

GAHC010165172021



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

Case No. : CRL.A(J)/26/2021

TEPHORO @ TEBOR KUJUR
KARBI ANGLONG, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocates:

Appellant	:	Mr. N.J. Das, Amicus Curiae.
Respondent	:	Mr. K.K. Das, Additional Public Prosecutor, Assam.

Date of Hearing and Judgment & Order	:	26.06.2024
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**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT & ORDER [ORAL]

[M. Choudhury, J]

The instant criminal appeal from Jail is directed against a Judgment and Order dated 10.12.2020 passed by the Court of learned Sessions Judge, Karbi Anglong, Diphu in Sessions Case no. 44/2009. By the Judgment dated 10.12.2020, the accused-appellant has been convicted for the offence of murder and he has been sentenced under Section 302 of the Indian Penal Code ['IPC' or 'Penal Code', for short] to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo rigorous imprisonment for another 1 [one] year.

2. The case was regarding alleged killing of one Lakshman Jee. The investigation was initiated on the basis of a First Information Report ['FIR', for short], lodged on 03.11.2002, before the Officer In-Charge, Bokajan Police Station, Karbi Anglong by one Ata Jee as the informant. In the said FIR [Ext.-2], the informant-P.W.1 had inter alia stated that at around 3-00 p.m. on 02.11.2002, all the members of their family went to the jungle to collect fire wood. At that time, his father, Lakshman Jee was alone at home. It was at about 4-00 O'clock, all of them returned after collecting fire wood. At that time, they saw the two accused persons, named in the FIR, hacking his father, Lakshman Jee with a dao. The two accused persons, named in the FIR, were [i] Tebor Kujur, that is, the accused-appellant; and [ii] Binanda Kacha. In the FIR, the informant had further stated that on seeing them, both the accused persons fled away from the scene. Thereafter, Lakshman Jee was taken to Bokajan Hospital, but he breathed his last there. The informant further mentioned that they did not know the reason as to why the accused persons committed the act.

3. On receipt of the FIR, the Officer In-Charge, Bokajan Police Station registered the same on 03.11.2002 as Bokajan Police Station Case no. 138/2002 [corresponding G.R. Case no. 376/2002] for the offence under Section 302, IPC read with Section 34, IPC.

4. It is the case of the prosecution that on 02.11.2002 itself, both the accused persons appeared in Bokajan Police Station with a dao and on their such appearance, they were taken into custody and the dao they produced was seized vide a Seizure List [Ext.-4], in presence of three witnesses, [i] Ata Jee, that is, the informant-P.W.1; [ii] Gathiya Munda [not a witness] and; [iii] Phuleswar Urang [not a witness].

5. After registration of the case, the then Officer In-Charge, Bokajan Police Station viz. Shahjahan Ali took up the investigation of the case himself. During the course of investigation, the Investigating Officer ['I.O', for short] recorded the statements of witnesses under Section 161, Code of Criminal Procedure, 1973 ['the Code' or 'CrPC', for short] and after conducting inquest proceeding on the dead body of the deceased, forwarded the dead body for post-mortem examination to Diphu Civil Hospital on 04.11.2002. The post-mortem examination of the dead body of the deceased was performed in Diphu Civil Hospital on 04.11.2002 by Dr. Sudip Ranjan De [P.W.3], who was posted as Senior Medical & Health Officer, Diphu Civil Hospital on 04.11.2002. The Autopsy Doctor [P.W.3] recorded his findings in a Post-Mortem Examination [PME] Report [Ext.-3]. As in the meantime, the I.O. of the case, Shahjahan Ali expired, one Md. Sofi Ullah [P.W.4] collected the PME Report [Ext.-4] on 30.04.2005. As the other part of the investigation was found to be completed, Md. Sofi Ullah [P.W.4] who was the Officer In-Charge, Bokajan Police Station at the relevant point of time, submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 42/2005 on 30.04.2005 against the two accused persons, named in the FIR, finding a prima facie case under Section 302, IPC established against them.

6. On submission of the Charge-Sheet, the case was committed to the Court of Sessions, Karbi Anglong, Diphu by an Order of Commitment dated 11.06.2009 in compliance of the procedure laid down in Section 209, CrPC finding that the offence under Section 302, IPC is exclusively triable by the Court of Sessions. On 11.06.2009, the accused persons, Binanda Kacha was produced from custody whereas the accused-appellant had entered his appearance before the committal court. The copies were accordingly furnished to them following the procedure of Section 207, CrPC and the learned Public Prosecutor was

accordingly notified.

