

GAHC010211972019



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

Case No. : CRL.A(J)/64/2019

RAM RATAN NAYAK
S/O. LT. SHYAMLAL NAYAK, R/O. TINGRAI T.E., LINE NO.7, P.S. TONGONA,
DIST. TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY PP, ASSAM.
2:LACHIT PRAJA
S/O- LATE AMADA PRAJA
VILL.- TONGANA TEA ESTATE
7 NO. LINE
PS- TONGANA
DISTRICT- TINSUKIA
ASSA

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MALASRI NANDI

For the appellant	: Mr. N. Hasan.	...Amicus Curiae
For the respondent no.1.	: Mr. B. Bhuyan	 Addl. P.P.

Date of hearing & Judgment : 22.11.2023.

JUDGMENT AND ORDER

(M. Zothankhuma, J.)

1. Heard Mr. N. Hasan, learned Amicus Curiae for the appellant. Also heard

Ms. B. Bhuyan, learned Additional Public Prosecutor for the State.

2. This appeal has been filed against the impugned judgment dated 15.03.2019 passed by the Court of the Sessions Judge, Tinsukia in Sessions Case No.86(T)/2016, by which the appellant has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life with a fine of Rs.25,000/-, in default to suffer imprisonment for 3 (three) months.

3. The prosecution case in brief is that the appellant had surrendered before the Tongona Police Station on 31.12.2015 along with the severed head of his aunt and a dao (long knife), which was used by him to sever the head of the deceased. An FIR dated 01.01.2016 was submitted by PW-2, who is the husband of the deceased to the Officer-in-charge, Tongana Police Station. In the FIR it was stated that around 7 p.m. on 31.12.2015, the appellant had killed PW-2's wife Anita Praja, by slitting her throat with a sharp weapon. Consequent to the FIR, Tongana P.S. Case No.01/2016 under Section 302 IPC was registered.

4. PW-12 was made the Investigating Officer (IO) and after investigation and interrogation of various persons, the IO filed a charge-sheet, on finding a *prima facie* case under Section 302 IPC against the appellant. Charge was thereafter framed by the learned Trial Court under Section 302 IPC against the appellant, to which he pleaded not guilty and claimed to be tried.

5. The learned Trial Court examined 13 (thirteen) prosecution witnesses during trial. The appellant was thereafter examined under Section 313 Cr.P.C

and the learned Trial Court passed the impugned judgment dated 15.03.2019, on coming to a finding that the appellant was guilty of having killed his aunt with a dao. The appellant was accordingly convicted and sentenced in terms of the impugned judgment dated 15.03.2019.

6. The learned Amicus Curiae for the appellant submits that due to the fact that the appellant had surrendered before the police with the severed head and the dao, with which he severed the head of the deceased, coupled with the fact that there was an eyewitness to the crime and the admission by the appellant in his examination under Section 313 Cr.P.C that he had committed the crime, the fact that the appellant was the cause of death of his aunt was proved. However, the evidence also shows that the reason for the appellant taking the life of his aunt was due to the abuse and scolding suffered by the appellant from his deceased aunt. He accordingly submits that as there was provocation on the part of the deceased against the appellant, the conviction of the appellant may be altered to conviction under Section 304 Part-II from Section 302 IPC.

7. Ms. B. Bhuyan, learned Additional Public Prosecutor, on the other hand submits that the evidence clearly proved that the appellant had killed his aunt. Further, the abuse/scolding given by the deceased to the appellant, would not justify the appellant's act in killing his aunt and subsequently severing her head from her body. The daughter of the deceased was an eyewitness to the crime and as the appellant, by his action and words, had admitted to the crime in question, the impugned judgment should not be interfered with.

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

9. As can be seen from the evidence adduced by the prosecution witnesses and especially the eyewitness (PW-3), the appellant had first entered the house of the deceased on the night of 30.12.2015. However, he was caught entering the house by the deceased, her daughter (PW-3) and the son of the deceased. Thereafter, the appellant had again come to the house of the deceased on the next day, i.e. 31.12.2015 and severed the head of the mother of the PW-3 with a dao. The appellant had thereafter taken the severed head and the dao to the police station, where he surrendered himself. The police seized the dao that had been taken by the appellant to the police station. The act of the appellant killing the deceased by severing her head had been seen by PW-3, who is the daughter of the deceased. Further, in the examination of the appellant under Section 313 Cr.P.C, wherein he was asked three questions, the appellant had admitted to surrendering himself before the police station carrying the severed head and the dao. He also admitted to severing the head of the deceased from her body. When asked as to why he had committed the crime, the appellant stated that the deceased had been spreading wrong information that the appellant was having illicit relations with his mother and sister. Despite informing the deceased not to repeat the said act, the deceased continued to spread misinformation. Thus, he killed her out of anger.

10. With regard to the reason given by the appellant for killing the deceased, we find that the appellant had not adduced any defence evidence, in support of his reason for killing the deceased.

