

GAHC010234722022



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

CRL APPEAL (JAIL) No. 118 OF 2022

Monuranjan Gogoi @ Biranjan Gogoi,
S/o- Late Gunaram Gogoi,
R/o- Borbari Engali Gaon,
P.S.- Chabua,
Dist- Dibrugarh.

.....Appellant

-Versus-

The State of Assam
Represented by the Public Prosecutor, Assam

.....Respondent

:: BEFORE ::

HONOURABLE MR. JUSTICE SUMAN SHYAM
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellant : Mr. S. D. Purkayastha, Amicus Curiae

For the Respondent : Ms. B. Bhuyan, Addl. P.P., Assam

Date of Hearing : **05.12.2024**

Date of Judgment : **17.12.2024**

JUDGMENT & ORDER (CAV)

(Mridul Kumar Kalita, J)

1. Heard Mr. S. D. Purkayastha, learned Amicus Curiae appearing for the appellant. Also heard Ms. B. Bhuyan, learned senior counsel and Additional Public Prosecutor appearing for the state of Assam.

2. This Criminal Appeal (Jail) has been registered on receipt of a petition of appeal filed by the appellant, namely, Shri Monuranjan Gogoi, who is presently serving out his sentence in the Central Jail, Dibrugarh. The petition of appeal has been forwarded to this Court through the Superintendent, Central Jail, Dibrugarh. In this Appeal, the appellant has impugned the judgment dated 17.10.2022 and order dated 19.10.2022, passed by the Court of learned Additional Session Judge, Dibrugarh, in Sessions Case No. 52/2019, whereby the present appellant was convicted under Section 302 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) and in default of payment of fine to undergo simple imprisonment for three months.

3. The facts relevant for adjudication of the instant appeal, in brief, are as follows:-

(i) That on 02.01.2019, one Smti. Labanya Chetia had lodged an FIR before the Officer-in-charge of the Moran Police Station, *inter alia*, alleging that on 01.01.2019, at around 7:30 PM, one Shri Monuranjan Gogoi (the appellant), entered into her house all on a sudden and hacked her husband to death with a *dao*. It is also stated in the FIR, at that time, the fellow villagers, namely, Sri Duwal Changmai and Sri Singra Dihingia of Bhogpara gaon of Sivasagar were present in her house and they had witnessed the incident.

(ii) On receipt of the aforesaid FIR, the Officer-in-Charge of Moran Police Station registered the Moran P.S. Case No. 3/2019 under Sections 448/302 of the Indian Penal Code and he himself took up the investigation of the case. The Investigating Officer visited the crime scene, recorded the statement of witnesses, prepared the sketch map of the place of occurrence of the offence got the inquest as well as post-mortem examination of the dead body done and arrested the appellant.

(iii) Ultimately, on completion of the investigation, the charge-sheet was laid against the present appellant under Sections 448/302 of the Indian Penal Code.

(iv) After considering the materials on record and after hearing both the sides, on 02/07/2019, the Trial Court framed the charge under Section 302 of the Indian Penal Code against the present appellant. When the said charge was read over and explained to him, he pleaded not guilty to the same and claimed to be tried. The appellant faced the trial remaining in custody.

(v) To bring home the charge against the present appellant, the prosecution side examined as many as six prosecution witnesses. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973, during which he denied the truthfulness of the testimony of the prosecution witnesses and pleaded his innocence.

(vi) Ultimately, on completion of the trial, by the judgment and order which are impugned in this appeal, the appellant was convicted and sentenced in the manner as already described in paragraph No. 2 hereinbefore.

4. Before considering the rival submissions made by learned counsel for both the sides, let us go through the evidence which is available on record.

5. PW-1, Smt. Labanya Chetia, who is the first informant of this case, as well as wife of the deceased, has deposed that the incident occurred on 01.01.2019 at about 7:15 PM in

their house. She has deposed that the appellant was residing in their house for last seven years prior to commission of the offence. She has also deposed that on the day of occurrence of offence, at about 6:30 PM, the appellant came to their house after attending a feast. That day, one of the relatives of PW-1, namely, Hingora Dihingia, also came to their house. She has further deposed that the Appellant found Hingora Dihingia seated on the bed of the appellant and as such, he lost his temper and threatened Hingora that he would cut him. She has further deposed that at that time, the husband of the first informant tried to pacify the appellant by telling him that he should not utter such words to a guest. At that time, the appellant attacked her husband with a *dao* causing serious injury on his head. She has further deposed that on the way to hospital, her husband succumbed to his injuries. She has also deposed that at the time of the incident, she, along with Durlav Changmai, Kankana Chetia and their guest Hingora Dihingia were present at the place of occurrence. She has exhibited the FIR as Exhibit-1 and her signatures thereon as Exhibit-1(1).

