

(2023) 08 GAU CK 0016
In the Gauhati High Court
Case No : Criminal Appeal (J) No. 95 Of 2019

Jibon Newar

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 14-08-2023

Acts Referred:

Indian Penal Code, 1860 — Section 307, 326, 341
Code Of Criminal Procedure, 1973 — Section 161, 162, 164, 313
Evidence Act, 1872 — Section 145

Citation : (2023) 08 GAU CK 0016

Hon'ble Judges : Susmita Phukan Khaund, J

Bench : Single Bench

Advocate : B Sarma

Judgement

1. Heard Ms. B Sarma, learned Amicus Curiae for the appellant Jibon Newar and Mr. D Das, learned Addl. PP, appearing for the State of Assam.
2. The appellant Jibon Newar (hereinafter referred to as appellant) has preferred an appeal from the District Jail, Goalpara against the judgment and order dated 15.05.2019 passed by the learned Asst. Sessions Judge, Goalpara in connection with Sessions Case No.109/2017 convicting the appellant under Section 307 IPC and sentencing him to suffer rigorous imprisonment for 7 (seven) years and to pay a fine of Rs.3,000/- with default stipulation. He was further convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for 7 (seven) years and to pay a fine of Rs.2,000/- with default stipulation. The sentences are to run concurrently.
3. The genesis of the case was that on 12.04.2017 at about 6.30 pm, an altercation erupted between the appellant and his wife Niru Kumari Newar (hereinafter referred to as the victim), and then the appellant struck a blow with a dao (machete) inflicting cuts on the ear and neck of the victim. Her hand was almost severed off by the blow. The appellant also assaulted his sons and daughters. The victim was knocked unconscious by the impact of the injuries and

blood oozed out from her injuries. She was taken to Simlitola Primary Health Centre and thereafter she was referred to G.M.C.H, at Guwahati as the injuries were grievous in nature.

4. The FIR was lodged by Tukuna Newar (hereinafter the informant) and Rongjuli PS Case No.47/2017 was registered under section 341/326/307 IPC. The investigating officer (I.O in short) embarked upon the investigation and on closure of investigation submitted charge sheet against the appellant. At the commencement of trial, a formal charge under section 341/326/307 IPC was framed and read over and explained to the appellant who, abjured his guilt and claimed innocence. To substantiate its stance, the prosecution adduced the evidence of 11 witnesses including the IO and Medical Officer (M.O for short), whereas the defence did not tender any evidence. On the incriminating circumstances arising against him, several questions were asked to the appellant and his responses were recorded. The trial Court decided the case on the following points:

"7. (1) Whether the accused Jibon Newar on 12.04.2017 at about 6.30 pm at village Simlitola under Rongjuli P.S., District Goalpara (Assam), voluntarily caused grievous hurt to Niru Kumari Newar by means of a dao which is an instrument of cutting as alleged, and thereby committed offence punishable under section 326 IPC?

(2) Whether the accused person at the aforesaid relevant time and place did an act, namely causing grievous hurt to Niru Kumari Newar with such intention or knowledge and under such circumstances by that act had caused death of Niru Kumari Newar, he would have been guilty of murder and thereby committed an offence punishment under section 307 of IPC?"

5. The learned counsel for the appellant laid stress in her argument that the prosecution witnesses are related to the victim. When questions were asked to the appellant under section 313 Cr.P.C., to the question No.28 the appellant answered that at the time of the incident his wife was inebriated and quarrelled with him and when he retorted, she brought out a dao and then she fell down and sustained the cut injuries. It is also submitted by the learned counsel for the appellant that the evidence of the witnesses clearly reveals that the appellant and the victim were at a logger heads and they used to quarrel frequently and it is not surprising that a false case may have been foisted against the appellant. Contradictions were elicited through the cross examination of the witnesses and the cross examination of the IO as per section 145 of the Indian Evidence Act, 1872 (Evidence Act, for short) qua section 162 Cr.P.C. The evidence given by the independent witnesses cannot be accepted as their evidence is heresay evidence.

6. Per contra the learned Addl. PP has stated that the evidence of the witnesses are corroborating. The victim's evidence cannot be discarded. She has categorically stated that her husband hacked her with the dao almost severing of her hand and caused incised injuries on other parts of her body including her

neck and ear. Her statement under section 164 Cr.P.C and the earlier statement of PW-3 has been substantiated and fortified by their evidence in the Court. It is further submitted that, considering the gravity of the offence the order of conviction and sentence is justified. The appellant deserves deterrent punishment. The judgment and order is sustainable and is not required to be interfered with.

