

GAHC010203192018



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

Case No. : CRL.A(J)/79/2018

JOY RAM NATH
S/O. LT. TALBAR NATH, VILL. RINGCHARA JARABARI, DIST. NAGAON,
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MS. S KANUNGOE, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

Date : 02-04-2024

[Manish Choudhury, J.]

The instant criminal appeal under Section 383 read with Section 374[2], Code of Criminal Procedure, 1973 [‘the CrPC’ or ‘the Code’, for short] from jail is directed against a Judgment and Order dated 05.7.2018 rendered in Sessions T[1] Case no. 55[N]/2015 by the learned Additional District and Sessions No. 2, Nagaon, Assam. By the Judgment and Order dated 05.07.2018, the accused-appellant has been convicted for the offence of murder under Section 302, Indian Penal Code [IPC] and has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 1000/-, in default of payment of fine, to undergo rigorous imprisonment for another 60 [sixty] days.

2. The case of the prosecution, in brief, was that on 22.07.2015, a First Information Report [FIR] was lodged before the Officer In-Charge, Raha Police Station by the informant-P.W.1. In the First Information Report [FIR], it was **inter alia** alleged that at around 02-30 p.m. on 21.07.2015, the accused-appellant stabbed Ramnath Nath, aged about 85 years, in the stomach and also dealt cut blows all over his person inside the house of the accused-appellant and as a result, Ramnath Nath sustained grievous injuries on his person. The informant had further mentioned that his father was immediately admitted at the Morigaon Civil Hospital, Morigaon and he breathed his last when the injured was being taken to Guwahati for better treatment. The informant also mentioned that it was around 07-30 p.m. on 21.07.2015, he went to the Police Station taking the deadbody of the deceased with him.

3. On receipt of the FIR, the said FIR was registered as Raha Police Station Case no. 207/2015 for the offence under Section 302, IPC and the Officer In-Charge, Raha Police Station, that is, Sri Dhaniram Nath, Sub-Inspector of Police [P.W.13] started investigation into the case.

4. The Investigating Officer [I.O.] of the case, P.W.13 during the course of investigation, visited the place of occurrence. It may be mentioned that prior to the institution of the FIR, the Government Gaon Burah, Sri Mohisingh Das [P.W.8] had informed about the incident over telephone at the Raha Police Station on 21.07.2015 and on receipt of the said information about the incident, the I.O. of the case, P.W.13 stated to have visited the place of occurrence and recorded the statements of few of the witnesses viz. P.W.2, P.W.3, P.W.5, P.W.6 and P.W.7 then. When the injured succumbed to his injuries on his way to Guwahati, his deadbody was taken back to Raha Police Station. Inquest on the deadbody of the deceased was conducted at the Raha Police Station at 07-30 p.m. on 21.07.2015 in reference to a General Diary Entry no. 553 and the said inquest was conducted by the jurisdictional Circle Officer, Smti. Pallabi Kachari [P.W.12]. Thereafter, the post-mortem examination on the deadbody of the deceased was performed at the B.P. Civil Hospital, Nagaon in reference to the same General Diary Entry no. 553 on 22.07.2015 by Dr. Ohiduz Zaman [P.W.11], the then Medical & Health Officer-I, B.P. Civil Hospital, Nagaon, who after performing the autopsy, prepared a Post-Mortem Examination Report [Ext.-5]. The I.O. of the case also got the statements of the son of the accused, Sri Nabajyoti Nath [P.W.2] and the wife of the accused, Smti. Minamai Devi [P.W.3] recorded under Section 164, CrPC on 04.08.2015 and such statements were recorded by the learned Judicial Magistrate, 1st Class, Nagaon. The accused after the incident, surrendered himself at Raha Police Station on 22.07.2015 with the alleged weapon of assault. The I.O. [P.W.13] of the case upon completion of investigation, submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 165/2015 on 31.08.2015 in connection with Raha Police Station Case no. 207/2015 [corresponding G.R.

Case no. 3728/2015] finding a **prima facie** case for the offence under Section 302, IPC well established against the accused-appellant.