During her cross-examination, she was asked certain suggestive questions by the learned defence counsel which were all answered in negative by her.

6. PW-2, Smti. Kankana Chetia, who is the daughter of the deceased has deposed that the appellant is a relative of

her father and he was residing in their house for last 7 years prior to the date of alleged incident. She has also deposed that the incident occurred at around 7:30 PM on 01.01.2019. She has deposed that at that time she was studying and her father was talking to their neighbour Durlav Changmai inside their house. She has also deposed that on that day one of their relatives, namely, Hingora, had come to their house and the father of the PW-2 had allowed Hingora to take rest in the room of the appellant. Accordingly, Hingora was taking rest in the bed of the appellant. She has deposed that seeing Hingora on his bed, the appellant asked him to get up and attempted to assault him. At that moment, the father of PW-2 appeared there and tried to pacify him by saying that he should not utter harsh words to an old person like Hingora. She has further deposed that on this, the appellant became angry and assaulted her father with a *dao* blow on the head. The PW-2, along with her mother, raised hue and cry. At that time, the appellant fled away from the spot with the *dao*. She has deposed that the people from neighbourhood gathered there and arranged a vehicle and sent the injured to the Assam Medical College & Hospital at Dibrugarh, where he was declared brought dead. PW-2 has also deposed that the incident occurred in her presence as well as in presence of her mother, neighbour Durlav Changmai.

During cross-examination, PW-2 was asked some suggestive questions by the learned defence counsel which were all answered in the negative by her.

7. PW-3, Durlav Changmai, has deposed that the complainant and the deceased are his neighbours. He has also deposed that the incident occurred on 01.01.2019 at about 7:30 PM. On that day, he was sitting in the residence of the deceased and was talking to him. He has deposed that suddenly the appellant appeared there and charged one Hingora, who was the guest of the deceased for taking rest on his bed. PW-3 has deposed that he along with the deceased tried to pacify him by making him understand that he should not utter such language to an old man like Hingora. After some time, the appellant went out of room and again came back and said that he would cut the old man, namely Hingora. PW-3 has also deposed that the deceased at that time asked the appellant that instead of attacking a guest better he should attack him. On this, the appellant attacked the deceased with a *dao*. PW-3 has deposed that the appellant gave two blows with the *dao* to the deceased in his presence. He noticed that he gave the blows of *dao* on the nape of the deceased. PW-3 has further deposed that on witnessing the incident, he became unconscious. He has also deposed that after committing the offence, the appellant fled away from the spot with the *dao*. He has also deposed that the deceased Hemo Chetia died on the way to the hospital.

8. During his cross-examination, only suggestive questions were asked to the PW-3 by the learned defence counsel which were all answered in the negative by him.

9. PW-4, Dr. Raihanuddin Ahmed, has deposed that he had conducted the post-mortem examination of the deceased Hemanta Chetia on 02.01.2019 and on his examination, he found the following: -

"Injuries:

1. Lacerated injury over right temporo parietal area of scalp, red in colour, of size 12 cm X 2 cm and of bone depth placed vertically.

2. Lacerated injury of size 10 cm X 2 cm and of bone depth over right occipital area of scalp, placed obliquely.

3. Chopped wound of size 9 cm X 1.5 cm and of cranial cavity depth over head, 2.5 cm below injury No. 2.

4. Chopped wound of size 13 cm X 3.5 cm and cranial cavity depth at 2 cm below injury No.3.

5. Lacerated injury over middle of the occipital area of head of size 9 cm X 2 cm and of bone depth.

6. Lacerated injury of size 6 cm X 2 cm and of muscle depth over lateral aspect of right hand.

7. Lacerated injury of size 6 cm X 1.5 cm and of tendon depth over back of the right hand.

8. Amputation of distal phalynx of right thumb.

9. Lacerated injury of size 2 cm X 0.5 cm and of bone depth over back of right index finger.

10. Chopped wound of size 7 cm X 2 cm and of bone depth over parietal area of head, horizontally placed.

11. Lacerated injury of size 6 cm X 1.5 cm and of muscle depth over left side of chest.

Injury No. 1 to 11 were red in colour.