7. On receipt of the case records of G.R. Case no. 376/2002, arising out of Bokajan Police Station Case no. 138/2002, the Court of Sessions, Karbi Anglong, Diphu [‘the trial court’, for short] registered the same as Sessions Case no. 44/2009. After appearance of the two accused persons before the trial court and after hearing the learned Public Prosecutor and the defence counsel, the learned trial court, on 08.10.2009, framed the following charge against the two accused persons :-

That you both, on 02.11.2002 at 4-00 p.m., at Paharia gaon, Lakhijan with common intention committed murder to Laxman Jee, the father of the complainant Sri Ata Jee with 'dao' at the house of the complainant causing the death of Laxman Jee and thereby committed an offence punishable U/S 302/34 I.P.C. and within my cognizance.

8. When the charge was read over and explained to the accused persons, they abjured guilt and claimed to be tried. During the pendency of the trial, the accused person, namely, Binanda Kacha expired on 06.03.2010 and as a result, the case stood abated against him. Accordingly, the trial proceeded against the surviving accused person, that is, the accused-appellant.

9. During the course of trial, the prosecution side examined four witnesses viz. [i] P.W.1 : Ata Jee; [ii] P.W.2 : Bister Jee; [iii] P.W.3 : Dr. Sudip Ranjan De; and [iv] P.W.4 : Md. Sofi Ullah; and exhibited five numbers of documents viz. [i] Ext.-1 : Inquest Report; [ii] Ext.-2 : FIR; [iii] Ext.-3 : Post-Mortem Examination [PME] Report; [iv] Ext.-4 : Seizure List; and [v] Ext.-5 : Charge-Sheet. After closure of the prosecution evidence, the accused-appellant was examined under Section 313, Cr.P.C. and when asked, the accused-appellant submitted that he would not adduce any defence evidence. After hearing the learned counsel for both the parties and on appreciation of the evidence/materials on record, the learned trial court has convicted the accused-appellant for the offence of murder under Section 302, IPC and he has been sentenced in the manner, mentioned above.

10. We have heard Mr. N.J. Das, learned Amicus Curiae for the accused-appellant and Mr.

K.K. Das, learned Additional Public Prosecutor for the respondent, State of Assam.

11. Mr. Das, learned Amicus Curiae appearing for the accused-appellant has submitted that the prosecution witnesses - P.W.1 and P.W.2 - were the two sons of the deceased, Lakshman Jee. It is submitted that if a comparative analysis of the testimonies of P.W.1 and P.W.2 are made, a number of glaring inconsistencies can be found. It is his submission that though P.W.1 claimed that his elder brother, P.W.2 was also an eye-witness to the incident of assault, P.W.2 did not support the version of his younger brother, P.W.1 by testifying that he was not an eye-witness to the alleged incident of assault. Mr. Das has further submitted that the appearance of the two accused persons in the Police Station on 02.11.2002 with the alleged weapon of assault was doubtful for the reason that the prosecution side did not examine all the three seizure witnesses who had subscribed their signatures in the Seizure List [Ext.-4]. Though, from the PME Report [Ext.-3] the case appeared to be a case of homicidal death, but the evidence on record is deficient as regards the real assailant. The glaring inconsistencies in the testimony of the alleged sole eye-witness, P.W.1 makes him a wholly unreliable witness and his testimony cannot be made the basis of conviction. With such contentions, the learned Amicus Curiae has submitted that the accused-appellant is entitled to be acquitted from the charge of murder by setting aside the impugned Judgment and Order of the learned trial court.

12. In response, Mr. Das, learned Additional Public Prosecutor for the State has submitted that the testimony of the eye-witness, P.W.1 cannot be discarded only for the reason that his version as regards presence of his elder brother, P.W.2 is belied by the testimony of P.W.2 itself. It is his submission that on the matter of assault, the testimony of P.W.1 received sufficient corroboration from the medical evidence in the form of the PME Report [Ext.-3] and the testimony of the Autopsy Doctor [P.W.3]. The fact that the two accused persons surrendered in the Police Station on the date of occurrence itself is a pointer towards their culpability in the crime. He has, thus, submitted that the impugned Judgment and Order of conviction and sentence does not need any interference.

13. We have given due consideration to the submissions of learned counsel for the

parties and have also perused the materials/evidence available in the case records of Sessions Case no. 44/2009, in original.