5. On submission of the Charge-Sheet, the learned Judicial Magistrate, 1st Class, Nagaon upon causing production of the accused-appellant from jail hajot, furnished copies to him in compliance of the provisions of Section 207, CrPC. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate, 1st Class, Nagaon committed the case records of G.R. Case no. 3728/2015, arising out of Raha Police Station Case no. 207/2015, to the Court of Sessions as per the provisions of Section 209, CrPC by an Order of Commitment dated 12.10.2015 by notifying the Public Prosecutor. On receipt of the case records of G.R. Case no. 3728/2015, pursuant to the Order of Commitment dated 12.10.2015, the Court of Sessions registered the same as Sessions T[1] Case no. 55[N]/2015 and transferred the case to the Court of learned Additional District and Sessions Judge no. 2, Nagaon, Assam [hereinafter referred to as 'the trial court', for short], for disposal.

6. On appearance of the accused-appellant before the trial court, the learned trial court after hearing the learned Public Prosecutor and the learned defence counsel and upon perusal of the materials on record, framed the following charge against the accused-appellant : -

That you on or about the on 21.07.2015 at 02-30 a.m. at Jarabari under Raha Police Station, you inside your house committed murder intentionally causing the death of Ramnath Nath and thereby committed an offence punishable under Section 302 of Indian Penal Code [IPC] and within cognizance of the Court of Sessions.

7. When the charge was read over and explained to the accused-appellant, he pleaded not guilty and claimed to be tried. During the course of the trial, the prosecution side examined as many as 13 [thirteen] nos. of witnesses and exhibited 7 [seven] nos. of documents to bring home the charge against the accused-appellant. The witnesses examined by the prosecution side were : [i] P.W.1 – Sri Dipson Nath [the informant], son of the deceased and brother-in-law of the accused; [ii] P.W.2 – Sri Nabajyoti Nath, the younger son of the accused and a grandson of the deceased; [iii] P.W.3 – Smti. Minamai Devi, the wife of the accused and a daughter of the deceased; [iv] P.W.4 – Sri Dimba Prasad Nath, the elder son of the accused and a grandson of the deceased; [v] P.W.5 – Smti. Kalpana Devi, a neighbour of the accused; [vi] P.W.6 – Smti. Saruphuli Devi, a co-villager/neighbour of the accused; [vii] P.W.7 – Sri Bhaben Saikia, a Home Guard attached to Raha Police Station; [viii] P.W.8 – Sri Mohisingh Das, a Government Gaon Burah;

[ix] P.W.9 – Sri Sanjib Kumar Nath, an acquaintance of P.W.4; [x] P.W.10 – Sri Rinku Nath, a nephew of the deceased; [xi] P.W.11 – Dr. Ohiduz Zaman, Medical & Health Officer-I, B.P. Civil Hospital, who conducted the post-mortem examination; [xii] P.W.12 – Smti. Pallabi Kachari, the jurisdictional Circle Officer, who performed the inquest; and [xiii] P.W.13 – Sri Dhaniram Nath, the Investigating Officer [I.O.] of the case and Officer In-Charge, Raha Police Station.

8. We have heard Ms. S. Kanungoe, learned Amicus Curiae for the accused-appellant and Ms. S.H. Borah, learned Additional Public Prosecutor for the respondent, State of Assam.

9. Ms. Kanungoe, learned Amicus Curiae appearing for the accused-appellant has submitted that the alleged incident had occurred on 21.07.2015 but the FIR was lodged only on the following day, that is, on 22.07.2015. According to Ms. Kanungoe, such delay of one day ought to have been explained, but there was no explanation. Ms. Kanungoe has further submitted that the accused-appellant was the son-in-law of the deceased and from the testimonies of the prosecution witnesses, it has not emerged that there was any motive on the part of the accused-appellant to cause the alleged murder. The learned Amicus Curiae has further submitted that the two eye-witnesses to the alleged incident were/are related to both the deceased and the accused-appellant and as such, their testimonies required strict scrutiny.