Mark of ligature not detected.

Cranium and spinal canal: Scalp as described, Skull as described. Vertebrae healthy. Membrane congested, diffuse subdural hemorrhage present bilaterally, Brain congested. Spinal cord not examined.

Thorax: walls ribs and cartilages were healthy. Organs were congested. Chambers of the heart were empty. Vessels were healthy.

Abdomen: Organs were congested. Walls were healthy. Stomach contained partly digested food materials. Small intestine contained fluidy materials and gases. Large intestine contained fecal material and gases. Bladder was empty. Organs of generation were healthy.

Muscles bones and joints: Injuries and fractures as described. Diseases or deformity nil. Dislocation nil.

Opinion as to the cause of death: The death was due to coma resulting from the head injury as described. All the injuries were ante mortem. Injury

No. 1,2,5,7,9 and 11 were caused by blunt force. And injury No. 3,4,8 and 10 were caused by Heavy sharp cutting weapon and homicidal in nature. Approximate time since death is 18 to 24 hours. Injury No. 3,4 and 10 are sufficient to cause death. In that given case dao may be the weapon of offence”.

He exhibited post-mortem examination report as Exhibit-3 as well as inquest report as Exhibit-4.

10. During his cross-examination, PW-4 has deposed that it is rarely possible in the given case that injury Nos. 3, 4, 8 and 10 could have occurred if the victim had fallen on heavy sharp cutting weapon. He has also deposed that in the case in hand, single injury is possible if someone falls on a blunt substance. However, it is unlikely in this case as it contains multiple injuries among the deceased.

11. PW-5, Pradip Chetia, has deposed that the first informant is his sister-in-law and the deceased Hemo Chetia was his elder brother. He has deposed that on 01.01.2019 at about 8:30 PM, on hearing hue and cry from the house of Hemanta Chetia, he immediately went to his house and saw the appellant Monuranjan Gogoi running out of the house of Hemanta Chetia. He saw Hemanta Chetia lying on the floor of the kitchen in a pool of blood. He also saw cut injuries on the backside of neck and on the head of Hemanta Chetia. He has deposed that he took the victim along with his nephew Rubu

Chetia to the Assam Medical College & Hospital, Dibrugarh, after wrapping a cloth on his head. PW-5 has deposed that on reaching the hospital, the doctor informed them that the victim Hemanta Chetia had already died.

12. During his cross-examination, the PW-5 has deposed that he had not seen the occurrence. PW-5 has also deposed that when he went to the house of Hemo Chetia, it was dark and when the appellant Manoranjan Gogoi was fleeing from there, a kerosene oil lamp was burning. He was also asked many suggestive questions by the learned defence counsel which were all answered in the negative by him.

13. PW-6, Shri Dipendra Chetri, who is the Investigating Officer of the case has deposed that on 02.01.2019, he was working as Officer-in-charge of Moran Police Station and on that day Smti Labanya Chetia (PW-1) lodged one FIR at Moran Police Station wherein it was alleged that on 01.01.2019 at about 7:30 PM the appellant Manoranjan Gogoi had killed her husband by inflicting *dao* blows on him. PW-6 has also deposed that after receipt of the said FIR, Moran P.S. Case No. 3/2019 was registered and he himself took up the investigation. He has also deposed that he recorded the statement of the complainant at the police station itself. Thereafter, he proceeded to the place of occurrence along with the complainant and there the sketch map of the place of occurrence was prepared by him. Thereafter, he recorded the statement of three eye-witnesses, namely, Durlav

Changmai, Kankana Chetia and Paradip Chetia. He has deposed that the police of Borbari Outpost got the inquest and post-mortem examination of the dead body done. He has deposed that during investigation, he came to know that the appellant after committing the offence had fled away from the crime scene along with the *dao* which was used for commission of offence. He has deposed that he came to know that the appellant was staying in the house of one of his relative at Bismile, Chabua. Accordingly, on 03.01.2019, he apprehended the appellant from the house of his relative at Bismile, Chabua.