14. We first refer to the medical evidence, led by the prosecution, in the form of testimony of the Autopsy Doctor, Dr. Sudip Ranjan De [P.W.3], who was serving as Senior Medical & Health Officer in Diphu Civil Hospital on 04.11.2002 and the PME Report [Ext.-3]. In his testimony, P.W. 3, Dr. Sudip Ranjan De deposed to the effect that he conducted the post-mortem examination on the dead body of the deceased on 04.11.2002. During autopsy, he found an incised wound over nose, an incised wound over the back of the skull, an incised wound over the right side of the face and fracture of the right upper arm. Exhibiting the PME Report as Ext.-3, he also identified his signature therein as Ext. 3[1] and the signature of the Joint Director of Health Services as Ext.-3[2]. The other findings, recorded in the PME Report were as under:

EXTERNAL APPEARANCE

Postmortem Examination done of a male aged 65 years wearing black half pant, rigor mortis was set in. There are incised wound over nose, over right side of the face, over right side of the skull are present, the right upper head is fractured, clotted blood are present over the injuries, incised wound is present over left hand.

CRANIUM AND SPINAL CANAL

Middle portion of the skull is fractured, Membrane is ruptured. Clotted blood is present in the brain;

Thorax: No abnormalities

Abdomen: No abnormalities

Liver, Spleen, Kidney, blooder, organs of generation, external and internal have no abnormalities.

Muscles bones and Joints: Incised wound over nose, incised wound over back of the skull, incised wound over right side of the face, right upper arm is fractured.

DETAIL DESCRIPTION

Injuries described above are anti-mortem in nature and are caused by sharp

object.

OPINION

In my opinion the cause of death is due to shock and hemorrhage due to injuries sustained by sharp object. Ext-3 is the PM report, Ext-3(1) is my signature, Ext- 3(2) is the signature of Joint Director of Health Services, Karbi Anglong, Diphu.

15. On perusal of the PME Report [Ext.-3] and the testimony of the Autopsy Doctor [P.W.3], it is found that the cause of death was due to shock and hemorrhage due to injuries sustained by a sharp object. Thus, it can be safely concluded that the death of the deceased, Lakshman Jee was a homicidal death. The question, thus, arises is about the real assailant responsible for the homicidal death of the deceased, Lakshman Jee. We can now turn to the testimonies of the two witnesses, P.W.1 and P.W.2.

16. P.W.1, Ata Jee in his evidence-in-chief, deposed to the effect that they were three brothers, namely, [i] Ata Jee; [ii] Bister Jee; and, [iii] Lucas Jee; and all of them used to live in the same house. P.W.1 stated that the incident took place about four years earlier, but he could not remember the date. On the day of occurrence, [i] he; [ii] his wife, Sukurmoni; and [iii] his brother, Bister Jee [P.W.2] went to nearby forest at around 7-00 a.m. to collect firewood. At that time, Lakshman Jee was alone in the house. P.W.1 further stated that when they were returning to their home in the afternoon and were about to reach their home, at around 4-00 p.m., they saw two persons assaulting Lakshman Jee with dao on the village road. P.W.1 stated that the place of occurrence was at a distance of twenty Nals [One Nal=Twelve feet] from their house and he recognized one of the assailants and the said assailant was the accused-appellant. P.W.1 further stated that by the time they reached the spot, the assailants fled away. As his father, Lakshman Jee sustained grievous injuries on different parts of his body, he was taken immediately after the incident to Bokajan Hospital for treatment. But at around 4-00 a.m. on the following day, his father Lakshman Jee succumbed to his injuries in Bokajan Hospital. Thereafter, the matter was reported to the Police Station and Police personnel came to the Hospital and held inquest on the dead body of the deceased. After preparing Inquest Report [Ext.-1], the dead body was sent for post-

mortem examination. P.W.1 further stated that the accused-appellant had surrendered in Bokajan Police Station with a dao and the said dao was seized by Police vide a Seizure List [Ext.-2] wherein he subscribed his LTI. P.W.1 testified that the dao which was shown to him at the time of his testimony in the Court was not the one which was deposited by the accused in Bokajan Police Station at the time of his surrender.

16.1. During cross-examination, P.W.1 reiterated that his brother, Bister Jee [P.W.2] and his wife, Sukurmoni were with him and all of them were returning home after collecting firewood. As regards the place of occurrence [‘P.O.’, for short], P.W.1 stated that there was no house near the P.O. except a plot of land belonging to one Rajen Bhumij. He denied suggestions that he did not witness the accused-appellant assaulting his father with a dao; and that they had gone to the forest at 3-00 p.m. only. He reaffirmed that all three of them went to the forest at 7-00 a.m.

