

GAHC010199512021



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

Case No. : CRL.A(J)/41/2021

SANJAY BHUMIJ
SIVASAGAR, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. N DEKA, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 18-10-2023
(S.P. Khaund, J)

1. Heard Mr. N. Deka, learned Amicus Curiae for the appellant and Ms. B. Bhuyan, learned Addl. PP for the State of Assam.
2. This appeal is preferred u/s 374(2) of the Code of Criminal Procedure seeking defeasance of the Judgment & Order dated 12.07.2021 passed by the learned Additional Sessions Judge,

Sivasagar in Sessions Case No. 35(S-N) of 2016 arising out of Nazira P.S. Case No. 202/2015 (corresponding G.R. Case No. 604/2015) convicting the appellant Sanjay Bhumij for the offence u/s 302 of the Indian Penal Code, 1860 (IPC for short) and sentencing him to undergo Imprisonment for Life and to pay a fine of Rs. 10,000/- with default stipulation.

3. The genesis of the case was that Asha Bhumij (hereinafter also referred to as the victim or deceased) who was married to Sanjay Bhumij (hereinafter referred to as the accused) was compelled to take shelter in her parental home as her husband i.e. the accused used to quarrel with her frequently. On 24.11.2015 at about 6 PM while Asha Bhumij was returning home after work, the accused pulled her from the road towards his house and after sometime she was found unconscious. Asha Bhumij was taken to the Tea Estate Hospital and the doctor declared her as dead. Her father Sri Deonath Garh, (hereinafter referred to as the informant) strongly suspecting that the accused had strangled his daughter lodged an FIR with the police at Nazira PS. The informant claimed to have noticed marks of assault on his daughter's face and neck and he saw blood oozing out from her nostrils and ears.

4. The FIR was registered as Nazira P.S. Case No. 202/2015 u/s 302 IPC and the Investigating Officer (IO in short) embarked upon the investigation. The body of the deceased was forwarded for autopsy and the statements of the witnesses were recorded u/s 161 Cr.PC. On completion of investigation, charge-sheet was laid against the accused u/s 302 IPC.

5. On appearance of the accused, copies were furnished and the case was committed for trial. On commencement of trial, a formal charge u/s 302 IPC was framed and read over and explained to the accused. The accused adjured his guilt and claimed innocence.

6. To connect the accused to the crime, the prosecution adduced the evidence of 6 witnesses, including the Medical Officer (MO in short) and the IO. Two witnesses were however not cross-examined by the defence. The remaining witnesses were cross-examined by the defence to refute the charges.

7. On the incriminating circumstances arising against him, the statement of the accused under Section 313(1)(b) of the Cr.P.C was recorded. He denied the circumstances projected against him by the prosecution in its evidence and claimed to be innocent. He did not tender

any evidence in defence.

8. After hearing the arguments advanced by the learned Addl.P.P. and the defence counsel and upon appreciating the evidence available on record the learned trial Judge, proceeded to convict and sentence the accused, as above, by the impugned judgment and order dated 12.07.2021, which is subject matter of challenge in this appeal.

9. Mr. N. Deka, the learned Amicus Curiae appearing for the appellant laid stress in his argument that this case suffers from a major discrepancy as the informant was not examined as a witness. The evidence of PWs-2, 3, 4 and 5 clearly reveals that the accused called them to his house informing them that his wife Asha Bhumij sustained injuries as she fell down from the bed. Had he been guilty of any offence, the accused would not have informed his neighbours about his wife's condition. The accused made every endeavour to resuscitate his wife. It is also emphasised by the learned Amicus Curiae for the accused that the MO admitted in his cross-examination that except the bruise and abrasion found on his wife's cheeks, no external injuries were detected during the post-mortem examination of the deceased. The MO also admitted that such injuries may be caused by haemorrhage due to a sudden fall, but the rupture on the liver of the deceased may not probably be caused by a fall. The learned Amicus Curiae for the appellant concluded his submission urging that the prosecution has failed to bring home the charges levelled against the accused by reliable evidence and hence, the impugned judgment deserves to be set aside and the accused is entitled to an acquittal.