14. PW-6 has also deposed that during his interrogation, the appellant had stated before the Investigating Officer that he does not remember as to where he threw away the *dao*. He has deposed that after collecting the post-mortem examination report as well as inquest report and after finding sufficient materials against the appellant, he submitted the charge-sheet against the appellant under Sections 448/302 of the Indian Penal Code. He had exhibited the charge sheet as Exhibit-7.

15. During his cross-examination, PW-6 has deposed that he could not seize the *dao* from the place of occurrence. PW-6 has also stated that though the witness Durlav Changmai did not specifically state before him that the accused attacked the deceased with a *dao* and gave two blows to him in his presence, however, the witness Durlav Changmai had

stated before him that the accused gave many blows on the head of the deceased with a *dao*. PW-6 has also deposed that the witness Durlav Changmai did not state before him that the accused gave blows of *dao* on the nape of the deceased. PW-6 has also deposed that witness Paradip Chetia did not state before him that when accused Manoranjan Gogoi was fleeing away from the house of Hemo Chetia, it was dark, but a kerosene lamp was burning. PW-6 has also deposed that the witness Smti Labanya Chetia had stated before him that her husband tried to make the accused understand by asking him not to rebuke their guest. PW-6 has also deposed that the witness Smti Kankana Chetia had stated to him that the accused rebuked their guest as the latter was taking rest on his bed.

16. During his examination under Section 313 of the Code of Criminal Procedure, 1973, the appellant denied the truthfulness of the testimony of prosecution witnesses and pleaded his innocence. He has stated that he was not present in the house of the deceased Hemo Chetia on the day of alleged incident. He has also stated that the deceased Hemo Chetia had kept him in his house for doing cultivation work and had assured him that he would give a plot of land to him. However, Hemo Chetia neither gave him any land nor any money and as the appellant told Hemo Chetia that he would file a police complaint against him, therefore, he has been

falsely implicated in the alleged incident. However, the appellant declined to adduce any evidence in his defence.

17. Mr. S. D. Purkayastha, learned Amicus Curiae appearing for the appellant has submitted that PW-2, who is the daughter of the deceased, has stated that the appellant gave only one *dao* blow to the deceased. He has also submitted that the PW-3 has also categorically deposed that it was the deceased himself who asked the appellant to assault him (the deceased) when the appellant was rebuking his guest. The learned Amicus Curiae has also submitted that as the appellant saw Hingora sitting in his bed, he was enraged and when the deceased himself asked him not to assault Hingora, but to assault him, the appellant lost his self-control and due to provocation, he assaulted the deceased.

18. The learned Amicus Curiae has also submitted that the facts of this case are such that it brings if within first exception to the Section 300 of the Indian Penal Code, hence, he submits that the offence in this case would be an offence of culpable homicide not amounting to murder under Part-I of Section 304 of the Indian Penal Code instead of Section 302 of the Indian Penal Code. Hence, he submits that the conviction of the appellant may be converted from Section 302 of the Indian Penal Code to Section 304 Part-I of the Indian Penal Code, and the sentence may be accordingly reduced.

19. On the other hand, Ms. B. Bhuyan, learned senior counsel and Additional Public Prosecutor appearing for the state of Assam has submitted that in this case, there are three eye-witnesses to the incident of assault by the present appellant on the deceased. She submits that though the weapon of assault could not be recovered, however, all the three eye-witnesses have categorically deposed that they saw the appellant assaulting the deceased with a *dao*. She also submits that the deposition of PW-4 i.e., the doctor who conducted the post-mortem examination clearly shows that multiple injuries were found on the person of the deceased, indicating that there were multiple blows were inflicted on the deceased by the appellant.

20. The learned Additional Public Prosecutor has also submitted that when the appellant was saying harsh words to the guest of the deceased, namely Hingora, the deceased only tried to pacify him not to utter harsh words to said Hingora and this act of the deceased may not be regarded as an act of grave and sudden provocation. She submits that the facts of this case are not such as to bring it within the exception 1 to Section 300 of the Indian Penal Code so as to bring down the conviction from section 302 to the Part I of Section 304 of the Indian Penal Code. She submits that the conviction of the appellant under Section 302 of the Indian Penal Code is based on the evidence on record, therefore,

the conviction and sentence imposed on the present appellant does not warrant any interference by this Court.