17. P.W.2, Bister Jee is also a son of the deceased, Lakshman Jee and is an elder brother of the informant-P.W.1, Ata Jee [P.W.1]. P.W.2 stated that he knew the accused, but did not know his name, though he is from the same village. P.W.2 deposed that they were four brothers, namely, [i] Lucas Jee; [ii] Anthony Jee; [iii] Bister Jee [P.W.2]; and [iv] Ata Jee [P.W.1]; and the deceased Lakshman Jee was their father, who was killed allegedly by the accused-appellant. As regards the day of occurrence, P.W.2 deposed that on the day of occurrence, he was not in home as he was at Ekorani, Bokajan. P.W.2 stated that his brothers were at home on the day of occurrence. P.W.2 testified that while he was at Bokajan, he was informed by the people of Ekorani area that his father was in serious condition and was undergoing medical treatment at Bokajan Hospital. P.W.2 stated that on receipt of the information, he went to Bokajan Hospital in the evening hours and he found his father there in an unconscious state. His younger brother, Ata Jee [P.W.1] was also there with his father. P.W.2 further stated that inquest proceeding on the dead body of the deceased was held after Police personnel came to the Hospital. He exhibited the Inquest Report as Ext.-1 with his LTI therein. According to P.W.2, it was Police who told him, showing the accused-appellant, that the accused-appellant had killed his father.

17.1. During cross-examination, P.W.2 categorically stated that he did not know where and when the incident took place and who were involved behind the incident. He stated that the place, Ekorani, Bokajan, where he went on the day of occurrence, was located at a distance and it would take 1[one] hour to cover the distance on foot from their house at Paharialine, Lakhijan. P.W.2 further stated that there were five houses nearby their house at Paharialine.

18. As mentioned above, Shahjahan Ali who initially investigated into the case, expired during the pendency of the investigation. P.W.4, Md. Sofi Ullah testified that it was Shahjahan Ali who visited the P.O.; recorded the statements of the witnesses; arrested the two accused persons; held inquest on the dead body of the deceased; and seized the dao, which was allegedly used in the incident. P.W.4 exhibited the Inquest Report [Ext.-1] and the Seizure List [Ext.-4]. P.W.4 recognized the signature of Sahjahan Ali appearing in the Seizure List [Ext.-4] as Ext.-4[1]. P.W.4 further stated that after going through the case diary, he learnt that the PME Report [Ext.-3] of the deceased was not collected and accordingly, he collected the same on 30.04.2005. Finding sufficient evidence against the two accused persons, he stated to have laid the Charge-sheet [Ext.-5] against them.

18.1. During cross-examination, P.W.4 stated that he did not see the seized dao in the Court.

19. While it is the case of the accused-appellant that there are glaring inconsistencies of incompatible nature between the testimonies of P.W.1 and P.W.2, it is the case of the prosecution that the testimony of P.W.1 received sufficient corroboration from the medical evidence and accordingly, inconsistencies alleged on behalf of the accused-appellant, is not of much significance.

20. On evaluation of the testimonies of P.W.1 and P.W.2, we are not in a position to subscribe fully to the said contention advanced on behalf of the prosecution. P.W.1, the informant-son of the deceased and the younger brother of Bister Jee [P.W.2] was categorical in claiming that his elder brother, Bister Jee [P.W.2] was with him all along the day right from 7-00 a.m. in the morning till the time of occurrence at around 4-00 p.m., on the date of

occurrence. P.W.1 stated that he, his wife and his elder brother, Bister Jee [P.W.2] went into the forest to collect firewood at 7-00 a.m. and all of them after collecting firewood, were returning together to their home in the afternoon and when they were about to reach their home, all of them saw the incident of assault made on the person of their father, Lakshman Jee, at around 4-00 p.m., at a distance from 20 Nals from their house. But, his testimony did not receive any support from his elder brother, Bister Jee [P.W.2], who testified to the effect that on the date of occurrence, he was not at all in their house at Paharialine, not to speak of accompanying his younger brother, Ata Jee [P.W.1] into the jungle at 7-00 a.m. to collect firewood and accompanying him also at the time of returning. P.W.2 had empathetically stated that his other brothers were at home on the date of occurrence, but he was at Ekorani, Bokajan, which place was at a distance. He further stated that when he was at Ekorani, Bokajan, he received the information that his father was in serious condition and was undergoing medical treatment in Bokajan Hospital. P.W.2 further testified that he did not know where and when the incident took place and who were involved behind the incident. It was only the Police personnel, who by showing him the accused, Tebor Kujur, told him that it was Tebor Kujur who had killed his father.