10. Per contra the learned Addl. P.P. Ms. B. Bhuyan laid stress in her argument that the evidence of the witnesses reveal that the deceased had to take shelter in her parental home as the accused used to fight with her frequently. It could be deciphered from the evidence of the witnesses that the accused and the deceased had a strained relationship. The deceased was found dead in her matrimonial home which clearly establishes complicity of the accused in the crime. On this ground she implored the Court to dismiss the appeal and affirm the impugned judgment.

11. We have given a thoughtful consideration to the submissions advanced at the Bar and have gone through the impugned judgment and carefully re-appreciated the evidence available on record. At first blush, it is apparent that there were no eye-witness to the crime and this case

rests squarely on the plank of circumstantial evidence. The evidence of PWs-2, 3 and 4 clearly reveals that as soon as the deceased became unconscious, the accused came to their house and informed them about his wife's condition.

12. PW-2, Mohesh Ravi Das, deposed that at the time of the incident which occurred in the year 2015, the deceased used to reside in her parental house and at times, she used to visit her matrimonial home. On the day of the incident, the accused went to his house and informed him that his wife slipped and tumbled down. As the accused asked for assistance, he (PW-2) called the ambulance and went to the accused-person's house and saw the victim lying on her bed and was unable to speak. Within half an hour, the ambulance arrived and the victim was shifted to the hospital. Meanwhile people had already assembled. PW-2 further deposed that as no one was present in the accused-person's house, at the time of the incident, he (PW-2) suspected that the accused might have killed his wife. He proved his signature on the inquest report as Ext.-2(1).

13. In sync with the evidence of PW-2, his wife Smt. Sima Bahoï deposed as PW-3 that the incident occurred about 6 years ago. When Asha Bhumij (deceased) was returning home from work, the accused called her to his house. After the incident, the accused came to her house and informed her that Asha had suffered a fall. She then went to the accused-person's house and found Asha (deceased) lying on the bed with her face covered with a blanket. Her husband (PW-3) called the ambulance and Asha was taken to the hospital. After Asha's dead-body was brought back from the hospital, she noticed blood oozing out from her neck and nostrils, and she also noticed two spots on each side of her neck over the tonsil region (throat). She also strongly suspected that the accused had killed his wife as no one was present in his house, at the time of the incident.

The evidence of PW-3 clearly depicts that Asha was staying in her parental home as there was some quarrel between Asha and the accused.

14. Similarly, the evidence of Smt. Minu Rajak, PW-4 also depicts that at the time of the incident, the accused approached her and informed that his wife had suffered a fall. Then she along with Mohesh Ravi Das (PW-2) and Smt. Sima Bahoï (PW-3) went to the accused-person's house and found Asha lying senseless on the bed. She noticed blood oozing out from

the victim's ears and also noticed two spots on each side of her neck over the tonsil region (throat). The next morning she learnt that Asha had passed away. She also strongly suspected that Sanjay was complicit, as no one was present in the house at the time of the incident.

15. The evidence of Sri Rajen Ravi Das (PW-5) also clearly depicts that there was a strained relationship between Asha (deceased) and her husband (accused). There was a quarrel between Asha and her husband and 2/3 months prior to her death, Asha was staying in her parental home, and at times she used to visit the accused. He heard that the victim Asha was taken to the hospital and on the following morning, she passed away. He saw injury marks on her neck and blood oozing out from her nostrils and her ears. He proved his signature on the inquest report as Exhibit 2(1).

16. S.I. Tuniram Neog, is the IO who testified as PW-6 that on 25.11.2015, the VDP Secretary Manan Pawar informed the OC of Nazira P.S. over phone that the accused killed his wife at Bamun Pukhuri Line No. 25. A G.D. Entry No. 675 dated 25.11.2015 was registered and the OC made preparations for inquest which was held by the Executive Magistrate. The OC entrusted him with the investigation and he immediately went to the place of occurrence (PO in short) and interrogated the witnesses and the Executive Magistrate. He found the body of the deceased on the bed inside the house of the accused. The body was forwarded for autopsy and the accused was apprehended and brought to the police station. On the same day the informant lodged the FIR and he interrogated the informant as well as the accused who admitted his complicity. He immediately arrested the accused and on the next day i.e. on 26.11.2015 he forwarded the accused to the Court. On 20.12.2015 he obtained the post-mortem report and on 30.12.2015 he submitted the charge-sheet u/s 302 IPC against the accused. He identified the FIR as Ext.-3 and the signature of the OC Sanjib Gogoi on the FIR as Ext.-3(1). He proved the sketch-map as Ext.-4 and his signature on the sketch-map as Ext-4(1). He also proved his signature on the charge-sheet as Ext.-5(1).