21. We have considered the submissions made by the learned counsel for both the sides and have also gone through the evidence on record meticulously.

22. On perusal of the post-mortem examination report of the deceased, which has been exhibited as Exhibit-2, it appears that the deceased suffered eleven numbers of injuries, out of which, at least three were chopped wound injuries, one injury was the amputation of the distal phalynx of the right thumb and remaining others were lacerated injuries. All injuries were ante-mortem and at least four of them were homicidal in nature. Though, learned Amicus Curiae for the appellant emphasized on the testimony of PW-1, where she has stated that she saw the appellant giving only one blow of *dao* to the deceased, however, the testimony of PW-3 to the effect that the appellant gave two blows of *dao* on the deceased cannot be ignored. The Trial Court relied on the testimony of the eyewitnesses in arriving at the conclusion that the deceased was assaulted with a *dao* by the appellant, giving less weightage to the discrepancy regarding the number of blows witnessed by each of the eye witnesses. We are in agreement with the conclusion arrived at by the Trial Court, as it may be possible that during the ruckus when the appellant assaulted the deceased, the

witnesses may not exactly remember the number of blows given by the appellant to the deceased, though they have witnessed the appellant assaulting the deceased with a *dao*. The eyewitnesses cannot be expected to give a picture-perfect report of the incident and there are bound to be some minor discrepancies. The testimony of eyewitnesses to the effect that the appellant assaulted the deceased with a *dao* could not be demolished by the defence side during cross-examination of the eyewitnesses and we find no error in the Trial Court relying on the same in arriving at the finding of the guilt of the appellant.

23. PW-4, the doctor who conducted the post-mortem examination of the deceased, has deposed that the injury Nos. 3, 4 and 10, which are chopped wounds caused by heavy sharp weapon, were sufficient to cause death. The Trial Court relied on this evidence to come to the conclusion that the instant case comes within the definition of murder as provided in section 300, thirdly of the Indian Penal Code. We are in agreement with the conclusion arrived at by the Trial Court, as at least three injuries inflicted upon the deceased were sufficient in the ordinary course of the nature to cause death.

24. Now, let us examine as to whether the instant case comes within the purview of first exception to Section 300 of the Indian Penal Code to bring down the offence committed

by the appellant to the category of culpable homicide not amounting to murder.

25. In this regard, the observations made by the Supreme Court of India in the case of **"K.M.Nanavati -vs- State of Maharashtra"** reported in **"AIR 1962 SC 605"** may be useful for our purpose. Same is quoted hereinbelow: -

"84. Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

85. The Indian law, relevant to the present enquiry, may be stated thus : (1) The test of "grave and sudden" provocation is whether a

reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to Section 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

26. As observed in the above case, there is no straitjacket formula for applying the doctrine of grave and sudden provocation. Its applicability depends on the facts and circumstances of individual case. By applying the principles laid down in the aforesaid decision to the facts of this case, we find that in the instant case the evidence on record indicates that the appellant got enraged on finding the guest of the deceased namely, Hingora sitting on his bed. When the appellant wanted to assault said Hingora, the deceased tried to persuade him not to do so and asked him that instead of attacking the guest, better he should cut him (deceased). We find that there is no evidence of any quarrel

or fight between the deceased and the appellant. The evidence on record shows that the deceased only tried to persuade the appellant not to assault his guest Hingora. Such utterance by the deceased in an attempt to persuade the appellant for not assaulting his guest Hingora, in our considered opinion, cannot be regarded as an act of grave and sudden provocation so as to come within the purview of the first exception to Section 300 of the Indian Penal Code. No reasonable person would have acted in the manner as done by the appellant in the circumstances of this case. Accordingly. We are of the considered opinion that the act of the appellant cannot be covered under any of the exceptions under Section 300 of the Indian Penal Code and it amounts to commission of murder punishable under section 302 of the Indian penal code as rightly held by the Trial Court.

27. For the reasons discussed in the foregoing paragraphs, the instant appeal is dismissed.

28. Send back the records of the Trial Court, along with a copy of this judgment to the Trial Court.

JUDGE

JUDGE

Comparing Assistant