2(1). He further deposed that the accused surrendered before him. He also collected the medical report of the injured and after completion of investigation, submitted charge-sheet against the accused under Section 448/324/307/109/34 IPC against the another accused declaring him absconder. Ext. 4 is charge-sheet and Ext. 4(1) is his signature. He also proved the pant as M.Ext. 1 and Sporting ganjee as M.Ext. 2.

During his cross-examination, he deposed that M.Ext. 1 and 2 were seized at hospital while his statement was recorded on 02.07.2007. He denied the suggestion that accused did not assault the victim. He denied the suggestion that victim is a carpenter and in course of his working as carpenter, he sustained injury.

15. From the depositions of the aforesaid witnesses and their cross-examination, certain important and vital facts are recorded in the following way:

- I. From the evidence of the PW1, it is proved beyond reasonable doubt that PW1 was the eye witness to the alleged incident.
- II. From the evidence of PW2, the injured victim, it is established that the appellant accused had voluntarily hurt the victim by a khukri, which is nothing but a dangerous weapon and it is also established beyond reasonable doubt that injury were inflicted in the shoulder as well as in the left mastoid region.
- III. From the evidence of PW7 and the medical report, it is clearly established and beyond reasonable doubt that one incised wound about 8 cm in length and ½ cm in depth over left shoulder joint of the victim was found on examination. It was also established beyond reasonable doubt injuries from the evidence of the PW7, Doctor, that

another incised wound about 5 cm in length and ½ cm in depth was found over the left mastoid region.

- IV. The Doctor's evidence that the injury was caused by sharp cutting weapon also remained unshaken. However, the Doctor opined that the injuries are simple in nature.
- V. In fact, during the cross-examination, the injured victim PW2 reaffirmed how and when the injuries were inflicted by the accused appellant and his statement is corroborated by the eye witness PW1 and the evidence of the Doctor, PW7.
- VI. From the evidences of PW3, PW4, PW5 and PW6 though they are not eye witnesses to the actual incident, however, from their evidences, it is established that they found the victim in a injured condition and the description of injury that they had given are similar to that given by the PW2, the injured victim, PW2, informant and PW7, the Doctor.
- VII. Therefore, it is established beyond reasonable doubt that while inflicting injury the accused has used sharp weapon for stabbing and stabbed the victim and such weapon is a dangerous weapon in the considered opinion of this court.
- VIII. From the aforesaid, it is also established that the accused voluntarily caused hurt to the victim by using a dangerous weapon and such hurt has caused bodily injury to the injured victim. Therefore, in the considered opinion of this court, it is well established that the appellant has committed an offence under Section 324 IPC.

16. It is by now well settled that the intention or knowledge that the injury inflicted may cause death is an essential ingredients to pass a conviction under Section 307 IPC. Thus, the intention or knowledge of the offender at the time of committing the offence that his act or his act including the use of the weapon in such a way that it may kill the victim is necessary. In the case in hand, from the testimonies of the witnesses including the eye witness and the injured victim no intention that the act was an attempt to murder the injured victim were not available, rather it was through the said two witnesses established that there was no previous enmity were there between the accused and the victim or that there was sudden provocation which lead to such attempt. Rather from their depositions it was established that the accused went to their place with the Khukri in hand in search of his father.

17. Even the nature of the act of the accused in the considered opinion of this court and the nature of injury and overall circumstances including the factum of absence of evidence of any motive and intention, this court is of the view that the act on the part of the accused cannot be said to be an offence under Section 307 IPC inasmuch as from the evidence of the eye witness and the injured victim, who described the execution of the offence by the accused, leaves a doubt whether the attempt was an attempt to murder the victim. The prosecution has also failed to prove beyond reasonable doubt that the nature of bodily injury would have inevitably led to the death of the victim and the accused was having knowledge of such situation.

18. Accordingly, it is held that the prosecution has been failed to establish beyond reasonable doubt that the accused has committed an offence under Section 307 IPC.

19. Now coming to the conviction under Section 447 IPC, from the

evidence of the PW1 and the victim himself it is established that the place of occurrence is residence of the victim and it is also established from the evidence of PW1 as well as PW3, PW4 and PW5 beyond reasonable doubt that the accused unauthorizedly entered into the house of the victim with an intention to commit an offence and in fact committed an offence under Section 324 IPC and therefore, the prosecution has been able to establish beyond reasonable doubt that the appellant has also committed an offence under Section 447 IPC and therefore the learned trial court below has rightly convicted the accused under Section 447 IPC.

20. In view of the forgoing discussion and reason the present appeal is partly allowed by setting aside the conviction and sentence imposed by the learned trial court below upon the appellant/ accused under Section 307 IPC, however, the conviction and sentence imposed under Section 447/324 IPC is upheld.

21. Accordingly, the appellant is directed to surrender before the learned trial court forthwith to undergo the remaining period of sentence. It is needless to say that any period of custody during investigation or during trial shall be set off from the sentence.

JUDGE

Comparing Assistant