10. Ms. Borah, learned Additional Public Prosecutor has submitted that there are two eye-witnesses as both the younger son of the accused-appellant and the wife of the accused-appellant had, in their testimonies, clearly implicated the accused-appellant and their testimonies were duly corroborated by the medical evidence. The other prosecution witnesses had also supported the versions of the said two eye-witnesses. Ms. Borah has further submitted that before lodging of the FIR on 22.07.2015, the I.O. of the case had received information about the alleged incident on 21.07.2015 from the Government Gaon Burah, Sri Mohisingh Das [P.W.8] on 21.07.2015 itself and he recorded the said information by way of a General Diary Entry vide G.D. Entry no. 553 dated 21.07.2015 at around 04-27 p.m. By referring to the said G.D. Entry from the case diary, available in the records, Ms. Borah has submitted that just because of the said G.D. Entry was not exhibited, the contention advanced by the learned Amicus Curiae that there was delay in lodging the FIR, is not of much significance as because the prosecution witnesses, P.W.4, P.W.8 and P.W.13 had referred about the same in their testimonies. In such view of the matter, there is no cause available for interference on that ground. Ms. Borah has further submitted that from the nature of injuries inflicted on the person of the deceased, it is evidently clear that the offence comes within the scope and ambit of Section 300, IPC, which is punishable under Section 302, IPC.

11. We have duly considered the submissions of the learned counsel for the parties and we have also gone through the materials on record including the testimonies of the witnesses and the documentary evidence and the records of Sessions T[1] Case no. 55[N]/2015, in original.

12. In order to bring home the charge of murder against the accused-appellant, the prosecution side, as already mentioned above, had examined 13 nos. of witnesses including three official witnesses, that is, P.W.11, who performed the post-mortem examination on the deadbody of the deceased; P.W.12, the jurisdictional Circle Officer, who conducted the inquest on the deadbody of the deceased; and P.W.13, the Investigating Officer [I.O.] of the case. Other than the two prosecution witnesses, that is, P.W.2 and P.W.3, the other prosecution witnesses, that is, P.W.1, P.W.4, P.W.5, P.W.6, P.W.7, P.W.8, P.W.9 and P.W.10 were post-occurrence witnesses.

13. Before looking into the accounts of the two eye-witnesses, it is apposite to refer to the depositions of the other witnesses, who did not see the alleged occurrence.

14. P.W.1, who was the informant, had deposed to the effect that at around 01-00 p.m. on 21.07.2015, his father, that is, the deceased had gone to the house of the accused-appellant, which was at a distance of about 1 km. He stated that the incident had happened at around 02-00 p.m. and his nephew, P.W.2 informed him over phone that the deceased was hacked by the accused-appellant. On receipt of the said information, he went immediately to the house of the accused-appellant. Going there, he found his father lying on the veranda of the house of the accused-appellant. He saw cut injuries on the hands and legs of his father. The body was smeared with blood and the intestine had come out. The injured was immediately taken by an ambulance to Guwahati but his father breathed his last on the way to Guwahati. As the death occurred on the way, the deadbody was taken back to Raha Police Station and from Raha Police Station, the deadbody was taken to the B.P. Civil Hospital, Nagaon. P.W.1 stated that he had lodged the FIR only on the day following the date of the incident. In his cross-examination, he had admitted that he did not witness the incident. He had stated that he went to the Police Station with the deadbody on 21.07.2015. The Police personnel from Raha Police Station after taking the deadbody to the house of the deceased, took the same to the B.P. Civil Hospital, Nagaon.

15. P.W.4, the elder son of the accused, deposed to the effect that at the time of the incident he was at Morigaon. It was one of their neighbours, P.W.5, who informed him that his grandfather was hacked by his

father, that is, the accused-appellant. Then, he came back to his house immediately and on reaching home, he found his grandfather lying on the veranda of their house with injuries. The deadbody of his grandfather was found smeared with blood and there were cut injuries. Like P.W.1, P.W.4 also stated that the injured was immediately taken to hospital for treatment but he succumbed to his injuries on his way. He stated about the post-mortem examination and the inquest and exhibited the Inquest Report as Ext.-4 with his signature on it as Ext.-4[1]. Other than putting a suggestion to the effect that P.W.4 did not state before the I.O. that P.W.5 informed him over phone that his father had hacked his grandfather with a dagger, nothing could be elicited by the defence. The suggestion put to him was denied by P.W.4.