11. The evidence of PW-1, who is the Senior Medical & Health Officer of Tinsukia Civil Hospital is to the effect that he performed the Post Mortem examination on the dead body of the deceased on 01.01.2016 and the result of his examination was as follows :

“External Appearance:- Body of a middle aged female, lean body with head separated from body at the neck. Long black hair, wearing blouse, petticoat and sweater. Rigor mortis present.

Injury:

1. The head is seen severed from the body at the level of occipital joint of the neck, cutting the skin, muscles, blood vessels and vertebrae. Spinal cord was lacerated. Oesophagus was lacerated. All other organs were congested.”

PW-1 states that in his opinion, death was instantaneous, as a result of ante mortem injuries of the deceased. The injuries were homicidal in nature and caused by a heavy sharp object.

12. The evidence of PW-2, who is the husband of the deceased, is to the effect that he was not in his residence at the relevant time as he was away at Namsai, Arunachal Pradesh for work. However, one Dayananda Tanti informed him over telephone that the appellant had killed his wife, while his daughter was at home. PW-2 states that his daughter told him that on the night prior to the occurrence of the crime, the appellant had entered her room and attempted to molest her, whereupon the deceased had abused the appellant.

In his cross-examination, PW-2 states that as his deceased wife had scolded the appellant, the appellant had killed the deceased.

13. The evidence of PW-3, who is the daughter of the deceased, is to the effect that on the night prior to the incident, she, her mother and brother were sleeping in their house. The appellant entered their house and attempted to molest her, whereupon the deceased focused her torchlight on his face and identified the appellant. The appellant then fled. The appellant however, came back the next day to their house at 6 p.m., while PW-3 and brother were taking food. Her mother was sitting on the bed. The appellant came into the house and inflicted injuries to her mother with a dao, as a result of which the head was severed from the body of her mother. The appellant then went to the police station while carrying the severed head of her mother and surrendered therein. She also stated that the police took her to the Court for recording her statement by the Magistrate.

In her cross-examination, PW-3 admitted that on the date of incident, the deceased had scolded the appellant and that was the reason why the appellant had killed her mother.

15. The evidence of PW-4, PW-5, PW-6 and PW-7 are to the effect that they heard that the appellant had killed the deceased.

16. The evidence of PW-8 is to the effect that he recognized the dead body of the deceased. However, he was declared hostile and the prosecution cross-examined him. In the cross-examination by the prosecution, PW-8 denied the fact that he had told the police that the appellant had confessed to him that the appellant had killed the deceased with a dao.

17. The evidence of PW-9, who is a garden employee, is to the effect that he came to learn that due to a quarrel between the appellant and the deceased, the appellant had killed the deceased with a dao. Thereafter, PW-9 was declared as a hostile witness.

During cross-examination by the Prosecution, PW-9 denied that he had told the police that the appellant had surrendered in the police station with the severed head and a dao.

18. The evidence of PW-10 is to the effect that he heard that the appellant had surrendered before the police with the severed head of the deceased.

19. The evidence of PW-11, who is also a garden employee, is to the effect that the informant, i.e, the husband of the deceased, was her brother and the appellant was her son. PW-11 stated that she saw the appellant coming out from the house of her brother. Though she went to the house of her brother, she did not enter into the said house and did not see the deceased there. However, the deceased was murdered by her son. PW-11 was thereafter declared as a hostile witness and in her cross-examination by the Prosecution, PW-11 stated that she saw her son coming out of the house of her brother and then she entered into the house, where she saw the headless body of the deceased lying on the bed. PW-11 denied that she had told the police that her son had surrendered before the police along with the head of the deceased.

During cross-examination of PW-11 by the defence, PW-11 stated that the appellant became angry because the deceased was abusing the appellant with obscene language, by telling her son that he should have a physical relationship

with his mother (PW-11) and his sister.

20. PW-12, who is the IO of the case, in his evidence stated that on 31.12.2016, the appellant surrendered in the Police Outpost and handed over a severed head and a dao. G.D. Entry No.481 dated 31.12.2015 was immediately recorded, which was exhibited as Ext.6. He immediately detained the appellant and kept the severed head in the police outpost. He also identified the dao that was seized from the appellant. He went to the place of occurrence and found the decapitated body of the deceased, which was lying on the bed. He sent the accused to Doomdooma Police Station and thereafter recorded the statement of witnesses. Then the dead body was brought to the police station and the Magistrate was informed. The Magistrate conducted inquest over the dead body of the deceased the next morning. Thereafter the dead body was sent for Post Mortem examination. On 01.01.2016, an FIR was lodged by PW-2 and Tongana P.S. Case No.1/2016 under Section 302 IPC was registered. The investigation was taken up by the PW-12 and he visited the place of occurrence. PW-12 further stated that he sent PW-3 to the Court, for recording her statement under Section 164 Cr.P.C. On conclusion of the investigation, charge-sheet was filed against the appellant under 302 IPC.

