

GAHC030001242024



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

Case No. : CRL.A(J)/5/2024

Sh. Lalruatzela
Saitual, Chawnpui Veng, Siatual District

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Lalrokunga Pautu, Amicus Curiae

Advocate for the Respondent : P.P./Addl.PP, Mizoram

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MARLI VANKUNG

Date of hearing : **19.11.2024**

Date of Judgment : **22.11.2024**

J U D G M E N T & O R D E R (C A V)

(Michael Zothankhuma, J)

Heard Mr. Lalrokunga Pautu, learned Amicus Curiae and Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor.

2. This appeal has put to challenge the Judgment dated 05.12.2023 passed by the Court of the Addl. Sessions Judge, Aizawl in Sessions Case No. 75/2020, by which the appellant has been convicted under Section 302 IPC and has been sentenced to undergo Rigorous Imprisonment for life with a fine of Rs. 10,000/-, in default of fine Simple Imprisonment for 90 days.

3. The prosecution case in brief is that an FIR dated 24.05.2020 was submitted by the informant (PW-1), to the effect that he had received information that Lalthatluangi of Saitual Chawnpui Veng, had been assaulted by her husband in the residence of PW-9. On reaching the residence, he found the deceased Lalthatluangi lying on the floor with blood oozing from her injury. During inquiry, it was found that the victim had been assaulted by the appellant (husband), by stabbing her with a knife on her right arm and right thigh with intent to kill her. The appellant was apprehended while hiding inside his residence and the knife was also seized in the presence of PW-2 and PW-3. The victim succumbed to her injuries after reaching the hospital. Inquest was conducted and Post Mortem Examination (PME) requisition was also submitted. After the PME was done, the body was handed over to her relatives for conducting a funeral.

4. The FIR was registered as Saitual P.S. Case No. 13/2020 dated 24.05.2020 under Section 302 IPC. The investigation started and after examining the witnesses and receiving the FSL report, the Investigating Officer, having found a prima facie case against the appellant under Section 302 IPC, submitted the Charge-sheet. The case was thereafter committed to the learned Trial Court for trial.

5. Charge under Section 302 IPC was framed against the appellant by the learned Trial Court, wherein the appellant pleaded not guilty and claimed to be tried.

6. After the evidence of 16 Prosecution Witnesses were recorded and the appellant was examined under Section 313 Cr.PC, the learned Trial Court came to a finding that the appellant had committed murder under Section 300 IPC and accordingly, convicted him under Section 302 IPC. The appellant was thereafter sentenced vide Order dated 06.12.2023 by the learned Trial Court.

7. The learned Amicus Curiae submits that as the conviction of the appellant has been based on the evidence of the 2 eye witnesses, PW-12 and PW-13, who are interested witnesses, the learned Trial Court committed an error in giving credibility to the testimonies of the interested witnesses. In support of his submission that the evidence of the interested witnesses should not be given credibility by the learned Trial Court, he has relied upon the judgment of the Supreme Court in the case of ***Md. Jabbar Ali Vs. State of Assam***, reported in ***2022 SCC Online SC 1440***.

8. The learned Amicus Curiae also submits that Section 102 (2) & (3) Cr.PC has been violated, inasmuch as, the seized knife which had been exhibited as Ext.M was not forwarded to the immediate Superior Officer by the seizing Police Officer, nor had the same been reported to the Magistrate having jurisdiction. He also submits that there were inconsistencies in the statements of the witnesses as regards the apparel worn by the deceased, as can be seen from the inquest report vis-a-vis the testimonies of PW-4 and PW-5.

9. The learned Amicus Curiae also submits that the evidence of PW-12 shows that PW-12 had stated he had not seen the appellant holding any weapon in his hand. Thus, the same was in contradiction to the further testimony of PW-12 that she had seen the appellant stabbing the deceased with a knife. He also submits that the severity of the injury sustained by the deceased was not mentioned by the Medical Officer (PW-15) or that the injury suffered by the deceased was sufficient to cause death in the ordinary course of nature.

10. He also submits that the offence committed by the appellant is that of culpable homicide not amounting to murder and as such, the charge against the appellant should be altered from Section 302 IPC to Section 304 Part II IPC. This is due to the fact that the appellant had requested his wife from whom he had been separated, to return home. As his request was rejected by the deceased, the rejection amounted to a grave and sudden provocation, which resulted in the appellant losing control, leading to the appellant killing his wife, without having any intention to do so.