16. The two witnesses, P.W.5 and P.W.6 were neighbours of the accused-appellant and they knew all the family members of the accused-appellant and the deceased. Both of them, in their testimonies, deposed to the effect that after hearing commotion from the house of the accused, they went there and found Ramnath Nath lying on the veranda of the house of the accused with cut injuries on his stomach, hands, legs, etc. They also saw the family members of Ramnath Nath there. They stated to have heard that it was the accused-appellant, who had inflicted the injuries on the person of Ramnath Nath. Though P.W.5 and P.W.6 were cross-examined by the defence, nothing material could be elicited from them, contrary to the case projected by the prosecution.

17. In his deposition, P.W.7, the Home Guard stated that at around 07-30/08-00 a.m. on 22.07.2015, the accused came to the Police Station along with a meat dao in his hand and disclosed that he had cut someone. The accused met P.W. 13 at the Police Station and disclosed to him again that he had cut a person. The P.W.7 deposed that when P.W.13 interrogated him, he was not present at the place. At that stage, the prosecution side sought leave of the Court to permit cross-examination of the said witness after declaring him as hostile. In the cross-examination by the prosecution, P.W.7 had admitted that the signature present in Ext.-5, Seizure List was his signature and he identified his signature on it as Ext.-5[1]. When P.W.7 was cross-examined by the defence, he stated that he did not know whom the accused had killed. As regards the seized dao, he stated that the same was about 2 ft. long including its handle and the handle was made of wood. In the cross-examination by the defence, P.W.7 stated that he had forgotten whether Ext.-5[1] was the same signature that P.W.13 had obtained from him. He denied the suggestions that the statements that the accused-appellant appeared at the Police Station taking a dao and stated that he had come there after hacking a person; and that P.W.13 seized the dao; were false.

18. P.W.8, the Gaon Burah, who knew all the members of the family of the accused as well as the

deceased, deposed that it was at around 02-00/02-30 p.m. on the date of the occurrence, P.W.1 made a phone call to him with the message that the accused-appellant had cut his father, Ramnath Nath and requested him to inform at the Police Station and thereafter, to come to the place of occurrence immediately. P.W.8 stated that he gave the information at the Raha Police Station over phone at first and thereafter, went to the house of the accused-appellant at Jarabari, Ringsara. Reaching there, he saw a pool of blood on the veranda and courtyard of the house of the accused. He did not see Ramnath Nath there as he was already taken in an ambulance for medical treatment. He stated that he came to know about the incident from the son of the accused and the neighbours who assembled at the place of occurrence. In the cross-examination, he was confronted by the defence to the effect that he did not, in his previous statement, stated that on the date of the occurrence, P.W.1 made a phone call to him and told him that the accused-appellant killed Ramnath Nath and that he should go there immediately and give the information at the Police Station. The witness denied them. Such portion of the previous statement of P.W.8 was, however, not marked by the defence and thereafter, put to the I.O. of the case, P.W.13 when he was cross-examined by them, to bring out any kind of contradiction on record for the purpose of denting the case of the prosecution.

19. P.W.9 was an acquaintance of P.W.4 and he stated, in evidence-in-chief, that he was with P.W.4 at Morigaon on the date of the occurrence. At around 01-00 p.m., P.W.4 received a phone call and thereafter, told him [P.W.9] that his father hacked his grandfather, Ramnath Nath. Thereafter, both of them came to the place of occurrence. On reaching the place of occurrence, he saw cut injuries in the hands, legs, stomach etc. of Ramnath Nath, who was lying on the veranda of the house of the accused. P.W.9 stated that at that time, Ramnath Nath was alive. He had called for an ambulance and thereafter, took Ramnath Nath to Morigaon Civil Hospital, Morigaon. The injured was examined at the Morigaon Civil Hospital and from there, the injured was referred to Guwahati for better treatment. After the injured, Ramnath Nath was taken to Guwahati by an ambulance, he went home. After some time, P.W.4 informed him over phone that Ramnath Nath died and asked him to go to the Morigaon Civil Hospital with an ambulance. Then, he went to the Morigaon Civil Hospital with an ambulance and as per the advice of the members of the family, the deadbody of Ramnath Nath was taken to the Raha Police Station. He exhibited the Inquest Report as Ext.-4 with his signature on it as Ext.-4[1].

20. P.W.10, a nephew of the deceased, was a witness, who reached the place of occurrence after the incident. He stated to have seen a pool of blood on the veranda and drawing room of the house of the accused. By the time he had reached, the injured, Ramnath Nath was already taken to hospital. He stated to have given his signature in the Inquest Report, Ext.-4 as Ext.-4[3].

