

GAHC010282252019



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

Case No. : CRL.A(J)/118/2019

RAJENDRA CHETRY
S/O. SRI KHEM BAHADUR CHETRY, VILL. CHUNA BASTI, KAILAJAN,
P.S. DILAI, DIST. KARBI ANGLONG, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY PP, ASSAM.

2:SRI DHRUBA CHETRY
S/O -LATE TILOK BAHADUR CHETRY
VILL.- CHUNA BASTI
PS- DILLAI
DISTRICT- KARBI ANGLONG, ASSAM

Advocate for the Petitioner : MR HARISH GUPTA, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT & ORDER

Date : 14-03-2024

(Marli Vankung, J)

Heard Mr. H. Gupta, learned Amicus Curiae for the appellant and Ms. S. Jahan, learned Additional Public Prosecutor for the State respondent No.1.

2] This is a jail appeal which arises out of the Judgment passed by the learned Session Judge, Diphu, Karbi Anglong in Sessions case No.705/2009 corresponding to GR case No.705/2007 and Dillai Police Station case No.02/2007, whereby the appellant was convicted under Section 302 IPC and was sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs.5,000/- in default R.I for 6 (six) months.

3] The case of the prosecution in a nutshell, is that an F.I.R. was filed by a Sri Dhruba Chetry on 28.12.2007 to the Officer-in-charge, Dillai Police Station, Karbi Anglong, Assam to the effect that on 28.12.2007 at about 1:00 A.M., Shri Rajendra Chetry of Chunabasti entered their house by breaking the door and trampled his father Tilok Bahadur Chetry, by inflicting grievous injury to him which caused his death and the accused has fled away. After the incident the people of the village captured the said Shri Rajendra Chetry, but he had escaped again. On receipt of the FIR, the Officer-in-Charge, Dillai, Police Station registered the FIR as Dillai P.S. Case No. 02/07 under Section 302 IPC dated 28.12.2007 at 8:30 A.M.

4] The case was duly investigated into by the case I/O, Shri Swapan Chhaterjee, S.I. of Police. The I/O visited the place of occurrence and forwarded the death body of Tilok Bhahadur Chetry to Diphu Civil Hospital for post mortem examination and collected report subsequently. He also took the statements of the informant at

the Police Station and the statement of the other witnesses at the place of occurrence, he prepared the sketch map of the place of occurrence. The accused/appellant was also arrested on the same day, from market place. From his investigation, the Investigating Officer found that prima facie cases for the offence under Section 302 IPC was well established against the accused and submitted the charge sheet. The learned Trial Court on receipt of the case records of GR No.705/2007 registered the case as Session case No.07/2009. Thereafter, on hearing the learned Public Prosecutor and the learned Defence counsel, the learned Trial court on 10.06.2009 framed charge against the accused appellant under Section 302 IPC for 'forcibly entering the house of the complainant Sri Dhruba Chetri and committed murder to Tilok Bahadur Chetri, the father of the complainant, causing his death on the spot', which was explained to the accused Rajendra Chetry to which he pleaded not guilty claimed to be trial. During trial as many as 5 (five) prosecution witnesses were examined out of the 7 (seven) Nos. of the prosecution witnesses cited in the charge sheet. On his examination under Section 313 Cr.PC, the stand of the accused was of complete denial. No defence witnesses were examined.

5] The learned trial court after considering the evidence on record and on hearing the learned counsels for both the parties, convicted the accused/appellant under Section 302 IPC and sentenced him to undergo

imprisonment as mentioned above. Aggrieved the accused appellant has filed instant appeal.

6] Mr. H. Gupta, learned Amicus Curiae submits that the daughter of PW-1, Ms. Sabitri Chetri, is the only eye witness to the incident and a vital witness, but she was not examined in the court as prosecution witness. PW No.1, is the wife of the deceased, she was also in the house at the time of the incident but she did not witness the incident and was in the adjacent room. She alleged that she saw the accused/appellant come out of the room after the alleged incident happened. The other prosecution witness PW Nos. 2 came to the P.O. the next date, on being informed, PW-5, who is the informant was also informed of the incident and he rushed to the P.O and saw the dead body of his father, thereafter, he filed the FIR. The PWs were not eye witnesses. The learned Amicus Curiae further submits that from the nature of the injury seen in the post mortem report, it appears that there was only one injury on the body of the deceased, no weapon has been recovered and therefore no case has been made out against the appellant for committing the offence of murder under Section 302 IPC.