In his cross PW-6 admitted that he did not produce the extract copy of the G.D. Entry No. 675 dated 25.11.2015 and he did not seize any weapon of offence.

The evidence of the PW-6 reveals that no contradiction could be elicited through his cross-examination vis-a-vis the cross-examination of the witnesses u/s 145 of the Indian Evidence

Act, 1872 (the Evidence Act for short) qua Section 162 of the Cr.PC. The tenor of the answers of the accused to the questions u/s 313 Cr.PC depicts a plea of denial.

17. To the queries made by the Court relating to the incriminating evidence against him, the accused admitted through his answers under Section 313 Cr.P.C that he was alone with his wife. He also acknowledged engaging in disputes with his wife. He did not deny that his wife was staying in her parental home at the time of the incident, but he admitted that at times his wife used to visit him. He tried to discharge the burden cast upon him by virtue of Section 106 of the Evidence Act by stating that his wife sustained the injuries, because she tumbled down from the bed box. He described that his bed had a box fixed to it and he tried to convince that a fall from such a type of cot may result into fatal injuries. This explanation of the accused was however not found to be plausible. The MO (PW-1) also affirmed in his cross examination that there is least possibility that the rupture detected in the liver of the deceased could be the result of her fall against hard substance.

18. The victim's deadbody was subjected to autopsy by MO, Dr. Pradip Kumar Saikia who prepared the post-mortem report Ext.-1 taking note of the following injuries:-

“(i) External appearance – Rigor Mortis-Present, bruise-multiple abrasion present over the cheek-Size-2 to 3 cms approximately.

(ii) Thorax-walls, ribs and cartilage :- 8th, 9th and 10th ribs were fractured.

(iii) Plurae-pale.

(iv) Larynx and Trachea :- pale. Right lung-pale, left lung blood stained. Lacerated injury present.

(v) Pericardium-pale. Heart-empty, vessels-healthy.

(vi) Abdomen-Peritoneum full with blood.

(vii) Liver and spleen-ruptured.

(viii) Kidneys-Healthy, bladder-empty. Muscles, bones and joints are normal (injury nil).”

The cause of death as per findings of the post-mortem report was hypovolumic shock

following traumatic rupture of both liver and spleen leading to massive abdominal bleeding. Death was ante-mortem in nature. The MO affirmed in his cross-examination that there is least possibility that the rupture detected in the liver of the deceased could be the result of a fall against a hard substance. He also stated that the bruise and abrasion on the cheeks may be caused by a sudden fall.

19. At this juncture it is germane to mention that the ingenious cross-examination of the defence has to be placed on an anvil and the grain has to be separated from the chaff. It is manifest from the post-mortem report and the evidence of the MO that the deceased sustained fractures of 8th, 9th and 10th ribs. No questions were asked to the Medical Officer during his cross examination to suggest that fractures on ribs could be caused by falling off from a bed. It is fathomable to any rational and prudent person that fractures on three ribs and ruptures on liver and spleen cannot be caused by a fall from the bed.

20. Therefore, it is held that death was indeed ante-mortem in nature and the injuries were caused by use of force/blunt impact.

21. The corroborating evidence of the witnesses PWs-2, 3, 4 and 5 clearly depicts that the accused was all alone at home with his wife, at the time of the incident. Rather, the accused, in his statement u/s 313 Cr.PC, admitted that he alone was present with his wife at the time of incident. The uncontradicted and uncontroverted evidence of PWs- 2, 3, 4 and 5 transpires the troubled relationship between the deceased and the victim. Through the cross-examination of the witnesses, the defence failed to rebut the evidence.

22. Although the complainant-informant was not examined as a witness, the evidence of the other witnesses unmistakably illustrates that the accused and none other than the accused had caused the injuries sustained by the victim (deceased). It cannot be said that circumstantial evidence could not have been relied upon by the trial Court to unearth the truth of the case even if the informant did not appear for testifying. Due to his demise, the informant could not be produced as a witness.