21. The evidence of PW-13 is to the effect that she was posted as Judicial Magistrate First Class in Tinsukia on 21.01.2016 and the Chief Judicial Magistrate, Tinsukia had passed an order in G.R. Case No.01.2016 arising out of Tongona P.S. Case No.1/2016, asking her to record the statement of PW-3. The statement of PW-3 was accordingly recorded, wherein PW-3 stated that on 30.12.2015, while she was sleeping in the house along with her mother and

brother, the appellant had entered their house and touched her body. PW-13 and her mother awoke and saw the appellant through the light from the torch. Thereafter the appellant fled. At about 7 p.m. on 31.12.2015, she was about to have dinner with her brother, the appellant came to the house and dealt a blow on the neck of the deceased. The head of her mother was totally severed. The statement of PW-3 recorded by PW-13 under Section 164 Cr.P.C was exhibited as Ext.11.

22. The examination of the appellant under Section 313 Cr.P.C and the question and answers recorded therein are re-produced herein below as follows :-

“Q. PW Someswar Gohain has deposed that on 31-12-2015, you surrendered yourself in the police station carrying a severed human head and a dao. What is your reply in this regard?

A:- Yes.

Q. PW Anjali Praja has deposed that you dealt cut blow on her mother with a dao, thereby severing her mother's head. What is your reply in this regard?

A:- Yes.

Q. Why did you commit this crime?

A:- Anita had been spreading the disinformation often that I had illicit relation with my mother and my sister. I had persuaded her many times not to do so. But she repeated that act again. Therefore, I killed her out of anger.”

23. As can be seen from the evidence of the prosecution witness, especially the evidence of the eyewitness, there is no doubt that the appellant had killed

the deceased. As stated earlier, the appellant had surrendered before the police with the severed head and the weapon used for killing the deceased. The appellant had also admitted to the killing of the deceased in his explanation given under Section 313 Cr.P.C, which corroborates the evidence that he had killed the deceased and vice versa, the evidence corroborates the explanation given by the appellant under Section 313 Cr.P.C.

24. In the case of ***Ravasaheb @ Ravasahebgouda & Others Vs. State of Karnataka***, reported in ***(2023) 5 SCC 391***, the Supreme Court has referred to the case of ***Mrinal Das Vs. State of Tripura***, reported in ***(2011) 9 SCC 479*** and held that the general principle of appreciating the evidence of eye-witnesses is that when a case involves a large number of offenders, prudently, it is necessary, but not always, for the Court to seek corroboration from at least two more witnesses as a measure of caution. However, the principle is quality over quantity of witnesses.

25. In the case of ***Karan Sing Vs. The State of Uttar Pradesh and others***, reported in ***(2022) 6 SCC 52***, the Supreme Court has held that evidence examined as a whole, must reflect/have a ring of truth. The court must not give undue importance to omissions and discrepancies which do not shake the foundations of the prosecution's case.

26. In the case of ***Sadhu Ram & Others Vs. The State of Rajasthan***, reported in ***(2022) 6 SCC 52***, the Supreme Court has held that if a witness is absolutely reliable, then conviction based thereupon cannot be said to be infirm

in any manner.

27. In the case of ***Bhagwan Jagannath Marked and Others Vs. State of Maharashtra***, reported in ***(2016) 10 SCC 537***, the Supreme Court has held that a witness being a close relative is not a ground enough to reject his testimony. Mechanical rejection of an even “partisan” or “interested” witness may lead to failure of justice. The principle of “falsus in uno, falsus in omnibus” is not one of general application

28. In the case of ***Rai Sandeep Vs. The State of NCT of Delhi***, reported in ***(2016) 10 SCC 537***, the Supreme Court has held that a sterling witness should be of a very high quality and calibre, whose version must be unassailable. The version of the said witness on the core spectrum of the crime should remain intact, while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars, in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials, for holding the offender guilty of the charge alleged.

29. On considering all the above facts stated in the foregoing paragraphs and keeping in view the various judgments of the Supreme Court as enumerated above, we are of the view that evidence given by PW-3 as an eyewitness is truthful and consistent with the case of the prosecution. The statement given by PW-3 under Section 164 Cr.P.C. is also in consonance with her testimony given before the learned Trial Court and her statement given under Section 161 Cr.P.C.

30. In the case of ***Singapagu Anjaiah vs. State of Andhra Pradesh***, reported in ***(2010) 9 SCC 799***, the Supreme Court has held that the intention of the accused has to be gathered from factors such as the weapon used, the part of the body chosen for assault, the nature of injuries caused and the intensity of the assault. In the present case, the use of the dao in severing the head of the deceased shows the intensity of the attack on the neck of the deceased, inside the house of the deceased. Further, the response of the appellant to the alleged scolding/abuse by the deceased, by severing her head from her body, does not in our view, be said to be proportionate to the alleged provocation. Keeping in view the judgment of the Apex Court in ***Singapagu Anjaiah (supra)***, we are of the view that the case would not attract the provisions of Section 304 Part-II IPC.

31. Accordingly, in view of the reasons stated above, we find no ground to interfere with the impugned judgment of the learned Trial Court.

32. The appeal is accordingly dismissed. Send back the LCR

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

JUDGE

JUDGE

Comparing Assistant