7] The learned Amicus Curiae submits that, the one vital witness who is said to have seen the commission of the offence, was listed as a prosecution witness in the charge-sheet but the prosecution did not make any serious attempt to produce

the vital prosecution witness, who is said to have moved to Nepal, to depose in the court. He has also brought to the notice of the court that, as per the deposition of PW No.1, her husband the deceased Tilok Bahadur Chhetri was sleeping with the younger son in the room adjacent to theirs, when they heard the sound of her husband shouting "marise" (I am being beaten), however, the said younger son who is also a vital witness has not been made a prosecution witness.

8] The learned counsel for the appellant submitted for the above reasons, there are lapses and insistencies on the part of the prosecution who have failed miserably, to prove their case against the instant appellant under section 302 IPC beyond reasonable doubt.

9] Ms. S. Jahan, learned Addl. Public Prosecutor on the other hand submitted that the learned trial court in its judgment & Order dated 19.06.2019 at para 17 has relied on the decision of the Apex Court in **Sudip Kumar Sen Vs. State of West. Bengal** reported in **(2016) 3 SCC 26**, wherein the Apex had held that the court may act on the testimony of a single witness though uncorroborated, provided the testimony of the single witness is found reliable.

10] Ms. S. Jahan learned Addl. Public Prosecutor submits that the evidence adduced by PW-1 clearly established that, the accused/appellant had entered into their house at around midnight while her husband, the deceased was sleeping with

her younger son in a different room. She then heard her husband shouting "marise" (I am being beaten). Her daughter, Sabitri Chetri woke up and went and saw that her father was beaten by the accused appellant Rajendra Chetry. When their daughter asked the Rajendra Chhetri not to beat her father, Rajendra Chetry entered into their room and had assaulted PW No.1 on her on chest, hand and mouth as a result of which she fell down. PW. No.1 had clearly stated that she saw the accused Rajendra Chetry drag the deceased out from the room and left him from the verandah. The accused had fled from the room. The learned counsel submits that these facts have not been disputed by the defence.

11] The learned counsel further submits that the testimony of PW No.1 who is also an eye witness, clearly establishes the involvement and is guilt of the accused/appellant. The post mortem report, exhibited by the Doctor, PW No.3, has clearly established that spleen was ruptured and had opined that the cause of death was due to haemorrhagic shock due to heavy internal loss of blood following splenic rupture caused by blunt injury. She submits that though PW No.5 who is the informant and PW No.2 were not eye witnesses, however, they were immediately rushed to the P.O on being informed of the incident and saw the death body of the deceased Tilok Bahadur Chetry. From the above prosecution witnesses, it has been clearly established that the death of Tilok Bahadur Chetry was caused by the accused appellant, who had entered into their house in the

middle of the night with the intention to cause the death and attacked the deceased Tilok Bahadur Chetry while he was sleeping on his bed.

12] We have considered the submissions made by the learned counsels and we have also perused the documents on records. The prosecution evidence adduced before the learned trial court may be briefly highlighted in order to appreciate the submissions made by the learned counsels.

13] PW No.1 is the wife of the deceased victim, her deposition in the court is to the effect that, the accused/appellant is their neighbour and the informant in the case is his elder son. Her husband, Tilok Chetry was killed by the accused, Rajendra Chetry. The incident took place at night when PW No. 1 and her children were sleeping in the house. Her husband Tilok Chetry was sleeping with the younger son of PW-1 in a different room. PW No. 1 was sleeping along with her daughter Sabitri Chetry in the adjacent room. At around 12 midnight while they were sleeping they heard the sound of her husband shouting "marise" (I am being beaten). PW-1's daughter Sabitri Chetry got down from the bed and proceeded towards the room where her father was sleeping. On reaching the room her daughter saw that her husband was being beaten by the accused Rajendra Chetry. Rajendra Chetry then entered their room and assaulted PW No.1 on her on chest, hand and mouth. As a result of which she fell down and while she was trying to

stand up, she saw the accused Rajendra Chetry dragging her husband from the room and left him in the verandah. When she came out she saw that her husband had already died. The accused fled from the veranda. The son-in-law of PW-1 informed the matter at Dillai P.S. In the meantime, the villagers had gathered at the place of occurrence. The next morning, the police came and took the body of the deceased for post mortem examination. Dhruba Chetry, the son of PW-1 filed the FIR. After about 15-16 days, the police came and took PW1 and her daughter to Diphu court, where they were produced before the Magistrate for recording their statements. She exhibited the statements which were recorded by the Magistrate as Ext P-1, she also stated that the accused was in a drunken stage and she did not know why the accused killed her husband. During her cross examination, she admitted that she did not see the incident. She denied the suggestion that the accused Rajendra Chetry did not kill her husband.