23. This case rests squarely on the plank of circumstantial evidence. The deceased was last seen to be alive when she was in the company of her husband. It is apparent from the available

evidence that there were frequent skirmishes and quarrels between the victim and her husband. Owing to their disagreements and conflicts, the victim was compelled to frequently go and reside at her maternal abode. On the day of the incident, the appellant was seen calling his wife to his house while she was returning home from work. PW-3 has categorically stated that when Asha Bhumij (deceased) was returning home from work, the accused called her to his house. After sometime, on the same evening the victim was found dead in the accused-person's house and all the witnesses PWs – 2, 3, 4 and 5 immediately went to the place of occurrence and saw the injuries sustained by the victim who was lying on the bed in the accused-person's house. It could be culled out from the depositions of PWs – 2, 3, 4 and 5 that the incident occurred in the evening, typically when people return from work in the Tea Gardens. The FIR was lodged on the following day, but the body of the deceased was forwarded for autopsy immediately after the incident i.e. on 25.11.2015.

24. Although the accused tried to explain that the victim sustained the injuries as she fell down from the bed but the nature and gravity of the injuries detected on the victim during autopsy belied the explanation offered by the accused. Thus the accused failed to discharge his burden as per Section 106 of the Evidence Act.

25. A scrutiny of the evidence clearly transpires that the following circumstances form a complete chain:-

Prior to the incident the victim was residing in her parental home for sometime as she had a quarrel with her husband (accused);

The accused was last seen with his wife;

The uncontradicted evidence of PWs-2, 3, 4 and 5 portrays that on the day of the incident the victim was last seen with her husband(accused);

There was no one present in the house and the last seen theory thus come into play.

Shortly thereafter, the victim's lifeless body was seen lying in the bedroom by the neighbours of the accused.

The time when the victim was alive and was last seen with her husband (accused) vis-a-vis the time of her death was of a short duration.

Injuries were detected on the victim's body during the post-mortem examination.

26. Thus, the findings of the learned trial Court do not warrant interference. The trial Court has appositely held that the accused failed to discharge the burden cast upon him by virtue of Section 106 of the Evidence Act. The learned trial Court relied on the celebrated judgment of Hon'ble the Supreme Court in *Sharad Brijhichand Sarda vs. State of Maharashtra*, reported in (1984)4 SCC 116 and held that in the instant case the circumstances formed a complete chain.

27. Although the quarrel between the accused and the victim is discernable from the evidence, yet it could be deciphered from the evidence that the victim at times used to visit her husband. The injuries sustained by the victim were indeed caused by the accused. It is not plausible that a fall from the bed could result in the injuries described by the MO, PW-1. It has also surfaced from the evidence that the accused did not abandon his wife's body or conceal the body after the incident. He made an endeavour to resuscitate his wife by seeking help from his neighbours. It is writ at large that there was a strained relationship between the accused and the victim but at the same time there is no evidence that the accused had any motive to commit murder of his wife by intentionally causing such injuries which were sufficient to cause death. Though the prosecution was able to prove beyond reasonable doubt that the accused is responsible for the victim's death, yet the prosecution failed to prove beyond reasonable doubt that the accused in a premeditated manner intentionally caused the death of his wife and thus committed murder.

28. It has permeated from the depositions of PWs-2, 3, 4 and 5 that the incident occurred in the evening. PW-3 has categorically stated that while Asha Bhumij (deceased) was returning from work, the accused called her to his house. Further the evidence of PWs-2, 3 and 4 clearly depicts that Sanjay Bhumij (accused) went to their house, in the evening and informed them that his wife had sustained injuries as she had a fall. Thus it is clear, that the accused informed his neighbours about his wife's death on the same evening. PW-5 categorically stated that when he returned home from work, he saw the deceased being taken to the hospital. Thus it is clear that the incident occurred within a fleeting span. Apparently this is not a case of pre-planned and premeditated murder.

In such a case where the mutual conflict is apparent and there is no reliable and acceptable

evidence as to what triggered the incident and who was the aggressor, the accused cannot be held liable for the offence of culpable homicide amounting to murder.

29. It is true that in every case of culpable homicide which amounts to murder, pre-meditation is not a *sine qua non*. If any bodily injury to the knowledge of the offender is likely to cause death and such bodily injury is intentionally caused, then such an act, although not pre-planned, also amounts to murder.