7. To decide this case in its proper perspective, I would like to re-appreciate the evidence.

8. PW-1 Smt. Tukuna Newar (informant) is the victim's sister-in-law and she testified that the incident occurred about 3/4 months ago. At around 6.30 pm while she was at home, her nephew came and informed her that the victim had been hacked. Immediately she went to the victim's house and found her sister lying in the courtyard in a pool of blood. She noticed injuries on her hand, neck and ears. Then they carried the victim in a push cart to Simlitola Hospital and from thereon the victim was referred to Guwahati. She lodged the ejahar (FIR). She proved the FIR as exhibit-1 and her signature on the FIR as exhibit-1(1).

9. No contradiction could be elicited through the cross examination of this witness. When cross examined, the PW-1 has denied that she has not informed the I/O that her sister sustained injuries on both her hands. Thus the evidence of this witness has remained uncontradicted and uncontroverted.

10. The victim Smti. Niru Kumari Newar has testified as PW-2 that the informant is her brother's wife i.e., her sister in law. The occurrence took place at around 6/6.30 PM about 7 months ago. Her husband came and demanded Rs.80,000/- to visit Nepal. She replied that she would give the money after discussing with her sons. At that time her husband dealt a blow on her neck from behind, cutting of the lobe of her ears. Then her second son came out and tried to resist, her husband then made an attempt to inflict injuries on her son and when she tried to ward off the blows, her husband dealt a blow with his dao on her right hand. Her right hand almost got severed off. She then slumped to the ground and then her husband dealt a blow which landed on her left hand and on her back. She was knocked unconscious by the impact and she regained consciousness at Guwahati. An iron rod was fixed to her arm. Her sister in law lodged the FIR in connection with this case. This witness was cross examined at length.

11. Certain contradictions could be brought to the fore through the cross examination of this witness and the cross examination of the IO. The IO P.W-11 has affirmed that she has not stated under section 161 Cr.P.C., that her husband came from behind and dealt a blow on the back of her neck up to her ear and then her second son tried to prevent the attack. She has also omitted to state under section 161 Cr.P.C., that her husband tried to attack her son and when she tried to ward off the blow her husband inflicted the injuries on her left hand. The remaining part of the evidence of this witness has not been contradicted or controverted by her cross examination vis-à-vis the cross examination of the IO.

12. PW-2's evidence that the dao blow inflicted by her husband almost severed of her right hand has remained uncontradicted and uncontroverted.

13. The Medical Officer Dr. Pranjan Kalita has testified as PW-10 that on 13.07.2017, while he was working at Hayat Hospital, Guwahati as Medical Officer in Emergency Department, he examined the patient, namely, Niru Kumari aged about 40 years in connection with this case, vide OPD Regd No.- RID No. 87858; MRD No.16722 dated 13.04.2017. After examination of the patient he found the following:

"(1) It was alleged history of physical assault at about 7.30 PM on 12.04.2017 near simlitola.

(2) Initially the patient was treated at Simlitola P.H.C.

(3) The patient was found conscious and oriented.

(4) He noticed and found-

(i) Repaired wound over right lateral aspect of neck extending upto the right external ear.

(ii) Excised wound over right forearm extending from ulnar side and both bones cut, muscles cut on ulnar side with sprouting vessels and connected with a muscle and skin twig on radial side. The finger movement was absent. Distal circulation?

(iii) lacerated wound over planter aspect of left forearm. Near total amputation right forearm.

In his opinion, the nature of injuries were grievous and the weapon used sharp."

14. He has proved the Medical report as exhibit-5 and the signature on the report as exhibit-5(1). He was cross-examined at length. He has admitted that the patient was not accompanied by police and he had not mentioned the police requisition number in exhibit-5. The exhibit-5 is not appended along with any x-ray report regarding injury inflicted on the bone. He admitted in his cross-examination that the lacerated injury may be caused by falling on hard substance but the injury on the bone could not be caused by pieces of glass.

15. Thus it has been proved beyond reasonable doubt that the injured person sustained such an injury which nearly severed off her right forearm. The injured person has clearly implicated that her husband has caused the injury.