14] PW 2, Raju Tamang's deposition is to the effect that the incident took place sometime in the month of December. He heard about the incident from some villagers and the next day, he had gone to P.O. where he saw the dead body lying on the bed. The police prepared inquest report and he was a witness to the inquest report exhibited as Ext.-I.

15] PW No.3 Dr. S.A. Ronghang, is the Doctor who conducted the post mortem on the deceased Tilok Bahadur Chetry. He opined that the cause of his death is due

to heamorrhagic shock due to heavy internal loss of blood following splenic rapture caused by blunt injury. The P.M.E report is exhibited as Ext.P.2.

16] PW No.4. Sri Swapan Chaterjee is the case I/O. His deposition is to the effect that at about 1 A.M. on 28.12.2007, he had received the FIR that a person named Rajendra Chetry entered the house of informant by breaking the door and caused grievous injury to the father of informant, Tilak Bahadur by trampling him which caused his death and the accused fled away. On receiving the FIR Ejahar case was registered vide Dilai PS Case No.02/07 under Section 302 IPC, he immediately proceeded the place of occurrence, he took the statement of witnesses prepared, prepared his sketch map, he also interrogated and forwarded him to Diphu Court. He had also held the inquest on the dead body and exhibited as Exb.1. He also forwarded the dead body for post mortem examination on receiving the PME report he found that the case U/s 302 IPC was established and according filed the charge sheet. Nothing pertinent was asked.

17] PW-No.5, Shri Dhruab Chetry is the informant in the case. His deposition is to the effect that the deceased Tilok Bahadur was his father. On the night of the incident he was in his paddy field. At about 1:00 A.M. some people from his village came and informed him that the accused assaulted and killed his father. On receiving the news he rushed home immediately, he found his father was lying on

the verandah. He found injury marks on the deceased. His parents and his sisters were at home that night at the place of occurrence. On arriving at the P.O. his mother and sister told him that the accused entered the house by breaking the door and assaulted the deceased which caused grievous injury, which resulted in the instantaneous death of his father. The next day, in the morning, he lodged his Ejahar. During cross examination, he admitted he was not at home at the time of the incident. He stated that he saw injury marks on the back side of the deceased which was bruises. He also stated that they did not have any dispute with the accused.

18] On examination of the accused under Section 313 Cr.PC, the accused denied all the incriminating evidence made out against him. No defence witness was produced.

19] We have perused the Post Mortem Examination Report exhibited as Ext. P-2. As per the report, the deceased sustained rupture of the spleen along the surface of about 4 inch long x 2 inch deep, following blunt injury. The spleen is also in size. The injury described ante mortem in nature. The doctor opined that the cause of his death is due to haemorrhagic shock due to heavy internal loss of blood following splenic rupture caused by blunt injury. No other signs of injury is noted except the "abdomen is distended".

No questions were asked by the defence to doubt the correctness of the PME report and we therefore are of the considered view that that the death of the deceased Tilok Bahadur Chetry was caused due to the injury sustained by him on 28.12.2017 night.

20] A perusal of the depositions of the prosecution witnesses shows that there are no eyewitnesses to the incident. The sole eyewitnesses to the incident according to PW1, who is the wife of the deceased, is their daughter Sabitri Chetry, who entered the room adjacent to theirs, and saw the deceased was being beaten by the accused appellant, however, Sabitri Chetry was not produced as prosecution witness in the court. We, however, find that the involvement of the accused/appellant in the act, is established by the evidence of PW-1, whose credibility has not been questioned or shaken in her cross examination. In her cross examination though PW1 had admitted that she did not see the incident. But in her examination-in-chief, PW-1 has testified that she heard her husband, who was in the adjacent room, shouting "marise" (I am being beaten). She testified that after the accused appellant beat her husband, the accused Rajendra Chetry came to their room and assaulted her on her chest, arms and mouth, as a result of which, she fell down and as she was getting up she also saw the accused Rajendra Chetry, dragginf the deceased/her husband, out from the room and left him in the verandah. When she reached her husband, he was already dead. The defence did

not bring forth any grounds to doubt the veracity of her deposition. PW 5 who is the informant, has also deposed that on receiving the news he immediately rushed home and found that his deceased father was lying in the verandah. PW No. 2 also arrived at the place of the occurrence on being informed of the incident and he saw the dead body of the deceased Tilok Chetry at the P.O.