11. The learned Amicus Curiae also submits that in view of the reasons stated above, even if the appellant is not found innocent of the charge framed against him, the charge against the appellant should be altered from Section 302 IPC to Section 304 Part II IPC.

12. The learned Addl. Public Prosecutor, on the other hand, submits that there is no law laid down by the Supreme Court that the evidence of interested witnesses cannot be relied upon by the Courts, for convicting an accused. She also submits that there has been no violation of Section 102 Cr.PC. With regard

to the inconsistencies in the statements of the witnesses when compared with the inquest report, as regards the wearing of the apparel of the deceased, the same was due to the fact that the clothes worn by the deceased were replaced by a different set of clothes at the hospital. The clothes worn by the deceased at the time of the incident was taken by the Police Personnel by way of the seizure memo, i.e., Ext. P-2. She also submits that this is recorded in the evidence of PW-4 & PW-5, who were seizure witnesses.

13. The learned Addl. Public Prosecutor submits that the knife (weapon) was taken from the custody of the appellant, as can be seen from the evidence of PW-1, PW-2 & PW-3. She also submits that a perusal of the PME report and the evidence of the Medical Officer (PW-15) clearly shows the severity of the injuries sustained by the deceased. Further, in the opinion of PW-15 (Medical Officer), the cause of death of the deceased has been mentioned as shock, due excessive loss of blood from the severed right brachial artery.

14. The learned Addl. Public Prosecutor submits that the evidence of PW-12 and PW-13 clearly shows that the appellant had first entered the house of PW-13 and had left. However, he came back again after 2/3 minutes, by holding his hand behind his back. The appellant was thereafter seen stabbing the victim with the knife. It can be thus presumed that the appellant had brought the knife, after he re-entered the house/place of occurrence.

15. The learned Addl. Public Prosecutor further submits that as the appellant had come back to the place of occurrence the second time, the intention to murder the deceased was clear. She also submits that in terms of the judgment of the Supreme Court in the case of ***State of Rajasthan Vs. Islam and***

Others, reported in **(2011) 6 SCC 343**, no case has been made out for altering the charge from Section 302 IPC to Section 304 Part II IPC, as the intention to kill on the part of the appellant is implied in his conduct.

16. The learned Addl. Public Prosecutor also submits that the FSL report and the deposition of the Assistant Director, FSL, Aizawl (PW-14) clearly connects the blood stains found on the knife and wearing apparels of the deceased, with the T-shirt, pants, chappal of the appellant, with the blood sample taken from the deceased. As such, it is clear that evidence leads to the fact that the appellant killed the deceased. There being no infirmity with the decision of the learned Trial Court, the appeal should be dismissed.

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

18. As can be seen from the records, 16 Prosecution Witnesses were examined. The victim had been stabbed by the appellant on her arm and left thigh using a big knife. PW-12 and PW-13 were eye witnesses to the crime.

19. In her evidence, PW-13 stated that while she was plucking the grey hair from the deceased in her house, at around 11:30 A.M on 24.05.2020, the appellant came into the house and told the victim to kindly forgive him. However, the deceased shook her head, due to which the appellant went out of the house. After a while, the appellant again entered the house and knelt down beside the victim and suddenly assaulted the victim, by stabbing her arms and left abdomen by using a big knife. The deceased fell on the floor and screamed with pain. PW-13 stated that she was also covered with blood that was spurting out from the deceased. PW-13 cried for help and her husband came rushing

from the garden. He caught hold of the appellant from behind and threw him outside the house. The appellant challenged the husband of PW-13 and started chasing the him. After that, the appellant ran into his house with the big knife and locked himself in. The deceased was thereafter taken by their neighbour Lalrammawii to the Saitual CHC. PW-13 did not go with them to the Saitual CHC as she was covered with blood. The deceased succumbed to her injuries at the hospital. The neighbour of PW-13 informed the Saitual Police about the incident. The evidence of PW-13 has not been shaken by the appellant during cross examination.