16. The cross-examination of this witness vis-a-vis the cross-examination of the I/O has not rebutted the evidence that the accused caused the grievous injury which almost severed off the right arm of the injured/victim. The other almost fatal injury was the injury on the back of her neck upto her ear. This injury was caused on the vital part of her body.

17. Tinku Newar, PW-3 is a child witness and his oath was not administered. He

has deposed that his aunt has lodged a case against his father. The incident occurred about 6.00 PM in the month of April. While he was studying, he heard his parents quarrelling and he got up from his study table and saw his father stabbing his mother who sustained injuries on her ears and hand. His aunt came and lifted his mother and took her to the hospital where she was provided treatment. In his cross examination he has stated that the police did not record his statement. PW-3 was only 13 years old at the time of the incident.

18. A neighbour Smt. Sushmita Newar deposed as PW-4 that the incident occurred about 2/3 months ago (from 30 January, 2018). She was at home at around 7/8 PM when Jibon Newar's son Tinku Newar, came running to her. He was in tears and he informed her that his father had stabbed his mother. She (PW-4) went running to Jibon's house and saw Niru Kumari Newar lying in an injured condition in the courtyard. Immediately they took her to the hospital. Later she was referred to Guwahati Medical College and Hospital. The police investigated the case and apprehended Jibon from the bathroom. They handed over blood stained clothes and the dao used by Jibon to the police and the police seized the same. She (PW-4) affixed her signature on the seizure-list Ext.-2. She proved her signature as Ext.-2(1). She identified the seizure-list relating to the seizure of blood stained clothes and earth as Ext.-3 and her signature on the seizure-list as Ext.3(1). She identified the dao as Material Ext.-I and blood stained clothes as Material Ext.-II and blood stained earth as Material Ext.-III. In her cross-examination PW-4 has admitted that she did not know what was written on the seizure-list. She stated that she handed over a dao at the police station on the day of the occurrence at about 8:30 PM.

19. The contradiction that could be elicited through her cross-examination vis-a-vis the cross-examination of the IO, Nandalal Sarkar is that PW-4 did not mention u/s 161 Cr.PC that at around 8 PM, Tinku Newar informed her that his father stabbed his mother. This witness was cross-examined in extenso, but her evidence remained uncontradicted except the contradiction that she did not mention before the IO that Tinku informed her that his father has stabbed his mother. It can thus be safely held that her evidence proves that she went to the victim's house at night and found her lying in an injured condition in the courtyard and then they took the injured person to the hospital and handed over the blood stained clothes, and dao to the police. Her examination-in-chief and cross-examination clearly depicts that the victim is her neighbour and there are 10/12 houses between her house and the victim's house. She has also admitted in her cross-examination that Niru Newar (injured person) is her sister-in-law.

20. Ranjana Newar has admitted in her cross-examination that Niru Newar is her cousin and PW-4, Sushmita Newar is her elder sister. Ranjana has deposed as PW-5 that the incident occurred about 4 months ago. The appellant's son came to her house and informed her that the appellant stabbed his mother. She immediately went to the appellant's house and saw the injured person Niru Kumari smeared with blood and was lying on the ground. A dao was lying

nearby. They took her to the hospital. At first they handed over the dao at the police station and they went to the hospital. The police seized the dao and blood stained clothes and she affixed her signature. She identified her signature on the seizure-list as Ext.-2(2) and Ext.-3(2). She further deposed that Niru was taken to Guwahati for treatment. Niru also informed her that her husband stabbed her because she did not give money to her husband. In her cross-examination PW-5 has admitted that she did not know what was written in the seizure-list Ext.-2 and Ext.-3. The blood stained clothes were not exhibited in the Court. She has further deposed that the dao was lying at the place of occurrence. Both PW-4 and PW-5 have admitted in the cross-examination that the same type of dao is available everywhere. She went with Sushmita Newar (PW-4) to Niru's house.

21. No contradiction could be elicited through the cross-examination of these witnesses despite the fact that these witnesses were cross-examined at length.

However, the IO PW-11 has stated in his cross-examination that PW-5 did not mention u/s 161 Cr.PC that a dao was lying near Niru. Thus the evidence of PW-5 that the appellant's son Boli informed her that the appellant stabbed his mother and then she went to the appellant's house and found Niru lying on the ground in a pool of blood has remained uncontradicted and uncontroverted.