21. The versions of the two witnesses, P.W.2 and P.W.3 are of import and relevance. P.W.2, in his testimony, stated that on the date of the alleged incident, he and his grandfather, Ramnath Nath were watching television in their house and his mother, P.W.3 gave tea to his grandfather, Ramnath Nath. At that time, the door of the house was open. His father, that is, the accused-appellant at that point of time brought out a sword from a bamboo sunga and arrived there. Arriving there, the accused thrust the sword into the stomach of his grandfather. P.W.2 stated that the sword came out from the backside of his grandfather. Soon thereafter, the accused-appellant attempted to cut him and his mother also but he came out running along with his mother and both of them entered into a room and locked themselves by locking the door. His grandfather also tried to go out of the room but fell down on the veranda. Following them, the accused-appellant came near the room where they locked themselves in and inserted the sword through the bamboo door. The sword touched the sadar [a kind of cloth wore by women] of his mother but somehow she was saved from the assault. Thereafter, the accused-appellant went to the veranda and dealt several blows on his grandfather. He stated to have made a phone call to his maternal uncle, P.W.1. After committing the assaults, the accused-appellant left the place. It was thereafter, P.W.1 arrived at their house. An ambulance was called thereafter and his grandfather was taken to hospital, who breathed his last thereafter. He exhibited his statement recorded under Section 164, CrPC as Ext.-1 with his signatures thereon. In his cross-examination, P.W.2 stated that his statement was recorded after about a month from the date of the alleged incident. He, however, stated that his statement was recorded by Police on the date of the incident itself.

22. P.W.3, who is the wife of the accused-appellant and the daughter of the deceased, had, in her testimony, stated that on the date of the occurrence, her father – Ramnath Nath came to their house in the after-noon and was watching television with her younger son, P.W.2. At that time, she brought tea for her father. Just at the point of time her father was about to drink the tea, her husband, that is, the accused-appellant arrived at the place with a sword in his hand and thrust it in the stomach of her father. Like P.W.2, P.W.3 also stated that the sword entered the stomach and came out from the back touching the chair. After that, the accused-appellant rushed towards them, that is, P.W.2 and P.W.3 with a view to assaulting them. Escaping from him, she and her son, P.W.2 entered into a room and locked themselves up. The accused-appellant had inserted the sword through the bamboo door and the sword pierced her sadar. At that point of time, her father also tried to go out of the house but he fell down on the veranda of the house. The accused-appellant retreated from the place near them and went near her father and dealt several blows on her father at the veranda. P.W.3 stated that they heard the sounds of dealing cut blows on Ramnath Nath and the

screaming of Ramnath Nath. As they raised alarm, the accused-appellant left the place. Thereafter, they came out of the room. P.W.1 along with the villagers took the injured Ramnath Nath to the hospital, who had, however, breathed his last on his way when he was taken to Guwahati for medical treatment. P.W.3 also stated that her statement under Section 164, CrPC was recorded before the Magistrate and she exhibited the statement as Ext.-3 with her signatures on it.

23. It was P.W.11, the then Medical & Health Officer-I, at the B.P. Civil Hospital, Nagaon, who performed the post-mortem examination of the deadbody on 22.07.2015. In his testimony, P.W.11 stated that on examination, he found the following wounds on the deadbody of the deceased :-

Wounds – position and character –

One incised wound over left forearm, size – 2 x 10 cm bone deep with fracture of ulna. One incised wound over left arm, size – 2 x 8 cm. One incised wound over right knee, size – 3 x 6 cm in size with intestine came out through wound over abdomen. Incised wound over left leg, 2 x 8. Incised wound over the right elbow with fracture of radius ulna.

23.1. He exhibited the Post-Mortem Examination [PME] Report as Ext.-5 with his signature thereon. The PME Report had specifically mentioned the following wounds :-

Wounds – position, and character :-

Incised wound over left forearm 3 x 10 cm bone deep with fracture ulna.

Incised wound over left arm 2 x 8 cm.

Incised wound over left knee 3 x 10 cm with fracture of pelega and tibia.

Stab wound over right iliac fossa 3 x 6 cm with intestine came out through wound over abdomen.

Incised wound over left leg 2 x 8 cm.