30. In this case at hand, the circumstances clearly transpires the intention of the accused. The accused as well as the witnesses have categorically stated that the accused and the victim had a troubled relationship. The accused admitted in his statement u/s 313 Cr.PC that the victim came to his house immediately before the incident. Thereafter the victim was found dead, within hours of entering the matrimonial home. After scrutinising the Evidence of the Medical Officer, PW-1 and the Post-mortem Report, Exhibit-1, it has become amply clear that the injuries were the result of an assault.

31. In this case, no injury caused by any dangerous weapon was detected during post-mortem examination. No weapon of offence was recovered during investigation. The Medical Officer admitted in his cross examination that the rupture of the liver and the bruises and multiple abrasions over the cheeks may be caused by a fall against a hard substance. At the cost of repetition, it is pertinent to mention that the Medical Officer was not cross- examined regarding the fractures of three ribs, i.e, the 8th, 9th and 10th ribs, detected during post-mortem examination. Thus, it is clear that the injuries were caused by blunt force. In the peculiar circumstances of this case, it is thereby held that this case falls within the ambit of exception 4 to Section 300 IPC. As there was already a strained relationship between the victim and accused, it is manifest that without premeditation, in a sudden fight, in the heat of passion and upon a sudden quarrel, the victim sustained the injuries, while she was alone with her husband in his house. The explanation to exception 4 indicates that, “it is immaterial in such cases which party offers the provocation or commits the first assault.” In the instant case too, it is not known which party offered the provocation or committed the first assault. This is a case of circumstantial evidence encapsulating the last seen theory.

32. In this context the observation of Hon'ble the Supreme Court in the case of *Jumman & Others v. State of Punjab*, reported in *AIR 1967 SC 469* is relevant, wherein the Honble Supreme court has held and observed that:-

“Where a mutual conflict exists and when there is no reliable and acceptable evidence as to how the fight started and who was the aggressor, it would not be correct to assume private defence from both the sides as well as intention to commit murder on the part of the accused. Such a case would be a case of sudden fight and conflict and has to be dealt with under exception 4 to Section 300 of Cr.PC.”

33. A few relevant observations relating to ‘intention’ in the decision of Hon'ble the Supreme Court in **Pulicherla Nagaraju Vs. State of A.P. (2006) 11 SCC 444** are reproduced herein below.

“Therefore, the Court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances; (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in

causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.”

34. Reverting back to the case on hand, it is held that, it could be deduced from the evidence available on record that the incident occurred without pre-meditation. Although trauma is evident, the injuries detected by the MO during autopsy do not depict that these injuries were caused in an unusually cruel manner. These injuries were caused by none other than the accused. The evidence of PWs- 2, 3, 4 and 5 and the statement of the accused u/s 313 Cr.PC reflects that the accused and victim were prone to frequent fights and squabbles. Thus it is manifest that the victim sustained the fatal injuries as an outcome of one such incident. It has also to be borne in mind that no weapon of offence could be recovered by the IO. Assault with bare hands cannot be ruled out.

35. It is thereby held that *“the incident occurred without premeditation, in a sudden fight, in a heat of passion upon a sudden quarrel and without the offender having taken any undue advantage or having acted in a cruel or unusual manner.”*

36. In such a situation, even on accepting the prosecution case, we hold that the accused did not commit the offence under Section 302 IPC. It is held that the prosecution could not prove beyond reasonable doubt that the accused committed murder of his wife by intentionally causing injuries which resulted in her death and is thereby not guilty of the offence of culpable homicide amounting to murder. In the light of the decision of the Hon’ble Supreme Court in the case of Jumman and Others (supra), the accused is held guilty of offence under Part-II of Section 304 IPC.

37. The conviction of the accused under Section 302 IPC is scaled down to Section 304 Part-II of the IPC. Accordingly, the conviction of the accused under Section 302 IPC is set aside and instead the accused is convicted under Section 304 Part-II IPC to undergo rigorous imprisonment for 7(Seven) years. The sentence of fine is upheld. The period of detention of the accused during investigation and trial is set off with the custodial sentence.

38. Before parting with the record, this Court extends the appreciation to the services rendered by Mr. N. Deka, 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.

39. The impugned judgement is modified and the appeal is partly allowed in these terms.

40. Send back the LCR.

JUDGE

CHIEF JUSTICE

Comparing Assistant