22. A neighbour Smt. Tara Devi Sarmah testified as PW-6 that the incident occurred about 5 months ago. At the time of the incident, she was at the home and a boy named Tinku Newar came shouting and informed her that his mother was assaulted. So, she went to the place of occurrence and saw Niru Kumari lying injured, in the courtyard. She noticed cut injury on her right hand and neck and blood oozing out from the injuries. She along with other persons present at the place of occurrence, took the injured to Simalitoli Hospital and provided treatment for her. Thereafter they informed the police at Simalitoli Police Outpost about the incident and the police came and investigated the case. On the night of the occurrence the injured person was sent to Guwahati Medical College Hospital. The police seized the dao and she affixed her signature on the seizure-list as Ext.-2 and she identified her signature as Ext.-2(3). She has admitted in her cross-examination that she did not mention before the IO that she Tinku Newar informed her that his mother was stabbed and then she went there and saw some bleeding injuries on the victim's body because of police did not ask any question regarding this. She has also admitted that she did not state that the injured person's children told her that their father had stabbed their mother.

23. When a witness is cross-examined ingeniously, the grain has to be separated from the chaff. On scrutinising the evidence of PW-6 it is held that the evidence on PW-6 clearly depicts that she saw the victim Niru Kumari lying injured in the courtyard and they took the injured person to the hospital for treatment and informed the police about the incident.

24. A tea garden labour Sri Jon Munda has testified as PW-7 that the informant Tukuna Newar is his neighbour. Almost a year back, one evening while returning

home from the Simlitola market, he heard a commotion and learnt from the public that the appellant hit his wife with a dao causing cut injuries on her neck and hand. As this witness failed to depose who informed him about the incident, his evidence can be considered as hearsay evidence, but nonetheless his evidence substantiates the evidence of other witnesses.

25. Another witness Manshai Munda testified as PW-8 that the informant is not known to her, but the appellant is known to her. About a year back, one evening at around 6:30 PM, she heard a commotion emanating from the appellant's house. He went to the appellant's house and saw his son Chandra Newar in tears and people assembled there. He heard from the people that the appellant stabbed his wife with a dao and she was taken to the hospital in a Thela (push card). He also heard that the appellant asked for Rs. 80,000/- from his wife as he wanted to go to Nepal but when his wife refused to pay the amount the appellant inflicted the slashes on his wife. The appellant hid underground in the toilet tank.

The argument of the learned counsel for the appellant that the evidence of these witnesses is hearsay evidence cannot be ignored.

26. Sri Shankar Chandra Rabha is a Scientific Officer of the Directorate of Forensic Science (DFS in short). He testified as PW-9 that on 20.04.2017, he received a parcel through the Director of Forensic Science in connection with Rongjuli P.S. Case No. 47/2017 u/s 341/326/307 IPC. The parcel was covered with the cloth and contained one cartoon box which consisted two exhibits. After opening the parcel he found the following articles –

(1) One wooden handle dao containing stain of suspected blood. Total length of the dao with handle is 43.0 cms approx. marked as-1, M.R. No. 13/17. His examination No. Sero-3792/A.

(2) Some amount of blood with soil is marked as-2 M.R. No. 14/17. His examination No. Sero-3792/B.

Result of his examination:-

Ext. No. Sero-3792/A and Sero-3792/B gave positive test for human blood of group "AB".

Ext.4 is the said Forensic Report and Ext.4(1) is his signature with official seal.

In his cross-examination, he testified that he had received the sample on 20.04.2017 but he never mentioned on Ext.-4, on which date he examined the sample in connection with this case. He has denied the suggestion that he had examined the sample of some other case.

27. Projecting the evidence of PW-9, the learned counsel for the appellant laid stress in his argument that the blood group "AB" has not been matched with the victim's blood group in support of the evidence that the dao was smeared with the victim's blood or the victim's blood got soaked on the earth exhibited in

connection with this case. As the date of the receipt of the sample is not mentioned on the Forensic Report, it could not be ascertained if the blood in the sample is a match of the victim's blood.

28. This argument of the learned counsel for the appellant can be safely brushed aside. The evidence of the injured witness, PW-2, cannot be ignored. She has categorically testified that her husband had attacked her with dao causing several grievous injuries on her body. Her evidence is substantiated by the Medico Legal Report and the oral evidence of the doctor that her hand was almost amputated by the blow.