Incised wound over right elbow with fracture of radius & ulna.

23.2. P.W.11 stated that all the injuries were anti-mortem in nature and he opined that that the death was due to acute circulatory failure following haemorrhage as a result of the injuries sustained. He had stated that the injuries, mentioned therein, could be sustained by sharp cutting weapon and sharp cutting weapon could be dao, dagger, khukri, etc. During cross-examination, P.W.11 stated that the Ext.-5, the PME Report was also countersigned by the Joint Director of Health Services, Nagaon but there was neither any date

below his signature nor there was any remark. In cross-examination, he stated that he did not clearly mention whether the deceased sustained the injuries by any blunt object or any sharp cutting object.

24. On a combined reading of the eye-witness accounts of the two witnesses, P.W.2 & P.W.3 and the Medical & Health Officer [P.W.11] along with the PME Report [Ext.-5], we do not find any inconsistency among them. Both P.W.2 and P.W.3 had deposed that when P.W.2 and the deceased were watching television in the house of the accused, the accused arrived at the scene with a sword in his hands and thrust the weapon of assault in the stomach area of the deceased. Both P.W.2 and P.W.3 were categorical in their testimonies that due to such insertion of the weapon of assault, the intestine of the deceased came out. One of the wounds mentioned in the PME Report [Ext.-5] was 'stab wound over right iliac fossa 3 x 6 cm with intestine came out through wound over abdomen' is consistent with such version of the two eye-witnesses, P.W.2 and P.W.3. Both P.W.2 and P.W.3 stated to have heard of the blows made on the deceased by the accused-appellant on the veranda of their house, which was also the house of the accused-appellant, with the same weapon of assault and they stated to have heard the screaming of the deceased at the time of giving those blows from the room where they confined themselves in when the accused-appellant chased them after the initial assault made by him on the deceased with the weapon of assault in the stomach area of the deceased. The other wounds, as reflected in the PME Report [Ext.-5], are found consistent with such versions of P.W.2 and P.W.3. The versions of P.W.2 and P.W.3 stood corroborated by the evidence of P.W.11, who stated to the effect that the injuries were inflicted by a sharp cutting weapon [dao, dagger, khukri, etc.]. The witness, P.W.12 who conducted the inquest, also recorded injuries in the stomach, chest, right hand, left hand, right leg, left leg and at the back in the Inquest Report [Ext.-4].

25. A contention has been advanced on behalf of the accused-appellant by the Amicus Curiae that the two eye-witnesses, that is, P.W.2 and the P.W.3 did not see inflicting of blows on the deceased by the accused-appellant. In so far as the first blow is concerned, both P.W.2 and P.W.3 had categorically testified that they witnessed the said assault, that is, thrusting of the weapon of assault in the stomach area of the deceased. It has been admitted by P.W.3 that she did not see infliction of the other blows made by the accused-appellant on her father at the veranda of the house but P.W.3 was categorical in her testimony that she heard the sounds of assaults made by the accused-appellant on the injured at the veranda as well as the screaming of her father. P.W.1 who was informed immediately after the incident, reached the place of incident, that is, the house of the accused-appellant, P.W.2 and P.W.3, found his father, Ramnath Nath lying on the veranda of the house. He found cut injuries on the hands and legs of his father with the intestine coming out. The body of his father was found smeared with blood. In their testimonies – P.W.4, the elder

son of the accused-appellant, and P.W.9, an acquaintance of P.W.4 – both of them stated that they arrived at the place of occurrence after the incident and found Ramnath Nath lying injured, smeared with blood and cut injuries, on the veranda of the house. P.W.5 who was a neighbour of the accused-appellant, P.W.2, P.W.3 and P.W.4, stated to have reached the place of occurrence immediately after the incident hearing commotion and found Ramnath Nath lying on the veranda of the house with cut injuries on his stomach, hands and legs. Thus, we find sufficient corroboration to the versions of P.W.2 and P.W.3, who stated that apart from the initial assault of Ramnath Nath in the stomach area by the accused-appellant which pierced his body, the accused-appellant gave further blows with the said weapon of assault at the veranda of the house when Ramnath Nath in an injured condition tried to go out of the house from the room where he was initially attacked. In presence of such overwhelming cogent and trustworthy evidence, no credence can be given to the contention made by the learned Amicus Curiae. The two eye-witnesses, P.W.2 and P.W.3 were given some suggestions during their cross-examinations by the defence but those suggestions were denied by them. P.W.2 and P.W.3 were not directly confronted with their previous statements, recorded under Section 161, CrPC and Section 164, CrPC, to prove any kind of contradiction, not to speak of contradiction on any material point.