20. The evidence of PW-13 has been corroborated by her husband PW-8, who stated that on 24.05.2020 at around 11:40 A.M, he heard the sound of a woman screaming from his house, while he was working in the garden below his house. On rushing to his house, he saw the deceased lying on the floor bleeding. He also saw the appellant holding a knife and leaning towards the deceased, trying to stab her. PW-6 grabbed the appellant on his arm and pushed him out of the house. He shouted for help and ran to the house of U Vanneia and U Rawngbawla, who came running to their house. Thereafter, they went to the house of the appellant. The Police also arrived at the residence of the appellant while he was inside his house. The Police apprehended the appellant and seized the knife, which had been used to stab the deceased. The evidence of PW-8 has not been shaken or controverted during cross examination.

21. The evidence of PW-12 is to the effect that he saw the appellant going out of the house of PW-13. The appellant thereafter came again into the house, hiding his hand behind his back, stating that he did not mind dying together

with the deceased. PW-12 then stated that as he looked towards the appellant, he saw the appellant assault the deceased, by stabbing her on her right hand and her right thigh multiple times with the knife brought by him. He rushed out from the house and shouted, 'Help, the appellant is trying to kill the deceased by stabbing her'. PW-8 then rushed in and fought with the appellant. Thereafter, the appellant ran away to his house and locked himself inside the house. The deceased died in Saitual District Hospital on 24.05.2020.

22. In his cross examination, PW-12 stated that the appellant had re-entered the house after 2 or 3 minutes after leaving it. In the first instance when the appellant entered the house, he was holding nothing in his hand. PW-12 further stated that he did not see the appellant holding any weapon in his hand when the appellant re-entered the house, but he presumed that since the appellant was hiding his hand behind his back, he may be carrying a weapon in his hand. The fact that PW-12 saw the appellant stabbing the deceased with a knife was not shaken or controverted during the cross examination of PW-12.

23. The evidence of PW-1 (informant) is that he is an ASI at the Saitual Police Station. He received information on 24.05.2020 that the appellant had assaulted his wife. On reaching the place of occurrence, he found the victim on the floor. She was bleeding profusely from her arms and thighs. She was taken to the Hospital by a Taxi. On finding out that the appellant had stabbed the deceased, PW-1 went to the residence of the appellant and asked him to open the door. The appellant hesitated as a number of people had gathered around his house. When the appellant opened the door, some people threw stones at the appellant, due to which the appellant closed the door. After he had asked the people to disperse, the appellant was asked to open the door, assuring him

that he would be safe in Police custody. The appellant then opened the door with the knife still in his hand. The knife was seized and the appellant was taken to the Police Station. As he received information that the deceased had died in the Hospital, he conducted an inquest and made a requisition for a Post Mortem Examination (PME) and also for drawing blood sample from the victim. The PME was conducted and the clothes worn by the deceased was taken off by the Nurses in the hospital. The said clothes was seized in the presence of witnesses. PW-1 exhibited the knife, the wearing apparel of the victim, the inquest report and the medical requisition for PME.

24. The evidence of PW-2 and PW-3 is that they were seizure witnesses in relation to the seizing of the knife (weapon) by the Police. In fact, PW-2 stated that when the appellant opened the door of his house, he was holding a big knife with blood stains which the police seized.

25. The evidence of PW-4 and PW-5 is that they were seizure witnesses with regards to the clothes of the deceased which were seized by the Police in the hospital, which was taken off from the body of the deceased by a Nurse.

26. The evidence of PW-6 and PW-7 is that they were the seizure witnesses with regard to the seizure of the wearing apparels of the appellant, which was stained with blood.

27. The evidence of PW-9, PW-10 and PW-11 is that they had heard the sound of screaming coming from the place of occurrence and that they had not seen the incident.

28. The evidence of PW-14, Assistant Director, Forensic Science Laboratory

(FSL) is to the effect that on examination of the blood stains found on the knife (weapon), wearing apparel of the deceased, the chappal and clothes of the appellant, including the blood sample of the deceased, the same showed that the blood found in the above items belonged to the deceased.

29. The evidence of PW-15, Medical Officer, is to the effect that the deceased sustained injuries as follows:-

- “i. Cubital fossa right side 5 cmx1 cm severing Biceps brachii and brachial artery.*
- ii. Postero-Lateral to right elbow-cut injury 'v' shape (or) two in numbers 10 cms x 0.5 cm and 4 cm x 0.5 cm up to Sub-cutaneous tissue cut.*

She sustained injury on the right thigh and details are as follows:

- i. Sub-cutaneous tissue cut on right iliac fossa 6cmx0.5 cms.*
- ii. Right thigh two cut injury*

-10cmx0.5cm upper anteromedial

-5cmx0.5cm upper anterolateral.”