21] Thus, in view of the above findings we find that the prosecution evidence has proved that it was the accused appellant who caused the death of Tilok Bahadur Chetry by inflicting the blunt injury and that he died due to haemorrhagic shock due to heavy internal loss of blood following splenic rupture caused by blunt injury, which attracts the offence of culpable homicide under section 299 of the Indian Penal Code.

22] At this point we find it appropriate to refer to a recent judgment of the hon'ble Apex court in **Anbazhagan vs. The State Represented by the Inspector of Police, 2023 (10) SCALE 173**: wherein it was held that :

“46. ...We have noticed something in the aforesaid observations made by this Court which, in our opinion, creates some confusion. We have come across such observations in many other decisions of this Court over and above the case of Jagrup Singh (1981) 3 SCC 616. What we are trying to highlight is that in Jagrup Singh (supra), although this Court altered the conviction from Section 302 to Section 304 Part II, it took shelter of Exception 4 to Section 300 of the IPC. The question is, was there any need

for the Court to take recourse to Exception 4 to Section 300 of the IPC for the purpose of altering the conviction from Section 302 to Section 304 Part II of the IPC. We say so because there is fine difference between the two parts of Section 304 of the IPC. Under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC."

23] Thus in view of the above observation of the Apex court and having arrived to the conclusion that the accused appellant caused the death of the deceased Tilok Bahadur Chetry, we have examined whether or not, the accused appellant had the pre mediated intention to cause the death of the deceased, or only had the knowledge that his act was likely to cause death, as described under section 299 of the IPC, and whether the act of the accused appellant attracted any of the clauses of Section 300 of the Indian Penal Code for committing the offence of murder punishable under section 302 IPC.

The ingredients laid out in section 300 IPC when culpable homicide is murder are-

- "1. If the act by which the death is caused is done with the intention of causing death, or*
- 2. 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

- 3. 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*
- 4. 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."*

24] On perusal of the prosecution evidence, we find that no weapon of any kind was seen or recovered from place of occurrence. We find that if the accused appellant had the real intention to cause the death of the deceased when he entered their house at midnight, in all probability he should be carrying some sort of a weapon or instrument to commit the act, there is no evidence to show that he had any kind of weapon or instrument with him. The nature of injury is described as blunt injury in the PME report. The PME report shows that no other signs of injury is found except for the rupture of the spleen along the surface of about 4 inch long x 2 inch deep, following blunt injury. The spleen is also enlarge in size. And the abdomen is distended. Thus from the nature of injury, we find that, the accused appellant must have inflicted the injury by giving a hard blow with his bare hands on the abdomen of the deceased once, since no multiple injuries are found on the body. For the aforesaid reasons we are of the considered view that the

prosecution has no sufficient evidence to prove that the accused appellant was having a pre-mediated plan or intention to cause such bodily injury to cause death or likely to cause his death. We also find that giving a hard blow on the abdomen is not so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death. For the aforesaid reasons we find that the act of the accused appellant does not meet the required ingredients to constitute the offence of culpable homicide amounting to murder under section 300 IPC.

25] Thus on finding that there is no sufficient evidence that proves that the accused appellant had the intention or pre-mediated plan to cause the death of the deceased Tilok Bahadur Chetry, we find that the accused appellant has committed an act of culpable homicide under the third part of section 299 IPC, finding that the accused appellant had the knowledge that the hard blow causing the 'blunt injury' is likely to cause the death of the deceased Tilok Bahadur Chetry.

26] Thus, on finding that the act of the accused is committing an offence under the third part of section 299 of the Indian Penal Code we find that the offence committed is punishable under Section 304 IPC Part-2 and the conviction of the accused appellant under section 302 IPC is found unsustainable. Accordingly, this court find it fit to alter the conviction of the accused appellant, Shri Rajendra Chetry from under Section 302 IPC to Section 304 IPC Part -2 IPC and accordingly alter the sentence imposed upon him by the learned sessions Judge, Diphu Assam

in Sessions Case no.07/2009 from life imprisonment and a fine of Rs. 5000/- i.d R.I six months to Rigorous Imprisonment for a period of 6 (six) years.

27] Appreciating the assistance rendered by Mr. H. Gupta, learned Amicus Curiae, we hereby provide that he shall be entitled to profession fees of Rs.7,500/- (*Rupees seven thousand five hundred*) only to be paid by the State Legal Services Authority upon production of a copy of this judgment.

28] Return the LCR along with a copy of this judgment.

29] Crl. Appeal No.118 (J)/2019 stands disposed of as above.

JUDGE

JUDGE

Comparing Assistant