29. The evidence of the Medical Officer, PW-7 clearly depicts that on examination he found incised wound over the right forearm extending from ulna side to both bones cut, muscles cut on the ulna side with sprouting vessels and connected with a muscle and skin twig on Radial side. Finger movement was absent. The right forearm was nearly amputated.

The injured PW-2 has categorically stated that her right hand was almost severed off. This evidence of PW-2 remained uncontradicted and uncontroverted on her cross-examination vis-a-vis the cross-examination of the IO, PW-11. The uncontroverted evidence of PW-1, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-7 that the victim was initially taken to Simalitoli Hospital has been substantiated by the evidence of PW-10 who has mentioned in his Medico Legal Report marked as Ext.-5 that initially the patient was treated at Simalitoli PHC. Although PW-2 has not mentioned before the IO when the initial statement was recorded that her husband came from behind and dealt a blow on the back of her neck causing incised wound on the back of her neck upto her ear, the Ext.-5 clearly reveals that a repaired wound was found over the right lateral aspect of neck extending upto the right external ear. This Ext.5 has been proved by the PW-10. Thus the omission of the victim to mention about her neck injury before the IO pales into insignificance as her evidence has been substantiated by the injury report. Thus the plea of the appellant that the blood stained clothes and blood stained earth is manipulated evidence appears to be too farfetched and sketchy. Appellants answers to the questions u/s 313 Cr.PC reveals that the blood stained clothes and the blood stained earth have been manipulated. This is a weak plea taken by him. Other plea taken by the appellant that his wife who was inebriated quarrelled with him and when he tried to ward off the blow the dao blow landed on her forearm, does not appear to be viable. The Medical Officer has deposed in his cross-examination that the injuries sustained by the victim on her right arm cannot be caused by accidental falling even if the victim had fallen over broken glasses. The Medical Officer has stated in his cross-examination that the lacerated wound at Serial No. 4(iii) may be caused by broken glasses but not the other injuries. The other plea taken by the defence has been projected through the cross-examination of the witnesses. The cross-examination of the witnesses PW-2, PW-3, PW-4, PW-5 and PW-6 clearly depicts that both the appellant and the injured used to quarrel frequently and they were at loggerheads. It is

apparent from the evidence of PW-2 (injured victim) and PW-3 that the appellant flew into a rage when the injured person refused to give him Rs. 80,000/- to visit Nepal.

30. In view of my foregoing discussions, it is thereby held that it is evident who caused the injuries on the back of the victim's neck and on her right forearm and the other lacerated injuries on her body. Neck is a vital part of a human body and the evidence reveals that the appellant also attacked the victim on the back of her neck and thereafter he almost hacked off her right forearm. The appellant behaved in a very aggressive manner. It appears as if the appellant was in a rampage. Even if he flew into a rage on being provoked by his wife's refusal to pay him Rs. 80,000/-, it was not rational on him to have acted in such an aggressive manner. It has not been brought on evidence if the victim's hand had to be amputated but the Medical Officer, PW-10 has stated that the injured victim's hand was almost severed off, cutting of bones and muscles. The evidence of sole testimony of an injured person is sufficient to bring home the charges of grievous hurt. The uncontradicted evidence of the PW's establishes beyond a reasonable doubt that the appellant is guilty of offence u/s 326/307 IPC.

31. In view of my foregoing discussions, it is held that the evidence of the injured victim clearly depicts that her husband i.e. the appellant caused the grievous injuries sustained by her. It has been rightly held by the trial court that the appellant caused the injury on the victim's neck with a dao with intention to commit murder. The appellant has been in custody from the beginning and throughout the trial. The appellant has already undergone a major part of his sentence. The judgment and order of the learned trial court convicting the appellant u/s 307/326 IPC is upheld with a slight modification.

32. The order of sentence u/s 307/326 IPC is reduced to the period of detention already undergone by the appellant.

33. Ms. B. Sarma, learned Amicus Curiae, who has ably assisted this Court in conducting this appeal, may be paid the honorarium at the rate fixed as per rules.

34. The appellant is to be released from custody forthwith, if he is not wanted in any other case.

35. Sureties stand discharged.

36. Send back the LCR.