Further, in the opinion of PW-15, the cause of death of the deceased was due to shock, which was caused by excessive loss of blood from the severed right brachial artery. PW-15 also stated that the PME was conducted after a lapse of 3 hours from the death of the deceased and that the injuries suffered by the deceased was sufficient to cause death in the ordinary course of nature.

30. The evidence of PW-16 is to the effect that the investigation conducted by him and the evidence collected, led to a prima facie case being found against the appellant under Section 302 IPC.

31. As can be seen from the evidence of the prosecution witnesses, there is no contradiction or discrepancies in their evidence. In fact, the evidence of the prosecution witnesses all corroborate one another.

32. In the case of ***Md. Jabbar Ali & Others Vs. State of Assam***, reported in ***2022 SCC Online SC 1440***, the Supreme Court has held that the evidence of related/interested witnesses can be rejected, if there are material contradictions and inconsistencies found in their testimonies. The Supreme Court also held that the well settled principle is that, just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded. However, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection.

33. In the present case, though PW-12 and PW-13 are related to the deceased, there is nothing to show that there are material contradictions and inconsistencies in their testimonies. In fact, the evidence of the prosecution witnesses, especially PW-8, PW-12 & PW-13, all point to the guilt of the appellant.

34. Another fact that points to the guilt of the appellant is the averments made by the appellant in his appeal petition. In his appeal petition, the appellant has taken the stand that he did not seek to justify his crime. It is the

appellant's case in the appeal petition that he was intoxicated and angry on severe provocation due, to the struggle and quarrel with the deceased, which led him to lose his control over his senses. He avers that the incident occurred accidentally due to sudden provocation and that he could not deny his responsibility for the death of his wife. He also avers that he grieves daily for taking his wife's life, especially when he had no previous plan, intention or motive to do so.

35. Thus, the appellant in his appeal petition has admitted to killing his wife in various paragraphs, though without intending to do so. The evidence recorded shows that the appellant had entered the house and left. He came back two or three minutes later with one hand behind his back. The appellant thereafter started stabbing his wife which led to her death. This clearly implies that the weapon was brought into the place of occurrence by the appellant.

36. In the case of ***State of Rajasthan Vs. Islam & Others***, reported in **(2011) 6 SCC 343**, the Supreme Court held that when the accused had admittedly left the house (place of occurrence) and returned back with a deadly weapon and hit the head of the deceased repeatedly which was a vital part of the human body, there was some amount of pre-mediation on the part of the accused, as an intention can develop on the spot. In the above background, the Supreme Court was of the opinion that the conversion of a conviction from Section 302 IPC to Section 304 Part II IPC could not be sustained.

37. The facts in this case are similar. The appellant earlier had come to the house with nothing and left, on being rejected by the wife for moving in back with him. However, on returning two or three minutes later, the appellant who

had this time brought a knife, started stabbing her repeatedly. This, in our opinion, amounts to pre-meditation to kill, especially, when there is nothing to show that the deceased had provoked the appellant. The only action of the deceased was that she had rejected the request of the appellant to move in back with him.

38. Though there is nothing to show that Section 102 (2) & (3) Cr.PC had been followed in respect of the seized knife, the appellant has also not been able to show what prejudice has been caused to him due to the above.

39. The examination of the appellant under Section 313 Cr.PC shows that the appellant had made a blanket denial of question Nos. 1 to 13 put to him in respect of the evidence adduced against him. However, the appellant has stated that "I did not see her at all", on the day of the occurrence, when he makes his answer to question No. 14, which is as follows:-

"Q.14. If you did not do what was alleged against you, then do you have any idea or do you know who would have stabbed your wife and caused her death?"

Ans: No. Vanneia came to my residence in the early morning while I was cooking and told me that they were going to kill him. I don't know what had happened that day, I did not see her at all."

This is clearly a false statement made by the appellant.

40. On considering all the above facts, we are of the view that there is no infirmity in the impugned Judgment & Order passed by the learned Trial Court.

The evidence recorded proves that the appellant killed the deceased, beyond all reasonable doubt. Accordingly, we do not find any ground to interfere with the same.

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

42. In view of the assistance rendered by the learned Amicus Curiae, his fee of Rs. 8,500/- should be paid by the Mizoram State Legal Services Authority.

JUDGE

JUDGE

Comparing Assistant