26. The contention advanced by the learned Amicus Curiae that there was some amount of delay in lodging the FIR is found to be not of much significance because of the fact that the prosecution witness, P.W.1-informant had, at around 02-00/02-30 p.m. on the date of the incident stated to have informed the Government Gaon Burah, P.W.8 about the incident of brutal assault on his grandfather, Ramnath Nath by his father, that is, the accused-appellant and by giving the information, P.W.8 was requested to inform at the Police Station. P.W.8, in his testimony, corroborated it by deposing that he made the phone call to the Police Station informing about the incident. The said fact is also stood corroborated by the statement of the I.O. of the case, P.W.13, who in his deposition, had stated that he came to know about the incident on 21.07.2015 from the Gaon Burah, that is, P.W.8 and on receipt of the said information, he had immediately went to the place of occurrence. The Inquest Report [Ext.-4] and the Sketch Map [Ext.-6] are found to have been made in reference to General Diary Entry no. 553 dated 21.07.2015.

27. The place of occurrence was the house of the accused himself. Thus, the presence of P.W.2, the younger son of the accused-appellant and P.W.3, the wife of the accused-appellant at the time/place of occurrence was found to be very natural. From the testimonies of the witnesses, including the wife and the younger son of the accused-appellant, it has emerged that the accused-appellant was habituated to liquor and used to pick up quarrels at home. P.W.2 had testified that the accused-appellant did not have any

affection towards them and he used to inflict torture on them. P.W.3, the wife of the accused-appellant had also stated that the accused-appellant used to inflict torture on them often. It has emerged from the evidence on record that after the incident, the accused-appellant was not at his house. From the evidence of P.W.7 and P.W.13, it has emerged that the accused-appellant surrendered himself with a meat dao at the Raha Police Station on 22.07.2015. Such conduct on the part of the accused-appellant is also relevant under Section 8 of the Evidence Act, 1872.

28. The I.O. of the case, P.W.13 exhibited the weapon of assault as Mat. Ext.-1. The weapon of assault [Mat. Ext.-1], seized vide a Seizure List [Ext.-5] was a dao of 30 inches long including the wooden grip. The accused-appellant did not either confront the autopsy doctor, P.W.11 or the I.O. of the case, P.W.13 extract anything material to challenge that the injuries sustained by the deceased could not have been inflicted by meat dao as the weapon of assault. On perusal of the original records, it is found that both the PME Report and the Seizure List, were marked by the learned trial court as Ext.-5. The testimonies of the two eye-witnesses, that is, P.W.1 and P.W.3, for the purpose of reaching satisfaction, are also compared with their previous statements recorded under Section 164, CrPC vide Ext.-2 and Ext.-3 and when both the sets of statements are examined, we find that P.W.2 and P.W.3 were consistent in their versions all throughout. From the evidence on record, it is found that the deceased sustained a number of bodily injuries and the bodily injuries were caused in the vital parts of his body and one of the injuries was the stabbed wound, as a result of which his intestine came out through wound of the abdomen. The medical evidence has established that the bodily injuries sustained by the deceased had led to his death.

29. The offence of culpable homicide is defined in Section 299 of the Indian Penal Code [IPC]. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Culpable homicide is the genus and the offence of murder its species, meaning thereby, all murders are culpable homicides but all culpable homicides are not murder. The offence of murder is defined in Section 300, IPC, which reads as under :-

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.

Exception 1.- When culpable homicide is not murder. Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos : —

- First.- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
- Secondly.- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
- Thirdly.- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or

property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.- Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

30. A court is often confronted with the question as to whether the offence, when the offence resulted into death of a person, was murder or culpable homicide not amounting to murder. It has been elucidated by the Hon'ble Supreme Court of India in *State of Andhra Pradesh vs. Rayavarapu Punnayya and another*, reported in [1976] 4 SCC 382, that the question can be approached at three stages, on the basis of the evidence on record. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in Section 299, IPC. If the answer to this question is **prima facie**

found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of murder contained in Section 300, IPC. If the answer to this question is found in the positive, then the offence is murder. On analysis, we find that the case in hand does not within the ambit of any of the fire exceptions provided in Section 300, IPC. Thus, the offence is punishable under Section 302, IPC.