21. Thus, it has emerged that the versions of the two brothers and the two sons of the deceased, P.W.1 and P.W.2 were at variance and the variance is of substantial nature and incompatible to each other. The contrary version of P.W.2, who is incidentally an elder brother of P.W.1, makes the witness, P.W.1 to fall outside the category of wholly reliable witness. Even, arguendo, the witness P.W.1 is assumed as neither wholly reliable nor wholly unreliable, then such testimony of P.W.1 requires appreciation with circumspection and care. In case of a wholly reliable witness, the court does not have any difficulty in coming to its conclusion either way. It may convict or acquit on a testimony of a single witness, if the testimony is found to be above reproach or suspicion of interestedness. If a witness is found to be wholly unreliable, the court would also have no difficulty in coming to a conclusion. It is in the third category of cases, that is, neither wholly reliable nor wholly unreliable, which the witness, P.W.1 is, the court has to be circumspect and has to look for corroboration in material particulars through reliable and credible evidence, direct or circumstantial.

22. P.W.1 is found to be witness also to the Seizure List [Ext.-4]. In the Seizure List [Ext.-4], it was recorded that the two accused persons viz. Tebor Kujur and Binanda Kacha appeared in the Police Station with a dao and vide the Seizure List [Ext.-4], one dao with handle was seized. In the FIR [Ext.-1] lodged by the informant-P.W.1 on the subsequent day, that is, on 03.11.2002, the informant-P.W.1 named the two accused persons as [i] Tebor Kujur, that is, the accused-appellant; and [ii] Binanda Kacha. Conspicuously, when the informant, Ata Jee testified as P.W.1 in the Court, he stated that he could recognize only the accused-appellant as the assailant and he did not name the other one of the two assailants, which he allegedly saw at the time of their appearance in the Police Station on 02.11.2002 and which he named in the FIR [Ext.-2] with details. This omission makes the version of the informant-P.W.1 more doubtful, creating a further dent to the case of the prosecution. The prosecution side, for reasons best known to it, did not examine the other two witnesses to the Seizure List [Ext.-4]. From the testimony of the Police Witness [P.W.4], who submitted the Charge-sheet [Ext.-5], and who also had duty to produce the alleged dao, seized vide Seizure List [Ext.-4], had testified, in his cross-examination, surprisingly that he did not see the seized dao in the Court, despite he himself was answerable for not producing it. P.W.1 was shown a dao when he was giving his deposition on 07.06.2010 and in his evidence-in-chief, he stated that the dao which was shown to him, was not the one which was allegedly deposited by the accused-appellant, Tebor Kujur in Bokajan Police Station at the time of his alleged surrender. Not exhibiting the alleged weapon of assault by the prosecution has created a further gap in its case. The testimony of P.W.1 as regards the P.O. was also belied by P.W.2. Unlike P.W.1, P.W.2 stated that there were five houses near their house. Such testimony of P.W.2 runs contrary to the testimony of P.W.1, who stated that there was no house near the P.O., which was at a distance of thirty Nals from their house. P.W.1 is found to have deftly changed the time of their going inside jungle to collect firewood from 3-00 p.m. in the FIR to 7-00 a.m., by the time he gave his testimony in the Court.

23. It is always the burden of the prosecution to prove a case beyond all reasonable doubts. If the prosecution fails to prove its case beyond all reasonable doubts, the benefit, at all stages, goes to the accused. Having regard to the above evidence/materials brought on record by the prosecution during the trial, as discussed above, we are of the unhesitant view

that the prosecution has not been able to bring the charge of murder against the accused-appellant on the standard of beyond all reasonable doubts. The learned trial court appeared to have passed the order of conviction treating the testimony of P.W.1 as a reliable one, but we could not subscribe to such view because of the reasons, mentioned above.

24. Thus, the accused-appellant is found entitled to the benefit of doubt. Consequently, this criminal appeal succeeds and the Judgment and Order dated 10.12.2020 is accordingly set aside. Resultantly, the accused-appellant is acquitted of the charge of murder under Section 302, IPC.

25. The accused is to be released from detention forthwith, if his detention is not required in connection with any other case, or for any other reason.

26. We reiterate the observation made by the learned trial court as regards the payment of compensation to the next of kin of the deceased as per the provisions contained in Section 357A, Cr.P.C. and the jurisdictional District Legal Services Authority, Karbi Anglong is to take necessary action with regard to payment of such compensation.

27. Before parting with the record, we wish to place our appreciation on record as regards the services rendered by Mr. N.J. Das, learned Amicus Curiae appearing for the accused-appellant and direct the Registry to make available to him just remuneration as per the notified fee structure applicable to the Amicus Curiae.

28. The Registry to send back the records of the learned trial court forthwith.

J U D G E

J U D G E

Comparing Assistant