31. The decision in *Pulicherla Nagaraju @ Nagaraja Reddy vs. State of Andhra Pradesh*, reported in [2006] 11 SCC 444, has held that 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; and [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.

32. From the evidence on record, it has emerged that the accused-appellant had arrived at the place of occurrence, which was incidentally his own house, with a weapon of assault [Mat. Ext.-1], by which one can cause the injuries/wounds, as reflected in the PME Report [Ext.-5] and as deposed by the autopsy doctor, P.W.11. That those injuries/wounds were caused by the accused-appellant were fully established from the testimonies of P.W.2 and P.W.3 – the two eye-witnesses, who were incidentally the wife and the younger son of the accused-appellant. The two eye-witnesses were also the daughter and the grandson of the deceased. The prosecution was successful to bring sufficient cogent and trustworthy evidence of other prosecution witnesses to support the testimonies of the two eye-witnesses. The nature of the weapon [Mat. Ext.-1] was capable of inflicting those injuries/wounds, sustained by the deceased. There is no evidence to indicate that the accused-appellant had picked up the weapon of assault just prior to the assault. The evidence on record go to show that the accused-appellant had carried the weapon of assault and caused the blows in the vital parts of the body of the deceased with sufficient force. The acts of brutal assault were not

found to be preceded by any sudden quarrel or sudden fight. The evidence on record do not also indicate that there was any kind of grave and sudden provocation on the part of the deceased to the accused-appellant. The deceased being the father-in-law of the accused-appellant, was not a stranger to the accused-appellant. It was not a case of single blow but it was a case of several blows by a sharp cutting heavy weapon on the deceased, who was admittedly unarmed and was watching television with his grandson [P.W.2]. At the time of the incident, the deceased, a man of more than 60 years of age, was served a cup of tea by his daughter [P.W.3], who was the wife of the accused-appellant.

33. It is well settled that a related witness cannot be said to be an interested witness merely by virtue of being a relative of the victim. A witness may be called interested only when he or she is expected to derive some benefit from a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons and has a motive to falsely implicate the accused. But in the case in hand, the two eye-witnesses, P.W.2 and the P.W.3 and few of the other prosecution witnesses like P.W.1, P.W.4 and P.W.10 were related, by the same degree, to both the deceased and the accused-appellant. Thus, we negate the contention that these related witnesses can be labelled as interested witnesses. It is also settled that the motive loses its importance in a case where direct evidence of eye-witnesses is available, because even if there may be a strong motive for the accused person to commit a particular crime, he cannot be convicted if the evidence of the eye-witnesses are not convincing. In the same way, if the evidence of the eye-witnesses are clear, reliable and trustworthy, the absence or inadequacy of motive cannot stand in the way of conviction. On appreciation of the testimonies of the witnesses, we have found that the evidence of the prosecution witnesses, more particularly, of the eye-witnesses are clear, consistent, cogent and reliable throughout and their testimonies are well corroborated by the medical evidence to establish that the offence committed by the accused-appellant is none other than murder, defined in Section 300 of the Indian Penal Code.

34. In view of the discussion made above and for the reasons assigned, we do not find any reason to take any view other than the view taken by the learned trial court, which has reached the view that the prosecution has proved the case beyond all reasonable doubt. The accused-appellant has not been able to show any ground, not to speak of good and cogent ground, to interfere with the Judgment and Order of conviction and sentence pass by the learned trial court. In such view of the matter, the appeal being bereft of any merit, stands dismissed and the Judgment and Order passed by the learned trial court is affirmed.

35. We reiterate the view of the learned trial court as regards awarding of compensation to the family

members of the victim as per the provisions of Section 357[8], CrPC. The jurisdictional District Legal Services Authority is to consider the matter of grant of compensation as per the extant procedure.

36. The court records its appreciation for the assistance rendered by the learned Amicus Curiae. The learned Amicus-curiae be paid remuneration as per the rules in force.

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

JUDGE

JUDGE

Comparing Assistant